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PROCEEDINGS

133

OF THE

COMMITTEE OF THE HOUSE OF ASSEMBLY,

APPOINTED TO

3
INVESTIGATE THE CHARGES

MADE BY

THE HON. JOHN A. MACDONALD,

AGAINST

GEORGE BROWN, ESQ., M. P. P.

WITH REGARD TO HIS CONDUCT AS PENITENTIARY COMMISSIONER.

A SHORT-HAND REPORT—BY WILLIAM E. O'BRIEN,

Professional Reporter.

TORONTO:

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1856.

ORDER OF REFERENCE.

Resolution appointing Committee. In the House of Assembly, Wednesday, February 27th, moved by Mr. *Brown*, "that the Hon. J. A. McDonald, Attorney General for Upper Canada, having in the course of debate last evening charged Mr. George Brown, a member of this House, while acting in 1848 as a Member and Secretary of the Commission appointed by Government to enquire into the condition of the Provincial Penitentiary :

"*First*. With having recorded falsely the evidence of witnesses examined before the said Commission ;

"*Second*. With having altered the written testimony given by witnesses after their evidence was closed and subscribed ;

"*Third*. With having suborned convicts to commit perjury ;

"*Fourth*. With having obtained the pardon of murderers confined in the Penitentiary to induce them to give false evidence ;

"And the said Hon. J. A. McDonald having pledged himself to substantiate those charges ; that a Committee of seven Members be appointed to enquire and report with all convenient speed as to the truth of the said charges, with power to send for persons and papers."

Resolution amended by adding the words "or in words substantially to the same effect," on motion of the Hon. J. A. Macdonald.

Committee appointed by the House :

Messrs. Stevenson,
Masson,
Clarke,

Messrs. Sanborn,
Wilson,
Ferres,

and Felton.

PROCEEDINGS OF THE COMMITTEE.

First Day—Saturday, March 1st, 1856.

The Committee met pursuant to notice.

PRESENT:—Messrs. Wilson, Sanborn, Masson, Felton, Stevenson, Clarke, and Ferres.

Some discussion arose as to whether any strangers should be allowed to be present, a reporter from the *Globe* and some Members of Parliament being in the room.

Mr. *Felton* objected to the proceedings of the Committee being reported by reporters on one side only. He did not object to Members of Parliament being present.

Mr. *Brown* did not think that it was competent for the Committee to shut out reporters. If they were to be excluded Members of Parliament must be excluded also.

The Committee then proceeded to appoint a Chairman.

Mr. *Felton*, seconded by Mr. *Stevenson*, moved that James Moir Ferres be Chairman of the Committee. This was opposed by Mr. *Sanborn* who proposed Mr. *Wilson*, but after some little discussion, Mr. *Ferres* was nominated without a division.

The discussion was then resumed as to whether reporters should be allowed to be present.

Mr. *Wilson* thought that the proceedings ought to be published.

Mr. *Stevenson* did not object to reporters being present, but said that it was a breach of privilege to publish any of the proceedings of a Committee before they have reported to the House.

Dr. *Masson* and Dr. *Clarke* thought that it would be very improper to publish the proceedings as they went on.

Hon. *J. A. Macdonald* said that the proceedings of the Committee would be reported to and become the property of the House, and he understood that the proceedings of a Committee could not be published until they were reported to the House.

Mr. *Ferres* said that the proceedings of the Committees of the House of Commons were published before they were reported.

The Clerk said that that was only by connivance.

Mr. *Felton* thought the better course would be not to have any report published until the whole matter was disposed of. They had no time to see that reports which might be published, if allowed at all, were correct or not, and he did not want to have any misrepresentations made.

Dr. *Clarke* objected to any report being given of anything said by any Member of the Committee.

At the request of the Chairman all then withdrew, except the Members of the Committee and Mr. Patrick, the clerk of Committees.

When the doors were opened

The Chairman stated that the Committee had come to the conclusion that the proceedings should not be published until reported to the House and that they had decided upon adjourning till Monday.

The Committee adjourned accordingly.

Second Day—March 3rd, 1856.

PRESENT:—Messrs. Ferres, Masson, Wilson, Clarke, and Felton. The Committee sat for some time with closed doors. When the doors were opened

The Chairman said that the Committee had come to the determination of taking up Mr. Macdonald's side of the question first. He wished to know what time the Attorney General would require for preparation.

Hon. *J. A. Macdonald* said that his chief witness was Mr. Henry Smith, who was in Montreal and he would ask for a summons for him. Mr. Smith was not only his chief witness but he would also tell him what other witnesss he would require.

Some conversation ensued as to the time when Mr. Smith could arrive.

Mr. *Felton* said that the best way would be to adjourn till again summoned by order of the Chairman. The Chairman had very properly announced the resolution of the Committee as to the way in which they intended to proceed.

Mr. *Brown*.—The point was not as had been stated. In the first place Mr. Macdonald says that the person whom he relies on is Mr. Henry Smith, the late Warden. Mr. H. Smith was never a witness before the Commission, therefore it could not be his testimony which was falsely recorded. Any ground of accusation that Mr. Macdonald could have of his own know-

ledge could not come from one who was never a witness, but from those who were witnesses. There was no use in delaying till Mr. Smith could come, as that might not be before a fortnight. He thought that he could go on and bring evidence to show that all these things were an utter falsity. He could show that these things were not only moral but physical impossibilities.

Mr. *Ferres* desired it to be distinctly understood that nothing of all this was to be published at present.

Mr. *Wilson*.—Mr. Brown takes an improper view of the case; every man is to be believed innocent until he is proved to be guilty. The determination of the Committee was to hear first what evidence Mr. Macdonald had to bring; it might be of such a nature as not to require any defence on the part of Mr. Brown.

Mr. *Brown*.—Was it possible that they could have decided on such a course behind his back, and without letting him know anything about it?

Mr. *Felton*.—It was necessary for them to adopt some regular mode of proceeding, or they would never get on. They had decided on regarding him as innocent until he was proved to be guilty.

Mr. *Brown* thought this course a most unfair one. He wished to find out from the Hon. Mr. Macdonald what his grounds for charging him as he had done were, and he was the first witness that he wished to call. Surely the Committee would not refuse to allow him to be heard?

Mr. *Ferres*.—Decidedly.

Mr. *Brown*.—What he asked was this,—There were two matters altogether different; one was the treatment of Mr. Smith by the Commissioners, another was the charge made against him personally that he had been guilty of conduct not only improper but sufficient to condemn him under the jurisdiction of the criminal law of the country. He demanded that the first witness should be Mr. Macdonald, that he might show from the evidence of that gentleman that he was not justified in bringing these charges, as he knew nothing of them himself.

Mr. *Ferres*.—He himself heard Mr. Macdonald say that the House would understand that he asserted nothing of his own knowledge.

Mr. *Brown*.—Mr. Macdonald said that he knew these statements to be true. They must see that it was important that before people could be got together to *concoct these charges*, Mr. Macdonald should state now on what grounds he is to proceed.

Mr. *Felton* said that he could not sit there and hear such words used. If Mr. Brown had anything to be proved by

witnesses they would take the words down no matter how strong they might be, but he would not allow Mr. Brown or Mr. Macdonald to use such language; if either of them did so he would leave the room and not sit on the Committee at all. If such things were said by witnesses they would take them down, but not from Mr. Brown or Mr. Macdonald.

Mr. *Brown*.—Mr. Felton had misunderstood him. He did not say who was going to concoct evidence. It was not on the charges that were to be raked up now that he was to be tried, and he did not think that it was right that Mr. Macdonald should turn round now and say that he was going to send for Mr. Smith. He should say what were the specific acts which he was going to bring forward to prove the charges which he had made. They should not allow him to go into general charges when there was a specific charge before them.

Mr. *Macdonald* hoped that Mr. Brown was not afraid of a general charge.

Mr. *Felton* said that they were instructed by the House to examine what the charges made against Mr. Brown were.

Dr. *Clarke*.—Were they to acquit Mr. Brown supposing Mr. Macdonald said that he did not make these charges on his own knowledge of the facts.

Mr. *Brown*.—What Mr. *Macdonald* said was no evidence; it was his own statement. He wanted to ask Mr. *Macdonald* on what grounds he made these charges.

Mr. *Felton* thought that Mr. Brown did not seem to consider that the investigation before the Committee embraced three points. In the first place, could any charge be substantiated against Mr. Brown? Can he then bring anything to destroy the value of the testimony? Then, was Mr. *Macdonald* making this accusation rashly, or was there anything which justified him in making the charge? His mind was perfectly clear on the subject, that Mr. Brown was beginning at the wrong end. When Mr. Smith was put on his trial before the Commission he had no doubt but that he was first assumed to be innocent until they proved him guilty.

Dr. *Clarke*.—If they were to discuss this question they should do it by themselves.

Mr. *Brown* did not think that Mr. *Felton* had put the case clearly.

Mr. *Wilson* thought the ground the Committee took was clear enough. Mr. Brown was held to be innocent until he was proved to be guilty.

Mr. *Brown*.—The point was this,—Mr. *Macdonald* had charged him with the most horrible crimes for which he had not the least shadow of foundation.

The *Chairman* interposed, amidst a good deal of confusion, and desired that the room should be cleared.

When the doors were again opened the *Chairman* stated that the Committee had come to the conclusion that the evidence against *Mr. Brown* should be first taken up.

Mr. Brown.—Was *Mr. Macdonald* not to be examined as to the charge he had brought against him?

Mr. Ferres.—That had not come before the consideration of the Committee. *Mr. Macdonald* had first to produce such evidence as he had to make good his charges.

Mr. Brown.—What did *Mr. Macdonald* say a few minutes ago, that his chief witness was *Mr. Smith*, a person whom they had found guilty.

Mr. Ferres.—He had stated the decision of the Committee. It would be for them to say whether they felt inclined to make any change in their decision.

Mr. Brown.—It would be most unfair for the Committee to come to such a decision behind his back and without his knowledge.

Mr. Macdonald asked the *Chairman* if the Committee had been unanimous in their decision as to their future proceedings.

Mr. Ferres.—They had been perfectly unanimous.

Mr. Brown did not think that the public would think that the Committee had taken a common-sense view of the matter.

Mr. Ferres.—They had nothing to do with what the public might think of their conduct.

Dr. Clarke contended that the course which *Mr. Brown* wished to pursue was contrary to the practice in all Courts of Justice.

Mr. Ferres.—If the Committee did not intend to adhere to their determination the discussion might go on, but not otherwise.

Mr. Brown.—He could only say, then, that he protested against the course which the Committee had decided upon as most unjust and most unfair.

Mr. Ferres.—*Mr. Brown* was entering upon the discussion again.

Mr. Macdonald applied for a summons for *Mr. Henry Smith*, senior, and *Mr. James Hopkirk*, of Kingston.

Mr. Felton then moved the following resolution, which he thought would meet the views of the Committee:—

Resolved,—That the parole and documentary evidence to be adduced in support of the charges against *Mr. Brown* be first received, and on the conclusion thereof, the evidence exculpatory of *Mr. Brown* be then entered upon and received.

He would then move that the Committee should adjourn to

that day week, subject to the order of the Chairman in case the witnesses should arrive before that time. It was then

Resolved,—That the Honorable Mr. *Macdonald* having requested time to produce his witnesses, process do issue to summon such witnesses, and that the clerk do telegraph to witnesses at a distance requiring their attendance, and that the Committee when it shall adjourn this day, do stand adjourned until Monday next, the 10th March, instant.

Mr. *Brown* would suggest that Mr. Smith should be summoned by telegraph.

Some discussion ensued as to the time at which Mr. Smith would be likely to arrive.

Mr. *Brown*.—He did protest against the conduct of the Committee as most improper. He was to be charged on the evidence of a man whom he had himself found guilty of improper conduct.

Mr. *Felton*.—A protest was quite irregular unless it was in writing. They could not do justice to the parties concerned if they allowed these warm discussions.

Mr. *Brown* complained of delay.

Mr. *Ferres*.—These were only preliminary discussions.

Mr. *Brown*.—He perfectly understood all about it.

The *Chairman* cautioned the reporters that nothing of this discussion was to be published, and the Committee then adjourned.

Third Day—Monday, March 10th.

PRESENT :—The Chairman, Messrs. Masson, Clarke, Sanborn, and Stevenson.

On account of the absence of Mr. Wilson and of Mr. Brown, the meeting was adjourned till to-morrow, at 11, A. M.

Fourth Day—Tuesday, March 11th.

PRESENT :—The Chairman, Messrs. Masson, Clarke, Sanborn, Felton, Stevenson, and Wilson.

The Committee sat for some time, with closed doors. Mr. Brown being still absent, they then adjourned till to-morrow at 11, A. M.

Fifth Day—Wednesday, March 12th.

PRESENT :—The Chairman, Messrs, Clarke, Sanborn, Masson, Wilson, Stevenson, and Felton. Also, Mr. Brown and the Hon. J. A. Macdonald.

Mr. *Brown*, in explanation of the cause of his absence, stated that he had misunderstood the time to which the Committee adjourned, or he would have been present before. He understood from Mr. Wilson that the Committee had adjourned till Wednesday.

Mr. *Macdonald* being then called upon to open his case,

Mr. *Wilson* said that Mr. Macdonald had better state the course which he intended to pursue.

Mr. *Macdonald*.—He intended, in the first place, to have all the papers connected with the matter laid before the Committee. He would then go into his case.

Mr. *Wilson*.—Did he himself mean to state anything of his own knowledge?

Mr. *Macdonald*.—He intended to manage his own case; but not to make himself a witness. If the Committee made him a witness, or if Mr. Brown called on him as a witness, of course he would appear as one; but not otherwise.

Mr. *Sanborn* asked if they were agreed as to what the charge was.

The *Chairman* then read the charges as given in the beginning of this Report.

Mr. *Wilson*.—The Committee ought to understand something about the mode which they intended to pursue. He thought the charges ought to be taken up one by one, and the evidence given accordingly. The charges should be spoken to *seriatim*.

Mr. *Macdonald* then called Mr. Grant Powell, as the first witness, and asked him in what capacity he appeared there, whether he was a Clerk in the Provincial Secretary's office, and of what papers he was in charge?

Mr. *Powell* replied that he was a Clerk in the Office of the Provincial Secretary, and in the Upper Canadian Department. He was directed by the Provincial Secretary to come here in his place. Mr. Cartier had been called on to produce the Report of the Committee appointed to enquire into the state of the Provincial Penitentiary, and all the papers connected with that enquiry.

[By Mr. *Ferres*.]—Do you produce those papers?—Ans. No; I have not got them.

[By Mr. *Macdonald*.]—Why do you not produce them.

Ans. They are not among the records in the Provincial Secretary's Department.

Ques. Were they ever there?—Ans. They were.

Ques. Where were they last there?—Ans. There were two reports, a preliminary and a final one. The first report, dated, the 21st March, 1849, was received in the Secretary's Office, and was referred to the Executive Council, for their information, on the 23rd March. The second report, dated the 15th April, was received on the same day, and submitted to the Executive Council on the same day.

Ques. Were they ever returned?—Ans. Never.

Ques. Do you know what became of them?—Ans. On enquiring at the Executive Council Office, I found, from memoranda in the minute book, that both reports were handed to Mr. Attorney General Lafontaine, on the 25th April, and sent to the Legislative Assembly on the 30th May, 1849.

[By Mr. *Ferres*.]—Were the papers thus sent the original documents?—Ans. The original documents.

[By Mr. *Macdonald*.]—Was there a book of evidence among those papers?—Ans. There was.

Ques. Did that accompany those reports?—Ans. Yes; to the Executive Council Office.

[By Mr. *Ferres*.]—Did the evidence go to the House of Assembly?—Ans. I do not know.

[By Mr. *Macdonald*.]—What became of the documents at the House of Assembly?—Ans. I have no personal knowledge.

Ques. In whose hands ought they to be?—Ans. I was instructed to search for these documents, and was told by Mr. Spink that they were burned. I was instructed to make this enquiry by the Assistant Secretary.

[By Mr. *Felton*.]—Lately, or some time ago?—Ans. Within the last few days, Mr. Spink stated that they had been in his custody but that they had been burnt at the first fire in Quebec.

[By Mr. *Wilson*.]—I understand you to speak of the original evidence taken before the Commission?—Ans. I refer to all the papers that have been sent to the Council.

Ques. The papers that they wanted particularly were the original evidence taken before the Commission; do you remember seeing that?—Ans. I have no recollection of any particular documents, the book of evidence accompanied the other documents.

[By Dr. *Clarke*.]—Was this book printed?—Ans. It was a book of written evidence. I do not know of any particular evidence. I did not read over the book.

[By Mr. *Sanborn*.]—Was this the original evidence or a copy of it?—Ans. I have no further recollection of the matter.

Ques. Was the book of evidence to which you refer the original evidence signed by the witness or a copy thereof?—Ans. I am unable to state ; I merely know that it was received at the office and sent to the Executive Council : it was sent in by the Commissioners.

[By Mr. *Felton*.]—You say it was sent to the office. By whom was it sent to the office, from whom were the documents received?—Ans. The documents were transmitted at the date above mentioned. They were received from the Secretary.

[By Mr. *Felton*.]—What was his name?—Ans. George Brown, Esquire. They were sent from the Secretary of the Commission to the Provincial Penitentiary to the Provincial Secretary, and referred by the Provincial Secretary, by command of the Governor General, to the Executive Council for their information.

The *Chairman* enquired if there was anything more to ask the witness.

[By Mr. *Macdonald*.]—Did you ascertain at the Executive Council Office that all the papers connected with the report, as well as the reports themselves, had been given to Mr. Lafontaine ?—Ans. I obtained no further information than is contained in an extract from the register book of the Executive Council Office, which I have with me. There is no mention of evidence in the extract which I will hand in if the Committee desire it.

[By Mr. *Felton*.]—Did you see the original entry?—Ans. I did.

Ques. Was there any objection to this being treated as authentic?—Ans. There could be none.

Mr. *Macdonald*.—I will get a certificate from Mr. Lee as to the book of evidence.

In reply to a question from the *Chairman*, Mr. *Brown* said that he had no question to put to Mr. Powell. He had not the least idea what was to be brought, he presumed there was no evidence ; he would take his own time as to meeting any evidence that might be brought.

The *Chairman* replied that he might cross-examine any witnesses that were brought.

Mr. *Brown* replied that he had that privilege and would use it whenever he thought it expedient.

Mr. *Powell* then retired.

Mr. *Macdonald*.—He would ask to have the point settled, as to the mode of taking evidence and as to cross-examinations ; cross-examination might be on new matter or matter elicited in the examination in chief ; Mr. Brown could make any witness a witness of his own, but he could not afterwards call the same witness and cross-examine him.

Mr. *Brown* hoped this would not be allowed, if he found it necessary to read up the reports of the Penitentiary Commission as to any point that might be brought up by a witness, it would be very unfair not to allow him to examine that witness afterwards.

Mr. *Sanborn*.—As he understood Mr. Macdonald, he did not intend to allow his witnesses to be brought back again for the purpose of cross-examination.

Mr. *Brown* objected to this altogether.

Mr. *Wilson*.—the usual course was to have the cross-examination after the examination in chief, that was the proper time to ask for explanation by cross-examination.

Mr. *Brown*.—That was what he objected to.

Mr. *Wilson*.—If he called up any witness as his witness, he became his witness.

Mr. *Brown*.—I object to that.

Mr. *Wilson*.—If he allowed any witness to pass without asking him any question, it was presumed he had nothing to ask him.

Mr. *Brown*.—His view was this: suppose Mr. Macdonald produces a witness who says something that he might not at the time be able to controvert, while, by having time to refresh his memory, he might be able to find out the truth about it.

Mr. *Wilson* replied that of course in such a case they would always be willing to adjourn the examination of any witness.

Mr. *Felton* said that they had come to the determination of conducting this case as it would be conducted in a Court of Justice, and he went on to explain the course taken in Courts of Justice.

Mr. *Brown*.—That was quite clear—with this understanding, he had no objection to the course proposed.

Mr. *Macdonald*.—Mr. Powell said that two reports and a book of evidence were transmitted by the Secretary of the Commission—that all those papers were sent to the Executive Council Office, and he produced a certificate that the reports were sent to Mr. Lafontaine. He (Mr. Macdonald,) would ask for a certificate that all these papers were sent to Mr. Lafontaine.

Mr. *Wilson*.—What did Mr. Lafontaine do with them?

Mr. *Macdonald*.—They would prove that by Mr. Spink. If it was proved that all the original documents were burned, he would ask leave to put in the printed documents from the Journals.

Mr. *Wilson*.—What had the report to do with any of these things?

Mr. *Macdonald*.—He would be able to show that in the course of his case.

Mr. *Brown* thought it was a very fair application.

Mr. *Wilson*.—It might be conceded that the report was lost.

Mr. *Felton* thought they had better have some further evidence.

Mr. *Ferres*.—Mr. Spink is not the proper custodian of these documents, it is the Clerk of the House.

Mr. Spink was then summoned but the messenger said that he was not in the House.

Mr. *Macdonald* said that he would have Mr. Spink here tomorrow, and Mr. Lee also. After that he would open his case.

Mr. *Brown* suggested that they might take the destruction of the documents for granted and go on with the case.

Mr. *Sanborn* asked if it was conceded that the original evidence was destroyed; he thought the Committee ought to be fully satisfied that it was destroyed.

Mr. *Brown* was willing to admit anything to bring the case up.

Mr. *Macdonald* thought the original book of evidence might be traced out.

Mr. *Lindsay*, the Clerk of the House, was then called.

Mr. *Ferres* enquired of him if he could tell them anything about the book of evidence that was along with the Report of the Commission? Had it been in his possession, or had he the the book of evidence?—Ans. It was all destroyed at the fire of 1849; there was not a scrap of anything saved.

[By Mr. *Felton*.]—Are you custodian of all documents sent to the House of Assembly?—Ans. Yes.

Ques. Did a book of evidence accompany the report?—Ans. The evidence was always attached to the report; to the best of my knowledge it was in this case.

[By Mr. *Macdonald*.]—Do you remember a book?—Ans. I cannot say whether it was a book or merely sheets sewed together.

[By Mr. *Ferres*.]—Were these original documents or copies?

[By Mr. *Brown*.]—Do you remember the laugh that was raised when they were laid on the table?—Ans. I remember that they were very voluminous. I cannot state whether they were the original documents or not.

[By Mr. *Ferres*.]—What became of them?—Ans. They were sent to the printer. If a copy was made for the printer the documents themselves would be kept, but if a copy was not made the documents would be sent, and in that case they would be returned. I cannot remember which was done.

Mr. *Macdonald*.—The evidence was never printed.

[By Mr. *Felton*.]—Where is the original now?—Ans. It was destroyed.

Mr. *Felton*.—It could not have been at the fire at Montreal, it must have been at the fire in Quebec.

Mr. *Macdonald* then gave notice that he would call on the Secretary of the Commission to produce any original documents he might have in his possession.

Mr. *Felton*.—That notice ought to be given in writing.

Mr. *Sanborn* thought that according to the strict rules of the courts there was no sufficient evidence that the original documents had been destroyed.

Mr. *Macdonald* wanted the original documents very much.

Some discussion arose here as to the Petition of Mr. H. Smith, senior, which had been printed for the use of the Members of the Committee.

Mr. *Brown* could not understand what this Petition had to do with the case. He objected to its forming any part of the documents before the Committee.

Mr. *Felton* contended that this Petition was part of the documents of the House, and therefore came under their notice as well as any other papers relating to the transactions of the Penitentiary Commission.

Mr. *Macdonald* having written out his notice then handed it in to Mr. Brown.

A discussion arising here respecting some points of order in the proceedings of the Committee, the doors were ordered to be closed.

The Committee then adjourned.

Sixth day—Friday, March 13th, 1856.

PRESENT :—The Chairman, Messieurs Sanborn, Wilson, Stevenson, Felton, Clarke, and Masson.

Miles O'Reilly, Esquire, Barrister, appeared as counsel for Mr. Brown, and Philip Vankoughnet, Esquire, Q. C., appeared on behalf of Mr. Macdonald.

Some discussion ensued as to whether the principals in the enquiry should be allowed to speak or take part in the management of their respective causes, or whether the whole matter should be left to the counsel.

Mr. *Brown* objected to being bound down in the commencement of the trial to have his mouth closed.

Mr. *Felton* contended that the whole matter should be conducted as in ordinary Courts of Law.

Mr. *Sanborn* suggested that if the counsel and principal were both present, then the counsel should manage the case, but if the counsel was not present, then the principal might conduct it himself.

Mr. *Macdonald*.—Suppose that the principal on one side and the counsel on the other were present?

Dr. *Clarke*.—The rule would work both ways.

Mr. *Vankoughnet* would agree to any rule that the Committee might think proper to adopt.

Mr. *Sanborn*.—They had already decided to abide by the course followed in Courts of Law, that would settle the whole difficulty.

The *Chairman*.—They had better adopt some strict rule; if counsel were to manage the case, well and good, but he wished to know, whether, if the principals interfered while counsel were present, he was to stop them or not.

Mr. *Felton*.—His opinion was that he should.

Mr. *Sanborn*.—That was the rule but it should not be carried out sharply.

The *Chairman* understood that their opinion was, that they should hear either the one or the other on any one point.

Dr. *Clarke* would not allow them both to address the Committee on the same subject.

The discussion then dropped.

Mr. *Spink* was then called in.—He is the custodian of all the records and papers of the House of Assembly.

[By the *Chairman*.]—Do you remember having a report of the Penitentiary Commission?—Ans. I do.

Ques. In what year?—Ans. In the year 1849.

Ques. Was there a book of evidence?—Ans. I merely know that I had the report.

Ques. Have you got the report now?—Ans. No.

Ques. Where is it?—Ans. It was destroyed at the Parliament House at Quebec. I say destroyed instead of burned, for some of the papers were thrown out and knocked about in the snow.

[By Mr. *Macdonald*.]—Were these all the papers that Mr. Lindsay gave you?—Ans. All that were given me as the report of the Commissioners. They were all destroyed.

Ques. Have you charge of the written as well as of the printed documents?—Ans. I have.

[By the *Chairman*.]—Can you say whether these were the original documents signed by the Commissioners or not?—Ans. I could not say.

[By Mr. *Vankoughnet*.]—Would you be the custodian of all the documents?—Ans. Yes.

[By Mr. *Felton*.]—Have you any recollection of the extent of the document?—Ans. It was, to the best of my recollection, a large square document, like a large book, both ends were open. I had the report several times. It appeared to me to be a number of documents tied up together in this parcel.

Ques. Was it written or printed?—Ans. I could not say. It was tied up. I do not recollect ever opening it or seeing it open.

Ques. Did you ever see it after the fire at Quebec?—Ans. No.

Ques. Do you remember ever seeing any endorsement by which you would recognise it?—Ans. It had just the usual endorsation as the report of the Penitentiary Commission. All the documents are done up with an endorsation as to the contents.

[By Mr. *O'Reilly*.]—Do you remember seeing this endorsation on this particular parcel?—Ans. Yes.

Ques. Do you remember whether the endorsation was made when it came to your office or afterwards?—Ans. I could not say, the Clerk several times wanted this report.

Ques. Have you any knowledge that this was the report?—Ans. It was merely a bundle of papers called the report.

Ques. Do you mean to say that all the papers which Mr. Lafontaine gave you remained in the Parliament buildings till they were burned?—Ans. I believe so, I do not think they could have been removed without my knowledge. My impression is that they were there and were destroyed.

Ques. Did these papers ever go out of your hands?—Ans. I do not recollect ever giving them to any person except the Clerk. He took them away for several days on one occasion. I can not tell whether the same documents were there eventually as those which came first.

Mr. *Macdonald* then put in a certificate from Mr. Lee, respecting the first and second reports of the Penitentiary Commission.

Mr. *Vankoughnet*.—I am instructed to say that this is the only evidence we can offer to account for the documents.

Mr. *O'Reilly*.—I do not understand Mr. Spink to say that the evidence was among these papers at all.

For the information of the Counsel the Chairman then read the evidence given on this subject on the previous day.

Mr. *O'Reilly*.—It would then only amount to this, that there is a surmise that this was the document; you must either prove that it was lost or else produce it. I do not see there is any tracing of the original document to the place of destruction.

Mr. *Brown*.—I am not going to have any legal objection put in the way of this enquiry.

Mr. O'Reilly.—I think that this is a question of which counsel ought to judge; there is no foundation on which to admit secondary evidence.

Mr. Vankoughnet.—I merely say that the Committee must see that we have done all that we can to account for the documents. I suppose that there is no suspicion that they are in our possession. They are not in the possession of the officers of the House and notice has been served on Mr. Brown in case he should have them, but we have no reason to suppose that he has. If it could be shown that Mr. Macdonald had ever been seen with them there might be some reason to suppose they had not been destroyed. I believe that we all know a little of the mode in which business is conducted in public offices, the papers are generally all put together, and it is not likely that they would be put in different places. They would all be together; I suppose that we may assume that they were together. Then we prove that they were transmitted to the Executive Council office, that Mr. Lafontaine obtained them there, that they then went to the Legislative Assembly, and that certain papers, more than one, said to be this report, were destroyed. The only link wanting now is this, that by possibility Mr. Lafontaine may have taken them away by mistake. The only link wanting to make the proof of the loss of the documents complete would be to ascertain from Mr. Lafontaine whether he has any recollection of what was done with those papers, or whether he had them after a particular day. In every other respect we have traced these documents from the Secretary's office to the Assembly, and we have traced them into the possession of Mr. Spink where they were destroyed. If the Committee decide that this is not sufficient, at present I do not know that we can supply any other evidence. I can, however, telegraph to Mr. Lafontaine, and can also examine every clerk in the House to see if any of them have any information to give on the subject.

Mr. O'Reilly.—There is a fallacy in this evidence altogether. It is evident that there must have been an immense quantity of correspondence. What I contend is that there is nothing to shew that the original evidence was among these documents.

Mr. Vankoughnet.—It is shown that there was a book of evidence sent in by Mr. Brown.

Mr. O'Reilly.—Yet the witness could not say whether it was the original evidence, and does not know that it was sent to the House of Assembly.

Mr. Wilson.—Did not think that there was sufficient evidence to account for the documents. The question was whether the original evidence was ever there.

Mr. Vankoughnet.—Where can it be? It may be in a thousand places, if the Government have not got it it must be in the hands of the Commissioners or of Mr. Brown who was their Secretary.

Mr. Brown was very desirous that the enquiry should not be obstructed. By all means let it go on.

Mr. Vankoughnet—It is not we who are making any objection.

Mr. Sanborn was of opinion that there was not sufficient evidence to prove the destruction of the evidence and allow the introduction of the secondary evidence.

A despatch was ordered to be sent to Sir L. H. Lafontaine to know if he knew anything about the matter, whether the book of evidence was given in along with the other documents.

The doors were then closed to allow the Committee to decide whether the evidence was sufficient or not.

When the doors were opened it was declared that the Committee had decided that there was not sufficient proof to allow the admission of secondary evidence.

Mr. O'Reilly then on behalf of Mr. Brown put in a written statement to the effect that they waived all objection to this point and consented to Mr. Macdonald's going on with his case as if the destruction of the evidence was fully proved.

The Committee then adjourned till Monday.

Seventh Day--Monday, March 17th, 1856.

PRESENT:—The Chairman, Messrs. Masson, Wilson, Stevenson, Clarke and Felton.

Mr. O'Reilly and *Mr. Vankoughnet*.

The Chairman read the minutes of the last meeting. It appeared that Mr. Bristow had been summoned but that he had been instructed not to move until he received further directions. Mr. Brown objected to this, and it was finally agreed that Mr. Bristow should be ordered to appear on the day of the re-assembling of Parliament after the recess.

Mr. Vankoughnet said that Mr. Macdonald being desirous of removing any doubt that might exist in the minds of the Committee or in the House, after the publication of the report, that he had not done all in his power to account for the missing papers, had decided on examining Mr. Brown as to whether he had any knowledge of these documents or whether he had them in his possession, or if he had any reason to suppose that any other person had them. He referred to the book of evidence

and wished to know what was returned to the Government. Mr. Brown ought to know for he was the Secretary of the Commission. He then put his question in writing in the following words, "What book or books, document or documents was or were returned by the Penitentiary Commission, of which you were Secretary, to the Government—Mr. Brown replied, in writing, "All the documents which were returned are in the appendix to the journals of the House of Assembly, and nothing more as I recollect."

Mr. *Vankoughnet*.—Did you return to the Government or did you in any way dispose of, and how, the original books or minutes of evidence subscribed by the witnesses examined before the said Commissioners, and if so, when?

Mr. *Brown*.—The original books containing the evidence are in my possession, and have never left it for a single hour.

Mr. *Brown* added that he would have been a fool if he had produced them; and knowing the character of the witnesses he would not have given the books to the Government without a pledge that they should be kept under seal. He did not suppose that the charge would have been made if it were known that these books were in existence.

Mr. *Vankoughnet*.—Then I ask that those books be produced.

Mr. *Brown*.—Certainly.

Mr. *O'Reilly*.—It was my intention, of course, to produce those books when the proper time came; and I wish to give Mr. Macdonald to understand that we cannot consent to the introduction of secondary evidence at this stage. The position of Mr. Brown, and the application he makes, is this: The evidence Mr. Macdonald intends to produce is that of persons who stand in a peculiar position towards Mr. Brown. They are persons who have been discharged from the Penitentiary; and it is to be expected that they will give evidence of the most hostile character to Mr. Brown; and it is right that he should protect himself by every means in his power which are fair and just, when lying under such a grave charge. What he desires is that the books which he will produce, and which he is willing to produce, shall not be open to the perusal of those witnesses, so as to enable them to come and shape a case. Mr. Brown expects them to give their evidence from recollection; and, while willing to lay the books before the Committee, wants them to be kept out of the reach of the witnesses.

Mr. *Vankoughnet*.—Mr. Macdonald has not made these charges against Mr. Brown of his own knowledge. He has not been discharged from the Penitentiary; he is not a convicted murderer, or suborned perjurer, and of course was not examined before the Commission. He did not make those charges

against Mr. Brown on his own knowledge, because he was never present at the sittings of the Commission; but he made them on good authority, and is here prepared to prove them.

Mr. *O'Reilly*.—My remarks did not apply to Mr. Macdonald.

Mr. *Macdonald*.—Of course not.

Mr. *Vankoughnet*.—What I want is to have those books produced; and then call attention to them, to mark those points to which I want the attention of the witnesses called. It is absolutely necessary to my case that I should have the right to do this; for of course I know nothing of the proceedings of the Commission but what I have read in the newspapers, and from a very short consultation with Mr. Macdonald. Mr. Brown is of course in a much better position than I can be or Mr. Macdonald either, for he was present during the sitting of the Commission, and knew the whole case. Now, I will suppose a case of falsification—that I believe is one of the charges, and one of the most serious, which has been made—how could I make out a case of that kind except by having liberty to refer to the books, examine those portions which are material, and point them out to the witnesses.

Mr. *O'Reilly*.—You are only anticipating difficulties that may not occur. I have no objection to your examining the books. All that I ask is that they shall not go out of the possession of the Committee; and that they shall not be used by the witnesses for the purpose of enabling them to make up a case.

Mr. *Vankoughnet*.—I have no wish to take them out of the possession of the Committee. But it must be very evident that I must be allowed to examine them. That I will do in the presence of one of the Committee, or, if it be necessary, in the presence of Mr. O'Reilly himself. I must say that I never was more astonished in my life—and I think Mr. Macdonald felt just as I did—than when Mr. Brown said he had those books and could produce them. We had certainly been led to believe that they had been destroyed by the burning of the Parliament House, and that all Mr. Brown could do would be to give us some trace of them.

Mr. *Brown*.—I want to make a statement.

Mr. *Felton*.—You had better not. It will be better to leave the Committee to deal with this matter.

Mr. *Vankoughnet*.—All that I ask for is the permission to examine the books, and mark out such portions as will necessary for my case to the witnesses. If Mr. Brown had said before that he had them in his possession, and had produced them, he would have shortened the proceedings very much; and as it is their production now will shorten proceedings. On my honor,

I never expected that he had the books in his possession. Without I am permitted to examine them as I propose—for their production puts a new face on the whole question—it is very evident that my case will be prolonged for a considerable time yet.

Mr. *O'Reilly*.—What do you want? You cannot take the books out from the Committee Room, and make use of them for the purpose of enabling witnesses to come here and manufacture evidence, when I hold that they ought to speak from their recollection.

Mr. *Vankoughnet*.—They must see the books when it is necessary to point out any particular portion of the evidence as it appears in them. How can I get a witness to state from memory the exact evidence he gave several years ago.

Mr. *Brown*.—Let us set the question at rest at once.

Mr. *Felton*.—We will treat those books as we would any other documents laid before the Committee. We must proceed exactly as we would in any ordinary Court of law.

Mr. *Wilson*.—Let us see. You say here that the evidence has been falsely recorded—do you propose to hand one of those books to a witness, and ask him if his evidence there has been falsely recorded?

Mr. *Vankoughnet*.—Of course I would.

Mr. *Ferres*.—You must see that we cannot discuss that point now. You cannot discuss that question until it fairly comes up before the Committee.

Mr. *Wilson*.—But if the charge is made that the evidence was falsely recorded, then you must shew that the witness remembers what his evidence was.

Mr. *Felton*.—If the book is produced then you must treat it as any other evidence would be treated in a Court of Law.

Dr. *Clarke*.—I understand the object of Mr. *O'Reilly* to be that the witnesses shall not see the books.

Mr. *O'Reilly*.—What I want to say is, that they must remember their evidence, and state what it was from memory.

Mr. *Vankoughnet*.—We must see the written evidence, and ask the witnesses if it was correctly recorded. Do you mean that I should ask a witness to state from memory precisely what evidence he delivered several years ago. How can you ask a man to state, word for word, his answers to the questions put to him, from the first day he appeared before that Commission until the last, seven or eight years ago.

Mr. *Ferres*.—We will consider these books as we would any exhibit furnished to this Committee by the Government.

Mr. *O'Reilly*.—What I say is that that witness should not read

the books through, and then come here with evidence prepared from them.

Mr. Vankoughnet.—The course that I ask the Committee to take is the very one which would be adopted in a Court of Law.

Mr. Wilson.—You state that the evidence was falsified; then you must state where it was falsified.

Mr. Vankoughnet.—How can a witness point out the falsification of his evidence except he has an opportunity of seeing the evidence itself.

Mr. Wilson.—Then why did he make the charge.

Mr. Brown.—That is the point.

Mr. Vankoughnet.—The witnesses do not make the charge. It is made by Mr. Macdonald; and the witnesses he brings forward must have an opportunity of proving the case. I want Mr. Wilson to understand that Mr. Macdonald perhaps never saw two of the witnesses in his life; and he must see their evidence, and ascertain on what points they affirm it to have been incorrectly reported. When Mr. Macdonald joins issue on this point with Mr. Brown, who knows the whole portion of the case exactly, he should have every latitude allowed him for the purpose of making out his case. How is Mr. Macdonald, who was not present during the sitting of the Commission, to know what evidence was given by any particular witness before the Commission except he saw the books, and was able to say to him, did you swear this?

Mr. Ferres.—You are stating things as probabilities which may never occur.

Mr. Vankoughnet.—It is not really, I suppose, a practical difficulty.

Mr. O'Reilly (in reply to Dr. Clarke)—Of course, I must understand that the evidence is not be published till after it has all been taken, and the proceedings of the Committee brought to a close: so as to prevent witnesses from seeing the evidence already given. But my principal object is to prevent them from having access to the books.

Mr. Brown.—You may publish all the evidence as soon as you please, for all I care.

The room was then closed.

The room being re-opened,—

Mr. Ferres read the following paper put in by Mr. Brown's Counsel:—"Mr. Brown, in producing the books in which the original evidence was taken down, asks that the witnesses may not be allowed to read the books so as to make a statement to suit their own purposes. There is no objection to Mr. Macdonald or his Counsel using the books. The only object is to prevent the witnesses from using them before they are examined."

Mr. Vankoughnet.—I have only to say that I have abundance of authority in the Law Courts to support my position.

The room was then closed.

The room being re-opened,—

Mr. Ferrer.—The Committee have unanimously resolved that the original books containing the depositions of the witnesses and the proceedings of the Commission, now produced, be used and treated precisely as similar documents would be if they had been sent down by the Government, and produced here in the regular manner, or if produced as exhibits in a Court of Justice.

Mr. Wilson (To Mr. O'Reilly.)—Now you ask that they should not be shewn to the witnesses.

Mr. O'Reilly.—It is difficult to demonstrate the practical object of what I am asking for; for a similar case would not occur in an ordinary investigation. I know of no similar case in a Court of Law. Here is a gentleman on his trial, on a charge of falsifying the evidence given before a Commission. That I take it is the principal charge brought against him; and the books produced here will be of themselves strong evidence in his favour. But it is intended to show by the evidence of persons, who were discharged from the Penitentiary on the report of that Commission, that their evidence was falsified. It is manifest, I take it, that these witnesses knew what evidence they gave, or they do not. If they do not, then this charge should never have been made. If they do, then they do not require to see these books; and if they know what their evidence was then they can so shape their testimony here as to answer the purpose they require. I know it is anticipating the case; but there can be no reason alleged why those books should be exhibited to the witnesses before their examination. The Committee can, however, decide practically if such a case should come up.

Mr. Vankoughnet.—This is not an ordinary case. I never saw such a case, exactly in point, in a Court of Law.

Mr. Wilson.—I will suppose a case.

Mr. O'Reilly.—Suppose a case of this kind in a Court of Law. Do you suppose that you could take the documents fyled in the Court out of doors?

Mr. Vankoughnet.—That is what I intend to show. In a Court of Law the exhibit is put in, sworn to, and fyled. It is then in the custody of the Clerk of the Court, and all parties have access to it. Then I would have a perfect right to show it to the witnesses, I would have a perfect right to turn round and tell the witnesses to examine it. There is no power in the Judge or in the Law to prevent me from doing so.

Mr. O'Reilly.—It was not a question of right, for of course a Court had the right although they might not exercise it. The

Court would have a right to allow the witnesses in such a case to see the evidence, and the Committee would have a right to do the same.

Mr. Vankoughnet.—I never heard of a Court refusing such an application.

Mr. O'Reilly only spoke of the power of the Court.

Mr. Vankoughnet.—They would merely say that they would not allow the papers to go out of the hands of the Court.

Mr. O'Reilly.—A Court frequently refused to give the accused party a copy of the indictment, and this was a similar case.

Mr. Vankoughnet.—That was very different from the present case, but suppose these documents were in the possession of the Government, I might then have gone and examined them and my witnesses might have examined them also.

Mr. O'Reilly.—I never knew an instance in which Commissioners returned the original documents to the Government.

The Chairman (To Mr. O'Reilly.)—Suppose these documents had come into our hands from the Government, could you then refuse to allow the witnesses to see them?

Mr. O'Reilly.—Then I take it that the Committee, in order to ensure fair play, might adopt any regulation that might be desirable. The Committee had a right to make such a regulation and the Committee would see in the course of the investigation that to allow those witnesses who stand in a very peculiar position to Mr. Brown, to see the evidence would be to give them the means of making out their statement. Such a course could not do any good and might enable the witnesses to do wrong.

Mr. Vankoughnet.—You are presuming that all our witnesses are discharged convicts, which is not the case.

Mr. Wilson.—It was for the accusers to say in what way the evidence was falsified before they saw it.

Mr. Vankoughnet.—It was utterly impossible that they could do so.

Mr. Wilson.—Then they take on themselves to say that the evidence is false without their having seen it.

Mr. O'Reilly.—As Mr. Brown says that the evidence has never been out of his possession, the accusers must have something to go upon besides those books.

Mr. Vankoughnet.—I do not think that the Committee ought to know on what we made our charge. In order to enable the Committee to decide, the very first thing we wanted was those books, which now for the first time we discover are in Mr. Brown's possession. The whole course of evidence which I was prepared to give is now changed, I was going into secondary evidence from the want of that which Mr. Brown now says that he has.

Mr. *Brown* said, that if Mr. *Vankoughnet* went out with him they could decide upon some plan which would meet the views of both parties. In the meantime a discussion took place in which several of the Members of the Committee expressed themselves very much aggrieved that Mr. *Brown* should have allowed them to spend so many days in endeavoring to prove the loss or destruction of documents which he had the whole time in his possession.

Mr. *Vankoughnet* presently re-entered the room and said that he and Mr. *Brown* had come to an understanding so far that as until the books came before the Committee, he did not know how far he might require to show them to the witnesses; it was proposed that he should see them first, and it might not be necessary for the Committee to decide on the point at all.

It was then agreed that the original evidence should be handed over to Mr. *Vankoughnet* for his perusal, and that in the meantime the Committee should not be called upon to decide the point in dispute.

The Committee then adjourned till to-morrow.

Eighth Day—Tuesday, March 18th, 1856.

PRESENT:—The Chairman, Messrs. *Masson*, *Wilson*, *Sanborn*, *Felton*, *Clarke*, and *Stevenson*.

Mr. *Vankoughnet*.

Mr. *Brown* submitted to the Committee that Mr. *Macdonald* should after the recess come down with a statement of the specific charges that he intended to make. He should not rest his case upon general matters, for he must have known the specific acts upon which he was going to put him upon trial. At the request of the Chairman, Mr. *Brown* put his statement in writing, in the following words; "Mr. *Brown* submits that, before proceeding to call his witnesses, Mr. Attorney General *Macdonald* should be called on to state in writing the specific acts of Mr. *Brown* which he relies on to establish the charges against him.

Mr. *Vankoughnet*.—Well, I can only say that I cannot do it. Such a thing was never expected to be done in any Court of Justice. It would just amount to this, that I should write out the whole of the evidence and give it to Mr. *Brown* for him to make out his defence upon it.

The room was then cleared to allow the Committee to decide the point raised by Mr. *Brown*.

The Committee decided the point in the negative.

The Committee then adjourned till Thursday next.

Ninth Day—Thursday, March 27th, 1856.

PRESENT:—Messrs. Ferres, Sanborn, Clarke, Stevenson, and Felton.

Also Messrs. O'Reilly and Vankoughnet, counsel.

The *Chairman* read a letter from Mr. Brown, complaining of the delays that had taken place in the proceedings of the Committee, inasmuch as twenty-eight days had elapsed since its first meeting, and there had not as yet been one witness examined in support of the charges which had been made. Also requesting the Committee to call on Mr. Macdonald to specify the precise charges which he intended to make, and to give the names of the persons whom as convicts and murderers he charged Mr. Brown of suborning to give false evidence, and urging on the Committee the necessity of at once proceeding in their investigations and permitting no further delay.

Mr. *Vankoughnet*, in reply to this letter, said: I charge Mr. Brown with being the whole cause of delay, for the first thing that we required was to obtain the books of evidence on which the charges were made, and it is only now, after having spent several days in endeavouring to get these books, or to find out what became of them, we find that they have been all the time in Mr. Brown's possession. No living person, unless it was his counsel, knew that he had them, and yet he allowed us to go on for several days calling witnesses to show that they were destroyed. Mr. Brown allowed us to go on with this preliminary testimony, which it was necessary for us to give before we went into our case, and when the Committee decided that we had not brought sufficient evidence to allow of the admission of secondary evidence, being anxious that it should not be said that we had not done all that we could to account for these books, it occurred to me that it would never do to allow the matter to rest there, and accordingly, as a last resort, we determined to examine Mr. Brown himself; when, much to the surprise of the Committee, Mr. Macdonald, and myself, it was stated that the books were still in existence, and they were immediately produced by Mr. Brown. The Committee on that day adjourned till the following Monday, and during that time I had only been able to give the books half an hour's examination, and it was impossible to make myself master of them in that time, as there are three large volumes, larger than the Journals of the House, and all in manuscript. Mr. Brown, when the Committee met next day, then asked me if I was ready to go on with my case, but, as I showed the Committee, the discovery of these books rendered it neces-

sary for me to prepare my case in quite a different shape from that which I at first proposed. This appeared then to be reasonable even to Mr. Brown, and the Committee saw the reasonableness of it, and granted the delay, and the Committee then adjourned over the recess for eight days till yesterday, when there was no quorum, which it was not in my power to prevent; and now we are charged with unreasonable delay in the prosecution of our case. I say that Mr. Brown is the cause of the delay, for if we had had the books in the first place we would have been able to go on with our case at once, and by this time we should have made great progress in the examination of our witnesses, and would have been saved a great deal of labour which has now turned out useless.

Some discussion then took place as to what day the Committee had adjourned to, some of the Members being of opinion that it had adjourned till Wednesday, and others till Thursday.

Mr. *Vankoughnet* continued: Mr. Brown assumes in his letter that Mr. Macdonald is called on to make specific charges, but Mr. Macdonald said that he had to rely upon the evidence of others, and that he required those persons to be here to give evidence. Mr. Smith was brought here for that purpose, and it had been a matter of great difficulty to get up this secondary evidence. In this manner Mr. Brown has given us an immense deal of labour to get up this secondary evidence, most of which we do not now want. The information we have been getting from Mr. Smith is now for the most part useless, and after all this we are now accused of having caused unnecessary delay.

The learned counsel then added that to-morrow he would put in a written answer to Mr. Brown's letter.

Mr. *O'Reilly*.—You are not, then, prepared to give the specific charges.

Mr. *Vankoughnet*.—I am prepared to go on with my case, and the Committee have decided that the charges are sufficiently explicit.

Mr. *O'Reilly*.—Mr. Brown is entitled to have these charges specified in detail, as in an ordinary indictment, and it is submitted in the letter just read that he is entitled to it.

Mr. *Clarke* considered that Mr. Brown's letter reflected on the conduct of the Committee.

Mr. *Brown* said that he had not intended to reflect on any one in particular, and that his intention was misunderstood.

Mr. *Felton* thought a thing of that kind ought not to be received; it would not be allowed in any Court of Justice. He objected to Mr. Brown's letter being placed among their records.

Several Members of the Committee were of opinion that Mr.

Brown's letter ought to be taken into consideration, and it was after some discussion agreed that they should now go on with the evidence, and that Mr. Vankoughnet should answer such parts of the letter as referred to Mr. Macdonald, and that the Committee should on some other occasion take up the letter as far as they were of opinion that it reflected upon themselves.

Mr. *Vankoughnet* said that he wished to examine Mr. Sheriff Thomas on some preliminary matters, and he would then in a few words foreshadow the course that he intended to take.

The following is the evidence of Mr. Sheriff *Thomas*, the questions and answers being all handed in in writing:

[By Mr. *Vankoughnet*.—Were you one of the Commissioners acting in the matter of the Penitentiary Commission?—Ans. I was.

[By the Committee.]—Of what county are you Sheriff?—Ans. Of the County of Wentworth.

[By Mr. *Vankoughnet*.—Were you constantly present during the investigations of said Commission?—Ans. Not constantly.

[By Mr. *Vankoughnet*.—Who acted as Secretary?—Ans. Mr. Brown,

Ques. By whom were the first and second reports, transmitted to the Government, prepared?—Ans. They were both prepared by Mr. Brown.

Ques. State what part the Commissioners other than Mr. Brown took in the preparation of said reports?—Ans. I am not aware of any, I presume the duty fell naturally to Mr. Brown as Secretary.

Ques. Did you as Commissioner or any other of said Commission examine said report before signing, or compare the evidence therein transcribed with the evidence taken before the said Commission, or did you trust to Mr. Brown for a correct report of the same?—Ans. I did not examine the report before signing, and I am not aware that my colleagues did, and I left the matter to Mr. Brown, and I believe that my colleagues did so.

Ques. Whom do you consider responsible for any unfair, erroneous or improper statement that may appear in their reports or either of them?—Ans. That must be left to public opinion. I do not feel that I have been a willing or a knowing party to such statements if such statements exist. I am responsible because I ought to have read the report before signing, but I do not feel that there are any errors for which I am responsible.

He went on to say that after such a long time he could not exactly recollect, and parts of the report may have been read over before him, but he was of opinion that he did not read the report after a general understanding upon the charge.

Mr. *Brown*.—I will call to your recollection the way in which

it was all done, we took these books, each had one, and the evidence was all summed up on each point, you had one book, Mr. Bristow had another, and there was an index made to each charge, we went from point to point to see what was established and what was not. I took the rough drafts, all of which I have now, and then had them corrected on each point. I did not make the extracts from the evidence, that was done by Mr. Jones.

Mr. Thomas.—I do not remember that being done.

Mr. Brown.—Mr. Thomas has forgotten.

Ques. Did you go over the book from one part of the evidence to another?—I have no recollection of doing so.

Ques. Did you yourself or did any of the Commissioners, other than Mr. Brown, make any extracts from the evidence for the purpose of the report or decide what part of the evidence should be transcribed or how the evidence should be reported on, or was or not that duty left to Mr. Brown?—*Ans.* My impression is strongly that the charges were considered by us separately and that the evidence on each charge as was contained in the minute book was referred to the charge. The charges were determined on by the Commission and it was left to Mr. Brown to report every charge and such evidence in the minute book as bore thereon. I made no extract from the minute book for such report. By the minute book I mean the book of evidence.

Ques. After you with your brother Commissioners had read over the evidence in relation to the charges did you take any part in the selection of the particular passages, which should appear in the report, or did you leave that to Mr. Brown, and did you see such report when it was ready for signature?—*Ans.* My impression is that having agreed on the charge the evidence bearing on such charge was left to Mr. Brown to extract without specific instructions thereon. I do not think I saw the report when completed. (He continued verbally.) I think I signed a blank sheet of paper with the understanding that having agreed as to the generals, the report was to be drawn up in accordance with the determination of the Commission.

Mr. Brown.—You are quite mistaken.

Mr. Vankoughnet.—Is that your strong belief?—*Ans.* That is my strong belief.

Mr. O'Reilly.—(verbally)—Mr. Brown says that when you were going over the evidence that instructions were given to take out the evidence line by line and passage by passage according to certain pencil marks in the book of evidence.

Mr. Thomas.—I am of opinion that those pencil marks were put to separate one part of the evidence from another. I remember signing a blank paper in Montreal with the understanding that such paper should be the final sheet of the report and

be our signature to such report, a basis or skeleton of the report having been agreed upon and the Commissioners understanding that the report should be in accordance with that basis. I do not remember whether the signatures were given over to the first or second reports, but I am inclined to think that it was to the first. I am satisfied that we did not sign the report in Kingston. We met in Kingston for our final business and then proceeded to Montreal together. This would be the first report but whether we went down to Montreal a second time I do not know.

The above was first given verbally and afterwards committed to writing by Mr. Thomas

Mr. *Vankoughnet*—I wish it to be understood that this is only a preliminary examination and that I shall have occasion to recall Mr. Thomas.

Mr. *O'Reilly* then entered upon his cross-examination. Name the Commissioners. Who were they besides yourself and Mr. Brown?—Ans. The Commissioners were Mr. Fergusson, Chairman, Mr. Daniells, Mr. Bristow, Mr. Thomas, and Mr. Brown.

Ques. Was the skeleton of both reports examined by the Commissioners and decided on by a full Board?—Ans. After the evidence had been taken, the Committee met to read and consider such evidence. It was then agreed that such evidence should accompany such a charge. There never was a charge made out and evidence given in relation to such charge. The charge was considered, and the book examined, to see what evidence bore upon the charge, and it was left to the Secretary to form the report upon it.

Ques. Have you read the printed report, and did you find it different in any point from what had been decided by the Commissioners?—Ans. I have never read the report, I have attempted to examine the book since this Committee was appointed, but I always closed the book with disgust.

Ques. Disgust with what?—Ans. With the whole proceedings.

In reply to a question from Dr. Clarke,

Mr. *Thomas* said, that after the report was handed in to the Government he saw nothing of it or of the minutes of evidence.

Some discussion here arose as to whether the original reports and paper of the Commission should have been handed in to the Government.

Mr. *O'Reilly* contended that they were not public property but that they were property in the hands of the clerk of the Commission and all that the Commissioners were called upon to give in was their finding. He contended that the rest was to be looked upon in the same light as the notes kept by a Judge, which were never given to any one.

Hon. Mr. *McDonald* showed that by the terms of the Com-

mission itself the Commissioners were directed to give in "all and every of their proceedings together with their finding."

M. O'Reilly and Mr. Brown said that it was never usual for Commissioners to send in anything but their finding.

In reply to a question from the Committee,

Mr. Thomas said that he should not have doubted that all the books and papers were handed in with the report and he was very much surprised when he heard that they were not in the hands of the Government.

Mr. Brown said that it would have been most improper to have allowed all the evidence taken before the Commission to have been printed, for there was much that they were obliged to take against their will which had no reference to the matter before them, and which reflected upon the characters of many private individuals.

Mr. Vankoughnet suggested to Mr. Brown the great loss of time resulting from the manner they had adopted of taking the evidence in writing. It had taken them two hours to take this preliminary evidence, and as there were thirty or forty witnesses to examine it would take two or three sessions before the evidence was concluded.

After some further discussion about Mr. Brown's letter the Committee adjourned.

Tenth Day—Friday, 28th March, 1856.

PRESENT:—Messrs. Ferres, Clarke, Stevenson, Felton, and Sanborn.

Mr. Attorney General Macdonald and Mr. Vankoughnet; Mr. Brown and Mr. O'Reilly.

Mr. Vankoughnet applied for an order that Mr. Brown do forthwith produce to and deposit with the Committee, all papers, books and documents relating in any way to the Penitentiary Commission or to the matters of investigation, which were laid before, held or had or used by the said Penitentiary Commission or the Members thereof; and which at the time this Committee was nominated by the House of Assembly were in his possession.

The Committee deliberated, and ordered accordingly.

Mr. Brown engaged to produce all papers to-morrow.

Mr. Sheriff Thomas' examination was resumed; and while giving a verbal answer to question 24 said, that "It appears that the text of the Report was drawn differently to what I thought, and it appears to me, that one or two pages of the Report is in my hand-writing which I must have suggested myself; therefore I, was in error yesterday in that respect, but there was a

“skeleton Report agreed to, and I know that after that skeleton, “I saw no more of the Report.”

Mr. *Brown*—No, nor did anybody else.

Mr. Attorney General *Macdonald* having requested that these words of Mr. *Brown*'s be taken down; they were taken down accordingly; whereupon Mr. *Brown* gave the following explanation:—“That what he meant in using the words above taken down was that on the adoption of the skeleton Report, or rather the draft Report, no further action had to be taken except the mere clerical work of writing out the fair copy, comparing and signing it.”

[By Mr. *O'Reilly*].—Did you not conduct the examination of the witnesses examined before the Penitentiary Commission, and write down the testimony, for a number of days in succession?—Ans. I conducted the examination of the witnesses, and wrote down the testimony during Messrs. *Brown* and *Bristow*'s absence on their tour in the United States, which lasted for many days.

Ques. On reference to the original papers of the Commission, is it still your impression that the drawing up of the Commissioners' Report was left to Mr. *Brown*, and that you signed it without reading it, or was not the draft report submitted to and decided upon by the Commissioners before it was copied out for signature?—Ans. The draft of the Report was entrusted to Mr. *Brown*, as is clearly shown by papers now produced: this draft was submitted to the Commissioners and adopted, paragraph by paragraph, with such alterations as were then determined upon: I have no reason to doubt that the pages and figures in this draft were as submitted and agreed to by us. When in Montreal I remember Mr. *Campbell* busied in drawing up the clear Report for presentation to Government: it is possible that we were assembled to hear read this Report so prepared by Mr. *Campbell*; but I do not remember such a circumstance, and do not think that it could have been so, at all events more than in part. I left Montreal before this clear Report was finished, and my signature in blank was designed, I believe, to be attached to it when completed.

Ques. Look at these portions of the original draft of the Report, and state were they not drawn by you, and do they not form part of the Report as printed?—Ans. The papers handed to me are in my hand-writing, and I have no doubt were suggested by me to form parts of the Report, and it appears by reference to the Report that these paragraphs do so appear.

Ques. Were the Commissioners unanimous in their finding upon the whole of the charges? Ans. I think that there was

entire unanimity in the opinion that the charges reported were truly found.

Ques. Before the draft Report was prepared did not the Commissioners give written instructions in this small book how it was to be drawn up?—Ans. It appears by a book now produced, that the charges were considered by reference to the minutes, and that it was left to the Secretary to draft his Report under headings and with references as made in the book now before me.

Ques. Do you not consider now, that you, as well as the other members of the Commission, are responsible for the report as finally made up and printed?—Ans. Undoubtedly we are responsible as Commissioners

[By Mr. *Vanboughnet.*]—Did not Mr. Brown generally and principally conduct the examination of the witnesses?—Ans. He did.

Ques. Who generally and principally prepared or suggested the questions for the witnesses, who shaped them, who urged the answers and shaped them when given?—Ans. The Secretary conducted the examinations, occasionally other Commissioners may have suggested a question, but it was generally left to the Secretary to draw out the evidence required.

Ques. Who made the draft Report, who marked or referred to therein the pages of evidence which were to be quoted, and who assumed to do this correctly for the information and duty of the Commissioners?—Ans. The draft or skeleton Report to which I referred was prepared by Mr. Brown; with reference to the remainder of the question I answer, Mr. Brown.

Ques. Did you on examining or having received the skeleton or draft Report referred to, proceed to examine the minutes of evidence to see that all pertinent evidence had been quoted or noticed, or did you rest satisfied with the discharge by Mr. Brown of this duty?—Ans. I cannot recollect how this matter was conducted. I presume that the evidence generally was referred to, and that all that was conceived pertinent to the charge was adopted by the Commissioners, and was included in the pages quoted. I do not remember whether the pages marked refer to evidence carefully collated by the Commissioners, or whether the matter was left generally to the Secretary, pertaining to the charge in hand.

Ques. Did you pay attention to anything more in the draft Report than its mere statements, or in other words to those parts of it which professed to give a history of the facts and the opinions of the Commissioners?—Ans. I presume that we did not examine the questions to see that nothing was omitted;

such a course would have exhibited a want of confidence in the Secretary, which we could have no reason to feel.

[By Mr. O'Reilly.]—Did not the whole of the Commissioners frequently and from time to time ask questions of the witnesses as the examination proceeded?—Ans. They did occasionally.

Ques. Have you any reason to suppose that the portions of the evidence intended to be embodied in the Report or any part of it were omitted, or that any portion of what was intended to be omitted, was included?—Ans. I have no reason to suppose so.

Ques. Was any official business of the Commissioners transacted in the absence of a quorum?—Ans. I think no official business of the Commission was transacted in the absence of a quorum.

Adjourned till 10 o'clock A. M., on Monday next.

Eleventh Day—Monday, March 31st, 1856.

PRESENT:—The Chairman, Messrs. Felton, Stevenson, and Sanborn.

Messrs. Macdonald and Brown, with Counsel.

Mr. Brown handed in a box of books and papers connected with the Penitentiary Commission, and in doing so stated that he believed all the papers of the Commission in his possession were among them, though there might be others remaining which he could not lay his hands on. In handing in these documents, Mr. Brown stated that among them is a book containing minute instructions on each charge against the late Warden of the Penitentiary, given him by the Commissioners to guide him in drawing up the draft report, which instructions were given upon a minute examination of the evidence. He also state that the original draft report is among the papers, and that it was minutely examined, compared with the evidence, amended, adopted by the Commission, and ordered to be copied. That the said draft report was handed over to the Clerk of the Commission to copy, that when made, the fair copy as sent to Government, was examined, amended, and adopted by the Commission. (This statement was given in writing.)

The Chairman stated that he had received a letter from Mr. Vankoughnet in reply to the letter of Mr. Brown.

This communication gave an explanation of the proceedings before the Committee so far as Mr. Macdonald was concerned, to the same effect as the explanation verbally given and reported on a previous day.

Mr. *Vankoughnet* being called away, Mr. Macdonald proceeded with the examination of Mr. Sheriff Thomas.

[By Mr. *Macdonald*.]—Was there not a preliminary and secret investigation held before the Commission, at which the Warden was not present?—Ans. There was.

Ques. Who got up the evidence at such examination, and who produced the witnesses?

Mr. *O'Reilly* contended that this was not a question which had any bearing on the charges. The charges were, first, that Mr. Brown falsely reported evidence; secondly, that he altered it after it was subscribed; thirdly, that he obtained the pardon of murderers and suborned convicts to induce them to give evidence.

Mr. *Macdonald*.—Does not the question bear directly on the last charge, by tending to shew that Mr. Brown tampered with evidence, and to prove that he must first shew that Mr. Brown had conversation with convicts.

Mr. *O'Reilly*.—It might be allowed as a preliminary examination.

Mr. *Thomas* (in answer to the question.)—A direct answer is, I think an advertisement was inserted in the Kingston papers notifying the sitting of the Commission. The evidence which came before them was supposed to be in consequence of such advertisement.

Ques. Did such advertisement cause the offer of convicts under sentence to be examined?—Ans. The books would tell as a matter of fact. I do not know that convicts under sentence were examined at the preliminary investigation. My idea was that the preliminary investigation was held at the jail; we had a sitting there. His idea was that they did not call any convict evidence except in corroboration of other evidence. The first convict evidence that he saw in the book was taken on the 5th September. He wanted to find out if any convicts at all were examined at this preliminary investigation. After a long reference to the books of evidence, he gave the following answer in writing: I cannot tell directly or indirectly. I presume that the evidence of the convicts was the result of the advertisement.

Ques. Had you or any of your brother Commissioners any communication with the witnesses before they were sworn?—Ans. I do not remember that I had any communication with witnesses before they were sworn. I think I can answer for Mr. Brown that he had seen witnesses and was aware of the general nature of the evidence they would give, but on this point I may be in error. I may say generally in reference to this question, that no prosecutor having been appointed by Government Mr. Brown conceived it to be his duty as Secretary

to conduct the prosecution. The Commissioners certainly felt that the character of the enquiries, and the answers in support thereof, were dependent on the Secretary's preparation thereof.

Ques. Did you not know as a fact that Mr. Brown was constantly and frequently with witnesses before being sworn. Do you not know that he was closeted with them at his hotel and elsewhere?—Ans. I do not remember this as a matter of fact. My impression is that he saw the witnesses or some of them before they were brought forward to give evidence.

Ques. Who prepared the charges based on the preliminary examination against the Warden?—The Secretary of course.

Ques. Did you or any of your brother Commissioners object to Mr. Brown being both judge and accuser as well as the prosecuting party, and did you not judge his being so an improper proceeding?—Ans. I do not remember that any formal objection was made, or that Mr. Brown's position was made the subject of discussion. I foresaw the difficulty from this course, and thought it was the leading error of the Commission.

Ques. Was the evidence of the party taken at the preliminary examination used at the subsequent trial. Was it not understood that no such evidence should be used unless the Warden had an opportunity of cross-examination?—Ans. It was understood that no such evidence should be used unless the Warden had an opportunity of cross-examination, and I am not aware that such understanding was not kept.

Mr. *O'Reilly* considered that this was assuming certain things to be facts, although they were not proved.

After some discussion on this point the answer was rewritten as follows :

Mr. *Thomas*.—Such evidence was not used, the parties were brought up again in Mr Smith's presence for fresh examination; when this was not the case my impression is, that the preliminary evidence was not used against the Warden.

Mr. *Macdonald*.—Any use of the preliminary evidence in the report when the Warden had not an opportunity of cross-examination, was not, as I understand from the last answer, sanctioned by the Commission; was this so or not?—Ans. If it was in the report it was sanctioned by the Commission.

Mr. *Macdonald* contended that this was not an answer to his question. He wanted to show that evidence had been used in the report contrary to the understanding of the Commissioners.

Mr. *Thomas* after some discussion shaped his question as follows : I have not knowingly sanctioned anything contrary to the literal spirit of the last reply, nor am I aware that any of the Commissioners did so.

Mr. *Brown* said that it made no difference at any rate, the whole thing was all fudge.

Mr. *Macdonald* said that such interruptions and attempts to bully witnesses should not be allowed.

Mr. *Brown* said that his remark was not intended for the witness.

Mr. *O'Reilly* repeated his objection, that these questions were assuming things to be facts, although the evidence, so far, shewed that it was not so.

Mr. *Brown*.—Suppose it had been, this is not the charge at all.

Mr. *Macdonald*.—Had the Warden an opportunity of cross-examining M. B. White, M. Phelan, E. Quinn, J. Brennan, E. Coté, or any one of them?—Ans. Their names are familiar to me but I do not remember anything particular about them. I do not remember whether the Warden had such opportunity, or if so, why he did not exercise it.

The Committee then adjourned.

Twelfth Day—Tuesday, 1st April, 1856.

PRESENT :—The Chairman, Messrs. Felton, Sanborn, Masson, Wilson, Stevenson, and Clarke.

Messrs. Macdonald and Brown with Counsel.

The Chairman being obliged to attend the meeting of an Election Committee

Mr. *Felton* was requested to take his place.

Mr. *O'Reilly* moved that the 36th question and answer taken yesterday be expunged. He had objected at the time to this question, and considered it to have been withdrawn when the 37th question was put. (The question to which he referred is as follows: "any use of the preliminary evidence in the report taken when the Warden had not the opportunity of cross-examination was not as I understand from the last answer sanctioned by the Commission; is this so or not?") When he made the objection Mr. Macdonald put the other question and he understood this to be withdrawn. His objection to the question was that it assumed the fact that evidence had been made use of in the way spoken of in the question. That this was the fact should have first been shewn, and the evidence so far went to shew that it was not so.

Mr. *Vankoughnet*.—His learned friend could not mean to urge that in this they were assuming anything. Was it not the commonest thing in practice at *nisi prius* to ask a witness

if he had said such a thing or not, or written such a letter, although the letter was not there.

Mr. *O'Reilly* argued that they did in this question assume that a certain fact is so and so. They must first prove it and the very next question disproves it. They could not contradict him in the position that they could never put a question in which they assumed a thing to be proved when it had not been so proved.

Mr. *Vankoughnet* did not assume it to be proved, he only assumed it as a fact.

Mr. *O'Reilly*.—There is nothing to base the question on.

Mr. *Vankoughnet* contended that it was every day practice to ask if such a thing was done or was not done, or was it true or was it false.

Mr. *Felton* considered that when they were putting written questions it was too late to make an objection after the answer was given. Here was a written question distinctly put down and answered.

Mr. *O'Reilly*.—It was for the Committee to consider if he had not said that he objected at the time the question was put, and if it had not been understood that the question was dropped. He was satisfied that if it had been put to the Committee then they would have said that it ought not to be put.

Mr. *Felton* did not understand that the question had been withdrawn.

Mr. *O'Reilly*.—At all events there could be no objection to its being expunged if it was improper.

Mr. *Felton*.—As soon as a written question is put the objection ought to be made before the written answer is put down.

Mr. *O'Reilly* said that he had not consented to its being written down as he thought it had been dropped.

Mr. *Vankoughnet*.—What he understood the Chairman to say, was that there should be an objection at once.

Mr. *Macdonald* read over the report to shew that he had not dropped the question.

Mr. *Thomas* said that he understood Mr. *O'Reilly* to object to the question.

Mr. *O'Reilly*.—The moment Mr. *Macdonald* put the other question he (Mr. *O'R.*) said that is right. He did not suppose that Mr. *Macdonald* was going to put both.

Dr. *Clarke* said that they had better take a note of the objection and discuss it afterwards.

This was agreed to and the matter dropped.

Mr. *O'Reilly* then went on with his cross-examination of Mr. *Thomas*.

Ques. Did you not generally in all cases take a preliminary

examination at which the parties implicated were not present, in order to learn what charges they were to be called on to answer?—Ans. We did so.

Ques. Will you please state how you proceeded generally. Did you first take information from sundry witnesses, called the preliminary evidence, and upon this form your charges, and then furnish the then Warden with those charges and the evidence on which they were based, and afterwards at the trial hear all witnesses produced, including those on whose preliminary evidence the charges were based?—Ans. That I believe to have been the course taken.

Ques. Did not the then Warden call a great many witnesses who had not been previously before the Commissioners?—Ans. I do not remember any instances thereof, but I have no doubt that it was so.

Ques. Did you not take down the whole evidence of the witnesses yourself from the 6th November to the 9th December inclusive?—Ans. I took evidence during the absence of Mr. Brown and Mr. Bristow in the United States, which was from the 6th November to the 5th December, included.

Ques. Who prepared or suggested the questions for the witnesses, who shaped them, who urged the answers, and shaped the answers when given during those thirty-three days? Ans. My impression is that the evidence during those days was called by the Warden, I think that there was but little cross-examination by the Commissioners, and I have no recollection by whom it was put, probably by the Commissioners in succession.

Ques. Was not the evidence of each witness carefully read over to him and its correctness acknowledged by the witness before signing?—Ans. It is inserted in the minute book, "The foregoing evidence was read aloud, the Warden declared the evidence correctly taken down, the witness did the same and then signed it. This is a true minute." And the fact was strictly in accordance therewith in all cases.

Ques. In reference to question and answer No. 31, please refer to the official letter book of the Commissioners, and say if Mr. Smith did not demand who were his accusers and if he was not replied to in the following terms on the 25th September. (The question went on to quote the following passage from a letter from the Secretary of the Commission to Mr. Smith):—"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 to you shall or may be referred to you by any person or persons who-soever, or which you may see fit to be preferred or investigated; and also into or concerning the whole conduct, economy, system of discipline, and management pursued in or with respect to our said Penitentiary.' In performing the duties entrusted to them, the Commissioners have received a large amount of evidence as to the general management of the Penitentiary; and as it appears that in this evidence there is much, personally, affecting your conduct as an officer of the institution, 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?"—The reply to Mr. Smith's letter as given in this question, is correctly taken from the official letter. I do not think this affects my answer to question 31.

Ques. This is an opinion of your own and ought not to be taken down as an answer to the question.—Ans. Would be exceedingly sorry to volunteer anything that might be deemed improper; but he understood the intention of this cross-examination to be to shake his previous evidence. He wished his previous answer to the question.

Ques. Will you please explain what took place in reference to the preliminary evidence touching the first four charges against the Warden?—Ans. The Warden declined to recall the witnesses, Phelan, Coté, Brennan, Quinn, Hearn, and H. Robinson. It was mutually agreed that the preliminary evidence of these persons should not be received in support of the first four charges. I find this fact by reference to the minute book now before me; and I do not find that the evidence of those parties has been used for the first four charges.

Ques. Did not the Commissioners inform the Warden, by letter, on the 23rd September, 1848, that the course to be pursued in regard to the evidence taken at the preliminary examination, would be as follows:—"You will have any assistance in the procuring of witnesses that the Commissioners can give—you will be entitled to reproduce 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;" and was this course not strictly followed?—Ans. I find such a letter amongst the offic

correspondence of the Commission. I was absent from the Commission at this period. I have reason to believe that this course was strictly followed.

Ques. Did Mr. Brown record, falsely, the evidence taken before the Commission?—Ans. Not with my knowledge; and I feel confident that he did not.

Ques. Did Mr. Brown alter the written testimony given by witnesses after their evidence was closed and subscribed by them, and are any of the charges against Mr. Brown, true, to your knowledge?—Ans. My reply is distinctly to the same purport as to the former question.

The examination of Mr. Thomas was here closed, and Mr. Vankoughnet proceeded to address the Committee.

Mr. *Vankoughnet*.—Mr. Chairman: I would first call the attention of the Committee to the charges which they are now called upon to investigate. In the first place, we charge Mr. Brown with having falsely taken down evidence. Then with having altered it, after it was signed and subscribed,—with having suborned convicts to give false evidence, and with having obtained the pardon of murderers as a reward for having done so. What I desire to impress on the Committee is this, that we are not investigating Mr. Smith's case. We are not inquiring whether the Commission was justified or not in the course which they took with regard to them. What we have to enquire, is, whether these charges against Mr. Brown are sustained in such a manner as to justify the accusation which has been made by Mr. Macdonald. I wish to have this borne in mind, from the first, for, by so doing, it will prevent any misunderstanding hereafter. When we commenced this enquiry, the impression on my mind and on that of Mr. Macdonald also, and I believe on the minds of every one, except Mr. Brown and his counsel, was that the books of evidence which had been taken before the Commission, had all been handed in to the Government, and destroyed by the fire at Quebec; and the course that we felt it necessary to pursue, was to give as well as we could, by *viva voce* testimony, a statement by witnesses as to the evidence they actually had given, and as to the mode in which it was taken down. We believed these books to have been returned to the Government until they were produced by Mr. Brown; and I presume that we got credit for sincerity in making that statement. So far from any of these documents being sent in to the Government, it turns out now that not even copies were sent in; but that all the Government ever had was the printed report, with such evidence as Mr. Brown chose to transcribe. The parties who made the charges against Mr. Brown had nothing but this report, they had no opportunity of

referring to the original books of evidence, for Mr. Brown kept them himself, for the reason he then stated—to protect himself against any charges that might hereafter be made against him. Mr. Brown felt that he might rest perfectly secure against any charge of having altered the evidence, as no one had ever seen it. They could not, with apparent truth, make a charge that he had altered these books after the evidence was taken, for no one had ever seen them. But, Sir, what people did read in the printed report, led them to complain that Mr. Brown had altered the testimony. What they complained of was, that their testimony, as given in the report, was falsified. Now, sir, I feel that however much I may regret, and, personally, I do deeply regret to be obliged to go into this matter; that for Mr. Macdonald's case, the discovery of these books is of very great importance; for I am prepared to prove from these books that the evidence, as collated in the report, is given falsely, and in such a way as to shew that it was deliberately falsified. Mr. Brown might say that the other Commissioners were equally concerned, and so they might be; but even granting that such was the case—did that make any difference in Mr. Brown's position? It is quite clear that if any of the Commissioners are responsible, Mr. Brown is not the least so. I am prepared to prove, from the facts disclosed by this book, that the evidence given in that report, professing to be transcribed from the book of evidence, has been deliberately falsified. Now the Committee have to bear this in mind, that the only thing before the public was that report—as to the books of evidence no one could say that they had been altered after the Commissioners closed the latter, for no one had ever seen them. Now I think that I shall more than sustain Mr. Macdonald's case, if I shew from Mr. Brown's own books of evidence that the evidence which has been given to the Government as sustaining particular charges, is different from that taken down in the minute book of the Commissioners. I am prepared to shew for instance that in transcribing the evidence, he has stopped short in the middle of a sentence. When Mr. Brown indignantly protested against our bringing up the testimony of convicts against him, I did feel that although such a course would have been justifiable on the part of Mr. Macdonald, yet that it would have been a very difficult and delicate thing to sustain fully, on such testimony, any charge against a man in Mr. Brown's high position in this country. And although I felt that I had this answer, that Mr. Brown could not object to such testimony, inasmuch as he had used such evidence against Mr. Smith, who was, before this affair, a man of good repute,—although many charges had been mainly sustained against him

on convict evidence; although that had been the case, and although I might say that it did not become Mr. Brown, of all other men, to make such objection, I did feel that it would be a very delicate thing to rest a case on such evidence. Never having seen these books, I was quite ignorant whether they would justify the evidence given in this report or not. I intend to shew by testimony which will be unimpeachable that portions of the evidence taken in the books correctly, and although it is in most cases reported to have been read over and signed, has been entered in the report in language entirely different. I shall be also prepared to sustain the other charges, but what I wish the Committee to understand is this: that looking at the whole character of the transaction, looking at what was really returned to the Government, and which alone was published, looking at this report, and bearing in mind the fact that it is with reference to that alone that all the witnesses have spoken, I maintain that if this report can be shewn to have misrepresented to the Government the evidence on which the Government was to act, and if evidence can be brought out of Mr. Brown's own book of evidence, to prove that these misrepresentations and falsifications of evidence have been made, then I say I maintain that the charge which Mr. Macdonald has brought against Mr. Brown is as fully sustained as if I had proved that ten days after the whole evidence was closed and signed it had been altered and falsified in the original minutes. Any person who supposed that these books had been handed in to the Government would say that Mr. Brown would not have chosen to give the Government anything on which such an accusation as this could have been based, and the natural consequence is that any one would imagine that if the books of evidence had accompanied the report they would have been made to suit it—no one would have sent books which contained a contradiction. We, therefore, can only come to the conclusion that either he has made the report to suit the evidence or the evidence to suit the report, otherwise he would never have returned them now, or else we must draw the inference that they have been kept back so long because they would not bear out the printed report. I submit that is evidence not open to objection on the part of Mr. Brown or any one else, and that if out of Mr. Brown's own books I can convict him of unfairly representing this evidence to the Government, I shall have done all that is necessary to do to sustain the charges made by Mr. Macdonald so far as the alteration of evidence is concerned. I would like also the Committee to understand fully that these charges made by Mr. Macdonald as to such statements of others on which they rest are not now made for the first time, for they were made in

1849 and again in 1850. Also that Mr. Macdonald never professed to make them on his own authority but on that of others. I wish again to say that while I have not the least desire to shew any eagerness to make out a case against Mr. Brown, which I have not but so far as I am personally concerned very much the contrary, I yet feel that I can not in any way shrink from the responsibility I have assumed so far as to justify the course which Mr. Macdonald took when he made these charges, and although it may seem like making out a case to injure Mr. Brown, I shall, nevertheless, fulfill my duty towards Mr. Macdonald in so doing, and shall endeavour to shield him from the imputation of having of his own malice made the charges, which it is the duty of the Committee to investigate. I have thus shadowed forth the course which I intend to pursue. On these books of evidence I shall mainly rest for the support of the charges, for that is evidence which can not be questioned, it is in no way open to suspicion, it is evidence which Mr. Brown can not challenge, and it will be found amply sufficient for my purpose, and I am also prepared to shew, without the aid of these books, that Mr. Macdonald was fully justified in making the charges which he did. There is one further remark which I wish to make before this Committee where there are none but Members of Parliament, and which I would not make out of doors. Mr. Brown, in the debate on this question, made an allusion to Mr. Macdonald in the House, which has called forth some inquiry on the part of Mr. Macdonald's friends. What I allude to merely affects Mr. Macdonald's conduct as a gentleman, and is in no way material to the business before this Committee. It is this: that Mr. Brown endeavoured to impress on the House that these charges must have been made in cold blood, for although Mr. Macdonald had made those charges, he had, since the time when the things of which he accused Mr. Brown must have taken place, if they ever took place at all, broken bread with him—he (Mr. Brown) had tasted his salt, and enjoyed his hospitality, and had been received into his house, and he could not understand how any man who had been on such terms with him could come down and make such grave charges against him when he must have known them all the time, if he knew them at all. In reply to this I am instructed to say that Mr. Macdonald is not aware of ever having invited Mr. Brown to his house. It is true that, when he and Mr. Cayley lived together at Quebec, Mr. Cayley had invited him to dinner, and Mr. Macdonald met him at Mr. Cayley's table as he had met him on various public occasions. I merely make this remark as among gentlemen, because it was urged as a reason to shew that Mr. Macdonald made those charges in cold blood, and I would further say that even if Mr. Macdonald

had offered his hospitality to Mr. Brown, that gentleman should be the last person to have now urged it against Mr. Macdonald. I am not aware that there is any necessity for me to state anything further; I shall be prepared to proceed to-morrow to call the attention of the Committee to the Books of Evidence and then proceed to the examination of *viva voce* testimony in support of the other charges; and I will then leave it to the Committee to say how many instances of falsification of evidence it is necessary for me to prove to sustain the charges, whether having proved one of them or six, I have done enough to enable the Committee to make their report, or to say, that if there are one hundred charges I must go on to prove ninety-nine.

Mr. *O'Reilly*.—I do not desire now to appear to question the kind of evidence which my learned friend proposes to bring to support his case, but there is one thing that I must submit to the Committee, that whatever charges are brought forward here must be confined to the charges put upon record. Now the main part of the evidence which my learned friend proposes to lay before the Committee is not to show that the evidence was taken down falsely but to make up quite a different case—that the portions of the evidence intended to accompany the report were not correctly or judiciously selected. It would be seen already, from the careful way in which everything was prepared, that it is utterly impossible that such could have been the case, and I protest against the Committee being hampered with anything of this kind, and I protest against my learned friend being allowed to drag every new discovery that he may make bearing on substantially different charges from those here laid down; when those are investigated Mr. Brown will be quite ready to meet any other charges that may be brought against him, but do let us have one thing at a time.

The usual hour of adjournment having arrived, the Committee rose.

Thirteenth Day—Wednesday, April 3rd, 1856.

PRESENT:—Messrs. Felton, Sanborn, Stevenson, Masson, and Clarke,

When Mr. *Vankoughnet* stated that he was prepared to go on with the evidence,

Mr. *Felton*, who had the chair, in absence of Mr. Ferres, said that it was necessary before going into the evidence to adopt some plan of proceeding.

Mr. *O'Reilly* would like to know under what head of the charges they now proposed to proceed.

Mr. *Vankoughnet*.—Extracting the evidence falsely was falsifying the evidence.

Mr. *O'Reilly*.—This question ought to be settled before going any further. The objections made yesterday ought to be settled at once. I apprehend that this evidence can not be offered under any of the heads now under enquiry. The charges are very distinct and plain. It will be found that this is not strictly admissible under any one of the charges on which Mr. Brown is now on his trial. The substance of what my learned friend proposes to prove is, that Mr. Brown erroneously transcribed the evidence from the minute book to the printed report; now it will be seen that M. Brown was instructed how to prepare a report in full, the original draft of which is now before the Committee, and this was not copied by Mr. Brown, but by some clerk, and this copy was not the act of Mr. Brown at all, he could not be responsible for this any further than as one of the Commissioners. He then went on the charges. What is the meaning, he said, of the word "record?" The charge as here stated is having falsely recorded the evidence given before the Commission. This can mean nothing more than putting down the evidence as it was given. What Mr. Vankoughnet speaks of now, is merely extracting evidence; which is as different from recording evidence as day is from night. This, therefore, can not come under the head of the first charge. The next charge is having altered evidence after it was closed and subscribed. It clearly can not come under that head; as I said before, if Mr. Vankoughnet chooses to bring charges of the description that this evidence would sustain Mr. Brown is prepared to meet them, but I do think that it would be unfair to Mr. Brown to take up these matters in this way. What does this amount to? It amounts to a condemnation of the whole board of Commissioners, who, if their conduct is to be examined into, would have been entitled to be called here and allowed to defend themselves. This duty devolved on Mr. Brown as Secretary, and it is exceedingly unfair to indict a man of one thing and then endeavour to prove him guilty of another, and not only that, but it would be very unfair to the other Commissioners. Of course I do not admit that there is anything in the matter affecting Mr. Brown, but I protest against my learned friend being permitted to give evidence on it at all.

Mr. *Vankoughnet*.—I would merely repeat a little more fully what I said yesterday. The Committee must know what took place in the House—that Mr. Macdonald made none of these charges on his own knowledge. Of course that is conceded. Well then the Committee well know that these books were discovered in Mr. Brown's possession the other day. The only

thing published was this report which professed to give the evidence given before the Commission, or such part of it as Mr. Brown thought proper to put in the report. When witness after witness read this report and said time after time, "I never gave that evidence. If he has taken down the evidence in that way it is false," on such statements Mr. Macdonald makes his charges. I maintain that transcribing the evidence falsely into the report, while professing to give it truly is just as much a false recording of the evidence as taking it down in these books falsely. That is a false recording of evidence quite sufficient to sustain the charge. I deny that the other Commissioners are responsible. It has been proved that the Commissioners did not proceed to examine the evidence day by day.

Mr. *O'Reilly*—It is just the contrary. Mr. Thomas said "paragraph by paragraph."

Mr. *Vankoughnet*.—Even if he did it was the duty of Mr. Brown to extract the evidence. He was the person most familiar with the evidence. He was the person to prepare the draft report. He professes to have done that although he did not read it over page by page. It was the duty of Mr. Brown to see that the evidence was taken down correctly, as he was to prepare the draft report, and he is not less responsible than the rest of the Commissioners. The other Commissioners are not as responsible. If it is put on mere technical grounds that my learned friend wishes to put it on, they are as responsible in one case as in the other. The objection that it is in any way reflecting on them would fail as much if the charge was proved in the way my learned friend says it ought to be proved. Mr. Brown ought to know what he intended to put in the report. He ought to know if he took the evidence down fairly or not. Looking at the fact that the books were never known to be in existence till the other day, I put it to the Committee that I have a large body of evidence of this character, and if the result is nothing more than this, the Committee must make a special report of this evidence and give it to the House and to the country.

Mr. *O'Reilly*.—I never could read the charge and understand anything else than that it was taking down the evidence differently from what the witnesses gave *viva voce* at the time. Every one knows perfectly well that the Commissioners would not have put the whole evidence in the report, they only transcribed such portions of the evidence as they thought proper to be submitted to the Government, and the transcribing of that can never be recording evidence. I desire to have a division of the Committee on this question before we go any further, for if they decide adversely, it will be for my client to make a further appeal.

Mr. Vankoughnet.—On the ordinary principles of law if a man makes a statement that such and such evidence was given, he is stopped from doubting the correctness of his own statement; he makes himself responsible for it.

Mr. Brown could admit that the Commissioners had nothing to do with copying the report except so far as it was in their own hand writing. If they made a mistake, clearly it was great remissness on their part. Again, he had nothing to do with the printing, and many mistakes occurred from that.

Mr. Vankoughnet—He did not allude to trifling matters of that kind.

Mr. Brown—At any rate it had nothing to do with the case.

Mr. Vankoughnet continued—If a man chooses to make a statement he is bound by that statement and we are bound to believe that Mr. Brown had made a true statement as to the way in which he had taken down the evidence. Having done that we can not allow him to say that I furnished you with the means of making a statement, I will not allow you to use it.

Mr. Felton said that the question appeared to him to be tolerably simple. The objection is that under the first head of their charges Mr. Brown is charged with having falsely recorded the evidence taken before the Commissioners. The question is, how far, (Mr. Brown having placed this evidence before the Committee,) the transcribing of evidence from the minutes to the report is falsely recording the evidence. That printed copy is the only copy ever returned to the Government. It is quite clear that that is the only public record there is. If there is any other, the Commissioners were bound to return it to the Government. They were bound to return either the whole or the important parts, and that printed return is the only public record.

Mr. Brown—This is not the record with respect to which Mr. Macdonald made his charges. They were made on the assumption that the evidence taken down was the same as that submitted to the Government.

Mr. Clarke—The way he understands it is this, Mr. Macdonald made his charges from what people told him.

Mr. Sanborn—It appeared to him that when there was a charge of falsely recording evidence, the proof that this does not accord with the original evidence does not show that the evidence in the book was falsely recorded.

Mr. O'Reilly, (for Mr. Brown), then put in a protest against the admissibility of the evidence proposed to be adduced by Mr. Macdonald in support of the charge of falsification of evidence.

Some discussion ensued as to the course the Committee should pursue as to whether or not the question as to the evidence should not be referred to the House.

It was decided that the Committee should adjourn until tomorrow, and then enter upon the discussion of the question. The Committee then adjourned.

Fourteenth Day—Thursday, 3rd April, 1856.

PRESENT:—Messrs. Felton, Sanborn, Masson, Clarke, and Stevenson.

Mr. *Sanborn* moves that this Committee be adjourned till tomorrow at eleven o'clock, in order to warn the attendance of the whole Committee to give their opinion upon the objection made by Mr. O'Reilly to the evidence offered by Mr. Vankoughnet, and that the members of the Committee be speedily summoned for that purpose.

Mr. *Stevenson* moves, in amendment, that Mr. O'Reilly's objection be over-ruled and that Mr. Vankoughnet do proceed with his evidence.

Carried; Mr. Sanborn dissenting.

Mr. *O'Reilly*, (for Mr. Brown), protests against the decision of the Committee upon the motion of Mr. O'Reilly, made yesterday, as to the reception of the evidence proposed to be offered by Mr. Vankoughnet on the ground stated in Mr. O'Reilly's motion and (providing under protest) reserves to himself the right of appealing to the House to annul the decision of the Committee on the point in question.

In consequence of the absence of Mr. Macdonald the Committee did not proceed with the evidence, and then adjourned till tomorrow.

Fifteenth Day—Friday, 4th April, 1856.

PRESENT:—Mr. Ferres, Chairman, Messrs. Sanborn, Masson, Felton, Stevenson, Wilson, and Clarke.

Mr. *Brown*—I wish to call the attention of the Committee to a very singular change made in the Minutes. I only discovered it last night.

Mr. *Ferres*—I suppose it is the paragraph written by Mr. Felton yesterday, "Mr. Sanborn moved that this Committee be adjourned till to-morrow at eleven o'clock, in order to secure an attendance of the whole Committee to give their opinion upon the objection made by Mr. O'Reilly, to the evidence offered by Mr. Vankoughnet."

Mr. Brown—It is that. It is quite clear that the point submitted by Mr. O'Reilly yesterday does not affect that. It is quite clear that that is a totally different issue; that the protest of Mr. O'Reilly is no protest to that at all. Mr. Vankoughnet made a motion to which Mr. O'Reilly made a protest. This is not Mr. Vankoughnet's motion which is recorded in the Minutes.

Mr. Vankoughnet—I propose to show that the evidence as reported by the Commissioners to the Governor, is falsely reported.

Mr. Brown—That I understand.

Mr. O'Reilly—You speak now of the return made to the Government.

Mr. Vankoughnet—Exactly. That is what I propose to show is a false report of the evidence.

Mr. Felton—I will tell you how this matter is in error: I put in writing what I considered to be the motion of Mr. Vankoughnet.

Mr. Vankoughnet—I made it *viva voce* of course.

Mr. Felton—I did not see the protest; but I put down what I took to be Mr. Vankoughnet's words. This statement is my statement.

Mr. Vankoughnet—What I propose to do is just this: This record of the Return made to the Government professes to give certain evidence; and I intend to show that it is not correctly given.

Mr. Felton—Mr. Brown looked over the memorandum yesterday and made no objection.

Mr. Ferris—We will have the minutes of yesterday read, and then we will go on. Let us put on the minutes what it is that Mr. Vankoughnet intends to do. Then if there was any misapprehension, we can take that up afterwards.

Mr. Vankoughnet—What I actually said was this—and I am sure that Mr. Sanborn understood it, for I heard him afterwards talking of it myself—I proposed to show that this Return to Government, which I call the Record of the Commissioners, for there was no other record, professed to detail and quote certain evidence, that this evidence so quoted was what the Commissioners relied upon as the ground for their recommendation to Government; and I propose to show that that evidence in the record was falsely reported.

Mr. Felton—I took down the statement of Mr. Vankoughnet. Then Mr. O'Reilly put in his statement, showing what he conceived to be the object Mr. Vankoughnet proposed to attain.

Mr. Vankoughnet—Mr. Felton's statement is perfectly correct; and it is what I propose to do now.

Mr. O'Reilly—The question that will come up is, whether Mr. Vankoughnet can fairly go into that under any of the charges.

on which Mr. Brown is now on his trial—that any evidence on that point is inadmissible. I object that the motion of Mr. Vankoughnet is founded on a misconstruction of terms. The record of the evidence is undoubtedly the evidence as written down in the original book. The printed Report cannot be taken as the record, as that was merely founded on the evidence; and the Commissioners might have sent in their Report without any portion of their evidence at all.

Mr. *Ferres*—Mr. Vankoughnet complains that the evidence was falsely reported.

Mr. *Vankoughnet*—Precisely.

Mr. *Ferres*—Then the question was perfectly understood yesterday, and decided on that ground.

Mr. *Sanborn*—The issue is raised on the statement given by Mr. O'Reilly in a manner in which there can be no doubt how the matter was understood by the Committee. Mr. O'Reilly contends that the record is the original book of evidence; and that the printed Report published cannot be taken to be the record. Mr. Vankoughnet wishes to show that the printed evidence in the Report disagrees with the original evidence taken from the witnesses, and that is the mode by which he endeavors to show that there is a false report of the evidence. That is the point clearly, and that is understood; but there should be no misapprehension of the character of the Report submitted to the Government.

Mr. *Brown*—He wants to show that this was a false Report; but that was not the Report that was sent to the Government, for that was a written Report.

Mr. *O'Reilly*—That is another point.

Mr. *Ferres*—I want Mr. Vankoughnet to put on the Minutes precisely what he means; and if he is satisfied I suppose that is all that can be required. It is his own statement.

Mr. *Felton*—I do not see the necessity for re-opening a case which has already been disposed of.

Mr. *O'Reilly*—I say that evidence of the character which Mr. Vankoughnet proposes to submit is not admissible.

Mr. *Vankoughnet*—I was proceeding to show by the original memoranda taken by Mr. Brown, as Secretary to the Commission, that the evidence as given in the printed Report was falsified—not limiting myself to the original memoranda, however, because I intend to prove it also by *vica voce* evidence. On that proposition of mine the Committee decided that I had a right to take that course.

Mr. *Ferres*—Had the decision which the Committee arrived at yesterday, that Mr. O'Reilly's objection be overruled, and that Mr. Vankoughnet do proceed with his evidence.

Mr. *Wilson*—Do I understand that the Committee have decided that if the extracts of evidence in that Report do not agree with the original books, that Mr. Brown is to be charged with falsification?

Mr. *Vankoughnet*—Certainly.

Mr. *Wilson*—You find that certain extracts of evidence were made from evidence by a clerk, and that clerk made those extracts correctly or not.

Mr. *Felton*—I speak to a motion of order. Are we going to have that decision or not?

Mr. *Wilson*—Yes. I mean to make a motion to revise.

Mr. *Vankoughnet*—I mean to say that since the meeting of yesterday I explained my position to the highest legal authority in this place, and he approved of it entirely. And with reference to what Mr. Wilson says, it is easy to be seen whether a clerk is responsible or whether Mr. Brown is responsible for the extracts.

Mr. *Ferres*—The printed report must be taken by the Committee to be the record handed into the Government.

Mr. *Vankoughnet*—That is the case precisely.

Mr. *Brown*—Do you mean to say that we are responsible for any typographical error that may appear in that report?

Mr. *Vankoughnet*—I mean to give in no typographical error or any clerical error as part of my case. I intend to show that the evidence in the printed report was falsified.

Mr. *O'Reilly*—How are you going to do that?

Mr. *Vankoughnet*—You will be satisfied of it yourself. We will prove it from the handwriting of Mr. Brown himself in the original books of evidence.

Mr. *Wilson*—I move to reconsider the decision of the Committee.

Mr. *Felton*—We must clear the room.

Mr. *Holton*—If you desire to clear the room, Mr. Chairman, I submit that you have no power to exclude Members of Parliament.

Mr. *Ferres*—It is not necessary that Members of Parliament should leave the room.

Mr. *Holton*—If the room is to be cleared I shall raise the question before the House whether the Committee has the power to exclude Members of Parliament.

Mr. *Ferres*—My idea is that the Committee while they have the power to exclude strangers, request members as a matter of courtesy to withdraw.

Mr. *Holton*—If it is a matter of courtesy, I do not mean to violate it. I am not here to break through any rule of courtesy. But I think you had not a right as a Committee of the House to

exclude members of the House from all the proceedings of the Committee.

Mr. Christie—I do not mean to go out.

Mr. Masson—I also think that the members of the House should be allowed to attend all the sittings of the Committee, and not be compelled to withdraw.

Mr. Holton—You can't help yourself, my dear sir.

The room was then cleared of strangers.

After some time the room was re-opened.

Mr. Wilson—I wish to state that the first charge the Committee has to examine, is the one charging Mr. Brown with recording falsely the evidence taken before the Commission. And, if I understand Mr. Vankoughnet to day, he intended to compare the evidence in the printed report with the original books in the handwriting of Mr. Brown, and if they do not agree he will take that as falsifying the evidence. Well, I think that any one that considers the matter must see that the evidence taken down and signed by the Commissioners could not have been taken down falsely.

Mr. Vankoughnet—I deny that.

Mr. Wilson—That is the only common sense view of the matter, and the only legal one. Suppose that you take the view that Mr. Vankoughnet does—what is the result? You find that in the draft report certain points are to be communicated, because certain passages bear out certain points. Now, Mr. Brown did not copy those extracts—that was done by a clerk. That was sent to the Government, and that was the basis of the action of the Government, in the shape in which it appeared on our journals. But before it appeared there it necessarily went through several hands—the clerk, the printer, the proof-reader, and the clerk of the House. Now, how can this Committee decide, or how can the House or the country decide, that any errors which occur in that report were the fault of Mr. Brown, when in reality the only charge against him is that the evidence was taken down falsely? Then, I say, that as far as Mr. Vankoughnet can sustain the charge of falsifying the evidence he is right; but if the attempts to prove falsification of the evidence simply because the printed report does not agree with the original books, that is not such a course as the Committee ought to sanction. For that reason I think the Committee arrived at an erroneous decision yesterday.

Mr. Stevenson—I understand the first charge to be that Mr. Brown had falsified evidence. Now, no statement of evidence was put before the Government, or was seen except what was seen in the printed report. Now, if that report was not a cor-

rect statement of the evidence, the charge made would be borne out, as it is the only statement which has been seen.

Mr. *Wilson*—Let me tell you that the charge is made for falsely recording evidence. It is not what appears in this printed report which will prove falsification.

Dr. *Clarke*.—The printed report is the record.

Mr. *Stevenson*—The substance of the words used by Mr. Macdonald in the House of Assembly should be considered. When Mr. Macdonald refused to be tied down to the words attributed to him by Mr. Brown, the House agreed that he should not be tied down to those particular words, but that the substance should be taken. Certainly, there was no impression left on my mind but that of falsifying evidence. If that was the charge we can enquire as to whether it was the case or not. Now with regard to the technical objection that is urged that this printed report is not the record, I think that we have no means of justifying that it is not the record, and it is a mere legal quibble.

Mr. *Wilson*—The words used are “falsifying evidence.”

Mr. *Clarke*—The view that I take of it is this: Is this printed report the record?

Mr. *Brown*—The original report is the record.

Mr. *Clarke*—I maintain the contrary, for the public saw nothing of those books. The private memoranda or jottings of a judge are not the record. Mr. Macdonald saw nothing of those books. They never left the hands of Mr. Brown; but were kept by him in secret to the last few days, and I maintain that that being the case this report is the only record of the Commissioners. The original books which he kept in his hands you may hold to be the record, and that may be law, but certainly it is not justice. I maintain that this is the record, and that it is on this we try Mr. Brown.

Mr. *Sanborn*—Mr. Macdonald proposes to adduce this evidence in sustaining his first charge, and his first charge is one that has been referred to us, it is for recording falsely the evidence; and it is reduced simply to this; whether Mr. Brown did, or did not, take down the evidence truly as it was given by the witnesses; and anything that will prove that charge it is competent on the part of Mr. Macdonald for him to offer, but anything else is not. That evidence after it has been given, and recorded, and placed in a different form after it was taken, cannot be considered the record on which we are to consider. It might be made the ground of a charge in another form, but it is not the charge here. Then I take the rule of the House, that Legislative Committees must refrain from considering questions not

sent down to them by the House, but must take fresh instructions to apply to this case. Those are the reasons which force me to think that we, confining ourselves to the rules of law, have no right to consider this printed report. It is not pertinent. It does not affect us.

Mr. Felton—I am very glad that Mr. Wilson is here, and wish that he was present yesterday to hear all that was said on the subject. I am glad that we have an opportunity of explaining to him the reasons of our decision, because I think it could be maintained in any Court of law in the world. My opinion is that without sticking to the strict rule of law we should observe the singular position in which the parties stand towards each other. In ordinary Courts it is the accuser that draws up the charge. In this case it is the accused that draws up the charge, and when the accuser objected to the wording of the charge it was said in the face of the House that the accuser was not to be held to the strict wording of the charge. In that charge, Mr. Brown is accused of having falsely recorded testimony; now, that I take to be placing the testimony falsely on some record. What is a record? The Member of the Committee who has spoken at greatest length has avoided touching on that. What is the record in a Court of Justice? It is the record that is to be used in deciding on the merits of a case. Now, what was done by the Commissioners in this case? They submitted this printed report to the Government, and that is the only record which has been seen. I do not care what they may have had in their pockets; anything they may have kept in their pockets has nothing to do with this case; they did not themselves consider it as a record. The very fact that they concealed these books proves one of two things, it proves that they did not consider those books as a record, for if they did they had no right to keep them. If they considered these books simply as copies then they should have been put in such a shape as to enable witnesses to ascertain if their evidence was correctly reported. Now let us consider it in another way! What opportunity had Mr. Macdonald of knowing the contents of these books? He made his accusation on the published reports; I ask any member of the Committee whether they knew, before these documents were brought down by Mr. Brown, that they were in existence? I ask any Member of the Committee whether he was sure 24 hours or 24 minutes, before they were brought down, that they were not destroyed?

Mr. Masson—I say that 24 hours before I was told by a friend that they were in existence.

Mr. Felton—The Committee did not know it; the House did not know it; it was supposed they had been submitted to the

Government by Mr. Brown, and that they had been destroyed. Now, when Mr. Macdonald saw the printed report, and when the public saw it, they had a right to assume that it was the record. Now, why do we record testimony? Is it to keep it in our pockets? Is it to record the evidence which may be adduced for the purpose of convicting the wicked, and excusing the innocent; and so that statement which Mr. Brown chose to furnish to the Government as the ground for ejecting Mr. Smith is the record on which he should be judged. Those are the reasons which influenced me, and I think we were quite right. I do not believe that we ought to decide more strictly than in a Court of law; and I say that in a Court of law the enquiry would be on all the facts imputed in that charge now before the Committee.

Mr. Masson—It was not for him to say whether the proof was to be taken from this paper or that paper. So long as he was satisfied that the evidence was against Mr. Brown, he must report so to the House. The same latitude must be allowed to Mr. Brown, in giving his evidence for the defence.

Mr. Wilson—These charges were not made against Mr. Brown as one of the Commissioners, but personally, as Secretary to the Commission, as having abused the position which he held as Commissioner. That he recorded falsely the evidence that witnesses gave. That he abused the confidence reposed in him by the Commissioners, by recording falsely the evidence given before the Commission. He was always glad where common sense agreed with law, and he would ask this question—Where was the evidence recorded? In the original book subscribed by the witnesses. Where could it be falsified but there? It could not be said to be falsely recorded in the transcribing. There has been a good deal of discussion upon the word recording,—but what was he charged with? It was, that he put down the evidence falsely when given. How did they now propose to show that that is false? Producing the report does not show that; for the whole that it contains of the evidence is only extracts. Before that book was produced it had passed through a number of hands, with whom Mr. Brown had nothing to do; and he cannot be charged with having falsely transcribed what was written after it left his hands. To give it any other view is an absurdity. He would admit that truth of the proposition so far as the record of the report goes; but when they applied the word record to transcribing the evidence, and applied it in the sense in which it is, and in that charge it is totally different. Mr. Brown being Secretary, and having the duty of recording the evidence of the witnesses, instead of doing that faithfully, is charged with having recorded it falsely.

Would it support that charge to bring extracts from the evidence copied into a book which had passed through a number of hands? If they called witnesses, and they said that what was given as their evidence was not really so, he would allow that that was good evidence; but if they only brought a book which professes to be only extracts from the evidence, and not the whole evidence—how could that be said to be falsely recording evidence? What is Mr. Brown accused of? He is accused of having taken the opportunity of being Secretary, not to write what the witnesses said, but something else. But in what way can the production of this report, and its companion with the original evidence, be a proof that he falsely recorded the evidence? If they do not agree, they can only say this, that the clerk who wrote it, did not copy correctly; or that it was not copied correctly for the printer, or that the printer did not print it correctly. The whole thing resolves itself into this, that in order that Mr. Macdonald may not be charged with having made a false charge. In doing justice to Mr. Macdonald, this is hinted at—that having only this evidence to go on, and believing when he took on himself to make this charge, that it was all there was—relying on that, being all that was true, is one thing; but when you come to do justice to the other party, does that make good what he is charged with?

Mr. Ferres—He would state the reasons that guided him. They were these. As far as the world was concerned, the only evidence was the printed report, and Mr. Brown acknowledges that this printed book was a true statement.

Mr. Brown—I deny that

Mr. Ferres—If that is the case, they need not play on the word record; they must take a common sense view of the case—is that really and truly a statement of the proceedings before the Committee? If it is not a true statement, there is somebody responsible. If Mr. Macdonald can prove that it is not a true statement, he thought they would be doing very wrong to refuse such evidence. The report was printed on the authority of the Parliament. It has the same authority as the laws of the land; it has been before the country for six or seven years, and there has never been a statement on the part of Mr. Brown that it was incorrect. He did not say that the printers of the House had falsified the report. He has allowed it to be received by the world as a true statement of what took place. The written evidence taken before the Committee never, he himself says, left his possession for a single hour. No one knew that it was in existence. He, then, was the only party who could say the report was not what he had written to the

Government. He neglected to do that, and he cannot now take advantage of his own position. Then, how are witnesses to know whether it was taken down correctly; they could only tell that from the printed report. If there is a false statement, the witness says that the witnesses came to a wrong conclusion, because they misstated my evidence.

Mr. *Wilson*—Is that the act of the Secretary?

Mr. *Ferres*—He took it as the act of the Commission; but they had evidence to show that Mr. Brown was the principal agent in writing out the report. He held this to be the record in the absence of the written document. He took the printed report as the original document up to the present time, in the same way that he would take the printed statutes as the original, if the original documents were destroyed. Then again, the order of reference says: "or in words substantially to the same effect." For their considerations, he thought they were bound to receive this evidence.

Mr. *Felton*—If the original documents had not been produced by Mr. Brown, would not Mr. Macdonald take this as a part of his secondary evidence? Suppose these books now produced were not in existence at all; suppose that all there was was that printed report. Having then established that the original report did not exist in the hands of the Government—would they not have had recourse to the printed report? and would not Mr. Macdonald have endeavoured to convict Mr. Brown on that? The difference is, if anything, in favour of Mr. Brown. He considered that if they could now show that the printed report did not contain a true copy of what the witnesses did say, it would be good evidence in support of the charge.

The question was then put and the objection overruled, Messrs. *Wilson* and *Sanborn* dissenting.

Mr. *Vankoughnet* said that this was not exactly the order of evidence that he intended to produce, but as his learned friend was obliged to leave, he thought it would be well first to bring up all the points of evidence in which there could be any legal question as to their validity, he therefore would commence with a case in order to shew how far the parties were justified in complaining that their evidence had been falsely given in the report made to the Government. He would refer to the parties who gave the information on which the charges were based.—(Refer to page 215.)

Mr. *O'Reilly* understood the Committee to have decided that this printed copy was to be given as evidence of what Mr. Brown did.

Mr. *Vankoughnet*—I am now going to urge that as a matter

of the strictest law I am entitled to give the best evidence that I can bring. Although we could not show that the original books of evidence had been destroyed; it was admitted that they were so. That being the case the next best evidence would be given. Now the next best evidence is the printed copy of the report. If it is desired to delay the proceedings to prove the correctness of the printed report, I can call the Queen's Printer to give information, but Mr. O'Reilly will admit that. The Committee have decided that I have shewn the loss of the original report. The witnesses could not swear whether the documents that were lost were books of evidence or report, but they swear that there were two reports and Mr. Brown has admitted that the only papers returned were the two reports. I am now entitled to go into secondary evidence.

Mr. *Wilson*—Would not the next best evidence be the draft report.

Mr. *Vankoughnet*—The other day the Committee will remember that when I said to Mr. Brown that we desired to treat these books as a copy of the Commissioners report, no objection was raised. If necessary I must call the Queen's Printer to prove their authenticity.

Mr. *Brown*—What I meant is this, that this was the copy prepared from the original report, and errors may have been made in the copying as well as in the printing. I never could have said that I was responsible for inaccuracies of that kind.

Mr. *Vankoughnet* after some further conversation on this point went on with his argument. The charge against the Warden being established in this report would, of course, affect the opinion of the Government as to any evidence that might be given in his favor, and would induce them to believe that no evidence had been given too strongly against him, and the charge of his having intimidated the inmates of the Penitentiary that gave evidence against him so as to induce them to give evidence in his favor, would make the Government think less of any evidence that any of them gave for him, as they would suppose that he had influenced them. In this way it reflects upon the whole evidence. When this evidence was published one of the witnesses after another told Mr. Macdonald that the evidence there given was not the evidence that they really gave. Now refer to page 217 of the printed Report, to the case of the colored convict McNair. This man gives the following account of himself, "*witness when under punishment has had full rations notwithstanding very often. Witness is on the punishment list now, and has only bread and water to-day, but he has no doubt a full ration is waiting for him.*" * * * * *

To the evidence in the above from the printed report, the follow-

ing is added in the written evidence: "*Mr. Frank Smith never on any occasion knew of witness's getting full rations while under punishment.*" Those words should have been inserted in the printed report. This witness was examined the whole day, the Commission adjourned upon his examination and resumed it the following day. This witness goes on to say, "When under punishment witness gets more food than the bread and water allowance; convicts fetch it to the witness; the food they bring is part of their own rations, none of the officers ever gave witness any extra food except Mr. Watts, who did so once or twice; was not under punishment these days." All this evidence is omitted in the printed report, although it has an important bearing on the case. Then, there is another case under the head of "Sundry unbusinesslike transactions," in the evidence of Mr. Horsey, in relation to the evidence of Mr. Coverdale, who said that the buildings might have been built for *thirty per cent. less by contract.* The printed report says, "Mr. Horsey testifies that the ordinary run of stone-cutting done in the Penitentiary is better than the ordinary run of work outside; here the stones are cut with sharp edges which lie 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." This is the evidence given in the printed report, but what Mr. Horsey really did say by the written evidence is this, "*witness does not consider that to have erected the Penitentiary buildings by contract would have been cheaper than the expense by convict labor has been, and he further thinks that the buildings are 25 per cent. better than they would have been by contract labor.*"

After some further discussion as to the relevancy of this evidence Mr. O'Reilly on behalf of Mr. Brown put in the following Protest: "Mr. O'Reilly objects that the printed report is not evidence of anything personally done by Mr. Brown in regard to extracting or reporting the evidence. Before this could be admitted as such evidence it would be necessary first to prove that the original was lost or destroyed and recently that the printed copy is a true copy of what was returned as the original report Mr. Brown can in no way be answerable for the correct copying, re-copying, or printing of the report of the Commissioners, or of the evidence returned by the Commissioners to the Government—all of which must have been done by clerks in the Government offices after Mr. Brown and the other Commissioners had finally parted with the custody of the original documents, and after they had ceased to have any control over them."

The Committee then adjourned.

Sixteenth Day—Monday, 7th April, 1856.

PRESENT :—Messrs. Ferres, Wilson, Sanborn, Stephenson, Masson and Felton.

Mr. Macdonald and Mr. Brown.

Mr. *Macdonald*—I beg to call the attention of the Committee to charge 8 count 18 in the journals under the date of the 18th May, 1848, Page 203. In this case the charge against the Warden was for inflicting punishment on a person laboring under insanity. The Warden as the report shows, page 204, was on his defence. The report states with regard to this as follows: "The defence of the Warden to this charge is "Reveille, (that is the person spoken of as being insane,) is "not, and has not been insane, and that part of the punish- "ments charged as inflicted on her, were awarded, but not "executed!" The evidence is quoted in whole or in part. To shew the defence there are extracts from the evidence of a witness called by the Warden to prove the several branches of his defence. A falsification occurs in the evidence quoted in the report in reference to the first branch. On this point it appears that Mrs. Cox was called, also Mrs. Coulter, Mr. Rogers the clergyman, Mrs. Martin, Mrs. Pollard and Mrs. Chase. It is in Mrs. Chase's evidence that the falsification occurs, she was the matron in whose hands this woman (Reveille) was for 13 months. She speaks in the first place as follows, as quoted in the printed report :—"Reveille frequently speaks of her leg "being contracted, she says that it arises from lying 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 Doctor "Nelson attended her for a long time. Reveille has al- "ways shown the same temper and disposition since wit- "ness has been here."....."Witness never "stated before the Inspectors that she believed Reveille to be "mad, nor before the Commissioners."

The evidence as given by Mrs. Chase in the minutes of evidence, contains the following passage, which is omitted in

the printed report "*Witness is sure that Reveille is not insane.*" Reveille told witness this morning that she wished Mr. Smith was here, that she would not be left in the state she is. She also said to witness that she misses Mr. Smith's kindness. Reveille used sometimes to speak badly of the Warden, she said that she would not have done so if she had not been put up to it."

The Committee will thus see in that all of Mrs. Chase's as well as Mr. Moir's evidence which speaks of Reveille's bodily health, is given, but that the portion which states whether she was mad or not, is omitted. Mr. Brown has instructed the Clerk to stop there. The very next words to where he left off are, "*witness is sure that Reveille is not insane.*" This witness was called for the purpose of proving that the convict was not well, and she immediately goes on to say that "she is sure she is not insane. She told witness this morning that she wished Mr. Smith was here, &c." These are the words which I contend ought to have been put in the report.

Mr. Wilson urged that Mr. Brown was not responsible for what was in the printed report.

Mr. Macdonald—Then I will put in the draft report and shew that Mrs. Chase's evidence is extracted in Mr. Brown's hand-writing, also that there can be no mistake about that. I will now call the attention of the Committee to the printed report, page 120, charge 2, count 4, to the evidence of Guard Wilson. Under the charge against the Warden of something wanting by mismanagement or negligence, reducing the Penitentiary to a state of the utmost disorder, Guard Wilson says by the printed report, "Convict Henry Smith has had beer 3 or 4 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 three or four days. They had beer three times." This is what is given in the printed report. In the draft report it will be found that these things are copied word for word in Mr. Brown's hand-writing. There are three several extracts. The first is taken from page 333 of the book of evidence as follows: "Henry Smith's (convict) evidence—has had beer since he came to the Penitentiary three or four times. Got it by orders of Mrs. Smith, the Warden's wife."

Then in page 426 it is continued as follows: "Is a convict in the Penitentiary. Has received beer from the Warden's servant by Mrs. Smith's orders; believes it was given him by Mrs. Smith's orders. He was told so by one of the convicts. Witness had a very bad cold last winter. Complained of it to

Mrs. Smith. Mrs. Smith gave witness a small piece of liquorice for it. Witness was not poorly when he got the beer. All the time he got it was when witness was working in the Warden's private apartments, and they were cleaning house."

On page 431 the evidence is continued—"Heard the convicts say once when he got beer that it was by order of Mr. Smith; was told so in the Warden's kitchen; there were three or four convicts; they were cleaning the house; they all got beer; the cleaning lasted three or four days; they had beer three times.

Mr. Macdonald—The next extract is from page 426.

Mr. Ferres—There is no necessity for taking down what is right.

Mr. Macdonald—The charge made was that the Warden allowed convicts to get spirits and intoxicating liquors.

Mr. Brown—The charge made was for mismanagement and negligence.

Mr. Ferres—That is the general charge.

Mr. Macdonald—This extract shows that the convict Henry Smith got this beer by the positive orders of the Warden's wife. The extract in the printed report from page 120 says: "the convict Henry Smith has had beer three or four times by order 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."

Mr. Wilson—What is suppressed there?

Mr. Macdonald—At page 426 of the book of evidence you will read what it is:—"is a convict in the Penitentiary; has received beer from the Warden's servant by Mrs. Smith's orders; he was told so by some of the convicts. Witness had a very bad cold last winter; complained of it to Mrs. Smith; Mrs. Smith gave witness a small piece of liquorice for it: witness was not poorly when he got the beer; all the time he got beer it was when witness was working in the Warden's private apartments, and they were cleaning house." The printed report leaves out the only material part of the evidence. The words "he was told so by some of the convicts" were left out. This shews a deliberate suppression. In the preliminary evidence Smith swears that they got beer by Mrs. Smith's orders. When brought back again he says he believes so because "he was told so by some of the other convicts."

Mr. Brown—We will see about that. If you want to argue it I will argue it with you.

Mr. Sanborn—I think that Mr. Macdonald ought to be confined to a simple statement of the fact. If he argues any point it is but fair that Mr. Brown should have the power to answer him.

Mr. Wilson—If the point wants an argument to sustain it, then Mr. Brown should have the right to answer it; but if the simple fact carries conviction then there is no necessity for any argument.

Mr. Macdonald—It is sufficient to shew that I have a right to point out these alterations. But when Mr. Brown goes into his argument I have not the power to say a word.

Mr. Wilson—If in addition to the statement of the facts some argument is necessary on your part, then Mr. Brown has the right to answer it.

Mr. Ferres—I think it will complicate the case exceedingly if Mr. Macdonald on stating his point, is followed by Mr. Brown in reply.

Mr. Wilson—What I think is desirable is that Mr. Macdonald should avoid argument as much as possible.

Mr. Macdonald—I do. The next extract is from page 431 of the book of evidence: "Heard the convicts say once when witness got beer that it was by order of Mrs. Smith; was told so in the kitchen. 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." The whole passage is from line 25 to line 29 inclusive. I object to the omission of the 25th, 26th, and a portion of the 27th lines: "Heard the convicts say once when witness got beer that it was by order of Mrs. Smith; was told so in the Warden's kitchen." These lines are omitted. The printed report says: "The cleaning lasted four or five days. They had beer three times."

Mr. Felton—I think it would be well to observe that this is part of the evidence offered to sustain the charge of "obtaining intoxicating liquors by stealth."

Mr. Macdonald—Turn to page 231 of the report, charge 5, count 9.

Mr. Ferres—What is the charge?

Mr. Felton—"Allowing contractors to deviate from their contracts to the injury of the institution."

Mr. Macdonald—On looking at the case it will be found that there is a charge that Watkins & Co. had large transactions with the Penitentiary in hardware. Mr. Mucklestone states that he was a partner in the firm of Watkins & Co. I will read his evidence: "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, $2\frac{3}{4} \times \frac{5}{8}$ inch, was ordered for the Penitentiary, last year, when the firm had not iron sufficient of that description on hand. English iron of a large size,

and Swedish iron of the right size, were furnished to supply the order. The regular contract price of $2\frac{3}{4} \times \frac{5}{8}$ inch English iron only was charged. The evidence of James McCarthy, 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 declared it to be untrue. There was very little of $2\frac{3}{4} \times \frac{5}{8}$ inch iron short, not more than two tons out of twenty." By referring to the report for these extracts, the Committee will see that the charge was made against the Warden that he allowed the Company to supply a larger and better kind of iron than was required by the contract, and was paid full price for it. Mr. Mucklestone swears that he furnished the larger kind of iron, but lost by it—only got the contract price for it. One-half of the charge in the original is in the writing of Mr. Bristow, and one-half in the writing of Mr. Brown.

Mr. *Brown*—It is in the hand of Mr. Bristow.

Mr. *Macdonald*—One-half of it is in the writing of Mr. Bristow.

Mr. *Brown*—I think it is but right that Mr. Bristow should be informed there is a charge against him.

Mr. *Felton*—You can bring it up again in the House if you wish, and have a separate Committee.

Mr. *Macdonald*—I want to refer to page 1189 of the book of evidence, the evidence of Mr. Horsey. Before reading that extract I will call your attention to the printed report, in which the Commissioners say that the charge against the Warden is clearly proved by the evidence of McCarthy. Mr. Horsey is sworn and examined by Mr. Smith: "Witness cannot say whether he would believe McCarthy on his oath. If he saw his evidence before the Commissioners he could tell. Has no other reason to disbelieve him but what he has heard. Question: If McCarthy has sworn before the Commissioners that he was told by Mr. Mucklestone that he (Mucklestone) received payment of the full weight of the English bars and of the extra price of the Swedish, notwithstanding his agreement to the contrary, has he testified truly? Answer. If he has so testified, witness thinks he did not tell the truth. Question: If McCarthy has sworn that he received the iron alluded to and certified the quantity received at the full weight delivered, has he sworn truly? Answer. He has not." That is the part which I say was omitted, and the report says that Mr. Horsey was not examined. Then in the same heading, under the same count, at page 153, there is another instance of the same kind. The report says: "The second transaction under this count is in

"regard to a quantity of stove-pipes ordered by Mr. Patrick
 "Quinn." I will observe, in the first place, that this is in
 Mr. Brown's writing. It says the whole of the evidence cor-
 roborates Mr. Quinn's statement. Then I will call your
 attention to the fact that the evidence of Mr. Bickerton, the
 Clerk, is suppressed. In the preliminary examination, Quinn
 says he "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 for them in advance, but the
 "Warden said it would answer to pay for them when deliver-
 "ed. 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 dishonourable 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." And the report says, "The whole of the evi-
 "dence corroborates Mr. Quinn's statement." Now, what I
 complain of is the omission of the Clerk's testimony, who
 swears that "Thirty lengths of stove-pipe appear by the
 Warden's work book as ordered to be made for Quinn on 29th
 October, 1847. Witness has frequently drawn up contracts
 entered into by the Penitentiary. Has drawn up all except a
 few which were executed by Campbell and Macdonald. Never
 drew up one between the Warden and Quinn for stove-pipes.
 Knows of no bargain between them for 1000 lengths of stove-
 pipe under the Warden's order of 29th October, 1849. One
 hundred lengths of stove-pipe were made and paid for by
 Quinn. Should think McCarthy must have exceeded his in-
 structions when he made 100 in place of 30 ordered by the
 Warden." This is altogether suppressed. I call your attention
 to page 173 of the printed report, charge 7. The charge is for
 "starving the convicts in the Penitentiary," counts 3 and 4,
 "that the food served to the convicts was not sufficient to sus-
 tain hard working," "that the convicts have been so habitually
 exhausted by want of food as to be unable to work." The
 evidence is that of Mr. Kirkpatrick, who was an Inspector of
 the Penitentiary for some years." "He always presumed the

convicts had enough of food while he was an Inspector, and their appearance indicated that they got sufficient food." The words in the original minutes as you will see "Thomas Kirkpatrick never heard, when an Inspector, that the convicts were kept in a state of starvation. Always thought they were too well fed. Their appearance did not indicate that the convicts had too little food. Cannot say the convicts could have done the work they performed had their food been insufficient. Never turned his attention to the subject of the convicts' food. Always presumed that they had enough. Has occasionally seen the food served out to the convicts, breakfast more frequently than dinner. Not very frequently present in the dining hall at breakfast during the six years witness was an Inspector. Thinks the food at breakfast was of sufficient quality." That is what I say is omitted. Then the next is the falsification of Mr. Horsey's evidence in page 160 of the printed report, charge 5, count 13: "Culpable mismanagement of the business affairs of the Penitentiary, in sundry unbusinesslike transactions." The 3rd issue under this count is embodied in the evidence of Mr. Coverdale. "He says witness' impression is" (I quote from the printed report,) "that the present building might have been built for 30 per cent less by contract." "And, (I still quote from the report) to meet this Mr. Horsey testified 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 lie 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." This is put in as part of my case, as it was the intention of the report by this falsification of evidence to shew that there was only a difference of 5 per cent between the estimates of Coverdale and Horsey, and induce the Government to believe that this was the only difference. Now, Horsey, as I can prove from the evidence taken down by Sheriff Thomas, says the work was as cheap as if it were done by contract, and 25 per cent. better. That I can prove by reference to page 845 of the written evidence—at the foot of the page and part of the next page—Mr Horsey says, "Witness does not consider that to have erected the Penitentiary buildings by contract would have been cheaper than the expense by convict labour has been, and he further thinks that the buildings are 25 per cent. better than they would have been by contract labour. Contractors try to get along as fast and as cheap as they can, but by the present method permanency is looked for."

Mr. *Wilson*—Let me understand you. You say that the extract you have quoted from the report is contradicted by the

written evidence? The witness says he believes that the buildings could have been put up for 30 per cent. less by contract—that is Coverdale's evidence. This witness says that the buildings would have been no cheaper by contract, and that the work would not be so good.

Mr. *Felton*—It makes just a difference of 50 per cent. He says that they would cost no more, and that they are 25 per cent. better.

Mr. *Macdonald*—Coverdale says that they cost 30 per cent. more; Horsey swears that they were as cheap as by contract, and 25 per cent. better.

Mr. *Stevenson*—The difference is 30 per cent.

Mr. *Felton*—Coverdale says that the cost of the buildings were 25 per cent. more than it would be by contract, and that the Government lost, while Horsey shows that the convict labour was as cheap as contract labour, and 25 per cent. better. The difference is 50 per cent.

Mr. *Stevenson*—The report given here represents the Government as losing 5 per cent, whereas the written evidence shews that instead of losing they gain 25 per cent. by the superiority of the work.

Mr. *Macdonald*—I want to call the attention of the Committee to page 182 of the printed report, charge 8, count 9: "Pursuing a system of punishment in the management of the discipline, cruel, indiscriminate and ineffective." In the very great extent of the punishment inflicted on the inmates of the Penitentiary." At this page it is stated that "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." Now I say that the books of evidence produced here do not shew that. It rests on Mr. Brown's own word.

Mr. *Wilson*—You can't prove a negative.

Mr. *Macdonald*—I say that statement is not warranted by a single passage in these three volumes of the original evidence. I will next proceed to examine ex-Warden Smith.

Mr. *Brown*—I wish to put this on the minutes. "Mr. Brown objects to the nature of the evidence tendered by Mr. Macdonald this morning, because if well founded it would only amount to an error of judgment on the part of the whole Commission, and would not in any way sustain the charges of individual criminality preferred against Mr. Brown by Mr. Macdonald."

The Committee then adjourned.

Seventeenth Day—Tuesday, 8th April, 1856.

PRESENT:—Messrs. Ferres, Masson, Felton, Stevenson, and Sanborn.

A long discussion arose as to the relevancy of the evidence laid before the Committee by Mr. Macdonald yesterday.

Mr. *Brown* contended that there was not one of the things mentioned in this evidence that was not done openly by the whole of the Commissioners, and there was a great deal of the original testimony in the handwriting of another Commissioner.—To charge him with an act of criminality because he in common with other Commissioners had done these things, even granting that they were true, was not at all what was alleged in the House of Assembly. There was no evidence in what had been brought before them of recording falsely the evidence taken before the Commission, and he denied altogether the deduction drawn from the evidence before them.

Mr. *Felton* objected to the course taken by Mr. Brown. Such a course would not be allowed in any Court of Law. If he wished to object to any answer, he should make it specifically, and not now when they were in the midst of the examination of witnesses.

Mr. *Brown* did not think that the Committee would take such an objection to his proceeding as this. He thought these eight cases were all, and it was to the whole of them that he objected. He objected to the whole of this evidence from the first. He went on to complain that there was a mistake in entering the minutes, and that he had objected at the time.

Mr. *Felton* denied that such was the case.

This matter was explained, and

Mr. *Brown* then protested against the whole of the eight cases, and handed in a written document to that effect. (This will be found inserted in the minutes of yesterday's proceedings.)

Mr. *Ferres* said that he could not receive this objection, as it would appear to have been made at the beginning of the testimony. According to the tenor of this objection, one would suppose that Mr. Brown made his objection before Mr. Macdonald went into his testimony. However, if the Committee wished to receive it he had no objection.

An altercation here arose between Mr. Brown and Mr. Felton as to the minutes of yesterday's proceedings.

Mr. *Brown* contended that he had objected to the evidence when given.

This Mr. Felton denied, and said that he had not interrupted Mr. Brown, but that Mr. Brown interrupted everybody, and had said things that were not true, and he had no hesitation in saying

that they were not true. There had been no objection entered against this evidence.

Mr. *Brown* appealed to the Committee if such language was to be allowed.

Mr. *Sanborn* thought it very strange that they should refuse what would be granted in any Court of Law. He was sure that Mr. *Macdonald* would not take advantage of his professional knowledge to deprive Mr. *Brown* of his rights. The meaning of the protest is that Mr. *Brown* wishes to protest against the admissibility of the evidence brought forward yesterday.

Mr. *Ferres*—Let him say so then.

Mr. *Sanborn* considered that he was met rather roughly as it appeared to him to be decided by a majority of the Committee that he would not be allowed to put on record his exception to the testimony put in. They had decided that they would be guided by the rules of the Courts of Justice and yet they were violating them every day. It was Mr. *Brown's* right to object to the admissibility of the evidence, and would they deprive him of that right.

Mr. *Felton*—The Committee had no desire to refuse anything that Mr. *Brown* had a right to put in.

Mr. *Wilson* understood the objection not to apply specifically to any of the charges, but by a slight alteration of the words it might be made so to apply.

Mr. *Macdonald* said that the objection was fully agreed to by the Council for two days, and the Committee took the objection fully into consideration and came to a conclusion; a motion was then made to reconsider this decision, which was lost. The objection was that the collation or examination of the printed report and the written book of evidence shewing the variance between them did not support the charges or any of them. The Committee came to the conclusion that this was available evidence and it was twice decided by the Committee that it should be received. He, (Mr. *Macdonald*) after that decision, went on in strict conformity with the rules of evidence and laid this testimony before the Committee. The evidence put in yesterday was in strict accordance with the decision of the Committee, and this protest of Mr. *Brown's* is merely a reiteration of the objection made by Mr. *O'Reilly* on his behalf. He, (Mr. *Macdonald*) went on in accordance with the resolution of the Committee and put in eight cases of evidence. Mr. *Brown* heard them all, and as each was concluded said "go on with the next." He gave all the references, and as soon as he proved one Mr. *Brown* said "go on with the next," and made no objection by sign or word until it was all closed. He did not wish to make any technical objection, as Mr. *Sanborn* said. It was right for Mr. *Brown* to make an

objection at the time, but it must be put in at the time and before the question is put that its propriety may be decided; but when a question is once put, then nothing more can be said. As Mr. Brown was not a lawyer he had not the least objection that he should put in his objection, but it must be in strict accordance with the facts.

Mr. *Wilson*—Suppose it to be just as the Attorney General said, no one can deny that Mr. Brown could say, suppose it to be so, in what way does that sustain the charge.

Mr. *Macdonald*—He had no objection.

Mr. *Felton*—If Mr. Brown would state his protest precisely in accordance with the facts, the Committee would receive it, but not otherwise.

Mr. *Brown* did not understand that it was necessary that he should raise the objection at every part of the testimony when he objected to the whole of it.

Mr. *Sanborn* maintained that Mr. Brown's objection was perfectly in form. The objection stands in the way of the evidence and should be taken into consideration, and either received or rejected.

Mr. *Stevenson* did not see any difference between the protest put in now and that already on the minutes. This objection was entered on the minutes, and the Committee decided on taking the evidence, and he did not see any difference between the objection now made and the words already on the minutes.

Mr. *Macdonald* would suggest that the objection be put in this way, "that after Mr. Macdonald closed his evidence on that day, Mr. Brown brought forward this objection."

Mr. *Brown* said that in this way they could not possibly object, and he then handed in his protest as follows: "Mr. Brown objects to the evidence this day laid before the Committee by Mr. Macdonald, inasmuch as even, if well founded, it would only amount to an error of judgment on the part of the whole Commissioners, and would not in any manner sustain the charges of individual criminality preferred against Mr. Brown by Mr. Macdonald."

Mr. *Ferres* said that this called on the Committee to decide quite another question, as to whether there had been an error on the part of the Commissioners or not.

Mr. *Brown* then altered his objection as follows: "Mr. Brown objects to the evidence this day laid before the Committee, on the ground that it is not relevant to the charges submitted to the Committee; that even if well grounded it would neither be recording falsely the evidence of witnesses examined before the Commissioners, nor altering the written testimony given by witnesses after their evidence was closed and subscribed."

Mr. *Felton* contended that these objections were the same upon which the Committee had already decided unfavorably to Mr. Brown. He now produces a document which is nearly the same as that which he made before to the whole testimony. This objection had been twice disposed of: First they had the objection put by Mr. Brown, then they had another by Mr. O'Reilly, and now they had this by Mr. Brown a third time. If Mr. Brown objected to any particular extract they should have discussed and disposed of them at the time, but he ought not to bring up any of the same objections which he made before, and which had been already disposed of. No court gives more than one decision, and when they have done that they do not allow the objection to be raised again. This is only a re-raising of the matter before disposed of, and cannot be again received.

The question was then put for the reception of the protest, and the motion was lost, Mr. Sanborn and Mr. Wilson dissenting.

A discussion then ensued as to what should be done with the objection, whether it should be put on the records or not. Mr. Sanborn and Mr. Wilson contended that a vote having been taken on the reception of the protest it should appear on the records of the Committee.

Mr. *Felton* argued that papers which had been rejected should not appear at all.

Mr. *Stevenson* was of opinion that the objection should appear in some shape in the record.

Mr. *Macdonald* said that the minutes should contain an exact record of the facts. It should appear that Mr. Brown handed in the following paper—that a vote was taken upon it, and that the Committee decided on the following division.

This was attended to and the Clerk instructed accordingly.

Mr. *Smith* was then called in by Mr. *Macdonald*, and examined as follows:

[By Mr. *Macdonald*.]—What is your name?—Ans. Henry Smith.

Ques. Were you Warden of the Penitentiary?—Ans. I was.

Ques. At what time?—Ans. From the year 1834 to the year 1848.

Ques. Were you suspended before you ceased to be Warden?—Ans. Yes, in November, 1848.

Ques. Were you then moved from the Penitentiary?—Ans. Yes, I was moved from the Penitentiary grounds.

Ques. When did you finally cease to be Warden?—Ans. I think it was in 1850 that I received a communication from Mr. Secretary Leslie, announcing my dismissal.

Ques. Were there any charges against yourself delivered to you?—Ans. There were.

Ques. By whom?—Ans. In the handwriting of Mr. Brown.

Ques. Did these charges give the evidence that was taken against you?—Ans. The charges were made, and evidence on these charges furnished me, called preliminary evidence.

Ques. Were you present when this preliminary evidence was taken?—Ans. I was not.

Ques. Had you any opportunity of cross-examining these witnesses, when such preliminary evidence was taken?—Ans. I was allowed to hear it.

Ques. Was there a trial afterwards on these charges?—Ans. I was called on to defend myself subsequently before the Commission appointed to investigate the affairs of the Penitentiary.

Ques. What was the course adopted in the taking of the evidence?—Ans. The witnesses were brought in separately and their evidence taken.

Ques. Were such witnesses called as you pointed out or as the Commissioners pointed out?—Ans. As I pointed out.

Ques. Who took down the evidence?—Ans. Mr. Brown.

Ques. Did he do so in all cases?—Ans. The evidence was taken down on my part also. In nearly all cases Mr. Brown took the evidence, in some cases Mr. Thomas.

Ques. Had you counsel then?—Ans. I wished to have counsel then but was not permitted.

Ques. Who examined the witnesses on your behalf?—Ans. I examined them myself. In one or two cases my son, Henry Smith, junior, put one or two necessary questions.

Ques. In what capacity was your son acting?—Ans. He was acting as clerk taking down the evidence.

Ques. How long was your son helping you?—Six days. I had three other clerks at different times

Ques. Who cross-examined your witnesses on behalf of the Commissioners?—Ans. Principally Mr. Brown; Mr. Bristow occasionally. A few questions were put by other members of the Commission, but very seldom.

Ques. Was the evidence read over to the witnesses afterwards?—Ans. Yes. After their examination was completed.

Ques. Did they read it over themselves?—Ans. No.

Ques. Who read the evidence?—Ans. Mr. Brown when he took it. Mr. Thomas for a few days, but Mr. Brown generally.

Ques. Did Mr. Brown take down the answers of the witnesses fairly?

Mr. Brown desired that this question might be put in writing, which was done.

Ans. He did not in all cases take it down in the exact words given by the witnesses.

Ques. Did or did not the witnesses frequently object to the manner in which it was taken down?—Ans. They did occasionally object to the words, but Mr. Brown said it was the same thing; and there was a discussion among the Commissioners whether it should be taken down in the exact words of the witness, but I was not present at those discussions.

Ques. Did I understand you to say that the Commissioners occasionally objected to the manner in which the evidence was taken down?—Ans. The Commissioners objected occasionally, but the witnesses more frequently.

Ques. Did not Mr. Brown frequently refuse to alter the evidence as taken down by him, until compelled to do so by the Commissioners?

Mr. *Brown* objected to this question, which was altered as follows: "Did Mr. Brown refuse to alter the evidence when requested to do so by the witness?"—Ans. In some cases he did.

Ques. Were or were not witnesses browbeaten or otherwise insulted by Mr. Brown?—Ans. They were.

Mr. *Brown* objected to this question, on the ground that it was not pertinent to the charge, and that it was a leading question also. The charge was, that Mr. Brown falsely recorded the evidence, not that he brow-beat the witnesses.

Mr. *Wilson* looked upon the question as an improper one.

Mr. *Macdonald*—His object was to shew that Mr. Brown wrote one way and read another, and he was now going on to shew the *animus* by which Mr. Brown was actuated. Suppose he could shew this, Mr. Brown must have had some intention in doing so; he wanted to shew that there was an *animus* against the Warden from the beginning, and that he brow-beat and insulted the witnesses.

Mr. *Wilson*—What is browbeating and insulting. You have still to come to that. That can be only a matter of opinion, and you have to come to what he really did.

After some further discussion on this point,

Mr. *Macdonald* withdrew the question, and put the following:

Ques. Were the witnesses who gave evidence in your favor browbeaten or insulted, or were they courteously treated?

Mr. *Brown* objected to this question, also, as irrelevant, and as a leading question.

Mr. *Macdonald* contended that a leading question was one which requires a direct answer, yes or no; but this question called upon the witness to say whether the demeanor of Mr. Brown was the one thing or the other. The witness should be allowed to make the answer as he thought proper.

Mr. *Wilson* did not understand this to be a fair definition of a leading question. It did not follow that because a question was put in the alternative, that the answer must be yes or no. The first proposition in this question is, "Were the witnesses brow-beaten or insulted." The answer to that must be yes or no. The next proposition is, "Were they courteously treated," and the answer to that must be yes or no.

Mr. *Fellon* regarded this as a leading question.

Mr. *Ferres*.—Let Mr. *Macdonald* put the question in this way, "What treatment did Mr. *Brown* show to the witnesses."

After some further conversation the Committee decided that this was a leading question, and it was accordingly withdrawn.

Mr. *Macdonald* then put the next question as follows:—What was Mr. *Brown's* demeanour towards the witnesses who gave testimony in your favor.

Mr. *Brown* objected to this question as irrelevant to the charges.

Mr. *Stevenson* said that he considered the question relevant on this ground, that if he found that in the examination Mr. *Brown* had acted fairly towards the witnesses he would be very backward to believe that he would change the evidence afterwards; if the contrary was found to be the case, of course he would think otherwise.

Mr. *Wilson* said that his objection to the question was, that the demeanour of a person must be a matter of opinion; what seemed right to one man would appear very different to another. They were only to discuss questions of fact and not of opinion.

The question was then put, as to whether the question was a proper one, and it was decided in the affirmative, Mr. *Wilson* and Mr. *Sanborn* dissenting.

Mr. *Smith* then gave his answer as follows:—Very offensive generally

Ques. In what respect offensive?—Ans. He spoke very sharply to the witnesses and appeared to intimidate them.

Ques. Did you ever object to his course?—Ans. I did not, I found it of no use, so many things were overruled.

Ques. Did any of the Commissioners object to his course?—Ans. Mr. *Amiot* did, to the manner in which Mr. *Brown* treated my witnesses.

Ques. What did he object to in the manner of Mr. *Brown*?—Ans. He objected to their being improperly treated by Mr. *Brown*, in not being treated courteously.

Ques. Do you remember who presided at the time that this objection was taken?

Mr. *Brown* desired that the question might be put down, which was done.

Ans. I believe it was Mr. Fergusson. I only recollect hearing Mr. Amiot object on one occasion.

Ques. Was the Court cleared to consider the matter?—Ans. It was. I was ordered to leave the room.

Ques. Was there any announcement made when they came back?—Ans. None, they proceeded with the examination.

Ques. Do you know Mr. Amiot's handwriting?—Ans. No.

Ques. Do you know whose handwriting that is (shewing witness a paper)?—Ans. I do not.

[By Mr. *Wilson*].—Whose handwriting is that?

Mr. *Macdonald*—Mr. Amiot's. He would prove that by another witness. He then continued.

Ques. Was Mr. Hopkirk a witness for you?—Ans. He was.

Ques. Was he cross-examined by Mr. Brown?—Ans. He was.

Ques. For how long?—Ans. During ten or eleven days, sometimes at night. The most of that time being cross-examined by Mr. Brown.

Ques. Did Mr. Hopkirk object to the length of his examination?—Ans. He did.

Ques. What was the reply given to him, and by whom?

Mr. *Brown* objected to this as being irrelevant to the charge before them.

Mr. *Macdonald* said that he could not well argue upon it until the answer was given.

Mr. *Wilson*.—His opinion was that the whole of the evidence was irrelevant.

Mr. *Macdonald*.—This was an attempt to shew what the demeanor of Mr. Brown was.

Mr. *Sanborn* thought it would be doing Mr. Brown justice to allow the whole thing to come out, but he at the same time thought that Mr. *Macdonald* was keeping outside the charge instead of coming to it.

Mr. *Macdonald*.—He was trying it chronologically down. He wished to shew Mr. Brown's demeanour to the witnesses, and he would then go on to prove falsification.

The question was then put and the objection overruled; Mr. *Wilson* and Mr. *Sanborn* dissenting.

The answer was then given as follows: Mr. *Brown* replied "you have been a principal witness for Mr. *Smith*, and it is for us to break down your testimony" or words to that effect. A warm altercation took place between Mr. *Brown* and Mr. *Hopkirk*.

Ques. Were there any other words used by Mr. *Brown* towards Mr. *Hopkirk*?—Ans. On another occasion I recollect Mr. *Hopkirk* objected to the manner in which Mr. *Brown* had

taken down his testimony, saying that those were not the words he had made use of. Mr. Brown said in reply to Mr. Hopkirk that he would alter his testimony, but it would go for what it was worth. Mr. Hopkirk replied that had such language been used to him elsewhere he would take notice of it, or words to that effect.

Ques. Do you remember any occasion on which Mr. Brown read a part of Mr. Hopkirk's evidence to him?—Ans. Yes, I recollect Mr. Hopkirk requested it might be read to him. Mr. Brown referred back some few pages in his book of evidence and read to Mr. Hopkirk what it was from the book. Mr. Hopkirk objected to what was read over to him as not being his evidence, and wished to read it for himself, saying that if he had given such evidence it was incorrect. Mr. Brown replied, "I can assure you it is all down here as I have read it to you." Mr. Hopkirk made some remark as to his being permitted to read the evidence for his own satisfaction. It was then decided by the Commissioners present that Mr. Hopkirk should see it. Mr. Brown replied, "well it is of no consequence, I shall not press the question" I do not recollect what the question was: it was in reference to a question in the cross-examination which had just been put by Mr. Brown. Mr. Hopkirk did not read the evidence, nor did he see it.

The Committee then adjourned.

Eighteenth Day—Wednesday, 9th April, 1856.

PRESENT:—Messrs. Ferres, Felton, Sanborn, Clarke, Wilson, Masson and Stevenson.

The evidence taken yesterday was read in the presence of Mr. Smith.

Mr. *Smith's* examination was resumed.

[By Mr. *Macdonald*].—Had you any cause to complain of the way in which the evidence was taken, or the way in which the witnesses were treated during Mr. Brown's absence?—Ans. No.

Ques. Were there any convicts in confinement examined against you, and how many?—Ans. I cannot tell how many without looking at the report.

Mr. *Ferres*.—You can look at it.

Mr. *Smith*.—I find that there were ten convicts examined against me.

Ques. Were there any, and if so, how many of those convicts pardoned after giving their evidence?—Ans. Three, I think, of those convicts were pardoned.

Mr. Brown.—That is not a proper question. That can be ascertained positively.

Mr. Felton.—You have no right to interfere with the question put to the witness.

Mr. Brown.—I have a right to interfere in order to obtain a correct answer. I will not be corrected in that way by Mr. Felton.

Mr. Felton.—I say that the answer to the question has been given correctly. The witness has been asked how many convicts were pardoned after giving their evidence, and he says "he thinks there were three;" I hold that the answer was correct one, and that you have no right to interfere.

Mr. Sanborn.—It does not appear to me to be a proper question at all. The pardon granted to those convicts was long subsequent to the whole transaction; and if it could be construed into a charge at all would apply to the Commission generally.

Mr. Macdonald.—One of the charges for this Committee to try is procuring the pardon of convicts. I must prove that they gave their evidence before they were pardoned.

Mr. Clarke.—It is very likely that they were pardoned in consequence of giving that evidence. They might have had a promise of pardon before they gave their evidence.

Mr. Sanborn.—Then Mr. Macdonald should prove the promise first and the pardon after.

Mr. Wilson.—The point Mr. Macdonald wants to prove is one thing; the charge before the Committee is another. The charge is in substance pardoning convicts because they gave evidence unfavorable to Mr. Smith. I do not see how that is to be proved by shewing that some of the convicts who gave evidence before the Commission obtained their pardon long afterwards.

Mr. Macdonald.—I want to establish the fact of those convicts who received their pardon having given evidence against Mr. Smith.

Ques. Do you remember who those three were?—*Ans.* Yes. One was Cameron, confined for murdering his wife. Another was Hennessy, confined for murder or manslaughter, I forget which, it was for killing his wife. And the third, I think, was confined for larceny; his name was Deblois.

Ques. Was it larceny or forgery?—*Ans.* He was said to be guilty of forgery; but I think that his crime was larceny.

Mr. Masson.—When were they pardoned?

Mr. Smith.—I do not know the exact time, but I saw Cameron at large shortly after the close of the examination.

Ques. What do you mean by the close of the examination: Do you mean the close of the Commission?—*Ans.* Oh no! The Commission was open after that.

Mr. Brown—And while the Commissioners were yet in Kingston?

Mr. Clarke—Wo'nt it be better to take the examination in chief first, and then let Mr. Brown cross-examine afterwards?

Mr. Smith—It was some weeks after the close of the examination.

Ques. Were there any discharged or dismissed Officers of the Penitentiary examined against you?—**Ans.** Yes, four or five. On looking at the copy of my Petition to the House I find there were ten.

Mr. Brown—How many did you first say?

Mr. Smith—I trust that some allowance will be made for any inaccuracy of that kind, in consequence of the length of time which has elapsed.

Mr. Brown—That is most important. The witness says that speaking from memory he cannot remember all that occurred, but when the copy of his Petition is put in his hands to refresh his memory he gives the exact number.

Mr. Smith—Those facts are given in my own writing in my petition. On referring to it I find that there were ten keepers or guards who had been dismissed for improper conduct in the Penitentiary, who were after their dismissal brought up to give evidence against me.

Ques. Did you ever see that document before?—**Ans.** Yes, it is a copy of my petition to the House of Assembly, which I sent to you.

(The document was handed in, marked C. and fyled.)

Ques. For what purpose was it forwarded to me?—**Ans.** For the purpose of being presented to the House.

Ques. In whose hand-writing is it?—**Ans.** In mine.

Mr. Brown—Was it forwarded this session?—**Ans.** No, it is dated 9th August, 1852.

Mr. Macdonald—Look at that document. In whose hand-writing is that?—**Ans.** In mine; it is merely a copy of my first petition, which I sent to you.

Ques. This is dated 1850. For what purpose was it sent to me?—**Ans.** For your private guidance.

Ques. Did these papers contain nothing but the petitions themselves?

Mr. Ferres—I want to ask is this a copy of the petition that was sent to the House of Assembly, for you state that it was sent for Mr. Macdonald's private use.

Mr. Brown—Both are copies of the petitions.

Ans. The second was not presented; the one dated 1850 was presented, but I am not sure that the other was presented.

By Mr. Macdonald—Did those papers contain anything else

besides the petitions themselves?—Ans. I see some references here for your guidance, in case a Committee was appointed to examine the petition.

Ques. Those references then, I understand, were written on the copies of the petition sent to me?—Ans. Yes.

Ques. I put that in to show that this memorandum was made at the time the memory was fresh. Were any of these dismissed keepers and guards restored after the close of the examination?—Ans. There was five of them restored.

Ques. Did those parties who were restored give their evidence for or against you?—Ans. All against me.

Mr. *Brown*—All the five?—Yes, all the five, and were all called by the Commissioners, so far as my memory serves me.

Mr. *Felton*—I would like to ask him why they were restored?

Mr. *Macdonald*—Do you remember their names?—Ans. Yes, their names were McCarthy, Gleason, Robinson, Wilson, and Keely.

Ques. Do you know who they were restored by?—Ans. No, I do not; but I think—

Mr. *Brown*—We must have positive evidence on that point.

Mr. *Felton*—Let him give his opinion.

Mr. *Smith*—At the time they were restored, I should think they were restored by the Commissioners.

Mr. *Brown*—Can't we also think for ourselves?—Ans. I know that at that time the Commissioners were Inspectors.

Mr. *Macdonald*—Were the Commissioners acting in any other relation then, than that of Commissioners?—Ans. Yes, they were Inspectors also of the Penitentiary.

Ques. Are those men in the Penitentiary service now?—Ans. No, not all; one, Robinson is not; he is a convict there, under a sentence of imprisonment for five years. Wilson and Keely have been dismissed for bad conduct, after restoration. The other two are there yet; I believe.

Ques. Were there any discharged convicts examined as witnesses before the Commission?—Ans. Yes, there were seven examined against me; their names are in the report, but there is one in addition, Milnes, whose name does not appear in it.

Ques. Were there any witnesses examined on the preliminary investigation, whom you could not procure to cross-examine, and some of whom had absconded from the Province?—Ans. Yes, after they had been previously examined against me.

Ques. Was the evidence of any of those persons relied on?—Ans. Yes, as you will find by the Report.

Ques. Can you give me the names of any of those witnesses?—Ans. Pheian, White,—

Mr. *Macdonald*—White was not a convict.

Mr. *Smith*—Oh, I thought you asked me for the names of the witnesses, White was a guard, he was not a convict.

Mr. *Ferres*—Give us the names of the convicts first.

Mr. *Smith*—Phelan, Brennan, Coté, Eliza Quinn.

Mr. *Brown*—You had better be certain of that—that her evidence was used.

Mr. *Smith*—I am almost certain of it.

Mr. *Macdonald*—Were all these parties discharged convicts?

Mr. *Smith*—Yes. White, an ex-guard is another person who was examined against me, and whom I could not get to cross-examine, as he had left the Province before I could serve a notice on him to appear before the Commissioners.

Ques. To refresh your memory read that portion of your petition which intimates that threats were held out in order to obtain evidence against you, and then say if that is so?—Ans. Yes, it is.

Mr. *Brown*—I object to such a question as that being put, it is a leading question.

Mr. *Macdonald*—I have called the attention of the witness to a paragraph in his petition, and asked whether the facts stated there are true or not, and he says they are.

Mr. *Brown*—I ask Mr. *Macdonald* to put his question in writing; this is a cross-examination on the paper he refers to.

Mr. *Macdonald*—The Clerk will take the question down in writing.

Mr. *Brown*—Oh, that is perfectly fair, that is right enough.

Mr. *Sanborn*—It strikes me that Mr. *Macdonald* can reach that more legitimately than by asking the witness to refresh his memory by reading that petition. He might as well ask the witness to prove the whole document at once, as to ask him to prove that one paragraph is true.

Mr. *Felton*—There is no impropriety in asking the witnesses to prove that that is true. I don't see any objection to it.

Mr. *Sanborn*—I think that Mr. *Macdonald* can reach his point as well another way.

Mr. *Felton*—But is there any objection to it?

Mr. *Sanborn*—The witness having refreshed his memory can make his statement in his own words.

Mr. *Macdonald*—I will ask the witness to read the paragraph.

Mr. *Smith*—I have done so.

Mr. *Macdonald*—Having so refreshed your memory, I ask you what is your recollection of the facts mentioned in that paragraph?

Mr. *Brown*—I think it will be better to divide the paragraph than to put the question in that shape.

Mr. *Macdonald*—And if I do divide it, then you will say that I am putting a series of leading questions.

Mr. *Brown*—What I object to is this! Mr. *Macdonald* has no right to ask the witness, “is this petition to be taken as evidence?” That is the point I want to reach.

Mr. *Macdonald*—You did not write this down falsely I suppose.

Mr. *Ferres*—The whole document is before us already.

Mr. *Sanborn*—It is before us as written evidence, not as oral evidence. That is quite another thing.

Mr. *Felton*—It is put in as a piece of testimony that should have credit allowed to it. If it is put in as a simple petition it can only be considered as a petition; but now Mr. *Macdonald* thinks that it is entitled to more credibility than that, and that the witness can establish the facts stated in it as true. That being the case, I think there can be nothing objectionable in asking the witness in whose writing it is if he can prove it. If the witness is entitled to credit at all he is equally entitled to credit when he says that one or two paragraphs in that petition are true, and he is the more entitled to credit when he has certain memoranda to confirm the statements made in the petition.

Mr. *Ferres*—And he can be cross-examined on them by Mr. *Brown*.

Mr. *Felton*—Certainly.

Mr. *Sanborn*—The petition it is true is in the witness' own handwriting; but after he has refreshed his memory I think the proper mode is to take his evidence orally. To make Mr. *Smith* swear to that petition is like making an attorney swear to his plea, which I think that most attorneys would be somewhat loath to do.

Mr. *Macdonald*—I now ask the witness, after reading the paragraph to which I have called your attention, do you believe the facts to be true?—Ans. Yes, I believe every word to be true.

Mr. *Felton*—You see we have a barren piece of evidence so far.

Mr. *Macdonald* read the facts to the Committee.

Mr. *Smith*—The paragraph I refer to is in the following words: “Threats were held out by the witnesses who appeared in evidence against your petitioner, that such of the officers of the Penitentiary as should testify in behalf of the Warden would be removed from their situations, and that nearly every officer of the institution who has given evidence in favour of your petitioner has been dismissed from the Penitentiary by the Commissioners.”

Mr. Macdonald—Will you mention the names of those officers who so gave evidence in your behalf, and were so dismissed?—*Ans.* Their names were Costen, Thomas Smith, William Smith, Manuel, Martin, Ballantyne, Grass, Little, Sexton, Somerville, McMahon, Tynor and Watt.

Ques. Were there any other officers ordered to be dismissed who gave evidence in your favour?—*Ans.* Yes, there were three others of those who gave evidence in my favour—Horsey, the master builder; Bickerton, the clerk, and Mrs. Pollard, the matron.

Ques. Two of them are in the Penitentiary now, are they not?—*Ans.* Yes, two of them; Horsey and Bickerton are there in the same capacity as before.

Mr. Ferres—You mean to say, I suppose, that these people were turned out?

Mr. Brown—No; they feared to be turned out, and resigned. That is it, is it not?

Mr. Macdonald—That was the case.

Mr. Smith—They feared to be dismissed, and Mrs. Pollard knew that she was ordered to be dismissed, and therefore resigned, I believe. I have no doubt of it.

Mr. Macdonald—Do you know who informed H. Manuel that he was to be dismissed?

Mr. Brown—Stop. I do not know what the rule of evidence is, but Manuel can be called himself.

Mr. Smith—He is dead. He died about two months since.

Mr. Macdonald—Who told Manuel that he was to be dismissed?—*Ans.* He told me that——

Mr. Sanborn—I think that the witness ought to be confined to what comes within his personal knowledge.

Mr. Macdonald—That is good evidence, now that Manuel himself is dead.

Mr. Smith—Henry Manuel told me that Mr. Brown dismissed him when on his way to give evidence against McCarthy for perjury.

Mr. Brown—Don't put that down. I don't want that question or answer to be put down; but I will admit at once that I told Manuel the Board had dismissed him.

Mr. Ferres—You say that you do not want that answer to be put down?

Mr. Brown—It is not pertinent. The question is not legal.

Mr. Ferres—Mr. Brown admits, and is willing to put it on record, that he told Manuel that he was to be dismissed.

Mr. Macdonald—But I want to shew the circumstances under which Mr. Brown told him that he was to be dismissed.

Mr. Brown—There is another way you can take of shewing that. I object to the secondary evidence. If you do not know how to do it, there is a way of getting at it.

Mr. Sanborn—The witness can state anything of his personal knowledge, or his answer can be taken down and then the objection to it.

Mr. Ferres—You must take down the question and answer, and then state what the objection is. It will be impossible to put the objection down without shewing what the matter objected to is.

Mr. Brown—I want you to instruct the witness that he cannot answer any question except of personal knowledge.

Mr. Ferres—Manuel is dead, and the witness has obtained this information from his own lips. That would be received as evidence in any Court.

Mr. Brown—Here is a statement that he heard from Manuel that he heard from me that he was to be dismissed. I ask if that is evidence that should be recorded?

Mr. Stevenson—I understood you to say just now that you had dismissed him.

Mr. Brown—Of course I did. I dismissed him myself.

Mr. Ferres—I don't think it is possible to refuse the answer, when Mr. Brown admits that he dismissed Manuel himself.

Mr. Brown—I put in this objection, and would wish to have it recorded: "Mr. Brown objects to the witness stating anything that he does not know of his own personal knowledge." I can be examined as a witness with regard to what I told Manuel. Of course if I was to admit that answer to be a good one, you could introduce all kinds of secondary evidence.

Mr. Felton—It is a mere question of law—an abstract point.

Mr. Stevenson—I am not a judge of whether it is legal or not, but I don't see, if the answer is pertinent to the question, why we should not have it. The man who said he had been dismissed is dead, and if the answer is important I do not see why it should not be recorded, no matter how illegal it may be.

Mr. Sanborn—The objection is not to the question, but to the answer being given.

Mr. Macdonald—The man is dead.

Mr. Sanborn—That is not taken down.

Mr. Macdonald—The reason why I ask the question is this: I would mention to the Committee that one reason why hearsay evidence may be now objected to is that it is not open to cross-examination; and a second reason may be that the statement made by one party to the other was not under oath; but Mr. Smith is under oath, and the question then arises

whether the statement of Manuel to him is of importance. I think it is. Of course I do not say that Mr. Brown has not the right to cross-examine Mr. Smith on that point as well as on any other growing out of the evidence.

Mr. *Brown*—The answer to this question is of no importance; but what I object to is that the witness should here report what people may have told him, who may have been told by other people eight years ago.

Mr. *Felton*—I think it would be as well to be careful.

The witness was ordered to report his answer to the question.

Mr. *Smith*—Manuel told me that Mr. Brown had dismissed him when on his way to give evidence against McCarthy for perjury.

Mr. *Brown*—That is a new answer altogether.

Mr. *Ferres*—It will all be struck out.

Mr. *Felton*—Strike it all out except that “Manuel is now dead.”

Mr. *Brown* objected to the entry of the evidence on the minutes at all.

Mr. *Sanborn*—The rule that should be observed, I think, will serve us in future. In this peculiar instance the answer should be taken down, but in 99 cases out of 100 you can object to the question at once, and prevent it from being put.

Mr. *Brown*—If you put that evidence down you may put in any kind of evidence you please.

Mr. *Ferres*—Mr. Wilson we are in a difficulty, and as you have just come in we will require your assistance as the question is a legal one. The answer given by the witness is objected to by Mr. Brown, as it is not on the personal knowledge of the witness. Now it is very clear that if he did not know finally that Mr. Brown had dismissed him, but that Manuel told him he had been dismissed by Mr. Brown, that is no evidence.

Mr. *Brown*—My objection is not to the answer but to the principle. Manuel told the witness that I told him that he was dismissed.

Mr. *Wilson*—That is not evidence at all.

Mr. *Ferres*—We are all agreed on that.

Mr. *Brown*—You say “we admit that” but yet you will put it on the minutes.

Mr. *Macdonald*—You can't strike the question off. It is a good one. The question is legal. You take that down, and then you state your objection, and that is first on the minutes.

Mr. *Wilson*—The question is an improper one. It ought to have been put in a different way.

Mr. *Macdonald*—That is decided already.

Mr. *Wilson*—I don't think that the question was right.

Mr. *Macdonald*—State what rule of evidence it infringes.

Mr. *Sanborn*—The objection of Mr. Brown was not put down while the answer was.

Mr. *Ferres*—Several of the words of the answer were written when I stopped the Clerk.

Mr. *Brown*—Not half of the words were spoken by the witness when I protested.

Mr. *Ferres*—Several words were written before you spoke.

Mr. *Wilson*—An improper answer ought not to go on the minutes.

Mr. *Felton*—This all comes of your opposition to what I proposed yesterday. We ought to decide on every matter as it comes up, and then we could decide as to what shall appear on the minutes or not; but you over-ruled me yesterday.

Mr. *Sanborn*—The only proper rule is to put the question on the minutes, and then state that it is objected, and let it be struck out.

Mr. *Felton*—That is a very good rule if people would only have the legal evidence.

Mr. *Ferres*—The Committee have taken the responsibility of making up those minutes in a different way from what I should have done. You ordered me to put the objection of Mr. Brown on the minutes, and now you order me to strike it out.

Mr. *Sanborn*—Oh no, you do not strike out the objection.

Mr. *Brown*—It is quite true that under the rule adopted by the Committee you may put anything on the minutes.

Mr. *Felton*—It was determined that that objection of yours should not be received.

Mr. *Wilson*—Suppose that that was wrong and that we had to deal with this case as it stood. If the witness cannot, the question according to the rules of the Courts of Law, as a legal question it should not be put down. Now, he says that he cannot answer the question of his own knowledge, but was told by Manuel. That is not evidence.

Mr. *Felton*—You perceive that if you commence by taking down the question and answer you come to the rule mentioned by Mr. Sanborn; and in such a Court as this that would be a very bad system.

Mr. *Wilson*—The Committee came to this determination: that they would only take down such evidence as would be evidence in a Court of law.

Mr. *Ferres*—Suppose that a lawyer put in a protest in a Court of law, and the Judge says "I cannot receive that," does the Judge permit it to go on the record? Does not the lawyer put it in his pocket again?

Mr. *Wilson*—Yes; but I see grave objections to taking down evidence that is not evidence.

Mr. *Felton*—I agree with you, but what is sauce for the goose is sauce for the gander.

Mr. *Stevenson*—I ask if the question was put down, and if the answer was put down?

Mr. *Ferres*—Yes.

Mr. *Brown*—That is wrong. The objection was not put down in the order in which I gave it.

Mr. *Ferres*—I beg to call your attention to this matter of fact, Mr. Brown, that I have told you two or three times the Clerk was writing when I stopped his hand.

Mr. *Sanborn*—I regard the question as a pertinent question, and the answer would be a proper one if Mr. Smith could give it of his own knowledge. The objection I understand to be in this way—that he did not know it of his personal knowledge; and I consider that they should both remain, and we cannot reject it.

Mr. *Ferres*—How would this do? Let the question stand, and then say that “the witness was proceeding to answer it verbally, when Mr. Brown made his objection.”

Mr. *Felton*—But don't you see that you took a different course yesterday?

Mr. *Wilson*—But what rule can you adopt with safety but the correct one? Why should an irrelevant answer be taken down by us as evidence?

Messrs. *Macdonald* and *Felton*—No, it is not taken as evidence. It must be taken down, and then the Committee may decide that it is not evidence.

Mr. *Macdonald*—Now some of my questions were overruled yesterday, that is: not struck out. It was objected that they were put as leading questions, and on that account they were overruled.

Mr. *Sanborn*—It is often the case in a Court that the witness states the answer to a question before it is possible to object; and you cannot erase the answer from the minds of the jury; but it is regarded by the Court as not being evidence, and this is the course that you must take here. Otherwise the actual state of the proceedings before the Committee never could be arrived at.

Mr. *Wilson*—How do the minutes appear now?

The minutes were read.

Mr. *Stevenson*—On the same principle that was admitted yesterday, I recommend that the paper put in by Mr. Brown to which we object should be put in the minutes. I think that Mr. Sanborn is quite right.

Mr. *Wilson*—Let it appear on the minutes. I stand alone.

Mr. *Brown*—Do'n't you see the remarkable effect that will have. The charge is there and I meet it; but if you put down the answer and then order it to be struck out, Mr. McDonald can insinuate any sort of evidence that he chooses.

The objection was sustained, and the answer ordered to be struck out.

Mr. *Macdonald*—Then I ask the Committee to take down Mr. Brown's admission.

Mr. *Brown*—Put it in these words: Mr. Brown stated his willingness to admit that he had communicated to Manuel that the Board of Inspectors had dismissed him, but objected to hear-say evidence as a matter of principle.

Mr. *Macdonald*—Do you know who told Thomas Smith?

Mr. *Brown*—Thomas Smith can be produced. I object to the question.

Mr. *Ferres*—The witness can state any thing of his own knowledge.

Mr. *Macdonald*—Do you know who told Thomas Smith that he was dismissed?

Mr. *Smith*—I only know from hearsay.

Mr. *Wilson*—Then, the answer should stop there. That is the proper way.

Mr. *Macdonald*—There he stops of course.

Mr. *Macdonald*—Was there any understanding between the Commissioners and yourself as to their being examined themselves as witnesses?

Mr. *Smith*—Yes there was an arrangement between the Commissioners and me, that I was to examine them personally on my part.

Ques. What was the arrangement?—Ans. The arrangement was that in any case where no other witness could be produced, they might be examined respecting the charges made against me by the Commissioners.

Ques. Did you call Mr. Brown as a witness?—Ans. I did.

Ques. Was he sworn?—Ans. He was.

Ques. Did he not refuse to give testimony?—Ans. He refused to give an answer to any questions that I put to him.

Mr. *Wilson*—Pray, what part of the charge does that meet? I ask seriously to what part of the evidence that charge would apply?

Mr. *Macdonald*—I put the question for the purpose of shewing the animus of Mr. Brown towards Mr. Smith. Mr. Brown was sworn to tell the truth, and when sworn would not answer the questions put to him.

Mr. *Wilson*—Is he charged with that?

Mr. *Macdonald*—It was a *suppressio veri*. (To Mr. Brown.) It is quite true that you refused to give testimony.

Mr. *Brown*—Yes.

Mr. *Macdonald*—It is quite true that you were sworn?

Mr. *Brown*—Yes.

Mr. *Macdonald*—What was the form of the oath?

Mr. *Smith*—I think that the form of the oath was to this effect, that he should a true answer make to all questions put to him. Mr. Amiot told Mr. Brown to answer one of those questions; he said that one of the questions was a proper one as relating to a circumstance which occurred prior to the appointment of the Commission, and he refused. The question was: "Did you at any time prior to your appointment to this Commission, write, speak, or print, any thing derogatory to my character as Warden of the Penitentiary?"

Ques. What was the answer?—Ans. The answer is fresh in my memory.

Mr. *Ferres*—Do you object to this?

Mr. *Brown*—I object to the whole.

Mr. *Wilson*—Mr. Brown was right to refuse to answer that question.

Mr. *Smith*—Mr. Amiot, who was President of the Commission at that time, thought it a proper question.

Mr. *Macdonald*—Refer to the printed report, page 236, charge 10, count 9, and also to appendix B, page 315. Look to No. 4 in that Appendix, what does that purport to be?—Ans. It purports to be a letter from the Surgeon of the Penitentiary to the Warden, dated 24th January, 1848, as follows:—

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 description of punishment, inflicted for the offences committed by him since his admission into 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.

[By Mr. *Macdonald*]—Was that letter produced before the Commissioners on the examination under that Court?—Ans. It was not.

Ques. Was a copy of it produced?—Ans. A partial copy.

Ques. Who produced it?—Ans. The production was in the original statement of charges against the Warden. That was the only production.

Ques. Was there any discussion before the Commissioners on the subject of that letter, and if so state the nature of it?

Mr. *Brown*—What has this got to do with it?

Mr. *Ferres*—I do'nt know.

Mr. *Macdonald*—I think that the answer will shew the direct proof.

Mr. *Smith*—I made an objection to the letter as it appeared in the book of charges, as it was merely a garbled extract, only about half the letter having been given, by which it was made to bear quite a different meaning from what it would have exhibited had the whole letter been given. I am not aware of any particular discussion before the Commissioners respecting the letter; but I stated to Mr. Brown that the copy served on me was merely an extract. Mr. Brown replied that he could assure me it was a true copy, and that he had taken it from the original.

Ques. A true copy of what?—Ans. A copy of the whole letter, that he had it from the original. I told him that was impossible, because I had the original in my pocket. I produced it, and shewed that he had omitted all the words after the word "Prison." He then replied that I had no right to keep a document belonging to the Penitentiary in my possession. I told him the reason why I had so kept it was that I thought I should have occasion for it after seeing the copy as written by Mr. Brown in the book of charges. I wanted that letter to appear in full on the minutes.

Ques. Was the statement of Mr. Brown that the copy in the book of charges was a copy of the whole letter, true or untrue?—Ans. It was untrue.

Ques. Was the statement of Mr. Brown that he had copied the letter from the original, true or untrue?—Ans. It was untrue.

Ques. Could he by any possibility have obtained a copy of the letter from the original?

Mr. *Sanborn*—These are leading questions.

Mr. *Macdonald*—You can put leading questions after the main question.

Mr. *Smith*, (In answer to the question.) No he could not.

Ques. Was any party, or were any parties present at the time of this conversation except the Commissioners and yourself?—Ans. A witness was present, Mr. Hopkirk.

The Committee then adjourned.

Nineteenth Day—Thursday, 10th April, 1856.

The Committee met at 10 A. M.

PRESENT:—The Chairman, Messrs. Wilson, Sanborn, Clarke, Stevenson, and Masson.

Minutes of last meeting read and approved.

Examination of Mr. Smith resumed.

[By Mr. *Macdonald*.]—In what capacity was Mr. Francis W. Smith in the the Penitentiary?—Ans. He was kitchen-keeper.

Ques. What were his duties?—Ans. His duties were to receive the provisions, and see them served out to the convicts when they were cooked.

Ques. What was the position of Mr. Chase in the Penitentiary?—Ans. She was assistant matron.

Ques. Was convict Reveille under her charge?—Ans. She was under charge as assistant matron.

Ques. Did any of the witnesses object to the manner in which Mr. Brown put down their answers?—Ans. Yes. Mr. Brown said on such occasions that the words put down by him as the evidence of the witnesses objecting bore the same meaning as the words the witnesses wished to be taken down.

Ques. Were the necessary alterations made in all cases?—Ans. Yes, in some instances they were.

Ques. When?—Ans. When the evidence was read over to them; and in those cases where they believed Mr. Brown's statement of the evidence was correct they did not object to sign.

Mr. *Brown*—I object to that answer. Those witnesses can be produced.

Mr. *Smith*—I speak to what I heard myself.

Mr. *Ferres*—Then in point of fact they were all made right.

Mr. *Smith*—I do'nt know about that.

Ques. The evidence was altered in some cases?—Yes, in some cases when witnesses complained their evidence was altered.

Ques. Were there not continual altercations between Mr. Hopkirk and Mr. Brown, as to the manner in which Mr. Hopkirk's evidence was taken down?—Ans. Yes, very frequently.

Ques. Do you remember any conversation or expression made use of by either Mr. Bristow or Mr. Brown on some such case?—Ans. Yes, some conversation took place, I think it was prior to any objection being made by Mr. Hopkirk, Mr. Bristow looked over the book of evidence and said to Mr. Brown, "that will answer your purpose."

Ques. For what purpose did you send your petitions to me?

—Ans. I sent them in the expectation that you would present them to the House of Assembly.

Mr. *Ferres*—Did he send both to you? Which do you refer to?

Mr. *Macdonald*—He sent me three I think. I refer to the two laid before the House.

Mr. *Smith*—I sent them for the purpose of being laid before the House of Assembly, in the hope that a Committee would be appointed to enquire into the allegations contained in them.

Mr. *Macdonald*—Did you instruct or authorize me to apply for such a Committee?—Ans. I did.

Ques. Did you instruct me as to the truth or untruth of the allegations contained in the said petitions?

Mr. *Brown*—I don't see what this has to do with the charges against me; let the question be put down. I object to the answer to that question, and to the question as well.

(Mr. *Felton* here entered the room.)

Mr. *Macdonald*—It appears to me that this is the most extraordinary objection that could be brought up. The Committee knows full well the circumstances under which the Committee was formed. I made those charges eight years ago, and I want to show to the Committee and to the country that I was instructed to make them. I think it is a mere matter of fairness that I should prove this by evidence; and that it is due to myself that I have the right to put it in.

Mr. *Wilson*—You say that you were instructed seven years ago to make those charges—why did you not?

Mr. *Macdonald*—They were made.

Mr. *Brown*—That is just the point I object to.

Mr. *Wilson*—You say that those charges were true—that is what you ought to go into. This is the simple business; to prove those charges to be true.

Mr. *Macdonald*—I called this witness for the purpose of shewing that they are true.

Mr. *Sanborn*—This does not appear to be within our jurisdiction. Mr. *Macdonald* has charged Mr. *Brown* with four distinct crimes, and anything that tends to prove his criminality under those charges is legitimate evidence; but anything that goes beyond that cannot be received.

Mr. *Stevenson*—I am surprised to hear any person argue that we are confined to the technical meaning of the words in the order of reference. Were we not, most of us, in the House, when the order of the reference was made; and we know the circumstances under which it was made. When the Committee first met, it was intended to call Mr. *Macdonald* and ask whether he could prove the charges of his personal know-

ledge and good report; but it turned out that he knew nothing of the case of his own knowledge, for he was not present at the sitting of the Commission, could not be present on account of the rule excluding all strangers; and, in fact, was not allowed to be present. No person then could suppose that he knew anything about it of his own knowledge; and every circumstance brought under the cognizance of the Committee shews that he could only have known it from the information derived from others. He founded the charges on the instructions furnished to him by others; and I think that the question is quite relevant the charges.

Mr. Felton—If we look at this matter in the interest of Mr. Brown, or in the interest of Mr. Macdonald, we must in either case come to the conclusion that this is a question which ought to be put. In the first place, looking at in the interest of Mr. Brown we heard Mr. Macdonald say that these charges were not new ones made by him, that they were made in the face of the House, and in the face of the country eight years ago. Now if it be true that these charges were made openly, and of course with reference to the only published document of the Committee at his command—the printed report—it was open to Mr. Brown to have contradicted the facts as stated at that time by the production of some testimony, the proof of which was in his own keeping. Now, if he has allowed this document to go forth to the public, notwithstanding those charges as the true report of the proceedings of the Commission, then I think that this question has a very important connection with the matter in hand. Now, it is all very well to say that Mr. Macdonald is not on his trial. I say distinctly the contrary. I think it is quite clear that in order to his justification, having made those charges, that he should be allowed to go on. I look on it in this light—if he were told several years ago that these charges were true, and could be proved, he is quite right in producing such evidence as will bear them out. There is another light in which it may be viewed; it is very difficult to prejudge what he is going to prove; in order to ascertain whether this witness states the truth now, it is right to find how nearly his statements made now agree with the statements that he made eight years ago; and if we find that they are the same, then we have the supposition that those statements are correct.

Mr. Wilson—What has the answer to this question to do with these charges?

Mr. Sanborn—Suppose that it is admitted, which of the charges does it prove?

Mr. Felton—Suppose what is admitted?

Mr. *Wilson*—Suppose it is admitted that he instructed Mr. Macdonald as to the truth or untruth of the allegation contained in the petition, what has that to do with the charges before us?

Mr. *Macdonald*—We are both on our trial here, both Mr. Brown and myself, and it is but right that I should have the opportunity of going into this evidence.

Mr. *Ferres*—Mr. Macdonald stated in the House openly that he did not make those charges of his own personal knowledge: and he wants now to shew that he was actuated by no personal feeling in making those charges; that he did it as a matter of duty, and that he was instructed to make them; that he has not made those charges recently of his own personal knowledge; but that he had been instructed to make those charges by those who did know; and I think it but right to Mr. Macdonald that he should have an opportunity of shewing this.

Mr. *Brown*—There is no end to the evidence that it will be necessary to bring.

Mr. *Ferres*—We have no business to judge where the end of the evidence will be given. We must sit here as long as it is necessary to obtain the evidence necessary to enable us to come to a decision.

Mr. *Macdonald*—As you have Mr. Brown's objection, I want you to state my answer to it.

Mr. *Brown*—You want a regular speech then to be reported.

Mr. *Ferres*—Do'nt object until you have heard what is proposed.

Mr. *Macdonald*—I merely want this answer to be put down: "The question is relevant as to all the charges, inasmuch as the answer tends to justify me in having made those charges, by the instructions and on the authority and statement of the witness." I see the object of Mr. Brown very clearly—he wants his reason to be taken down, and then have it noted down without giving me an opportunity of answering it, and thus place me in a false position before the country and the House.

Mr. *Stevenson*—I object to the argument being allowed to appear on the minutes at all.

Mr. *Brown*—I have no objection to put in a simple objection, this way; that I object to the question as it appears on the minutes as being irrelevant.

Mr. *Macdonald*—That is the whole question of the argument.

Mr. *Stevenson*—That is why I object to it.

Mr. *Sanborn*—This is a very objectionable course for the Committee to adopt. The minutes are going to be a statement of pleadings from beginning to end.

Dr. *Clarke*—It is not going to be; it is that now. Read these minutes and you will find that it is already the case.

Mr. *Sanborn*—I am sure that Mr. Macdonald himself will not say that it is the usual practice in the courts of law to do what he now proposes; and we have agreed to be bound by that practice.

Mr. *Macdonald*—It is the practice with us every day. *In nisi prius* cases the objection and the answer are always put down.

M. *Brown*—Then if Mr. Macdonald is allowed to put down his answer, I should make this statement “that the Committee had certain charges remitted to them to inquire into, that these charges are against him (Mr. Brown) and not against Mr. Macdonald, and that if the evidence proposed by by this question is received it will open up to the Committee a new and voluminous subject of inquiry not at all within the scope of the Committee.”

Mr. *Ferres*—Shall this statement go on the record?

Mr. *Wilson*—I have no objection.

Ques. Then shall the question be put to the witness?

The Committee divided on this point, and it was carried in the affirmative; yeas, Messrs. Clarke, Stevenson, Masson, Felton, and Ferres; nays, Messrs. Wilson and Sanborn.

Mr. *Ferres*—The question is this: Did you instruct me as to the truth or untruth of the allegations contained in the said petitions?

Mr. *Smith*—I did.

Mr. *Macdonald*—What did you tell me?—Ans. I said I had every reason to believe I could easily substantiate every allegation in these petitions.

Ques. Did you, or did you not, send to me notes of the evidence, and of the references with which I could so prove the allegations contained in the petitions?—Ans. I furnished you with the petitions, marginal notes containing the names of the witnesses and references to the report upon which I could substantiate the allegations of the petitions.

Ques. Will you look at a copy of the petition I now hand to you, with the clauses numbered and verified by your initials?—Ans. Yes.

Mr. *Ferres*—Stop. We have not had this printed petition before.

Mr. *Macdonald*—Then I will ask the witness: Will you look in the printed petition now produced, marked D., at the

clauses numbered from 1 to 11, and verified by your initials, and say whether I was or was not instructed by you to make the specific charges therein contained.

Mr. Brown—I want the clerk to put down that I make the same objection to this that I did to the other question.

Mr. Ferres—The objection is overruled on the same division. The question was then repeated, and

Mr. Smith said, you were instructed to make those charges.

Mr. Macdonald—Does this petition contain anything which in your opinion is incapable of proof?

Mr. Brown—I object to that question. Why is it incapable of proof? Is it true or untrue? I don't know the legal rule; but I think this question ought not to be put.

Mr. Sanborn—It is objectionable on every ground.

Mr. Macdonald—I repeat the question as follows: Does this petition contain anything which, according to the best of your knowledge and ability, is untrue or incapable of proof?

Mr. Wilson—I think that question ought not to be put, for this plain reason, that you are attempting to prove the allegations of that petition by his assertion of his belief.

Mr. Macdonald—This is the same objection, of course, which *Mr. Brown* made before.

Mr. Brown—I object to the question now.

Mr. Sanborn—It appears to me very strongly objectionable. It is proving wholesale the whole amount, and not swearing to it exactly, but giving it as a matter of opinion. It is monstrous.

Mr. Ferres—I don't believe that it proves a single word in the petition. It merely proves that *Mr. Macdonald* was right in taking up the petition, and asking for a Committee.

Mr. Sanborn—Even on that ground I do not think that the question is one which should be put to the witness. It will be impossible; it is useless to attempt to carry on an examination if we put such questions as this.

Mr. Macdonald repeated the question as he proposed to put it to the witness.

Mr. Brown—I object.

The Committee divided, and the objection was overruled, yeas, Messrs. Felton, Stevenson, Masson, and Ferres; nays, Messrs. Wilson and Sanborn.

The clerk then proceeded to take down the answer of the witness, from the dictation of the Chairman, when he was interrupted by *Mr. Brown*.

Mr. Brown—I object to this. You (to the Chairman,) have turned round several times when the clerk is writing down the evidence, and suggested words that the witness did not think of.

Mr. Ferres—Take that down.

Mr. *Wilson*—Before that is taken down, it is necessary to put down the words suggested to the witness.

Mr. *Ferres*—I desire to see it taken down, because it is not true.

Mr. *Brown*—It is true.

Mr. *Felton*—It is but right that those words used by Mr. Brown in the presence of the Committee, and which he would not have been allowed to use in the House, should be taken down.

Mr. *Ferres*—If the witness gives an answer that I do not clearly understand, I want him to explain his meaning; and I want it put on the minutes in such language that there can be no misunderstanding.

Mr. *Wilson*—The difficulty arises from this: Mr. Brown thinks that the Chairman has not used words which convey the same meaning as those used by the witness.

Mr. *Masson*—Do you mean to say that I should not have the right to ask Mr. Smith what he said?

Mr. *Brown*—Most undoubtedly.

Mr. *Masson*—If that is the case why should not the Chairman have the same right.

Mr. *Felton*—I would like to know who has interrupted witness, or suggested questions more than Mr. Brown himself?

The witness then answered the question: It contains nothing but what is true to the best of my knowledge and belief, but in consequence of the absence and death of some of the witnesses, who could have proved the allegations therein contained, it is impossible to say whether they are all now susceptible of proof.

Mr. *Macdonald*—I now close the examination of Mr. Smith.

Mr. *Smith* withdrew, and Mr. *Edward Horsey* was called.

Mr. *Edward Horsey* of Kingston was called,—and in answer to questions put from the Chair, stated,—I am Architect and Master-builder to the Penitentiary, at Kingston; I have been so since September, 1846.

By the request of Mr. *Macdonald*, the evidence given by witness before the Commissioners on the Penitentiary enquiry, was read over to him in full, and the examination was then proceeded with.

The evidence was read over to me at the time it was taken before the Commissioners I believe, speaking from recollection I did not read it myself; it was read over to me.

Mr. *Macdonald* called the witness's attention to the following passage, page 1188, lines one to six inclusive:—"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 work is 25 per cent."

[*By Mr. Macdonald*].—Did you convey to the Commissioners, on which side the difference of cost lay?—Ans. Of course it was 25 per cent. better than work done by contract, and worth that much more.

Ques. Did you convey to the Commissioners your opinion as to the comparative cheapness of the works in money?—Ans. I did.

Ques. What did you convey to the Commissioners as the comparative cheapness of the work?—Ans. Why, of course, it would be 25 per cent. more.

[*By the Chairman*].—Do you mean to say that the work by convict labor is 25 per cent. better in quality, at the same price as contract labor?—Ans. I do.

[*By Mr. Macdonald*].—By the words, "difference in the costs of the work is 25 per cent.," as stated in your evidence, did you intend to convey to the Commissioners that the cost of convict labor was 25 per cent. more than contract labor?—Ans. I mean to say it was worth 25 per cent. more than contract work.

The Committee adjourned until 10 o'clock, A. M., to-morrow.

Twentieth Day—Friday, April 11th, 1856.

PRESENT:—The Chairman, Messrs. Stevenson, Masson, and Sanborn,—4.

The Hon. Mr. Macdonald and Mr. Brown, were present.

Henry Smith, Esquire, cross-examined by Mr. Brown:

Ques. On the first assembling of the Penitentiary Commissioners at Kingston, did you meet them, and did they explain to you the course they intended to pursue in conducting their examination into the state of the Penitentiary?—Ans. They might have done so; but, at this distance of time, I cannot recollect.

Ques. Did the Commissioners read over to you, at a meeting you had with them, the following minute of the course they intended to pursue: "That no evidence should be received, except on oath or affirmation; that the answers of witnesses should be put down in full; and the questions when required; that all witnesses shall be examined first by the Chairman and afterwards by the other Commissioners in turn; that no person shall be present when witnesses are under examination but the Commissioners; that when any charge is considered to be substantiated by the Commissioners, the party implicated shall be

“informed of the nature of the complaint against him; if he
 “denies the truth of the allegations, and demands that the wit-
 “nesses may be cross-examined by him, he shall be entitled to
 “that privilege?”—Ans. I do not recollect having ever heard
 such a minute read.

[*By Mr. Masson.*]—Were you ever served with a copy of the
 minute now read?—Ans. I do not recollect having ever been
 served with such copy, and my impression is, I never was.

Ques. Please refer to the following passage in page 14 of the
 minutes of the Commissioners, and say if it is a correct minute :
 “At 10 o'clock, Mr. Hopkirk, Inspector, and Mr. Smith, Warden
 “of the Penitentiary, had an interview with the Commissioners,
 “which lasted until 12 o'clock. They were informed of the
 “course the Commissioners had determined to pursue in the
 “examination of charges against the officers of the Penitentiary,
 “with which they expressed themselves highly satisfied?”—

Ans. I think that such a meeting did take place but I never
 expressed myself highly satisfied, as I believe there was a pre-
 determination to deprive me of my office.

Ques. When the Commissioners had completed their pre-
 liminary examinations into the state of the Penitentiary, did
 they extract such portions of the evidence as appeared to affect
 you, and transmit them to you for such explanations as you
 might see fit to offer?—Ans. I was served with a copy of certain
 charges made against me by the Commissioners, who acted at the
 same time as judges in the case; in the evidence to support those
 charges, garbled extracts were made of the evidence said to
 support those charges.

Ques. Did you receive the said extracts on the 23rd Sept.,
 1848?—Ans. I received them sometime in the fall of 1848;
 but do not know the exact date.

Ques. Have you no means of ascertaining the precise date?
 —Ans. No; unless by reference to the letter accompanying
 those charges; I see, by reference to the printed Report, the
 date was September 23rd, 1848.

Ques. Did you commence calling witnesses in explanation
 of the first four charges, on 9th October, and continue every
 day until the 28th October?—Ans. Very possibly I did; but
 am not certain.

Ques. Did you re-commence calling witnesses on the 10th
 November, and continue until the 15th November—did you
 resume your defence on the 28th November, and continue
 daily, with but four days' intermission, up to the 19th January?
 —Ans. I cannot say as to the dates.

Ques. Have you no means of ascertaining?—Ans. I have
 no means of ascertaining here.

Mr. *Felton*, a member of the Committee, entered.

Ques. When the extracts from the preliminary examinations were transmitted to you by the Commissioners, did they inform you by letter of 23rd September, 1848, as follows:—"You will have every assistance in the production of witnesses which the Commissioners can give you, and you will be entitled to re-produce the same witnesses if you think proper, or any others you may require, if it should be found impossible to procure the attendance of any of the witnesses who have given testimony against you, the evidence of such parties will only be used against you as corroborative testimony?"

—Ans. Yes; I recollect something of that sort coming to me.

Ques. Did the Secretary of the Commissioners write you on the 7th October, before commencing your defence, to furnish him with a list of your witnesses in something like the order you desired to produce them, so that subpœnas might issue for their attendance?—Ans. I believe he did.

Ques. Did you furnish such lists of witnesses from time to time to the Secretary of the Commission and did he issue subpœnas for the parties you designated?—Ans. I think not, because I could produce my own witnesses without a subpœna.

Ques. Do you mean that you never called on the Secretary to produce witnesses for you?—Ans. I cannot recollect that I ever did; I might have called upon the Secretary to subpœna two or three witnesses who had been privately examined against me in order that I might cross-examine them.

Ques. Did you call on the Secretary to summon any witness who was not summoned as you desired?—Ans. I do not know; I cannot tell, as the subpœnas were not placed in my hands.

Ques. Did you call upon the Secretary to summon any witness who was not produced?—Ans. I do not think I called upon the Secretary to summon any witness who was not produced.

Ques. When you had closed your defence on the first four charges, with the exception of recalling Maurice Phelan, Eustache Coté, Eliza Quinn, James Brennan, Thomas Herne, M. B. White, and Henry Robinson, who had given evidence in the preliminary examination, was it agreed between you and the Commissioners "that in as far as the first four charges are concerned, the Warden shall dispense with the re-examination of these witnesses, 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?"—Ans. Yes.

Ques. Was the evidence of any of these parties used against

you by the Commissioners in reporting on the first four charges?—Ans. No.

Ques. Was any such agreement made in regard to any witnesses examined in the preliminary enquiry upon the last seven charges, as had been made in regard to the first four?—Ans. I recollect of no agreement being made with regard to the absence of the witnesses upon the seven remaining charges.

Ques. Did you call for the production of any witness examined in the preliminary examination on the last seven charges, who was not produced?—Ans. I have answered that question already. I have already said I did not.

Ques. You have stated in your direct evidence that Maurice Phelan absconded from the Province after being privately examined against you; at what date do you allege he so absconded?—Ans. I do not recollect the precise date, but it was before the time I wished to cross-examine him.

Ques. How do you know that he absconded? Ans. I was so informed by an officer of the Penitentiary.

Ques. What was the name of that officer?—Ans. Thomas Costen. I think also Dr. Sampson mentioned it.

Ques. Did you apply to the Commissioners to issue process for the production of Phelan?—I did not, as I thought it was useless.

[*By Mr. Felton*]—Is Maurice Phelan, respecting whom you have given testimony, the same Maurice Phelan who is named in the minutes of the Penitentiary Commissioners of the 27th June, 1848?—Ans. I believe that is the same man. He formerly was a convict in the Penitentiary.

[*By Mr. Brown*]—When you say that Phelan absconded, do you mean that he fled the country on account of crime?—Ans. No, I do not.

Ques. What do you mean, then?—Ans. I mean he left the country, as I said before.

Ques. You have stated in your direct evidence that James Brennan absconded from the Province after being privately examined against you; at what date do you allege he so absconded?—Ans. I cannot tell the date, but I make the same answer as I did before with regard to Phelan.

Ques. How do you know that Brennan absconded?—Ans. By being informed by some of the officers of the Penitentiary; but by whom I cannot recollect.

Ques. Have you no means of recalling to memory the names of the officers who so informed you?—Ans. No, it was the general subject of conversation.

Ques. Did you apply to the Commissioners to issue process

for the production of Brennan?—Ans. No, I did not, and for the same reasons I have stated with regard to Phelan.

Ques. What did you mean when you said Brennan had “absconded?”—Ans. That he had left the Province.

Ques. You have stated in your direct examination that Eliza Quinn absconded from the Province after being privately examined against you; at what date do you allege she so absconded?—Ans. The same answer as I gave with respect to the other absconding witnesses.

Ques. How do you know that Eliza Quinn absconded?—Ans. By common report.

Ques. Did you apply to the Commissioners to issue process for the production of Quinn?—Ans. No, for the same reasons as before stated with regard to the others.

Ques. When you stated in your petition, which you have put on file, that many of the witnesses examined against you in the preliminary enquiry, absconded from the Province, and that you had no opportunity of examining them; to what witnesses did you refer?—Ans. I referred to Brennan, Coté, Phelan, Eliza Quinn and White.

Ques. When you stated that Mr. M. B. White absconded from the Province, after being privately examined against you; at what date do you allege he so absconded?—Ans. The same answer as with regard to the other witnesses.

Ques. How do you know that Mr. White absconded?—Ans. I was informed so by some of the Penitentiary people, who knew the fact.

Ques. Will you please state who were those “Penitentiary people?”—Ans. I do not recollect; it was generally mentioned “that White had gone, and that I could not get him.”

Ques. Did you apply to the Commissioners to issue process for the production of Mr. White?—Ans. No, for the same reason I before stated with regard to the other witnesses.

[By Mr. Felton.]—Is Michael B. White, of whom you have spoken, the same Michael B. White named in the minutes of the Penitentiary Commissioners on the 28th June, 1848?—Ans. It is the same person.

[By Mr. Brown.]—You have stated in your direct examination that Mr. M. B. White, an ex-guard, was privately examined against you, and “left the Province before you could serve a notice on him to appear before the Commissioners;” did you, then, serve such notice on the witnesses?—Ans. I did not, for the same reason as I have stated with regard to the others.

Ques. Was it arranged, before you commenced examining your witnesses, 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 taken down?”—Ans. Yes.

Ques. Was this practice strictly followed during the whole examination?—Ans. Yes, as far as reading out of the evidence, but in some instances the evidence was not correctly taken down, and was afterwards altered.

Ques. What do you mean by “altered,” was it made right to the satisfaction of the witness and yourself before proceeding to the next question?—Ans. It was, so far as I could judge by the reading by the Secretary.

Ques. When the evidence of each witness was closed for the time, was it not all re-read to him, amended to suit him, and a distinct assent to its correctness asked and obtained in every case?—Ans. It was read over to him as I stated in my previous answer, and being so read, the witness appeared satisfied; I could not tell whether Mr. Brown read it over correctly, as I did not see the evidence.

Ques. Were you present while the witnesses were being examined, was one line of evidence taken in your absence?—Ans. A great deal of evidence was taken in my absence.

Ques. Do you refer to the preliminary examination?—Ans. I do refer to the preliminary examination.

Ques. Do you refer to the examinations taken after the extracts from the preliminary evidence were transmitted to you?—Ans. No; with the exception of one or two questions put by my son, by the consent of both parties.

Ques. Were there not at least three Commissioners always present while evidence was being taken?—Ans. I do not know, as I was not present at the preliminary examination.

Ques. When you were producing evidence on your defence before the Commissioners and during the cross-examination of your witnesses, were there not at least three Commissioners always present?—Ans. Yes.

Ques. Was not the entire evidence taken down by or for you, as it proceeded?—Ans. Yes, as far as I recollect; I did not read the evidence taken down for me.

Ques. As the Secretary read what he had written to each witness, did you not compare it as he proceeded with your copy?—Ans. I did not, but the Clerk who wrote it did.

Ques. Did you not frequently make suggestions in amendment of what Mr. Brown had written, before signature?—Ans. —I do not recollect having made any suggestions whatever.

Ques. Did you in any one case point out an amendment of the evidence which was not referred to the witness, and, if sustained by him, corrected in the book before signature?—Ans. I do not recollect I ever did.

Ques. Was not your assent distinctly asked and obtained by the Commissioners, to the correctness of what was written down as the deposition of each witness?—Ans. Not in all cases.

Ques. In what cases was this not done?—Ans. I cannot recollect, as the number of questions was so great.

Ques. Was not your assent distinctly asked and obtained by the Commissioners at the close of each witness's deposition to the correctness of what was written down in said deposition?—Ans. Not in all cases.

Ques. Can you designate one case in which this was not done?—Ans. I can not.

Ques. When the assent of the witness and your assent had been asked and obtained to the correctness of the record, did not the Secretary in every case attach the following or precisely similar words to the end of the deposition? "The foregoing evidence was read aloud, Mr. Warden Smith declared the evidence correctly taken down, the witness did the same, and signed it?"—Ans. My assent was not always asked as to the correctness of the record; and whether the Secretary attached to the evidence the words stated in the question I do not know, as I did not read the book of evidence.

Ques. Did the Secretary read aloud the words quoted in the last question in every case at the close of each deposition?—Ans. No, he did not read them out in every case.

Ques. Did he generally do so?—Ans. He did upon several occasions.

Ques. Can you designate one instance in which he did not do so?—Ans. No.

Ques. Did each witness subscribe his name to his depositions after it had been read over to him?—Ans. I do not know.

Ques. What did you mean by the following sentence in your petition? "That in many instances the testimony given by witnesses was taken down differently from what it actually was, as the various alterations, interlineations, and erasures in the minutes of evidences will sufficiently show?"—Ans. I meant that in the first instance the evidence was taken down incorrectly, but that it was afterwards altered in consequence of the dissatisfaction expressed by the witnesses as to the correctness of the manner in which their testimony was taken down.

Ques. Did you mean that those "alterations, interlineations, and erasures," were made in open Court, in your presence, and before the witnesses subscribed their depositions?—Ans. I did.

Ques. Was there any instance in which Mr. Brown refused to alter the evidence of any witness as taken down by him when insisted on by such witness?—Ans. Mr. Brown refused to alter

evidence as taken down by him, saying, "that what he had written down as their evidence implied the same as given in the exact words of the witness," but on the witness's refusing to sign until it was altered as desired, Mr. Brown made the amendments as insisted upon, and the evidence was then signed.

Ques. What witnesses so refused to sign their depositions?—

Ans. I recollect two, Mr. Samuel Pollard and Mr. Hopkirk; there were others, but I cannot now specify their names.

Ques. Were their depositions in every case altered as they desired before signature?—Ans. I believe they were.

The Committee then adjourned till 10 o'clock A. M., on Monday next.

Twenty-first Day—Monday, 14th April, 1856.

PRESENT:—The Chairman, Messrs. Stevenson, Masson, Wilson, Clark, Sanborn, Felton.

The Hon. Mr. Macdonald, and Mr. Brown were present.

The minutes of Friday were read and approved.

Mr. *Smith's* cross-examination resumed.

Ques. In the evidence as finally subscribed by the witnesses in your presence, can you point out any passage that was "recorded falsely?"—Ans. I cannot, as I do not know that the witnesses placed their names to the evidence which they had given.

Ques. In the evidence as finally amended at the request of the witnesses, can you point out any passage that was "recorded falsely?"—Ans. Yes, I think there were two that I recollect particularly; one was in the evidence of Dr. Sampson, and the other in that of Mr. Horsey, and another case also in that of convict Henry Smith. I believe there were others, but I do not now recollect them. In giving this answer I refer to the evidence quoted in the book of charges served upon me.

Ques. [*By Mr. Wilson*].—Referring to the written testimony taken before the Commissioners, and purporting to be signed by the witnesses, can you point out any addition or falsification therein?—Ans. Never having seen the written testimony referred to, I am unable to give an answer to this question.

Ques. [*By Mr. Brown*].—When the evidence taken in your presence was read out by the Secretary, and you or your clerk compared it with your own copy of the evidence, was there one varaince between your copy and the official copy which was not amended?—Ans. If the evidence was correctly read over, there was not.

Ques. Do you mean by your answer to question 159, that in

taking down Dr. Sampson's evidence in the original book of record, Mr. Brown wrote down falsely the testimony given by that gentleman?—Ans. I do not know, as I have never read the book of evidence.

Ques. What did you mean then, by your answer to the question 159?—Ans. I meant what I said.

Ques. Were you present when Dr. Sampson gave the evidence you refer to as incorrect?—Ans. I was present when all the evidence was taken for the defence.

Ques. Was the evidence of Dr. Sampson, to which you refer, taken while your defence was being made?—Ans. I think it was part of his recorded evidence; I am almost certain it was. Referring to the printed report, page 205, beginning, "convict Reville 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 words omitted are, "*but if she had been a quiet woman, the punishment would not hurt her.*"

Ques. Were you present when Dr. Sampson gave the evidence from which you say these words were omitted?—Ans. I have already answered this question; I have said I was; to the best of my recollection; it was given during the defence.

Ques. Pray refer to page 879 of the original record kept by the Commissioners, and say if the whole evidence of Dr. Sampson on that occasion was not taken down in Mr. Brown's absence, by Mr. Commissioner Thomas?—Ans. I believe that to be Mr. Thomas's handwriting.

Ques. Was the following statement made by Mr. Thomas at the end of Dr. Sampson's deposition, a true or a false record?—"The foregoing evidence was read aloud; the ex-Warden declared the same to be correctly taken down; the witness did the same, and signed it?"—Ans. I recollect making a remark to Mr. Thomas, who then acted as Secretary, that I was perfectly satisfied with his proceedings, although I was not with those of Mr. Brown.

Ques. Was the record quoted in the last question as made by Mr. Thomas, true or false?—Ans. I believe Mr. Thomas took down the evidence in good faith, and that an omission in the same has been unintentionally made.

Ques. Did Mr. Thomas truly or falsely record that you declared on that occasion that the evidence of Dr. Sampson was "correctly taken down?"—Ans. He incorrectly took down the evidence, although I believe it was unintentional on his part.

Ques. In the evidence of Mr. Horsey, as taken in the official books of evidence, and finally amended in your presence, can

you point out any passage that was "recorded falsely?"—Ans. I think the words "*in favour of the latter*" were omitted; but I have not read the official evidence, and cannot say if the said words are contained therein.

Ques. Please look at the official record, and point out where this omission occurred?—Ans. On page 1188, at the close of line 8, the words as taken down by my clerk, were, after the words "25 per cent. in favour of the latter," which are omitted in the printed report, page 160.

Ques. Then you say the evidence of Mr. Horsey should have run thus: "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 lie close in the wall: but outside they are not so particular; would say the difference of cost of the work is 25 per cent—*in favor of the latter*?"—Ans. Yes.

Ques. Please refer to the original entry in the official record of the Commissioners, and say if there is any alterations or erasures in that portion of Mr. Horsey's evidence to which you have referred?—Ans. No; there appears to be no alteration whatever in those six lines, although there may be an omission.

Ques. Were you present when Mr. Horsey gave that evidence?—Ans. I was.

Ques. Please refer to the end of Mr. Horsey's deposition, and say if the words at its close were true or false, "The foregoing evidence was read aloud; Mr. Warden Smith declared the evidence correctly taken down; witness did the same, and signed it?"—Ans. I left it entirely to the clerk to check what was taken down by the Secretary, as he kept the book of evidence on my part.

Ques. Did you or your clerk, before Mr. Horsey left the room, call the attention of the Commissioners to this alleged omission?—Ans. I did not see the evidence as taken down by the clerk.

Ques. Please refer to the record, and say if that is Mr. Horsey's signature, subscribed to his deposition.—Ans. I have no doubt it is; I believe it to be his handwriting.

Ques. In the evidence of convict Henry Smith, as taken down in the official book of evidence, and finally amended in your presence, can you point out any passage that was recorded falsely?—Ans. I do not know that the evidence was finally amended in my presence. I have not seen the written evidence, therefore I cannot tell: but in the printed Report part of the evidence is left out, which causes it to bear an erroneous impression or meaning.

Ques. Is then the import of your statement in regard to convict Smith in your answer to question that the Commissioners did not fairly collate the evidence of that witness?—Ans. It is my impression that the evidence published in the printed Report, page 120, is not fairly taken.

Ques. What portions of the evidence of Smith do you refer to as not fairly taken down?—Ans. I cannot tell here, not having my papers with me; the words I refer to in the printed report, page 120, are: "Convict Henry Smith has had beer three or four times by order of Mrs. Smith, the Warden's wife." I think there are words left out after the word "times" by which the witness "stated he was told so by some of the convicts," which words appear to be omitted in the Report.

Ques. Is, then, your charge against Mr. Brown in this matter that he omitted to state in the official report to the Government that Smith has stated to the Commissioners that he was told by convicts that the beer he got in the Warden's kitchen was by order of Mrs. Smith?—Ans. I state that I have made no charge against Mr. Brown; I state that the words in the report, as the evidence of Smith, do not contain the whole of the testimony.

Ques. Please refer to the original record of evidence, pages 426 and 431, and say if it is not there recorded as the testimony of said Smith: "Is a convict in the Penitentiary; has received beer from the Warden's servant, by Mrs. Smith's orders; believes it was given him by Mrs. Smith's orders; he was told so by some of the convicts. Witness had a very bad cold last winter, complained of it to Mrs. Smith; Mrs. Smith gave witness a small piece of liquorice for it. Witness was not poorly when he got the beer; all the times he got beer it was when witness was working in the Warden's private apartments, and they were cleaning house." * * * "Heard the convicts say once, when witness got beer, that it was by order of Mrs. Smith; was told so in the Warden's kitchen; 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;" and say if these original entries correctly state that the evidence given by Smith on the point referred to?—Ans. I have no reason to doubt the correctness of these extracts. On reference to the printed Report, the evidence of the convict Henry Smith, states he "has had beer three or four times, by order of Mrs. Smith, the Warden's wife," whereas in the original evidence it appears he merely said he was told so by some of the convicts."

Ques. Are you cogizant of Mr. Brown's having "altered the written testimony given by witnesses after their evidence was closed and subscribed?"—Ans. No, because I did not see the evidence as taken down by him.

Ques. Did you charge this against Mr. Brown in your petition to the House of Assembly?—Ans. I do not recollect that I charged such a thing against Mr. Brown.

Ques. Have you personal knowledge that Mr. Brown "suborned convicts to commit perjury?"—Ans. I have not.

Ques. Did you prefer this charge against Mr. Brown in your petition to the House of Assembly?—Ans. No, I think I merely averred that perjury had been committed.

Ques. You said in your direct examination, that of the convicts who gave evidence prejudicial to you, three were pardoned and liberated before the term of their sentences expired, namely, Cameron, Hennessy, and DeBlois; have you personal knowledge that any of these men were so pardoned and liberated at the request or by the intervention of Mr. Brown, or any of his brother Commissioners?—Ans. No I know nothing of that personally.

Ques. Have you personal knowledge that Mr. Brown obtained the pardon of any convict to induce "him to give false evidence?"—Ans. No, I have no access to the records of the Government.

Ques. Did your petition to Parliament contain this charge against Mr. Brown?—Ans. No.

Ques. Do you know, of your own knowledge, the date when convict Cameron was liberated, or the reasons which influenced the Governor General in extending to him the Royal Pardon, or the parties who applied to His Excellency, on Cameron's behalf?—Ans. No, I do not personally know.

Ques. Do you as to convict DeBlois?—Ans. I do not know it personally.

Ques. Do you as to convict James Hennessy?—No.

Ques. Were you, while Warden of the Penitentiary, ever called upon to report, whether convict Cameron was a fit subject for the Royal clemency, and what was the purport of your report?—I was called upon to report the names of such convicts as were fit to be pardoned for good conduct, among them I believe I mentioned the name of Hugh Cameron, who, up to that time, had conducted himself in a becoming manner.

Ques. What was the date of that report, and how long had Cameron been then in the Penitentiary?—Ans. I am not certain as to the date, but it was in 1848, prior to my being called upon to defend myself against the charges preferred against me by the

Commissioners. He had been in for five or seven years; his sentence was for fourteen.

Ques. Were you ever called upon so to report in regard to convict DeBlois, and what was the purport of such report?—Ans. I do not recollect, DeBlois might have been one, there were several mentioned, but were not all pardoned.

Ques. Were you ever called upon so to report in regard to convict Hennesy, and what was the purport of such report?—Ans. I cannot recollect. I make the same answer in the case of DeBlois.

Ques. What was the conduct of convicts Cameron, DeBlois and Hennesy respectively, while under your charge, was it good or bad, were they often or severely punished?—Ans. No, they were very seldom punished, or they would not have been reported as fit for pardon.

Ques. Have you personal knowledge that Mr. Brown “obtained the pardon of murderers confined to the Penitentiary, to induce them to give false evidence.”—Ans. No, I have no personal knowledge of the fact.

Ques. Did your Petition to Parliament contain this charge against Mr. Brown?—Ans. No.

Ques. When did you first send to Mr. Attorney General Macdonald, for his guidance and instruction, in applying for a Committee of Inquiry, a copy of the Petition which you have filed as exhibit C 2, and which you have verified to be a true statement of your complaints against the Commissioners?—Ans. I believe it was the same year as the Parliament sat at Toronto, in April or May, 1850.

Ques. Did Mr. Macdonald in that year, comply with your request, and apply for a Committee of Inquiry?—Ans. He did.

Ques. Did you 1851, again so apply to Mr. Macdonald, and did he comply with your request?—Ans. I think not.

The Committee adjourned until 10 o'clock, A. M., to-morrow.

Twenty-second Day---Tuesday, 15th April, 1856.

PRESENT:—The Chairman, Messrs. Masson, Stevenson, Willson, and Sanborn.

The Hon. Mr. Macdonald and Mr. Brown were present.

Minutes of yesterday were read and approved.

Mr. *Smith's* cross-examination resumed.

Ques. You said yesterday in answer to the question 203 that you thought Mr. Attorney General Macdonald did not in 1851 apply to the House of Assembly for a Committee of Inquiry into

the allegations of your petition, please look at the Journals of the House of Assembly for 1851, page 61, and say if it is not there recorded, that your petition was brought before Parliament?—Ans. Yes it appears on record, and is no doubt correct.

Ques. Did you in 1852 again so apply to Mr. Macdonald to present your petition, and did he comply with your request?—Ans. I do not recollect of any other, except in the two cases I have already mentioned.

Mr. Clarke, a member of Committee entered the room.

Ques. Please refer to your direct evidence of Wednesday last, and say if you did not put in a copy of your petition with this declaration?—It is a copy of my “Petition to the Legislative Assembly forwarded by me to Mr. Macdonald for presentation to the House; it is in my handwriting, and dated 19th August 1852”—Ans. Yes.

Ques. Did Mr. Macdonald in 1852 comply with the request you then made him, and present your petition?—Ans. I do not recollect whether he did.

Ques. Did you in 1853 again so apply to Mr. Macdonald to bring your petition before the House, and did he comply with your request?—Ans. I do not know whether he did, I only speak with certainty with regard to the first Petition.

Ques. Did you in 1854 again so apply to Mr. Macdonald to bring your petition before the House, and did he comply with your request?—Ans. No I think not, I did not send any petition then.

Ques. Did you in 1855 again so apply to Mr. Macdonald to bring your petition before the House, and did he comply with your request?—Ans. No, No.

Ques. Did you in 1856 again so apply to Mr. Macdonald to bring your petition before the House, and did he comply with your request?—Ans. No.

Ques. When you stated in your direct examination that you did not object to Mr. Brown’s demeanour towards your witnesses because you “found it was of no use, as many of your objections had been over-ruled” what objections did you refer to?—Ans. I referred to nearly fifty objections made to allow me to produce evidence in my defence.

Ques. Do you refer to questions which you desired to put to witnesses, over-ruled by the Commissioners?—Ans. Yes, the answers to which would have been material to my defence.

Ques. You have stated in your direct evidence, that when Mr. Hopkirk was under examination, as a witness for you, he objected to the length of his examination, and that Mr. Brown replied, “you have been a principal witness for Mr. Smith, and it is for us to break down your testimony; please to state who were

present when this alleged remark was made by Mr. Brown?—
 Ans. I was present, the Clerk who took down the evidence was so, Mr. Brown was acting as Secretary ; three Commissioners, one of whom was Mr. Brown, and Mr. Hopkirk was also there.

Ques. Can you designate the passage in Mr. Hopkirk's testimony which you say Mr. Brown wrote down making the remark, that, "it would go for as much as it was worth?"—Ans. I do not recollect it, but I distinctly recollect the words being used by Mr. Brown.

Ques. Who were present on this occasion ; which of the Commissioners were present?—Ans. I do not recollect.

Ques. When these words, or something like them, were used by Mr. Brown, was not Mr. Hopkirk tendering some statement, when Mr. Brown considering it to be not proper evidence, remarked that it was not evidence, but if Mr. Hopkirk desired it, that he would write it down, and it would go for what it was worth ; and on Mr. Hopkirk's referring to the observation, did not Mr. Brown at once explain that he had no intention of speaking discourteously, but merely referred to the irrelevancy of the testimony?—Ans. I recollect no such thing, I merely recollect what I have stated.

Ques. Can you designate the passage in Mr. Hopkirk's evidence which you say Mr. Hopkirk asked Mr. Brown to read over, and to which, when read, he (Mr. Hopkirk) objected as not being his evidence?—Ans. Oh no, the evidence is so voluminous that it is impossible for one person to recollect the whole.

Ques. Did you make no memorandum of the transaction by which you can designate the passage ; will not your own private copy of the evidence show it?—Ans. No.

Ques. What were the names of the ten keepers and guards who gave evidence prejudicial to you, and of whom you state in your direct evidence they were dismissed for "improper conduct?"—Ans. I only find nine names in the list, viz: Edward Hatting, James Gleeson, Martin Keely, Terence McGarvey, Richard Robinson, James McCarthy, James Wilson, Thomas Fitzgerald, and James Skynner. I do not recollect the tenth.

Ques. Was guard Fitzgerald dismissed from the Penitentiary, and about what time?—Ans. I believe he was, and for drunkenness, but I do not recollect when.

Ques. Were all these persons appointed while you were Warden and with your assent?—Yes.

Ques. Did not the circumstances attending the dismissal of nine of these officers, form matter of accusation against you before the Commissioners.—Ans. It did. I was charged with procuring the dismissal of some, or all of the parties named.

Ques. You stated in your direct examination that you *believed*

“ threats were held out by the witnesses who appeared in evidence against you, that such of the officers of the Penitentiary, as should testify on behalf of the Warden would be removed from their situations.” Who made those threats and to whom were they made?—Ans. I do not recollect the parties, but it came out in evidence in my defence.

Ques. In whose evidence did this come out?—Ans. I do not recollect, but it is stated in the minutes of evidence.

Ques. Was this one of the charges against the Commissioners contained in your petition?—Ans. Yes. I believe it is. It is one of the allegations contained in my petition. The officers and others who gave evidence in my favor were discharged by the Commissioners or Inspectors, who were the same persons.

Ques. Please refer to your petition and state the names of the witnesses you furnished to Mr. Macdonald, as capable of establishing this charge?—Ans. Hugh Manuel is one. I have no memorandum of any other; there were others.

Ques. Do you know of your own knowledge, that any one person made such threats?—Ans. No not personally, only through evidence.

Ques. You have stated in your evidence that an arrangement was made between the Commissioners and you, as to the examination of members of the Commission as witnesses on your behalf; please to look at page 976 of the minutes of the Commission, and say if this is a true record of the arrangement, “ Mr. Smith yesterday applied to the Commissioners to know if he will be allowed to examine one or more Commissioners on oath, on matters not affecting evidence given before them by other parties. The matter having been duly considered, Mr. Smith was now called in and 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 object by other witnesses?”—Ans. Yes, I recollect that.

Ques. You have stated that Mr. Brown having been called by you and sworn, refused to answer the questions you put to him; please refer to page 1332 of the minutes of Commission, and say, if the following is a true record of what occurred: “ George Brown, sworn by Mr. Smith, is Secretary of the Penitentiary Commission; witness is shewn a copy extract of letter from Dr. Sampson.

“ GEORGE BROWN.”

“ A large number of questions were put to the last witness, as to the proceedings of the Commissioners, and the manner in which they received their information, which were all over-ruled by the Court. Mr. Warden Smith having gone through all his questions for this witness, rose up, and said, “ Now gen-

“flemen, since you refuse to give me 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 thereupon left the room?—Ans. It is not a true record in as much as a great part is left out.

Ques. What was left out?—Ans. The part left out is the proceedings which took place after the “copy of extract of letter from Dr. Sampson” was “shewn to Mr. Brown.”

Ques. Do you mean that the questions put by you to Mr. Brown and over-ruled by the Commissioners, are left out?—Ans. One question was not over-ruled by the Commissioners, the question referred to, as having been put by me to Mr. Brown, is “Did you, prior to your appointment as a Commissioner to examine into the affairs of the Penitentiary, say, write, print, or publish, any thing derogatory to the character of the Warden of the Penitentiary?” This question was decided by Mr. Amiot, the then President, to be a proper one, as referring to what took place prior to the appointment of the Commission.

Ques. Were all the questions over-ruled by the Commissioners but this one?—Ans. I have given evidence to that effect in my preceding answer.

Ques. Is the minute which follows Mr. Brown’s deposition a true record, from the words, “a large number,” to the end?—Ans. Yes.

Ques. Is it stated in that minute that the questions put to Mr. “were all over-ruled by the Court”?—Ans. Yes, it is stated so.

Ques. You state in your direct examination, that in the list of charges sent you by the Commissioners for explanation, there was a “garbled extract from a letter of Dr. Sampson, by which the document was made to “bear quite different meaning from what it would have shewn, had the whole been given, please refer to page 255 of the charges, and say, if the words quoted, are represented to be a copy of the entire letter?—Ans. No, it does not state so, although Mr. Brown personally assured me it was.

Ques. Was not the letter from which the words referred to formed a portion, written and sent to you by Dr. Sampson, and was it not in your own possession, when the charges were sent to you, and during your defence?—Ans. It was written and sent me by Dr. Sampson and was in my possession.

Ques. Did the Commissioners write truly to the Government, when they wrote on 28th January, 1849, in regard to this transaction? “The Warden was charged with making a false return to the Surgeon, of punishments inflicted on an insane convict. In the formal charges the letter of the Surgeon to the Warden asking the return, was given in so far as it related to the point at issue; the latter part had no reference to the point at issue

and was not given. It happened that the words acts of violence, occur in the latter portion and the Warden looked on these words as favourable to his defence, and tried to make it appear that the latter portion, was kept back by the design of the Commissioners: the extract from the letter of Dr. Sampson was a full and fair extract, and it was not quoted in the charges as the entire letter; the idea of garbling a letter, the original of which was in Mr. Smith's own possession, is palpably absurd; it is true the Commissioners refused to allow Mr. Brown or Mr. Hopkirk to answer certain questions put by the Warden as to this letter, but they affected in no way the charges against the Warden and only tended to impugn the integrity of the Commissioners?—Ans. I do not know that the Commissioners ever wrote on the subject to the Government.

Ques. Which of the Commissioners were present when the conversation you allege to have taken place between you and Mr. Brown on this matter, occurred?—Ans. I am not quite certain, I do not know but the minutes will shew. It took place during Mr. Hopkirk's examination, and I recollect it from this particular circumstance; I asked the question from Mr. Hopkirk whether on a previous occasion, Mr. Brown had not stated that the letter as furnished in the charges contained the whole of what Dr. Sampson had written, and that I was not allowed to get from him the answer.

Ques. When had Mrs. Chase convict Reveille under her charge?—Ans. I do not recollect the exact date, but it was during the latter part of Mrs. Chase's attendance at the Penitentiary.

Ques. At what date did Mrs. Chase come to the Penitentiary as Assistant Matron?—Ans. It appears by her evidence that she went to the Penitentiary as Assistant Matron on the 15th November, 1847; I have no doubt it was the case.

Ques. On the occasion when you allege Mr. Bristow looked over Mr. Brown's shoulder at the Book of Evidence, and said to Mr. Brown "that will answer your purpose," what did he refer to, what was the point under examination?—Ans. I cannot now recollect, in consequence of the great quantity of evidence taken.

Ques. On what day did this occur; who were present; and did you or your Clerk make any minute of the circumstance?—Ans. I cannot recollect what day it was, nor the persons present; but no minute was taken by me; Mr. Brown and Mr. Bristow were certainly present, and I rather think Mr. Amiot also.

Ques. (*) You stated in your direct examination, that you furnished Mr. Macdonald, along with your petition, with a list of

all the witnesses, and references to the portions of the Report on which you relied to substantiate your allegations; please to refer to the said petition, and give the names of all the witnesses written upon it, as those you relied on to substantiate your charges.—Ans. George Sexton, Hugh Manuel, J. Hopkirk, S. Muckleston, E. Horsey, W. Smith, T. Costen, T. A. Corbett, T. Kirkpatrick, H. Sadlier, F. Brikerton, H. Smith, junr., T. Smith, E. Chase, W. Martin, A. Ballantyne, H. Grass, F. Little, T. Somerville, J. McMatron, R. Tyner, J. Watt, M. Pollard, Elizabeth Smith.

Ques. You stated in your direct examination that “in consequence of the absence and death of some of the witnesses “who could have proved the allegation contained therein, (i. e. “in your petition) it is impossible to say whether they are all “now susceptible of proof;” please to state which of the above named witnesses are now “dead?”—Ans. Hugh Manuel and E. Chase; as to the rest, I do not know.

Ques. Which of the said witnesses are “absent,” and please explain whether you mean by “absent” that it is impossible to procure them?—Ans. Martin is in the States; I do not know where to find all the others.

[*Cross-examination by Mr. Brown concluded.*]

Mr. *Smith* re-examined by Mr. Macdonald.

Ques. Specify the names of the witnesses mentioned in answer to question (*), whose residence you do not know?—Ans. William Smith, William Martin, A. Ballantyne, H. Grass, F. Little, T. Somerville, J. McMatron and R. Tyner.

Ques. Was Samuel Pollard a witness for you?—He was, and is now dead.

Ques. Was he a material witness?—He was, a very material witness.

Ques. On reference to your petition, do you find that you referred to the written evidence, as well as to the witnesses?—Ans. I did.

Ques. You said, in your cross-examination, you referred to Manuel’s evidence, as to threats made by witnesses against you, that the officers who gave evidence in your favor would be dismissed. Refer to page 1148 of minutes of the Commissioners, and say, whether the evidence which follows, contains the evidence you referred to. “Keely has told witness that “officers who gave testimony in favor of the Warden would be “dismissed, and more than him have said so. Skinner has “said so, he said Pollard and Manuel, and a good many “others who would be in the Warden’s favor, would be dismissed; Skinner said the Commissioners told him so when “he was before them.”—Ans. Yes.

Ques. Does the letter from Dr. Sampson to you, stated in the Book of charges, appear to be an extract?—Ans. Yes.

Ques. At the time Mr. Brown stated that it was a true copy of the original letter, and that he had copied it from the original, did he know you had the original?—Ans. No.

Ques. Had he any reason to suspect it was in your possession?—Ans. I think not, from what subsequently took place.

Ques. Had the Commissioners, or Mr. Brown as their Secretary, possession of the Books and Papers of the Penitentiary?—Ans. They remained in the office, and they had access to them.

Ques. Do you remember how many questions you put to Mr. Brown, when sworn as a witness?—Ans. I think twenty questions.

Ques. Did not Mr. Brown refuse to answer any of them?—Ans. He would not answer any one of them.

Ques. Did any of those questions refer to the garbling of this letter of Dr. Sampson?—Ans. I think the first question did.

Ques. Did you attempt to prove by other witnesses, that Mr. Brown had stated, that it was a copy of the whole letter from Dr. Sampson?—Ans. I did.

Ques. Who was the witness?—Ans. Mr. Hopkirk.

Ques. Were you allowed to put the question?—Ans. I was not.

Ques. Refer to page 1145 of the original Book of evidence. Do you find any, and if so how many questions, proposed to be put to Mr. Hopkirk, and not allowed?—Ans. Yes, twelve.

Ques. Will you read them as recorded there?—Ans. I do; they are as follows: “The following questions were proposed to be put to Mr. Hopkirk by Mr. Smith in the course of his examination, but were not allowed. “Did Guard Cooper tell you, that he had informed the Commissioners you had returned the five cords of wood you had from the Penitentiary? Did you come to me after the conversation you had with Cooper, to know if he had given evidence before the Commissioners respecting the five cords of wood had by you from the Penitentiary? What object had you in coming to me to ask whether Cooper had given evidence about the wood? Have you had any conversation with Cooper, relative to his evidence before the Commissioners respecting the cord wood? Did he tell you that he had informed the Commissioners you had returned the five cords of wood? Have you any reason to suspect through what channel information was conveyed to the Commissioners that you got pigeons from the Warden or Mrs. Smith? Have you heard a report, that the Commissioners are anxious to find grounds, on which

“to condemn the Warden? Would such reports tend to bias the witnesses against me? Have not the Commissioners appeared to be desirous to get from you all the evidence you could give against me? Did you hear a report shortly after the Commissioners came to Kingston, that the late Secretary Sullivan, had influenced the Commissioners to shelter Dr. Sampson? Were some of your brother Inspectors of opinion that Mr. Sullivan had done so? Has it been made a charge against you, in the Newspapers, that you had brought strangers to the Penitentiary?”

Ques. Will you refer to page 1165 of the original Book of evidence. Were any questions proposed to be put to Mr. Hopkirk by you, and not allowed, and if so, how many?—Ans. Yes, five, they were not allowed.

Ques. Will you read them as recorded there?—Ans. I do; they are as follows: “Were you told by Mr. Secretary Brown that you must be mistaken in your impression that ‘acts of violence’ were mentioned in Dr. Sampson’s letter to the ex-Warden respecting the convict James Brown? Did not the Secretary shew you a letter in the Book of charges against the Warden, to prove that you were mistaken? Did not the Secretary assure you that he made that copy from the original letter of Dr. Sampson? Did not the Secretary say that the copy shewn to you in the Book had been carefully compared by him, with the original, and that it contained the whole of the letter? Do you think it was Dr. Sampson’s wish that he should be bound over to keep the peace?”

Ques. Will you refer to page 1198 of the original Book of evidence. Were any questions proposed to be put to Mr. Edward Horsey by you, and not allowed, and if so, how many?—Ans. Yes, two.

Ques. Will you read them as there recorded?—Ans. I do, they are as follows: “While Mr. Edward Horsey was under examination, Mr. Warden Smith proposed to put to him the following questions, but was not allowed:—Was all your evidence taken down when you were examined before the Commissioners? Did it appear to you that in your examination, the Commissioners were desirous of getting information as to the state of the Penitentiary, or to prove charges against the Warden?”

Ques. At the time Mr. Brown refused to answer your questions, had you any witnesses to examine, and how many?—Ans. A great many to examine in chief, and several to cross-examine.

Ques. Why did you then close your defence?—Ans. Because I saw it was useless.

Ques. Why useless?—Ans. Because justice was not done me ; my questions were unanswered by the deision of the Commissioners.

Ques. In addition to Cameron, did you certify as to the good conduct of any other convicts?—Ans. I did.

Ques. Did any of those convicts give testimony in your favor?—Ans. I do not recollect; but I do not think they did; some might have done so.

Ques. Were any of the convicts, witnesses in your favor, pardoned?—Ans. I know of none.

Ques. Were you or were you not informed that convicts were promised their pardon for giving evidence against you?

Mr. *Brown*—I object to this question being put, on the ground that it refers to hearsay evidence.

Mr. *Macdonald*—The question was not put as against Mr. Brown, but to shew the fact that Mr. Smith said so to me and to show that his statement was followed up. The most conclusive evidence was afterwards obtained.

Mr. *Brown*—It is perfectly impossible to receive such evidence.

Mr. *Felton*—The question refers to two facts, one with reference to Mr. Smith, the other with reference to the fact whether he told Mr. Macdonald. The first part would not be evidence but the other would.

Mr. *Brown*—It would be the same as that which he has already testified, that he had no knowledge of it himself.

Mr. *Macdonald*—I will withdraw the question and put it in another shape.

Ques. Did you state to me that convicts had been promised their pardon on giving evidence against you?

Mr. *Brown* objected to this question also, it was of the same class as the questions that some objected to before. It could only prove that Mr. Macdonald had this information, but it would have no bearing upon the truth of the charges.

The motion was then put and the objection overruled on the following division:

Yeas :

Mr. Clarke,
Mr. Masson,
Mr. Stevenson,
The Chairman,—4.

Nay :

Mr. Sanborn,—1.

Ans. I heard so, and told Mr. Macdonald. I believe also it is to be found in the minutes of evidence.

The Committee adjourned till ten o'clock, A. M. to-morrow.

Wednesday, 16th April, 1856.

Committee met.

PRESENT:—The Chairman, Messrs. Stevenson, Felton, Sanborn, Clarke, Masson.

The Hon. Mr. Macdonald and Mr. Brown.

Minutes of yesterday were read and approved.

James Hopkirk, Esquire, Collector of Customs, Kingston, called in and examined by Mr. Macdonald.

Ques. Were you Inspector at the Penitentiary?—Ans. I was one of the Board of Inspectors.

Ques. During what period?—Ans. From the beginning of 1847 to the end of 1848 or beginning of 1849.

Ques. Were you examined as a witness before the Penitentiary Commissioners?—Ans. I was.

Ques. Who were the Commissioners present?—Ans. There were various Commissioners present on various occasions.

Ques. Was Mr. Brown there?—Ans. I am not certain that he was there upon every occasion, but he was generally there.

Mr. *Macdonald* here requested the witness to read over his evidence as given before the Commissioners on the affairs of the Penitentiary in 1849.

The Committee then adjourned until ten o'clock A. M. to-morrow.

Thursday, 17th April, 1856.

Committee met.

PRESENT:—The Chairman, Messrs. Felton, Sanborn, Masson, and Clarke.

The Hon. Mr. Macdonald and Mr. Brown.

On motion of Mr. *Felton*, the Committee adjourned until ten o'clock A. M. on Friday next.

Friday, 18th April, 1856.

Committee met.

PRESENT:—The Chairman, Messrs. Felton, Masson, Sanborn, The Hon. Mr. Macdonald and Mr. Brown.

The minutes of Wednesday were read, and Mr. Hopkirk testified, that, upon reading over his evidence in the original book, in regard to answer to question 278, he does not observe that Mr. Brown was absent upon any occasion on which he, Mr. Hopkirk, was examined.

Mr. *Hopkirk's* examination resumed :

Ques. How many days were you examined?—Ans. I speak from memory, when I say I was, I should think, 13 or 14 days.

Ques. Do you remember how many days you were examined in chief, and how many days in cross-examination?—Ans. I should think from 2 to 3 days in chief, and 11 in cross-examination ; but I speak from memory.

Ques. Who cross-examined you?—Ans. Mr. Brown, I think, on every occasion, as far as I can remember.

Ques. In what manner was that cross-examination conducted?—Ans. It was conducted with very great minuteness and length, and it seemed to me with a great desire to elicit everything unfavorable to the Warden.

Mr. *Brown* objected to this answer.

Objection over-ruled on the following division :

Yeas :

Mr. Stevenson,
Mr. Felton,
Mr. Masson.—3.

Nay :

Mr. Sanborn.—1.

Ques. Were you asked by Mr. Brown if you had spoken to any of the officers of the Penitentiary, about the evidence they were to give before the Commissioners, and if so, what was your answer?—Ans. I am not certain that the question was asked directly by Mr. Brown ; but in the course of my examination the question did come up as to whether I had spoken to any of them, and I stated that I never had.

Mr. *Brown* begged to submit that that answer ought not to be received as to the manner in which the examination was conducted. They allowed a great deal to go upon the minutes with regard to Mr. Smith that was not relevant to the case. The question was—should they go on to take this sort of evidence, or were they to confine themselves to matters of fact.

Mr. *Sanborn* understood that if the evidence of this nature was not objected to in the examination in chief, Mr. Brown would have no course but to cross-examine in the same manner. On other grounds he thought that this evidence ought to be inadmissible. It is not asking as to the facts but as to manner which must be a matter of opinion. Mr. Brown might have an unfortunate manner but that was not the question before them, that is not one of the charges against Mr. Brown.

Mr. *Macdonald* thought the whole manner and conduct of Mr. Brown ought to be brought up.

Mr. *Sanborn*—If that were so they ought to begin with the substantive charges first.

Mr. *Felton* could not see any objection to the testimony. The question came up in this shape, how far the examination of these witnesses was fairly conducted. If they were fairly examined by the Commissioners or by Mr. Brown, then any error which might occur, if there was any, or any misapprehension might be supposed to be from inadvertence. It ought to be taken as a whole.

Mr. *Stevenson* thought the question a proper one as showing the manner in which the examination was carried on. If that was a good one there could be no objection to it. It ought to be taken as a whole.

Mr. *Brown* objected both to question and answer.

Ques. Did Mr. Brown make any remark on your answer, and what was it?

Mr. *Brown* objected to that question. He did not apprehend that they were there to get the remarks of any of the Commissioners.

Mr. *Macdonald*—A remark is a fact.

Mr. *Brown* put in his objection as follows: Mr. Brown objects to this question, the conversation which occurred at the sittings of the Commissioners not forming part of this enquiry. The charges against Mr. Brown being specific acts.

Mr. *Macdonald* replied that the question was relevant as it leads directly to elicit the fairness or unfairness of Mr. Brown in his treatment of witnesses, or the fairness or unfairness of the manner in which the evidence was taken down.

Mr. *Brown* subsequently withdrew this objection and put his objection generally to the question without stating any specific reasons.

Objection over-ruled on the following division:

Yeas:

Mr. Felton,
Mr. Stevenson,
Mr. Masson.—3.

Nay:

Mr. Sanborn.—1.

Ans. He remarked sneeringly that the evidence would go for what it was worth.

Ques. Was your answer taken down?—Ans. I think it was, but am not quite certain.

(Mr. *Clarke*, a member of the Committee, entered the room.)

Ques. Did you remonstrate against the length of your examination?—Ans. I did.

Ques. What was Mr. Brown's answer?

Mr. *Brown* objected to this question.

Dr. *Masson* said that their object was to find out whether Mr. *Brown* was honest or not, and anything tending to show that was relevant.

Mr. *Sanborn* said that the question was objectionable on every ground. It was a leading question and was irrelevant.

Objection over-ruled on the following division :

Yeas :

Mr. Felton,
Mr. Stevenson,
Mr. Masson,
Mr. Clarke.—4.

Nay :

Mr. Sanborn.—1.

Ans. He said that I had given strong evidence in favor of the Warden, and that it was necessary to break it down, or words to that effect ; stated, also, either on that occasion, or on another, that they (meaning the Commissioners) must support their own witnesses.

Ques. Did Mr. Brown take down your evidence correctly?

—Ans. I think before it was finally agreed to, it was generally taken down tolerably fairly, but I had great difficulty in getting Mr. Brown to take down my answers as I gave them. I may add that on many occasions, he would not take down the explanations which I wished to make.

Ques. Were the words in which the evidence was taken down, before alteration, more favorable or unfavorable to the Warden, than the words you actually used?—Ans. I must explain that in many instances, Mr. Brown changed my words into words of his own, and proposed putting them down in his own words. These alterations appeared to me, in almost every case, to be unfavorable to the Warden, and we had frequent discussions upon the subject ; Mr. Brown often endeavouring to persuade me that what he proposed to put down, or had put down, was of exactly the same meaning in effect, as what I had stated, when I considered the meaning was very different ; we had constant disputes on the subject ; I told him I could not see why he was so determined not to take my own words, and that I would not allow him to put words in my mouth that I had not used ; I may also mention that when I had given an answer which I considered quite plain and distinct, he would frequently pause a considerable time before taking it down, and then repeat it in a form that gave it a different meaning.

Ques. Are you a Scottish Advocate and accustomed to taking down evidence?—Ans. I have been accustomed to see evidence taken down, and to take it myself, since about the year 1820 till within these few years, and I have been an Advocate since the

year 1826, and have both seen a great deal of evidence taken down, and have myself taken down a great deal.

Ques. Do you consider your examination was conducted fairly or unfairly by Mr. Brown, or with the usual courtesy evinced towards witnesses?—Ans. On several occasions I consider there was a considerable want of courtesy, and there was always a great reluctance in taking down anything I had stated favorable to the Warden; on some occasions such statements were not taken down until after a great deal of discussion.

Ques. Had you not been a professional man, and accustomed to the taking and giving of evidence, could you have prevented your evidence from being perverted?

Mr. *Brown* objected to this question.

Objection over-ruled.

Ans. I think not; for this reason, that if I had permitted my evidence to be taken down in the words in which Mr. Brown proposed to record it, it would have borne a different meaning to what I intended to convey; and sometimes, when Mr. Brown repeated my answers in his own words, I could not, until after some consideration, perceive in what the difference in the meaning consisted, although there was a very considerable difference.

Ques. Were you asked at any time about a letter from Dr. Sampson to the Warden?—Ans. I was asked a question, in answering which I referred I think to a letter from Dr. Sampson to the Warden, expressing my opinion that that letter contained some expressions as to “acts of violence” on the part of the convict named Brown. Before taking my answer down, Mr. Brown referred to a book, in which was what he stated to be a copy of that letter; but whether it was engrossed in the book or on a separate sheet drawn from the book, I cannot exactly now remember. In that copy there was no mention of “acts of violence;” he shewed it to me in order to shew that I was mistaken in my impression, and I think he also shewed it to the Warden. Mr. Smith said he thought there had been “acts of violence” mentioned, and that some parts of the letter were omitted, and such was my impression also; but Mr. Brown said that he had compared it carefully with the original; I then said I spoke from memory and supposed I must be mistaken if that was the case.

Ques. Was that letter produced then, or at a subsequent time?—Ans. The original letter was produced, but whether on that day, or on a subsequent day, I do not remember; but it was produced and I was examined on it.

Ques. By whom was it produced?—Ans. My impression is that it was produced by Mr. Smith, but I would not like to speak with positive certainty on that fact.

Ques. Was the paper which Mr. Brown alleged to be a copy of this letter, in fact a true copy of the said letter?—Ans. It was not, because it did not contain the whole of it.

Ques. Do you remember on any occasion, when under cross-examination, having your previous evidence referred to by Mr. Brown, and if so, state the circumstances?—Ans. I remember many occasions on which my previous evidence was referred to by Mr. Brown; I remember one in particular: Mr. Brown was taking down my evidence in one part of the Book of Evidence. He turned back some leaves of the book and appeared to refer to something in the book,—he then said: “I see in your former examination you swore so and so.” It appeared to me that it was not what I had sworn to and I said so. Mr. Brown assured me he had just referred to my evidence, and that I had sworn to it; he then said: “These are your very words.” I then said, if so, I wish to see it, as it is not correctly taken down, and I requested to see it. He said I will not shew it you, or words to that effect; I said I thought I had a right to see, it and Mr. Amiot, the Chairman, decided that I should see it. Mr. Brown then said that it was of no consequence as he would not press the question. I still insisted upon seeing it and I was allowed to see it, and it was not as Mr. Brown had stated it. I asked Mr. Brown how he came to say that I had given such evidence. He answered that the meaning was the same or was to the same effect. I said that he said he was using or reading my very words; he said “Oh well, it is the same thing” or words to that effect.

Ques. Did not Mr. Brown on that occasion quote your evidence falsely?

Mr. *Brown* would submit that they had the fact stated and that the opinion of Mr. Hopkirk was of no consequence. The Committee could judge of the facts for themselves. The whole of the facts had been brought out and now they asked the opinion of the witness on the people who had judged him. He would put it to the Committee if they would take the opinion of Mr. Smith or him (Mr. Brown)—on these grounds he objected to the question.

Dr. *Clarke* said it was not a matter of opinion, it was a question of fact.

Mr. *Macdonald* said that it was as much a matter of fact as if he were to ask Mr. Sanborn if that piece of paper was black or white, it was no more a matter of opinion than that was. He had a right to put the question in a dozen different shapes if he could elicit the point more clearly. It was a matter of fact whether the evidence was quoted fairly or not.

A good deal of discussion ensued on this point.

Mr. *Felton* said that this question covered the whole ground and was most pertinent to the matter before them. On the other hand if the witness were called upon to express an opinion on a matter on which he had a right to express an opinion he might do so. It is a matter of every day occurrence that opinions are asked of witnesses. In either case it was a pertinent question and might be put in any shape.

Mr. *Macdonald*—Suppose a man said that he saw a person go into a shop and take away certain things, could he not then be asked whether this person did not in fact steal those things?

Mr. *Sanborn* thought that the question ought not to be allowed. Objection over-ruled on the following division.

Yeas :

Mr. Clarke,
Mr. Felton,
Mr. Masson,
Mr. Stevenson,—4.

Nay :

Mr. Sanborn,—1.

Ans. Referring to my previous evidence, he quoted as “ my very words” words which I had not used, and which were not recorded in the Book of Evidence ; therefore, I can come to no other conclusion, than that he did quote my evidence falsely.

Ques. Had you subscribed that portion of the evidence from which Mr. Brown appeared to read your testimony at the time he so appeared to read it?—Ans. I had.

Ques. Did Mr. Brown ever warn you as to the evidence you were to give in answer to questions put to you?—Ans. I remember on one occasion, before the answer at all events, was taken down, Mr. Brown stating to me that if such were my impressions, as conveyed in my answer, I must be mistaken, as he and others had noted the facts differently from what I stated them. I told him, that I did not see why he should tell me this ; that I was here to speak of what I recollected, or of what my impression was, and that whether that recollection, or impression was correct or not, I must state it as I believed it to be true. Mr. Brown said he did not doubt I would state the truth, he merely mentioned it to shew me, that if my impression was different from theirs, I must be mistaken, or words to that effect.

Ques. Do you remember giving evidence about some greenhouse plants, and if so, state the circumstances?—Ans. Yes. Mr. Brown was examining me about some plants which had been presented to me by Mrs. Smith ; I had stated that I had got them from Mrs. Smith. Mr. Brown in repeating my answer, added “ from the Penitentiary garden.” I stopped him and said I did not say so ; he said “ I suppose they came from somewhere, and it is necessary to identify them ;” I said “ Well, if you wish to be particular put down from the Warden’s private house.”

Mr. Brown then said "it was of no consequence." I remarked he thought it of consequence when he supposed they came from the Penitentiary garden, but did not seem to consider it so when he heard they came from the private house; I think it was ultimately taken down that they came from the house, but I am not certain.

Ques. Were you asked about the Penitentiary carts taking your furniture from the wharf to your house, and state the circumstances?—Ans. Yes, I remember I was asked about them, and I think I was asked whether the Penitentiary carts had taken them. I stated I had paid a man named Conlin, and I produced his receipt. Mr. Brown declined taking down that part of my answer, saying that the previous part of my answers stating that the Penitentiary carts had not taken them, would be sufficient; I was very anxious to have the whole taken down, and there was a good deal of discussion about it; but whether I prevailed in having it taken down at that time, I do not remember.

Ques. Have you known any instances in which keepers and guards were intimidated by Mr. Brown in giving their evidence, or in consequence of giving their evidence?

Mr. *Brown* objected to this question.

Objection over-ruled on the following division :

Yeas :

Mr. Clarke,
Mr. Felton,
Mr. Masson,
Mr. Stevenson,—4.

Nay :

Mr. Sanborn,—1.

Ans. I remember a case of a guard named Manuel; I had caused him to be subpoenaed as a witness in a prosecution against McCarthy for perjury; I had also caused Mr. Brown to be subpoenaed as a witness: they were both sitting in Court, Manuel somewhere behind Mr. Brown. Mr. Brown turned round and appeared to perceive Manuel, and went up to him, touched him on the shoulder and spoke to him. They had some apparently exciting words together, but what they were, of course I did not hear, but Manuel came to me immediately after Mr. Brown left him, and said Mr. Brown had dismissed him from the Penitentiary for being a witness for me. I think this was in the Fall Assizes of 1849. I complained to the Government and wished an investigation into the case, as I felt bound to see justice done to Manuel, as he considered I had been the means of depriving him of his bread.

Ques. Was this charge against McCarthy connected with his evidence given before the Commissioners?—Ans. Yes, it was.

Mr. *Macdonald* here closed the examination of this witness.
The Committee adjourned until 10 o'clock, A. M., on Monday next.

Twenty-sixth Day—Monday, 21st April, 1856.

PRESENT :—Messrs. Masson and Sanborn.
Hon. Mr. Macdonald and Mr. Brown were present.
The Committee adjourned for want of a quorum until 10 o'clock A. M., to-morrow.

Twenty-seventh Day—Tuesday, 22nd April, 1856.

Committee met—

PRESENT :—The Chairman, Messrs. Felton, Masson, Stevenson, Sanborn.

The Hon. Mr. Macdonald and Mr. Brown were present.
The minutes of Friday were read and approved.

Mr. Hopkirk cross-examined by Mr. Brown.

Ques. Have you personal knowledge that Mr. Brown obtained the pardon of murderers confined to the Penitentiary, to induce them to give false evidence?—Ans. I have no personal knowledge of it, I know a murderer was pardoned about that time, but whether at Mr. Brown's instigation or not, I do not know, or for what.

Ques. Who was that murderer, and when was he pardoned?—Ans. A man of the name of Cameron: I cannot say when he was pardoned, it was after the sitting of the Commission, but whether after it closed, I do not know.

Ques. Have you personal knowledge that Mr. Brown obtained the pardon of any convict to induce him to give false evidence?—Ans. I have no personal knowledge.

Ques. Have you personal knowledge that Mr. Brown suborned convicts to commit perjury?—Ans. I have no personal knowledge.

Ques. Have you personal knowledge that Mr. Brown altered the written testimony given by witnesses before the Penitentiary Commissioners, after their evidence was closed and subscribed?—Ans. I have not seen any evidence but my own. I see a great number of alterations upon that evidence, but whether they

were all made before my signature, or since; my memory does not serve me to ascertain.

Ques. Did you, last week, at the request of Mr. Macdonald, read over carefully the whole of your evidence as it now stands in the official record?—Ans. I did, at the request of Mr. Macdonald read over my evidence, but I cannot say I examined it very minutely, as it is so voluminous.

Ques. Can you point out any passage in your evidence that you know to have been altered since it was closed and subscribed?—Ans. I cannot.

Ques. Have you personal knowledge that in the evidence of any witness, as subscribed by him, there is any testimony recorded falsely?—Ans. I have not.

Ques. When you were under examination before the Penitentiary Commissioners, were your answers read aloud by the Secretary, sentence by sentence, as he recorded them, and amendments suggested by you, made thereupon, before proceeding to the next question?—Ans. I think in most cases, the Secretary repeated my answers, some times in my words and sometimes in his own; when I objected, they were sometimes corrected before being taken down, and sometimes afterwards, before signature.

Ques. When your examination was closed for the day, was not your whole deposition re-read to you, and your distinct assent asked and obtained to its correctness?—Ans. Yes.

Ques. Was not the assent of the Warden in like manner asked and obtained, to the correctness of each deposition before it was signed?—Ans. I cannot say as to that.

Ques. After your assent had been so given, were not the following words in every case written after your deposition? “The foregoing evidence was read aloud; Mr. Warden Smith declared the evidence correctly taken down: witness did the same, and signed it.” Ans. I have no doubt it was so.

Ques. Were these words then read aloud, and the book handed to you for signature; and does not every deposition you made before the Commissioners, bear this record, with your signature attached?—Ans. I see that it bears such records, and I have no doubt it was so.

Ques. Were three Commissioners invariably present while you were under examination?—Ans. Yes, I have no doubt they were.

Ques. You have stated in your examination by Mr. Macdonald, that while you were giving evidence, that you had not spoken to any of the officers of the Penitentiary about the evidence they were to give before the Commissioners—Mr. Brown said sneeringly that it would go for what it was worth; are you quite

sure it was in regard to this question the observation was made?

—Ans. I am quite sure.

Ques. Who was examining you at the moment, Mr. Smith or the Commissioners?—Ans. I am not certain, but upon recollection I rather think it must have been Mr. Smith.

Ques. Which of the Commissioners were present when this occurred?—Ans. I cannot speak with certainty as to that.

Ques. Did you make any remark on this observation of Mr. Brown?—Ans. Yes, I think I did; I think I said that if the observation had been made elsewhere, I should have noticed it differently, or words to that effect.

Ques. On your referring to Mr. Brown's observation, did not Mr. Brown at once explain, that he had no intention of speaking discourteously, but merely referred to the irrelevancy of the testimony?—Ans. I think Mr. Brown did make some explanation or apology, after some words had passed between the Commissioners and myself on the subject.

Ques. You have stated in your examination by Mr. Macdonald, that while you were under examination before the Commissioners, you remonstrated against the length of your examination, when Mr. Brown remarked, "You have given strong evidence in favor of the Warden, and it is necessary to break it down," and again, that the Commissioners "must support their own witnesses;" which of the Commissioners were present when (as you allege) these observations were made?—Ans. It is impossible for me to say at this distance of time, but I think the expression "our own witnesses" in reference to those who had given testimony against the Warden, was used more than once.

Ques. Did the Commissioners make a true or a false statement to Government when they wrote officially on 28th January, 1849, while the enquiry was yet proceeding, in reply to an attack made on them in the House of Assembly, by Mr. Attorney General Macdonald as follows: Mr. Macdonald is reported to have said, "one witness was cross-examined for twelve and a half consecutive days, and when he asked why he was subjected to so severe an examination, he was told, '*You are the chief witness for the Warden, and it is our business to destroy your testimony.*'"

"The witness alluded to is James Hopkirk, Esq., when the evidence is published it will be seen whether the Commissioners were blameable in making his examination so minute, when his own proceedings were being inquired into, as to certain charges against the Warden, Mr. Hopkirk said "You are trying me, not the Warden, why do you inquire in this way into my conduct?" or words to that effect, Mr. Brown said, "You are chief witness for the Warden, and it is our duty to show how much you are yourself mixed up in these very transactions," and Mr. Bristow

added, " every point on which you have been examined, was brought up in your direct examination by the Warden?"

Question objected to by Mr. *Felton*.

Objection over-ruled on the following division.

Yeas:

Mr. Sanborn,
Mr. Stevenson,
Mr. Masson,—3.

Nays:

Mr. Felton,
The Chairman,—2.

Ans. I do not see how it is possible for me to give a correct answer to the question as put; I was not present when the statement was said to have been made by Mr. Macdonald, neither do I know what communication the Commissioners made to the Government.

Ques. You have stated in your examination by Mr. Macdonald, that before your evidence "was finally agreed to, it was generally taken down tolerably fairly." Can you point out an amendment of any passage in your evidence which you asked to have made and which was not made?—Ans. Without a more minute examination of my evidence, I cannot at this distance of time point out what amendments were agreed to and what were not, but I know I had constant discussions as to the words in which my evidence was to be taken down, and there were frequent discussions as to explanations, which I wished inserted, which sometimes were, and sometimes were not agreed to.

Ques. Was not your deposition in every case amended to suit you, before signature?—Ans. I insisted upon it being amended, as far as I considered it necessary, before signature.

Ques. Would you, a Lawyer of 30 years' standing have put your signature to a deposition, with a written declaration attached to it, that your evidence was "correctly taken down" unless every amendment which you considered in the least material, had been made in it, before signature?—Ans. No.

Ques. You have stated that Mr. Brown wrote down words in your deposition different from those you used, that you had great difficulty in getting him to alter them, and that "in almost every case" the words used by Mr. Brown were more unfavourable to the Warden than those you actually used. Did this frequently occur?—Ans. There were very frequent discussions between Mr. Brown and myself with reference to my answers, and as to the words in which he proposed taking them down, or had taken them down.

Ques. Then, do you mean to say, that the perversion of your evidence by Mr. Brown, charged in your answer to question 289, did not consist in his writing down incorrectly what you had said, but in his repeating your testimony to you, to see if he had correctly apprehended you before he commenced writing it

down?—Ans. I think there was a peculiar colour given to my evidence, sometimes in the one case, and sometimes in the other, which would have given it a different meaning from what I intended.

Ques. Was this “peculiar colour” which you say was given to your evidence by Mr. Brown, frequently so given in the evidence as written down by Mr. Brown?—Ans. Sometimes before it was written down, sometimes after.

Ques. Were the occasions frequent on which Mr. Brown so wrote down your words, different from those you had used, when you had great difficulty in getting them altered, and when the words used by Mr. Brown, were more unfavourable to the Warden, than those you actually used?—Ans. Every one accustomed to taking down evidence, must be aware, that even a slight alteration in the turn of an expression, will make a very great difference in the meaning intended to be conveyed, and I had very great difficulty in getting Mr. Brown to take down my own words. These difficulties were of frequent occurrence. There were also frequent discussions as to altering what had been taken down.

Ques. I must repeat my questions. Did it frequently happen that Mr. Brown wrote down words in your deposition, different from those you used, that you had great difficulty in getting him to alter them, and that the words used by Mr. Brown were more unfavourable to the Warden than those you actually used?—Ans. There were frequent occasions in which he proposed to write them or did write them down, and in which I had great difficulty in getting him to alter them.

Ques. I am not asking you as to what *he proposed* to write down, what I wish to know is, did it frequently happen that *he wrote* down your answers under the circumstances alleged?—Ans. I have already stated, that after the answers were written down, I had frequent occasions to have them altered.

Ques. On those occasions, were the words at first written down by Mr. Brown “in almost every case,” more unfavourable to the Warden than those you afterwards made him record?—Ans. So it appeared to me at the time, so much so, that I remember remarking jokingly, that it appeared, as if they were trying the Warden criminally, and that I saw an Attorney General (alluding to Mr. Brown,) and a Solicitor General (alluding to Mr. Bristow,) but that I saw no counsel for the prisoner, neither did the Judges appear to act as counsel for him.

Ques. Please take the original Books of Evidence and shew those passages in your depositions which you allege you got Mr. Brown with difficulty to alter, and which were more favourable to the Warden after alteration than as written down by Mr. Brown?

The Committee adjourned until 10 o'clock A. M. to-morrow, leaving Mr. Hopkirk and Mr. Brown *in committee room* for the purpose of referring to the original record of evidence, and preparing his answer to this question.

—————

Twenty-eighth Day—Wednesday, 23rd April, 1856.

PRESENT :—The Chairman, Messrs. Felton, Sanborn, Stevenson, Clarke, Masson,—6.

Hon. Mr. Macdonald and Mr. Brown were present.

After the adjournment of the Committee yesterday, Mr. Hopkirk handed into the Clerk the following answer to question 336: “I have looked over my testimony, as taken down in the original record of evidence, and signed by me, and I find a great number of alterations and interlineations; some of these occur on almost every page, but at this distance of time it is impossible for me to remember the precise points in my evidence in which these alterations occur, which were material or otherwise, or where a different turn of expression might convey a different meaning from what I intended; neither can I now remember what alterations I got Mr. Brown to make with difficulty or otherwise; I see, however, on page 919, the words “for acts of violence” interlined, and I am under the impression that this was a material alteration, which Mr. Brown took down with reluctance.”

Mr. *Hopkirk's* cross-examination resumed.

Ques. Is the passage in your testimony, to which you have referred in your last answer, as to be found in page 919, as follows:

As originally written.

“Recollects of a letter from
“Dr. Sampson, asking for a re-
“turn of punishments inflicted
“on James Brown, being laid
“before the Board; thinks the
“Warden mentioned on that
“occasion, that some of the re-
“ports could not be found;
“thinks general directions were
“given to the Warden to furnish
“all the punishments inflicted
“on Brown, which could be
“found, but merely states so
“from recollection.”

As amended.

“Recollects of a letter from
“Dr. Sampson, asking for a re-
“turn 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 fur-
“nish *a list of* all the punish-
“ments inflicted on Brown, *for*
“*acts of violence*, which could
“be found; but merely states
“so from recollection.”

Ans. It is, I think, with one exception only, but I am under the impression that the words "but merely states so from recollection" were added after the answer was amended, by the insertion of the words "acts of violence," in consequence of Mr. Brown having endeavored to persuade me that I was wrong in supposing these words were in the original letter, and his having shewn what he said was a true copy of that letter, but which did not contain them.

Ques. Do you mean that the words "but merely states so from recollection" were added at your request, after the suggestions made by Mr. Brown?—Ans. Yes, I do; such is my impression.

Ques. Have you a distinct recollection that this passage in your evidence was originally recorded by Mr. Brown different from what you gave it?—Ans. I have a perfect recollection, on reference to the evidence, of my having been staggered as to my speaking correctly, when I said that Dr. Sampson's letter contained reference to "acts of violence," in consequence of Mr. Brown's producing what he said was a copy of that letter, which contained no reference to such acts; and I have not the least doubt, but that the words "merely states so from recollection" were added in consequence of that; I have also no doubt that the words "acts of violence" were inserted at my own request, after Mr. Brown had taken my evidence down, and that I had used the expression "acts of violence" when I gave my evidence at first.

Ques. Have you a distinct recollection that you had difficulty in getting Mr. Brown to insert the words "for acts of violence?"—Ans. I have a most distinct recollection of Mr. Brown's endeavoring to persuade me that there could be no reference to "acts of violence" in the original letter, and that it was not until after considerable discussion, that he did insert the words "acts of violence" at my request.

Ques. Are you quite sure that it was at that point of your examination, that reference was made to Dr. Sampson's letter?—Ans. On reference to the evidence itself, I can have no doubt of it.

Ques. Then do you declare distinctly, that Mr. Brown was unwilling to interline the words "for acts of violence," and that his avowed reason for that unwillingness was, because "acts of violence" were not mentioned in Dr. Sampson's letter of the 24th January?—Ans. I am perfectly certain that Mr. Brown was unwilling to interline the words "for acts of violence" and that he endeavoured to persuade me, that they were not in the original letter, but what the reason for that unwillingness was, I can only conjecture.

Ques. Did Mr. Brown give no reason for his alleged unwillingness to interline the words "for acts of violence?"—Ans. He

said they could not be in the original letter, as the alleged copy of that letter which he produced, contained no reference to them, and that he had carefully compared it with the original.

Ques. Please to look again at the passage in your evidence, and say whether the words "acts of violence" as interlined, had not exclusive reference to the directions given by the Board of Inspectors (of which you were a member) to the Warden, for the preparation of a list of punishments inflicted on Brown?—
Ans. They have reference to Dr. Sampson's letter, which was the foundation of the directions given to the Warden, to furnish the list of punishments referred to, and I think the purport of the cross-examination was to shew that the Warden had made a false return, when he had only given a list of the punishments inflicted "for acts of violence," while Mr. Brown wished to shew, that he had been ordered to give a list of all punishments inflicted on Brown.

Ques. Was it true, that "directions were given (by the Board) to the Warden to furnish a list of all the punishments inflicted on Brown," or was the order for a list of punishments "for acts of violence" only?—Ans. I can only speak as to what I said in my original evidence before the Commissioners in 1848, in which I state, that 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; I have no reason to doubt the correctness of that evidence.

Ques. Was there a minute made by the Board of Inspectors, for the guidance of the Warden, in preparing the said list?—
Ans. I cannot say, without reference to the minute book of the Board of Inspectors.

Ques. Be good enough to refer to your own cross-examination before the Commissioners, page 1069, on this very passage of your evidence, and say if you had not a copy of the identical minute of the Board of Inspectors referred to, placed in your hand, and if you did not prove it to have been in the following words: "It appears from his (Dr. Sampson's) letter of the 24th ult., 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 requested?"—
Ans. I perceive that the quotation in the question is correctly made from my evidence, and I have no doubt but that the evidence is taken as I gave it, but whether the cross-examination was upon this very passage, I am not prepared to say.

Ques. Now Sir, was it a list of "all the punishments" or "all the punishments for acts of violence" that the Board, of which you were a member, gave directions to the Warden to

prepare?—Ans. It seems to be the several amounts and descriptions of punishments referred to in two letters of Dr. Sampson, one of the 18th and one of the 24th January, 1848.

Ques. Is it not evident then that the words in your evidence as originally recorded by Mr. Brown, namely: “thinks general directions were given to the Warden to furnish all the punishments inflicted on Brown which could be found” were strictly true, and in accordance with the recorded instructions of the Board to the Warden?—Ans. I cannot answer with precision, but I am certain that I spoke as on page 919 with reference to a letter of Dr. Sampson’s which did contain the words “acts of violence,” and which Mr. Brown assured me did not contain them or could not have contained them.

Ques. Are you still quite confident, that the reference to Dr. Sampson’s letters was on that occasion; do you feel so confident of it that you could swear to it?—Ans. I have no doubt of it, and I think I would have no hesitation in swearing that it was so, to the best of my knowledge and belief.

Ques. Is it not now evident, that the words, as you made Mr. Brown amend them, namely: “thinks general directions were given to the Warden to furnish a list of all the punishments inflicted on Brown” “for acts of violence” were false and not in accordance with the recorded instructions of the Board to the Warden, to furnish a statement of “the several amounts and descriptions of punishments inflicted on the convict?”—Ans. In giving my evidence as at page 919 it will be observed, that I state, that I think, in reference to a letter of Dr. Sampson’s therein referred to, “that directions were given to the Warden to furnish a list of all the punishments inflicted on Brown for acts of violence,” the words as I caused them to be taken down were not false but correct. Had I allowed them to be finally recorded as originally written, and had I so sworn to them I should have sworn to what I believed at the time to be false.

Adjourned until 10 o’clock A. M., to-morrow.

Twenty-ninth Day—Thursday, 24th April, 1856.

PRESENT:—The Chairman, Messrs. Masson, Sanborn, Clarke, Stevenson,—5.

Honorable Mr. Macdonald and Mr. Brown were present.

Minutes of yesterday read and approved.

Mr. *Hopkirk’s* cross-examination resumed.

Ques. In your examination by Mr. Macdonald you have stated that while you were under examination before the Commissioners, you referred (in replying to a question) to a letter of Dr. Sampson’s to the Warden, as containing “some reference to acts of violence” by a convict; that Mr. Brown thereupon referred you to a document, (either in a Book or a separate sheet, you cannot

remember which) and stated that it was a copy of that letter; that in that document there was no mention made of "acts of violence;" that Mr. Brown, as you thought, shewed it to Mr. Smith, who said he thought "acts of violence" had been named in it; that you at first said, that such was your impression, but afterwards said, you spoke from memory and must be mistaken if that was the case; that the original letter was produced on that, or a subsequent day you think, by Mr. Smith, and that it then appeared that the copy shewn you by Mr. Brown did not contain the whole of the letter, but only a part; please to state if the occurrence you here alluded to, was the same incident of which you have been speaking in connection with the passage of your evidence on page 919 of the original minutes of evidence?—Ans. I am now speaking of the same occurrence which I alluded to in my examination by Mr. Macdonald; and I have no doubt that this is the same occurrence recorded at page 919 of my evidence before the Penitentiary Commissioners.

Ques. Do you then state distinctly that it was on this occasion (page 919) that Mr. Brown produced the extracts from Dr. Sampson's letter, and convinced you that you "must be mistaken" in supposing "acts of violence" were mentioned in it?—Ans. I have no doubt that it was on this occasion. Mr. Brown produced what he alleged to be a copy of Dr. Sampson's letter, and endeavoured to convince me that I must be mistaken in supposing that "acts of violence" were mentioned in the original letter.

Ques. Then, do I understand you to say, that he did not convince you; and that your recorded testimony was unaffected by what passed?—Ans. My impression still was that "acts of violence" were in the original letter, though Mr. Brown, by assuring me that he had compared the copy he produced with the original, did somewhat stagger me as to the possibility of my being mistaken, and I consequently added the words "but merely states so from recollection" I think I would not otherwise have added these words.

Ques. Was it on the day you gave the evidence recorded on page 919, that the whole of Dr. Sampson's letter was produced?—Ans. I have already stated that whether the original letter was produced on that day or on a subsequent day, I do not remember, but it *was* produced.

Ques. At the moment when (as you allege) Mr. Brown made this mis-representation as to the contents of Dr. Sampson's letter was not the original letter in Mr. Warden Smith's possession, and had it not been previously considered by the Board of Inspectors, of which you were a member, and an official reply made to it, by the Warden under instructions of the Board?—Ans. I do not know that it was in Mr. Smith's possession at the time, but

I have no doubt it had at some time previous, been laid before the Board of Inspectors of which I was a member.

Ques. Which of the Commissioners were present at the time Mr. Brown shewed you this extract?—Ans. I do not exactly remember, but it would appear from the original minutes now shewn to me, that Mr. Amiot, Mr. Bristow, and Mr. Brown were present.

Ques. Was it the Warden or Mr. Brown who first produced, and placed in your hands the entire letter of Dr. Sampson of 24th January?—Ans. I have already stated that my impression is, it was produced by Mr. Smith; but I am not perfectly certain of this.

Ques. If Mr. Smith has declared before this Committee, that he first produced the said letter from his pocket; did he declare truly?—Ans. I have no reason to doubt that he declared truly; as it corresponds with my own impression.

Ques. Were you under direct examination by the Warden or by the Commissioners, when you allege Mr. Brown shewed you the extract from Dr. Sampson's letter, and made the statement in regard to it?—Ans. I have no doubt now, from reference to the minutes of the Commissioners, that it was when under examination by Mr. Smith.

Ques. Was the entire letter of Dr. Sampson produced for the first time, while you were under direct examination by the Warden, or cross-examination by the Commissioners?—Ans. I cannot distinctly call to recollection.

Ques. When the entire letter was produced, did Mr. Smith proceed to interrogate you on the subject of Mr. Brown's alleged statement that the extract from Dr. Sampson's letter was the whole letter?—Ans. After the entire letter had been produced, but whether immediately after its production, I cannot say, Mr. Smith interrogated me as to whether Mr. Brown had not alleged, that the copy which he had produced previously, was a true copy of the original, and I think he put questions to me in various shapes to elicit that fact; but I was not allowed to answer them as they were objected to by Mr. Brown.

Ques. On what day was the evidence recorded on page 919 given?—Ans. On reference to the evidence, it would appear to have been given on 13th December, 1848.

Ques. Please examine the record of evidence of that day, and say, if Mr. Smith examined you on that day as to Mr. Brown's alleged mis-statement, in regard to the extract from Dr. Sampson's letter?—Ans. I see no notice in the original evidence of any such examination on that day.

Ques. Now please turn to your evidence of 3rd January, 1849, commencing on page 1162, and say if Mr. Smith did not on that

day examine you fully in regard to Dr. Sampson's said letter of 24th January, and if there are not recorded at the end of your deposition of that day, certain questions as having been put to you by Mr. Smith upon Mr. Brown's alleged mis-statement, in regard to the extract from Dr. Sampson's letter, but which were over-ruled by the Commissioners?—Ans. On reference to my evidence of 3rd January, 1849, I perceive on page 1165 and 1166, certain questions recorded as having been proposed by Mr. Smith to be put to me, and not allowed. I can have no doubt that these questions referred to the copy of Dr. Sampson's letter, produced by Mr. Brown as a true copy; but whether that letter was dated 18th or 24th January, I do not know, nor do I see that Mr. Smith examined me fully, as he was not permitted to do so.

Ques. Is the following passage a portion of your evidence, permitted by the Commissioners to be recorded on that day: "Witness is shewn the copy of "charges transmitted by the "Commissioners 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?"—Ans. Yes, that is a portion of my evidence on page 1162.

Ques. Is the following passage also recorded as a portion of your testimony on that day? "Witness is asked to compare the "said copy with a letter in Dr. Sampson's handwriting, 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 is not given?"—Ans. Yes, that is recorded in my evidence.

Ques. Are you not now satisfied that it was on this day—the 3rd January, 1849, and not on the 13th December, 1848—that Mr. Smith produced Dr. Sampson's letter, and the alleged mis-statement of Mr. Brown in regard to it occurred?—Ans. No, I am not satisfied that it was first produced on that day, it may have been produced previously, although I was, examined regarding it on that day.

Ques. Did Mr. Smith examine you on any day between the 13th December, 1848, and the 3rd January 1849?—Ans. I see from the original minutes, that I was examined by Mr. Smith on the 14th December, 1848, and the 2nd of January, 1849, and these are the only days upon which it appears I was examined. I merely speak from reference to the books of evidence taken before the Commissioners.

Ques. Please examine your evidence on these two days—14th December and 2nd January—and say, if you were examined on either of these days in regard to Dr. Sampson's letter, or as to

any alleged mis-statements of Mr. Brown?—Ans. I have examined my evidence on these two days, and I find nothing there recorded regarding any examination as to the letter of Dr. Sampson, alluded to.

Ques. Are you not now satisfied that you were entirely wrong insaying that discussion arose on the 13th December, 1848, as to the contents of Dr. Sampson's letter, but that it must have been on 3rd January, 1849, that the alleged mis-statement of Mr. Brown in regard to it occurred?—Ans. No, I am still of the same opinion.

Ques. Is it not clear that if the alleged mis-statement had been made on 13th December, while you were under direct examination by Mr. Smith, that before closing his direct examination on 14th December he would have put those questions which he did actually put on the 3rd January, 1849?—Ans. I do not see that it is clear at all.

Ques. Did the Commissioners write truly or untruly to the Government when they wrote officially on the 29th January, 1849, to the Provincial Secretary—while the Commission was yet sitting? as follows: "The Warden was charged with making a false return to the Surgeon, of punishments inflicted on an insane convict in the formal charges. The letter of the Surgeon to the Warden asking the return, was given in so far as it related to the point at issue; the latter part had no reference to the point at issue, and was not given; it happened that the words 'acts of violence' occur in the latter portion, and the Warden looked on these words as favourable to his defence, and tried to make it appear that the latter portion was kept back by design of the Commissioners. The extract from the letter of Dr. Sampson was a full and fair extract, and it was not quoted in the charges as the entire letter. The idea of garbling a letter, the original of which was in Mr. Smith's own possession, is palpably absurd?"—Ans. I know nothing of what the Commissioners wrote to the Government, I only know that Mr. Brown produced as a true copy of a letter from Dr. Sampson what it appeared afterwards, was not a true copy of that letter, and that I conceive the part omitted was material to Mr. Smith's defence.

Ques. You have stated in answer to question 297, that you remember, that on one occasion, on which Mr. Brown was taking down your evidence in one part of the book of evidence, he turned back some leaves of the book and appeared to refer to something in the book, and said, 'I see in your former examination you swore so and so,' but it appeared to you that was not what you swore to, and you said so; that Mr. Brown assured you he had just referred to your evidence, that you had

sworn to it, and these were your very words; that you then said that if it was so, you wished to see it as it was not correctly taken down; that Mr. Brown refused to shew it, but Mr. Amiot said you should see it; that Mr. Brown then said he would not press the question, but you insisted on seeing it, and were allowed to see it, and it was not as Mr. Brown had stated it; that you asked Mr. Brown how he came to say you had given such evidence, and he replied "Oh, well it is the same thing." Please to state what was the matter under consideration when all this occurred?—Ans. I have no distinct recollection of the particular subject upon which he was then cross-examining me. I remember the circumstance in the question well enough.

Ques. How do you come to recollect so very accurately the precise expressions employed on that occasion, and cannot recollect the subject matter?—Ans. Because the fact of Mr. Brown's reading my evidence incorrectly to me, made a very deep impression on me at the time, and I thought that it was a very unfair proceeding.

Ques. Please refer to the words originally written on page 1162 of the official record, but erased with the explanatory note in the margin that "by reference to his previous evidence, witness found he was in error here, and this answer was struck out," and say if the words erased were not as follows: "In witness's direct examination he swore that he was under the impression that 'acts of violence' were mentioned in Dr. Sampson's letter of 24th January, 1849, in reference to convict Brown?"—Ans. It is so recorded there.

Ques. Was not this the occasion to which you alluded in the passage of your evidence quoted in question 297, and on which you say Mr. Brown referred back to your evidence, and some discussion arose as to what you had previously sworn to?—Ans. No, I do not think it was.

The Committee adjourned until 10 o'clock, A.M., to-morrow.

Thirtieth Day—Friday, 25th April, 1856.

PRESENT :—The Chairman, Messrs. Masson, Sanborn, and Felton.

The Hon. Mr. Macdonald and Mr. Brown were present.

Minutes of yesterday read and approved.

Mr. *Hopkirk's* cross-examination was resumed.

Ques. In answer to question 303 by Mr. Macdonald, namely, whether you knew "any instance in which keepers and guards were intimidated by Mr. Brown in giving their evidence, or in consequence of giving their evidence," you cited as an

instance the dismissal of keeper Manuel, please to state if Manuel was dismissed in 1849, six months after the Penitentiary Commission made its final report to Government?—

Ans. I believe that Manuel was actually dismissed in the fall of 1849, I think in October, but I have reason to believe, that his dismissal was in consequence of the evidence he had given before the Commissioners, and also of his having been brought up as a witness on McCarthy's trial.

Ques. Were you an Inspector of the Penitentiary at the time the Commission was issued, to enquire into the conduct and management of that Institution, and had you not taken an active share in the management of the prison during a large portion of the period when the gross irregularities in the administration of its affairs were charged to have existed?—

Ans. I was an Inspector of the Penitentiary at the time the Commission to Mr. Brown and others, to enquire into the conduct and management of that Institution was issued, but I had only taken an active share in the management of the Institution, from the early part of 1847 till about the end of 1848. I am not aware that gross irregularities did exist, although Mr. Brown took every pains to make such appear.

Ques. Were not many of the acts of yourself and your brother Inspectors inquired into by the Commissioners, and condemned in their report to the Governor General?—Ans. Many of the acts of myself and brother Inspectors were inquired into by the Commissioners, and almost everything which they, or the Warden had done, was condemned in the most wholesale manner, but so unfairly did I consider the enquiry conducted, that I remember remarking to Mr. Brown, some time towards the close of my cross-examination, that Mr. Baldwin and Mr. Hincks were too honest to sanction the proceedings of the Commissioners; to which Mr. Brown replied, that they (meaning the Commissioners) were the servants of Government and that the Government were bound to support their proceedings, or words to that effect, to which I replied that I did not think so, but that at all events, if the Government did support them, there would be an enquiry by Parliament, or words to that effect; on which Mr. Brown remarked laughing, "Oh, if you are trusting to that, you will find you are mistaken,—you will have to wait until you get a good Tory Government, before you get an inquiry," or words to that effect.

Ques. Which of the Commissioners were present when (as you allege) you made this observation to Mr. Brown?—Ans. I cannot exactly recollect, but I presume Messrs. Amiot, Bristow, and Brown, as latterly there were seldom any others of the Commissioners present.

Ques. Did not the Commissioners, by letter of 31st October, 1848, recommend to the Governor General the suspension of yourself and colleagues, as Inspectors of the Penitentiary, and were not the proceedings of the Commissioners the cause of the final resignation of the Inspectors, and its acceptance by the Government?—Ans. I do not know what the Commissioners wrote to the Government; the cause however, of the final resignation of myself and the other Inspectors was as follows:

Two guards named Cooper and Bannister, had taken money at the Gates of the Penitentiary, contrary to the rules of the Institution. The Board of Inspectors, of which I was one, thought it their duty to remove these men out of temptation, to another part of the building, but without in any way altering their pay. It happened that these men had given evidence against the Warden, and Mr. Brown, in pursuance of his practice, of supporting such witnesses, insisted that these men should be restored to the gates. I think he applied to the Inspectors to restore them; that they refused. He then applied to Government, as I am led to believe, from the letter of the Secretary to the Board of Inspectors. A correspondence ensued, the result of which was, that the Government expressed a desire, that the wishes of the Commissioners might be complied with, but the Inspectors, having taken the matter into consideration, did not think they could, with due respect to themselves, or with due regard to the interests of the Institution, comply, and they respectfully tendered their resignations, and the acceptance of their resignation, was conveyed in a letter from the Secretary, expressive of the thanks of the Governor General for their gratuitous services, and also declaring, that no censure against the Inspectors was intended. The men, Cooper and Bannister were immediately restored by Mr. Brown, and if I am not mistaken, a muster roll of all the officers of the Penitentiary was called over, and the order for their restoration to the gates, read in presence of them all. This, together with the fact which had previously occurred, of Mr. Brown's refusing to appear before the Grand Jury to give evidence, or to produce the book of evidence in a charge against McCarthy for perjury, in statements made against me, he being one of the strongest witnesses against the Warden, and thus defeating, for the time, the ends of justice; completed the impression which already existed, that all who favoured Mr. Smith would be visited with the vengeance of the Commissioners, and all who gave evidence against him would be rewarded.

Ques. Are you quite sure that Mr. Brown insisted on the restoration of Cooper and Bannister to the Gates?—Ans. I have

no doubt he did, as he was the party who appeared to control the proceedings of the Commissioners.

Ques. Are you quite sure that Mr. Brown applied to the Inspectors to restore Cooper and Bannister?—Ans. My impression is that he did, but as I have stated before, I am not quite positive.

Ques. Are you quite sure Mr. Brown wrote to Government on the subject of Cooper and Bannister's removal?—Ans. I have already stated that I have only reason to believe so.

Ques. Are you quite sure that Cooper and Bannister were immediately restored to the Gates by Mr. Brown?—Ans. I have reason to believe so.

Ques. Are all the rest of your statements in regard to Mr. Brown equally truthful with your statement as to Mr. Brown's having taken any active share in the removal and restoration of Cooper and Bannister?

Question withdrawn.

Ques. Now, sir, please look at the records of the Commissioners, and say if your statement, that Mr. Brown took an active share in the removal of Bannister and Cooper is not false, and if the fact was not, that Mr. Brown for many days before, and after that occurrence, was in the United States?—

Ans. I have spoken in regard to the case of Cooper and Bannister according to the best of my recollection after an interval of about seven years. I may be in error on some particulars, but I have stated nothing but what I believed to be true; I know nothing of the records of the Commission nor do I know that Mr. Brown was in the United States at the time referred to; I have already said that my reason for believing Mr. Brown had insisted on the restoration of the gate keepers was, that he was the party who appeared to control the proceedings of the Commissioners, and I have no reason to doubt that the restoration of the gate keepers was procured by them.

The Committee adjourned until 10 o'clock on Monday next.

Thirty-first Day—Monday, 28th April, 1856.

PRESENT :—Mr. Sanborn.

The Hon. Mr. Macdonald and Mr. Brown were present.

The Committee adjourned until to-morrow at 10 o'clock A. M., from want of a Quorum.

Thirty-second Day—Tuesday, 29th April, 1856.

PRESENT:—The Chairman, Messrs. Stevenson, Felton, Sanborn and Clarke.

The Hon. Mr. Macdonald and Mr. Brown were present.

Minutes of Friday read and approved.

Mr. *Hopkirk* handed in the following explanation with regard to his evidence of that day.

On reference to my answer to question 383, I would wish to state that the removal of the gate keepers, Cooper and Bannister was, I have no doubt, procured by the Commissioners as I stated in answer to question 389, but that I think on recollection, that the application to the Inspectors, to restore them may have been made in the name of the Commissioners, and that they may have been actually restored by them, the fact of the removal, by the Inspectors, of the gate keepers, Bannister and Cooper from the gates, and of the Commissioners, having procured their restoration, and of that restoration having led the Inspectors to resign, I remember perfectly, but I think the application to the Inspectors may have been made in the name of the Commissioners, and the actual restoration made ostensibly by them; I mentioned my desire to make this correction on the day I gave the evidence, but it was deemed better I should make it to-day, when the evidence should be read over to me, and I stated the circumstance, to the best of my recollection at the time, after the lapse of about seven years.

Mr. *Brown* said that it would be most unjust to allow this to go in the minutes as Mr. Hopkirk had made a great many statements which he (Mr. Brown) could shew to be incorrect and which Mr. Hopkirk would acknowledge when he brought them to his recollection by putting the books into his hands.

Mr. *Macdonald*—The Committee could not exercise any discretion in the matter. Mr. Hopkirk put that in as his explanation.

Mr. *Brown*—If there was any mis-statement it ought to be put right.

Mr. *Macdonald*—The Committee could not put answers into the mouths of witnesses.

Mr. *Felton*—If the witness after examination wished to make any correction, he was the best evidence against himself. The Committee could not refuse to allow the witness to make any correction that he thought proper.

After some further conversation the explanation was received.

Mr. *Brown* closed his cross-examination of Mr. *Hopkirk*, and Mr. *Macdonald* stated he would re-examine him on to-morrow.

Adjourned till 10 o'clock A. M. to-morrow.

Thirty-third Day—Wednesday, 30th April, 1856.

PRESENT :—The Chairman, Messrs. Felton, Stevenson, Sanborn and Clarke.

The Hon. Mr. Macdonald and Mr. Brown were present.

Minutes of yesterday read and approved.

Mr. *Hopkirk* re-examined by Mr. Macdonald.

Ques. In answer to Mr. Brown's question 312, you state that you have no personal knowledge that in the evidence of any witnesses as subscribed by him, there is any testimony recorded falsely ; were you present when any witness was examined relative to any of the charges against Warden Smith ?

—Ans. I was not I think present at the examination of any other witness on the charges against the Warden, though I was present and did myself examine witnesses relative to some matters connected with the Surgeon, which do not, I believe, come within the scope of this Inquiry.

Ques. Then you do not know that the evidence of other witnesses is recorded truly. Is this so?—Ans. No, I do not, I have no personal knowledge of it.

Ques. In answer to Mr. Brown's question 327, you state that you insisted on your depositions being amended, as far as you considered it necessary. Do you mean by this, that you insisted on getting, and actually succeeded in getting, the whole of your explanations at all times taken down?—Ans. I insisted on its being amended, so far as, that my testimony as so amended, should not be inconsistent with truth ; I frequently made explanations which Mr. Smith sometimes wished to have taken down, and his desire was over-ruled. At other times Mr. Smith having no Counsel probably did not see that these were material to his defence, although I thought they were ; but when these explanations did not affect the correctness of my evidence as far as it went, I did not at all times insist, nor did I at all times succeed in getting such explanations taken down.

Ques. In answer to Mr. Brown's question 384, you stated that you think Mr. Brown applied to the Inspectors to restore Cooper and Bannister to the Gates, and that he then applied to Government as you are led to believe, from the letter of the Secretary to the Board of Inspectors, and that thereafter the men were restored by Mr. Brown. To what letter of the Secretary do you refer, and do you mean that the correspondence with the Inspectors and Government, took place with Mr. Brown as an individual?—Ans. When I state in answer, that I am led to believe from the letter of the Secretary to the Board of Inspectors, I refer to a letter or letters of the Secretary

of the Province to the Board of Inspectors, as there may have been more letters than one. I have already also explained that the application for the restoration of the gate-keepers, was probably made in the name of the Commissioners, and that they may have been actually restored by them.

Ques. You have also mentioned in answer to question 382 that Mr. Brown refused to appear before the Grand Jury to give evidence, and to produce the books of evidence in a charge against McCarthy for perjury. Will you explain the circumstances to which you allude?—Ans. A person named McCarthy, a keeper, had been dismissed by the Board of Inspectors. In the book of charges served on the Warden, were statements, said to have been given by him before the Commissioners on oath, which detailed occurrences, said to have taken place before the Board of Inspectors, known to my colleagues and myself to be false; and also for other untrue statements reflecting on myself, and I preferred a charge of perjury against him before the Grand Jury, but my object at the time was defeated, by Mr. Brown's refusing to appear as a witness, or to produce the record containing McCarthy's false statements. I thought it very strange that he should desire to prevent the truth from being elicited, and applied to Government, who informed me that Mr. Brown had been directed to attend, which he did at a future period. McCarthy had given very strong evidence against the Warden.

Ques. You say also in the same answer, that an impression had gone abroad that those witnesses who favoured Mr. Smith, would be visited with the vengeance of the Commissioners, and those who gave evidence against him, rewarded. Can you mention any instances in which this impression was justified by the results?—Ans. Such an impression had gone abroad, and I think I stated something to a similar effect, in my examination before the Commissioners. McCarthy, the keeper alluded to in my last answer, was restored, and is now a keeper in the Penitentiary; also, I believe, keepers Gleeson, Martin, Keely, James Wilson, and Richard Robinson; this last man has since been criminally convicted, and I believe is now or was lately himself a convict in the Institution—all these had, as far as my memory serves me, given testimony against Mr. Smith. There may have been others, but I cannot recall their names at present to my recollection. On the other hand, George Sexton, Thomas Smith, William Martin, Thomas Costen, and Hugh Manuel, officers of the Institution, who had, I have reason to believe, given evidence in favor of the Warden, were subsequently dismissed.

(Witness withdrew.)

Mr. Macdonald here concluded his re-examination of *Mr. Hopkirk*.

Mr. Brown applied for leave to cross-examine *Mr. Hopkirk* on the statements he had just made to the Committee, on his re-examination by *Mr. Macdonald*.

Application over-ruled unanimously.

Mr. Macdonald called the attention of the Committee, for their special consideration, as evidence, the testimony of *Wm. Martin*, *A. B. DeBlois*, *Henry Smith*, (convict,) and *Hugh Manuel*.

Grant Powell, Esquire, again called.

Mr. Macdonald desired to know if all the books were now in evidence.

Mr. Ferres said that he always considered the books to be in evidence.

Mr. Brown said that that would not be right, for the Committee might go over the books and come across something which appeared to bear on the charges and in that case he should be allowed to explain.

Mr. Macdonald—Certainly.

Mr. Felton—That was a question for their consideration.

Mr. Ferres—He regarded the books as evidence and in the possession of the Committee.

Mr. Sanborn—If they went over the books page by page and found something that might appear to bear upon the charges it would be out of their province to take them up as bearing upon the case. It was for the parties themselves to make out their own case.

Mr. Macdonald—Certainly, that would not be right, but he took it that the books were before the Committee as evidence, and if not he would put the whole of them in as such.

Mr. Ferres understood that they were all before the Committee for he had said at the time that he would not proceed a step further until everything that *Mr. Brown* had in his possession was laid before them, and from the day that *Mr. Brown* brought them in he regarded them as in the possession of the Committee.

Mr. Brown—They were quite agreed that all these books were to be held as references, but they were not to extract pages here and there to which his attention had not been called as he might have evidence to explain anything that appeared to bear upon the charges.

Mr. Ferres read an extract from the minutes showing that the books had all been put in as evidence.

Mr. Macdonald then referring to the books of evidence called the attention of the Committee to the evidence of one *DeBlois*, and others.

Mr. *Brown* objected to this.

Mr. *Macdonald* replied that he referred to this for the purpose of giving Mr. *Brown* notice and not taking him by surprise. For instance he found that Wm. Martin and convict H. Smith both swore as to De Blois' statement of a promise of pardon. He was then going on to prove his pardon and the letters of Mr. *Brown* on the subject. He had a right to put in any of this evidence that he pleased and to bring any portions that he thought proper to substantiate his charges. He was going through the books and was going to argue upon the alteration in the evidence to shew that they were strongly against Mr. Smith—that witnesses would not swear to what was put down and that the evidence had to be altered afterwards.

Mr. *Brown* contended that he should have notice of what was to be brought forward that he might have an opportunity of rebutting it.

Mr. *Sanborn* said that to go through the books and argue from them without giving Mr. *Brown* notice of what he was going to bring up, would be most unfair. The only course that Mr. *Macdonald* could take would be to point out what he considered as bearing upon the charges and then let Mr. *Brown* bring evidence to rebut them. The books were not substantial evidence in the case. They were only to be regarded as indications of something and not as proving facts. They could only be regarded as giving presumptive evidence.

Mr. *Ferres* looked upon the evidence in their books as if the parties had been examined before the Committee—what was good evidence for the Commissioners was good evidence for the Committee.

Mr. *Sanborn*—How could they tell from these books whether Mr. *Brown* took the evidence down correctly or incorrectly. They could only assume from the manner in which the alterations were made—if they found they were very much more against Mr. *Smith* than in his favor—that the evidence had not been fairly taken, but that was no positive proof.

Some further discussion ensued upon this point without any definite conclusion being arrived at, and the Committee then proceeded to examine Mr. *Grant Powell* with regard to certain correspondence in the Secretary's Office relating to certain murderers confined in the Penitentiary.

Ques. [By Mr. *Macdonald*.]—Produce the original papers and copies of all the papers from the Secretary's office with regard to the pardon of DeBlois?—Ans. I do.

Ques. Among these papers, is there a letter dated 7th October, 1848, signed George Brown, Secretary?—Ans. There is.

Ques. In whose hand-writing is that letter?—Ans. It is Mr. Brown's. I also produce letters from the Secretary's Office, with regard to Hugh Cameron's pardon.

Mr. *Brown* admitted the letter of 9th August, 1849, respecting the pardon of Wallingford Saunders, Jean J. Glarisse, Hugh Cameron, Franklin Riley, James Stoutenburgh, William Lilius and William Humbert, to be in his hand-writing.

Mr. *Powell* cross-examined by Mr. Brown.

Ques. Please to look at the papers you have given in, in the case of convict A. B. DeBlois, and say who were the Petitioners on whose solicitation the Government were induced to inquire into the case of DeBlois?

Mr. *Macdonald* objected to this question.

Objection sustained unanimously.

Ques. Among those papers, is there a petition dated August 1848, to the Governor General, applying for the pardon of A. B. DeBlois, professing to be from Helen Jalbert, and recommended by the Rev. C. F. Cazeat, Rev. B. O'Reilly, Rev. L. A. Montairny, Rev. H. Boutier, Rev. P. Pouliot, Rev. N. Beairnbien, Rev. E. Payment, Rev. S. Matti, Rev. L. Proulx, Rev. Z. Chareot, Rev. P. L. Laharge and Rev. L. Roy?—Ans. There is.

Ques. Please refer again to the papers, and say if the Provincial Secretary, in consequence of the said application, did not, by letter of the 25th September, 1848, "apply to the Penitentiary Commissioners to report whether DeBlois' conduct has been such during his detention therein, as to render him a fit subject for the exercise of the Royal clemency?"

Mr. *Macdonald* objected to this question.

Objection sustained unanimously.

Ques. Is there among the papers you have put in, a letter from the Provincial Secretary to the Commissioners, dated 25th September, 1848, asking them to report on the case of DeBlois?—Ans. There is a draft of a letter of that date.

(Witness withdrew.)

The Committee adjourned till 10 o'clock, A.M., on Friday next.

Thirty-fourth Day—Friday, 2nd May, 1856.

PRESENT:—The Chairman, Messrs. Clarke, Stevenson, Sanborn, and Felton,—5.

The Hon. Mr. Macdonald and Mr. Brown were present.

Minutes of Wednesday read and approved.

Napoléon Casault, Esquire, a Member of the House, called and examined.

Ques. [By Mr. *Macdonald*].—Were you in Toronto in 1850?
—Ans. I was in Toronto on the 5th August, 1850.

Ques. Did you attend the Legislative Assembly?—Ans. I did on that day.

Ques. What was the subject of discussion?—Ans. Amongst others, there was a motion made by Mr. *Macdonald* the present Attorney General West, to refer to a Committee, the Petition of Henry Smith, Esquire, late Warden of the Provincial Penitentiary of Canada, complaining of the mode of proceeding adopted by the Commissioners appointed to investigate certain charges against him, as I find at page 242 of the Journals of 1850.

Ques. In making this motion, did Mr. *Macdonald* make any remarks to the House, and if so, state generally the tenor of those remarks?

Question objected to by Mr. Brown.

Objection over-ruled on the following division :

Yeas :

Nays :

Mr. Felton,

Mr. Sanborn,—1.

Mr. Stevenson,

The Chairman,—3.

Ans. Remarks were made by Mr. *Macdonald*, charging the Commissioners of the Penitentiary Inquiry with grave misconduct, the precise terms I do not at this distance of time recollect, but they were of a stronger character than I had ever heard used in a similar assembly. I was present in the House of Assembly the other day, when the words were made use of, which caused this Committee to be appointed, and the expressions used by Mr. *Macdonald* in 1850 were stronger than those used on the recent occasion. Such is the impression on my mind. I remember well that there were allegations of falsification of evidence, and of promises made to convicts to induce them to give evidence, and many other charges which I cannot now specially mention.

Ques. The charges then were of the same character and description as those preferred by me during this Session?—

Ans. To the best of my recollection they were.

Ques. Was Mr. Brown present when those remarks were made in 1850?—Ans. He was.

Ques. Where was he, and did he hear those remarks?—

Ans. On the left side going into the House of Assembly Chamber; there were seats reserved for Legislative Councilors, and in the rear of these seats there were benches to which the public were admitted. Mr. Brown was on one of the front

benches, and I was on the same bench near him, but no person between us, so far as I recollect. He did hear those remarks.

Ques. Had Mr. Brown communication with any of the members respecting those remarks?—Ans. He had with Mr. Richards, now Mr. Justice Richards, and the purport of what Mr. Brown told Mr. Richards was, to oppose the appointment of a Committee. He gave him his reasons why he should do so, and also some explanations of the conduct of the Commissioners; in answer to what had fallen from Mr. Macdonald, Mr. Richards went to his place and repeated in other words what had been said to him by Mr. Brown. I may say that Mr. Richards came two or three times to Mr. Brown, previous to his rising in his place, and addressing the Speaker on the subject. Mr. Brown spoke so loud that no one in the vicinity could avoid hearing what he said.

Ques. What was the result of Mr. Macdonald's motion?—Ans. It was lost.

Ques. Did you hear Mr. Brown in his place, this Session, deny that he had at any time opposed the granting of a Committee?

Mr. *Brown* objected to this question.

Objection sustained unanimously.

Mr. *Casault's* examination in chief was here closed.

Mr. *Brown* stated he declined asking Mr. *Casault* any question in cross-examination.

The Hon. Mr. *Macdonald* stated he had completed his evidence.

The Committee adjourned until 10 o'clock A. M. on Monday next.

Thirty-fifth Day—Monday, 5th May, 1856.

PRESENT:—The Chairman; Messrs. Masson, Stevenson, Sanborn, and Felton.

The Hon. Mr. *Macdonald* and Mr. *Brown* were present.

Minutes of Friday read and approved.

Mr. *Brown* opened his defence with the following remarks to the Committee. I had great doubts whether I should call any witnesses on my part or not as there is no evidence bearing on the charges brought by Mr. *Macdonald*. The whole of the evidence is extraneous to the charges. I have held very strongly that the Committee had no power to take up these matters at all and would have appealed to the House if I had not feared that it would have appeared as if I wished to avoid enquiry.

Besides this the whole of the evidence was against the Commissioners, and I did not think that it would be right to prevent them from having an opportunity of acting in their own defence. It is quite clear that not only my transactions but that the whole proceedings of the Commissioners are beyond reproach, and that it would not be right to deprive them of the means of coming forward and explaining their position. Mr. Macdonald has called Mr. Sheriff Thomas as a preliminary witness and had put questions to him as to the truth of the charges against me, to which he replied that he did not believe they could possibly be true, so that his evidence amounted to nothing so far as that was concerned. Then we had Mr. Casault who only spoke as to a conversation—which he overheard between myself and Mr. Richards, and in which I shall shew that he was entirely mistaken. Then we had Mr. Smith, the late Warden, who was convicted of every species of crime that a man in his position could be guilty of and who was dismissed on our report. All these tales against me were brought by him to the Government, and not only were they dismissed as groundless, but his papers were returned to him as being improper to remain in the hands of the Government. Then we had Mr. Hopkirk who was one of the Inspectors and mixed up in the affairs of the Penitentiary in such a way as to make it very doubtful whether he or Mr. Smith were the most culpable. He also resigned and his resignation was accepted at the instance of the Commissioners. He also brought charges against me which the Government dismissed. Then Mr. Horsey was brought, but the first question put to him shewed that the reading in his evidence with regard to the stone work at the Penitentiary was precisely the same as that which the Commissioners alleged. Thus the whole evidence is that of Smith and Hopkirk, who were parties dismissed by the Commissioners. They are brought here after the lapse of eight years to make up all the tittle tattle that could be brought up against me. None of their evidence bears upon the charges brought by Mr. Macdonald. Their stories are all based upon their own imaginations. The Commissioners, who are men of unblemished reputation, might have let the statement of Hopkirk and Smith go without notice, but as it has been the opinion of the Commissioners that these things should be rebutted, I have thought it proper to bring two or three witnesses in my defence. The session is now coming to a close and I am very anxious that the report should be brought before the House this session, and although Mr. Macdonald has taken so much time with three or four witnesses I will endeavor to bring my evidence into such a small space as will allow the Committee to report without delay.

William Bristow, Esquire, of Montreal, called in and examined on behalf of Mr. Brown.

Ques. Were you one of the Commissioners appointed by Government in May, 1848, to enquire into the actual condition and management of the Provincial Penitentiary?—Ans. I was.

Ques. Were you regularly present at the meetings of the Commission?—Ans. I was present, I believe, at every meeting of the Commissioners from the opening of the Commission on the 23rd of June, 1848, till the final rendering of the Report on the 16th of April, 1849, with the exception of a period from the 6th of November, 1848, to the 10th of December, 1848, when I was in the United States along with Mr. Brown, examining into the Penitentiary system of the United States.

Ques. Did you take a close and earnest interest in the whole proceedings of the Commission, and are you thoroughly conversant therewith?—Ans. I did, and am thoroughly acquainted with everything that was done.

Ques. Had you frequent occasions during the sittings of the Commission, and especially while preparing the Report, to examine minutely the official record of evidence?—Ans. I had.

Ques. Have you any knowledge that Mr. Brown “recorded falsely the evidence of witnesses examined before the said Commissioners?”—Ans. I am certain he recorded correctly everything that passed before the Commissioners.

Ques. Have you any knowledge that Mr. Brown “altered the written testimony of witnesses after their evidence was closed and subscribed?”—Ans. I am certain he did not, up to the time of making the Report.

Ques. Have you any knowledge that Mr. Brown “suborned convicts to commit perjury?”—Ans. I have not.

Ques. Have you any knowledge that Mr. Brown “obtained the pardon of murderers confined to the Penitentiary, to induce them to give false evidence?”—Ans. I certainly have not. I am not aware he attempted to obtain the pardon of any individual.

Ques. If he had done so during the sitting of the Commission, would you have been cognizant of it?—Ans. I must have known had any person been pardoned through the instrumentality of the Commissioners. The Inspectors may have recommended pardons, but as a Commissioner I know nothing of it, and the Commissioners did not interfere to obtain the pardon of any individual, to the best of my recollection.

Ques. Witness's attention is called to two letters, of August and October, 1848, in reference to convicts Duncan and De

Blois, and is asked if he had any reference to these cases in his last answer?—Ans. I had forgotten the case of Duncan, who was recommended by the Commissioners for pardon, being in a dangerous state of health; Duncan was not examined as a witness before the Commissioners. There was the case of one DeBlois, referred by the Provincial Secretary to the Commissioners, and the Commissioners in that case made on the 7th October, 1848, the following report: “I am instructed by the Commissioners to state for the information of His Excellency that the conduct of DeBlois, while in the Penitentiary, has been very good, and that in the opinion of the Commissioners he is a fit subject for the exercise of the Royal clemency.”

“In their investigation of the affairs of the Penitentiary, the Commissioners have availed themselves, to a limited extent of convict evidence; and important testimony, adverse to the management, has been given by several convicts, whose general conduct has been meritorious; of these DeBlois is one. The Commissioners have in consequence deferred for the present, bringing such cases under the notice of His Excellency the Governor General, to avoid misconstruction, or prejudice to the officers on their defence. Should His Excellency see fit to extend to DeBlois the Royal pardon, the Commissioners would respectfully submit whether the intimation of it might not be advantageously suspended, until the officers of the Penitentiary have closed their defence.”

“I have, &c.,

“(Signed,)

GEORGE BROWN;

—“Secretary.”

Ques. Had there been loud and continued complaints against the management of the Penitentiary for a long time previous to the issuing of the Commission under which you acted?—Ans. I had a very trifling knowledge of the circumstances that had occurred prior to the appointment of the Commissioners; certain documents were put into my hands, through the Provincial Secretary, when I reached Kingston, which contained the principal information on which I acted as one of the Commissioners. The Commission under which the Commissioners were appointed, stated, that divers charges had been made against the conduct and management of the Penitentiary.

Ques. Did it not appear by evidence given before the Commissioners, that great irregularities and violent dissensions, had existed within the Prison, previous to the issuing of your Commission.

Question objected to by Mr. Felton as a leading one.

Objection over-ruled on the following division ;

Yeas :

Mr. Masson,
Mr. Stevenson,
Mr. Sanborn,—3.

Nays :

Mr. Felton,
The Chairman,—2.

Ans. It did.

Ques. What was the nature of your Commission. Was it to try any particular officer or officers, or was it to inquire into the conduct of the Penitentiary, in all its departments, and suggest ameliorations?

Question objected to by the Chairman.

Objection sustained unanimously.

Ques. Did the Commissioners carefully consider the course they should take in pursuing their inquiries, and is the following extract from their printed report (pp. 80 and 81,) a true record of their conclusions?

“ Your Commission was opened at Kingston on 23rd June, 1848 ; and after due consideration, the following notice was published in the newspapers :

“ His Excellency the Governor General having issued a Commission to investigate divers charges and complaints respecting the conduct, system of discipline, and management of the Provincial Penitentiary ; notice is hereby given, that the Commissioners 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.”

“ The mode in which we should proceed with our inquiries, received grave consideration ; and the peculiar circumstances of the institution, made this a matter of some difficulty. It was obvious, that if, without previous knowledge of the affairs of the Penitentiary, 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 previously made partially acquainted ; we therefore resolved to invite gentlemen residing in the neighborhood of Kingston, and reputed to be well acquainted 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 enquiry, 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 enquiries, 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 recalling the witness 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 at the moment, greatly overbalanced any slight disadvantage which might attend it?”—
 Ans. They did carefully consider the course they should adopt, and the above extract contained in the question, is a true extract.

Ques. Did the Commissioners communicate to the Warden and to the Inspectors, (through their representative, Mr. Hopkirk) that they intended to pursue this course, and did both of these gentlemen express themselves “highly satisfied therewith?”—Ans. They did.

Ques. Did the Commissioners by letter of 29th July, 1848, communicate to Government the course they intended to pursue, and was the approval of the Governor General in Council, therefor, received by the Commissioners by letter from the Provincial Secretary?—Ans. They did communicate, and the Government sanctioned their course by letter dated 29th August, 1848.

Ques. Was the course of procedure thus adopted and approved, strictly followed throughout, by the Commissioners?—
 Ans. It was.

Ques. Who were the parties with whom the Commissioners held preliminary conversations, and by whose information their first enquiries were directed?—Ans. The following gentlemen had interviews with the Commissioners, and communicated much valuable information, which led to further enquiry by the Commissioners; Honorable P. B. DeBlaquière, James Nichalls, Esquire, formerly President Board of Inspectors, Dr. Sampson, Surgeon of the Penitentiary, A. Manahan, Esquire, formerly an Inspector, Thomas Kirkpatrick, Esquire, late President Board of Inspectors, Samuel Rowlands, Esquire, Editor *Kingston Chronicle and News*, J. B. Marks, Esquire, late an Inspector, Rev. R. V. Rogers, Chaplain to the Penitentiary, A. Pringle, Esquire, formerly an Inspector, Major Sadler, late an Inspector, Hon. John Macaulay, first President Board of Inspectors, His Lordship the Roman Catholic Bishop of Kingston, and Rev. Angus McDonell, Vicar General.

Ques. Did the Commissioners, on the information of these gentlemen, and the written documents placed in their hands by Government, proceed to examine under oath, such parties as they were led to believe were cognizant, from personal knowledge, of the actual condition of the Penitentiary?—Ans. They did.

Ques. Did the Commissioners extract from the evidence of the parties so examined, such portions as seemed to affect the character or conduct of any officer, and serve a written copy thereof upon him, for explanation?—Ans. They did.

Ques. Were such extracts transmitted to Mr. Henry Smith, Warden; Dr. Sampson, Physician; and Mr. Francis W. Smith, Kitchen Keeper; and on his demanding it, were copies of statements in which his name incidentally occurred, furnished to Mr. Hopkirk, one of the Inspectors?—Ans. They were.

Ques. Were the extracts of evidence carefully considered by the Commissioners, and minute instructions given to the Secretary, as to the portions of testimony to be extracted, or was the selection left to the Secretary's discretion?—Ans. They were carefully examined by the Commissioners, and the particular extracts to be furnished, selected by them.

Ques. When Mr. Warden Smith was served with the extracts of evidence affecting his character and conduct, was he informed by letter: “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 think proper. 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”?—Ans. A communication to that effect was made to Mr. Smith.

Ques. What was the practice followed in summoning witnesses; did the Warden furnish the Commissioners with the names of the parties he desired to examine, and were summonses thereupon issued for such parties?—Ans. The Warden did communicate to the Commissioners the names of such witnesses he wished called, and in every case in which he required it, a summons was issued.

Ques. Did Mr. Smith call upon the Commissioners to summon one witness, who was not summoned, or was any summons issued for any witness, who was not produced?—Ans. I am not aware of any instance in which he desired a witness to be called, and who was not called.

Ques. Please refer to the official record and say, if 35 of the 54 witnesses whose testimony affecting him, was transmitted to the Warden for explanation, were not recalled by Mr. Smith, and cross-examined on their written evidence?—Ans. They were, and their names were, Major Sadlier, Mr. Samuel Muckleston, Rev. R. V. Rogers, Dr. Sampson, Mr. Bickerton, Clerk, Mr. Utting, late Deputy Warden, Mrs. Cox, late Matron, Mrs. Coulter, late Matron, Mr. Coverdale, late Architect, Mr. Costen, Deputy Warden, Mr. Horsey, Architect, Messrs. Swift, Richardson, Jones, and Gibson, Keepers; Messrs. Wilson, Kearns, Atkins, Cooper, Watt, Bannister, Waldron, and Martin, Guards; Messrs. Keely, McGarvey, McCarthy, and Gleeson, late Keepers; Mr. Fitzgerald, late Guard; J. H. Freeland, discharged convict, and Cameron, Chagnon, Dyas, Smith, DeBlois, and McCormick, convicts.

Ques. Of the remaining 19 witnesses, whom the Warden did not recall, were there not 6 whose evidence was altogether omitted by the Commissioners in reporting to Government, on the charges against the Warden,—namely, Eliza Quinn, Hems, Leahy, Travis, Christmas and Lemmon?—Ans. Yes.

Ques. Of the remaining thirteen witnesses, whose evidence was so transmitted to the Warden, but who were not recalled by him; were not six contractors residing in Kingston or vicinity, namely: Messrs. T. Hendry, P. Quinn, J. Breden, S. Breden, P. Conlan and R. Allan. Was not another of the said thirteen witnesses, (Mr. Skinner) a keeper in the Penitentiary. Was not another, Richard Robinson, late guard, residing in Kingston. Was not another (James Henessy) a convict in the Penitentiary; and might not all of these nine persons have been produced at any moment, had the Warden so requested?—Ans. To the best of my belief they might have been so called.

Ques. Of the remaining four witnesses was not Mr. M. B. White, a Merchant in Carbondale, Pa., and Maurice Phelan a hand on an American steamer; and might not both have been produced had the Warden so requested? Ans. I know no reason why they might not have been.

Ques. Have you any reason to doubt that the two remaining witnesses, namely, James Brennan and Eustache Coté, might have been procured, if the Warden had so requested?—Ans. I have no reason to doubt these two witnesses might have been called.

Ques. Did the evidence of these thirteen witnesses affect materially the charges against the Warden?—Ans. Some of their evidence was strong against the Warden, but there was no portion of their evidence, that was rested upon, as material in getting up the report.

Ques. Had the evidence of the thirteen witnesses who were not recalled by the Warden, been struck out altogether, would the Commissioners have come to a different conclusion from what they did in their official report?—Ans. Certainly not, they would not.

Ques. Did Mr. Smith, besides recalling thirty-five of the witnesses, whose written evidence had been furnished him by the Commissioners, call and examine forty-eight other witnesses of his own?—Ans. Yes, their names are as follows: James Armstrong, Andrew Ballantyne, E. Chase, Thomas Conden, S. E. Crandell, Sheriff Corbett, W. Crawford, W. Chapman, L. Duddevir, James Dissett, J. Feely, W. Funston, Thomas Fitzgerald, Henry Grass, James Hopkirk, John Hooper, J. Hail, Mark Hermeston, Thomas Kirkpatrick, F. Little, Phebe Martin, Hugh Manuel, Henry Montgomery, Grace Marks, Mary Mathews, James Mills, John Mathews, P. McDonegle, Richard McNair, James McMahan, R. Nursey, S. Pollard, Mrs. Pollard, James Parker, Jacob Price, Henry Parleton, Samuel Rodgers, John Rowe, George Ramsden, Mrs. T. Smith, Thomas Smith, William Smith, George Sexton, Lester Smith, Thomas Somerville, Ann Sturges, H. Smith, M. P. P., and R. Tyner.

Ques. In reference to the allegation that Mr. Smith was condemned on convict testimony, please to state if this is true?—Ans. There was no charge considered established upon convict testimony, nor was any reliance placed upon convict testimony in itself, except where strongly corroborated by other evidence of a more reliable character.

Ques. How many convicts did the Commissioners examine in the preliminary investigation, and was the evidence of all those used, in reporting to Government?—Ans. Ten convicts

were examined by us. I do not remember exactly how many were used by us, in our report.

Ques. How many convict witnesses did the Warden call in his defence?—Ans. I believe 16.

Ques. Did the Warden apply to the Commissioners for leave to be defended by Counsel, and were not the following reasons for refusing, communicated to him officially by the Commissioners?—"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."—Ans. He did apply and the foregoing answer was given to him.

Ques. At what date were the extracts of evidence transmitted to Mr. Warden Smith, and at what dates did he commence and close his defence?—Ans. The extracts of evidence were transmitted to the Warden on the 23rd September, 1848. The Warden commenced his defence on the 9th October, 1848, and closed it on the 19th January, 1849.

Ques. Please refer to the Minutes of the Commission, and say if it was not arranged between the Commissioners and the Warden, before he commenced his defence, 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 taken down;" state also if the practice was strictly in accordance with this rule?—Ans. It was so arranged, and the agreement was invariably acted upon by the Commissioners.

Ques. When the Commissioners were examining or cross-examining a witness, was any one Commissioner at liberty to put any question he chose—or was the assent of the Board necessary?—Ans. Every Commissioner put such questions as he thought proper.

Ques. Was each question, when put to the witness, if not objected to by a Commissioner, held to be put with the consent of the whole Board?—Ans. It was.

Ques. Besides the official record of the testimony given by the witnesses, were full minutes of the evidence taken by persons present, and if so, by whom?—Ans. I kept a complete copy of all the evidence taken before the Commissioners during the time I was present; I believe the other Commissioners had books before them, in which they took memoranda; but as to the fullness of these memoranda, I cannot pretend to speak; and I am not certain whether Mr. Fergusson, the Chairman, had such a

book ; Mr. Warden Smith had a Clerk during the whole time, who apparently took full minutes of the whole of the evidence.

Ques. Then Mr. Warden Smith has the means in his possession, and you also have the means, by comparing your record with the official depositions, of detecting any inaccuracy, if such there were, in the official books of Evidence, have you not?—

Ans. I cannot speak precisely as to the means possessed by Mr. Smith, as I have not read his minutes, but my own minutes are about as full as Mr. Brown's records.

Ques. Did you compare your minutes of each answer, with the answer as read aloud by Mr. Brown, and make suggestions in amendment, when any seemed necessary?—Ans. I was in the habit of listening to Mr. Brown's reading of every answer that was given, and of comparing it with my own memoranda, if there was any discrepancy that struck me, I pointed it out.

Ques. Did Mr. Smith and his Clerk, also compare their record with the answers read aloud by Mr. Brown, and make suggestions in amendment, from time to time?—Ans. Mr. Smith did so frequently.

Ques. Was there ever a suggestion made by any witness in amendment of his testimony, that was not made in the record by Mr. Brown, or one suggestion made by you or Mr. Smith, that was not referred to the witness, and if sustained by him, at once carried out?—Ans. There was not.

Ques. Was there ever any unwillingness shewn by Mr. Brown, to correct the evidence of any witness, or any disposition shewn by him, to give the testimony other than its true colouring?—Ans. Never to my knowledge.

Ques. When the evidence of each witness was closed for the time, was his whole deposition re-read to him, amended to suit him, and a distinct assent to its correctness asked and obtained in every case?—Ans. Yes.

Ques. When the assent of the witness had been so asked and obtained, to the correctness of his depositions, was not the assent of the Warden, in every case, also asked and obtained to its correctness?—Ans. It was.

Ques. When the assent of the witness, and the Warden to the correctness of the testimony had been obtained, were not the following words invariably appended to the deposition: "The foregoing evidence was read aloud ; Mr. Warden Smith declared the evidence correctly taken down, witness did the same and signed it?"—Ans. There was such a statement appended to the evidence.

Ques. Did the Secretary then read aloud these words, and was the deposition in every case then signed by the witness?—Ans. It was.

Ques. Had you frequent occasion before the Commissioners closed their labours, to examine the official record, and did you ever discover, by comparison with your own copy of the evidence or otherwise, the slightest variation between the testimony as recorded by Mr. Brown, and that actually given?—Ans. I did frequently recur to the records, and I never, on any occasion found any error in them.

Ques. Was there any discourtesy shewn to any witness by any of the Commissioners; was any witness brow-beaten or insulted?—Ans. No.

Ques. Did any witness refuse to sign his deposition?—Ans. Never. One person of the name of Pollard did, in the first instance, object to signing his deposition, he was asked to point out if any part was untruly reported, he said it was correctly taken down, and he then signed it.

Ques. Was any question, pertinent to his defence sought to be put to any witness by Mr. Smith, but over-ruled by the Commissioners?—Ans. Never to the best of my knowledge; the only questions I remember being over-ruled, apparently had for their object to impeach the Commissioners. I believe the whole of those questions, or of any questions over-ruled, will be found recorded in the records of the Commissioners.

Ques. Was any intimidation used towards any witness by any of the Commissioners; were any threats of dismissal, or promises of any kind, held out to any witness, or were the Commissioners on the contrary, most careful to guard against doing any thing that might unduly influence the testimony of persons who might be witnesses before them?—Ans. Certainly not in my presence, and I can speak for myself, and as far as I know of any of my brother Commissioners, that they were most careful to guard against anything, which might unduly influence the evidence for or against the parties accused.

Ques. When the Warden proposed examining Mr. Brown as a witness, did Mr. Brown refuse to answer the questions, or did the Board over-rule them, before they were put to him?—Ans. I remember I objected to the questions put to Mr. Brown, and my brother Commissioners concurred with me, in my objection to his answering them.

Ques. When Mr. Smith declined to proceed further in his defence, on the plea that the Commissioners over-ruled his questions to Mr. Brown, was his case exhausted?—Ans. I should imagine it was, as he had gone over all the ground in the charges laid against him, having re-examined most of the witnesses which we had previously examined, and he had produced a large number of witnesses in his own defence, on every one of the charges taken *seriatim*.

Ques. When Mr. Smith had closed his defence, did the Commissioners proceed to examine the evidence received on each charge, was an index made to the several points of evidence, and the testimony referred to, and carefully weighed, and were minute instructions on each count thereupon, given to Mr. Brown for his guidance in drawing up a draft report?—Ans. The Commissioners did pursue the course described in the question.

Ques. Witness is shewn a memorandum book, and his attention being directed to the contents, he is asked if that is the book in which Mr. Brown took down, count by count, as the evidence was considered and decided upon, the instructions of the Commissioners for drawing up the draft report?—Ans. It is.

Ques. Witness is shewn a bundle of manuscript sheets, and is asked if that is the original draft-report of the Penitentiary Commission, prepared by Mr. Brown, and if it was in strict accordance with the instructions given him?—Ans. It is.

Ques. Were some portions of that draft report prepared by you, and other portions by Mr. Thomas?—Ans. Yes.

Ques. Was that draft-report considered, paragraph by paragraph, by the Commissioners; the extracts of under evidence each count, carefully referred to and read, and the whole report amended and adopted unanimously, by all five of the Commissioners?—Ans. Yes, it was.

Ques. By whom was the fair copy of the report made from the draft report?—Ans. A fair copy, I think, was written from the draft report by a gentleman of the name of Campbell, but I am not certain whether one portion was not written by another clerk.

Ques. When the fair copy was completed, was it carefully read over by the Commissioners, amended, and adopted unanimously, at a full Board?—Ans. It was.

Ques. Where did this take place; please state particulars as to the final adoption and signing of the Report by the Commissioners?—Ans. I think the reading of it occupied more than one sitting; part of it was read at Mr. Brown's lodging in St. Joseph Street, Montreal, and the remainder at my house; when the latter portion of it was read I doubt whether Mr. Thomas was present; I am under the impression that the last few sheets of the fair copy had not come in, and that we all signed a blank page, with a formal conclusion, Mr. Thomas being very anxious to leave for Hamilton.

Ques. Did Mr. Thomas hear read, every word of the Report before he signed it; was there anything more to do than merely to copy fairly the last few pages, when he attached his signature?—Ans. I won't be quite certain, whether the following part. "We have now laid before your Excellency the result of our

“labors 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 honor on an early day to submit to your Excellency, as our final Report; all of which is respectfully submitted,” was made when Mr. Thomas left or not; the other I am certain was.

Ques. Were there not several amendments made by the Commissioners upon the Report, when they examined the fair copy, before finally adopting it?—Ans. I remember several made by myself, I think, consisting of a few scoticisms, but no other, but a few slight verbal alterations.

The Committee adjourned until 10 o'clock, A. M., to-morrow.

Thirty-sixth Day—Tuesday, 6th May, 1856.

PRESENT:—Messrs. Wilson and Masson.

The Committee adjourned until 10 o'clock, A. M., to-morrow from want of a quorum.

Thirty-seventh Day—Wednesday, 7th May.

PRESENT:—The Chairman, Messrs. Wilson, Sanborn, Masson. The Hon. Mr. Macdonald and Mr. Brown.

Mr. *Bristow's* examination resumed.

Ques. Was the extracting, collating and arranging the evidence quoted in the Report, either legally or in fact, the individual act of Mr. Brown; or were the whole Commissioners equally with him, responsible for it?—Ans. The whole was done under the joint orders of the Commissioners.

Ques. Is the Report accurate and true; are its decisions strictly in accordance with the evidence; is there one passage you would alter now, with the additional light you have since acquired, and the severe criticism that has been applied to the document, by the partisans of those condemned in it?

Question objected to by Mr. Macdonald.

Objection sustained unanimously.

Ques. Was the collation of the evidence in the Report, justly and accurately made?—Ans. It was, and with great care.

Ques. When the Commissioners examined the evidence on each count, with a view to a decision; were differences of

opinion sometimes found to exist among themselves as to the verdict that should be rendered; and in such event, what course was taken? Ans. There was, as might be expected, amongst five gentlemen, occasional difference of opinion; where any of importance existed, as to the conclusions to which the evidence before them led. The evidence bearing on the matter was faithfully given on both sides, so that any one reading the Report might form his own judgment.

Ques. Did the Commissioners unanimously Report, as a result of their enquiries, that the Warden had "permitted irregular practices in the Penitentiary, destructive of the discipline necessary in such an Institution?"—Ans. They did.

Ques. Did the Commissioners unanimously report, that the state of the prison was such, that though nominally under the silent system, "prisoners not thoroughly contaminated" when "they arrived were exposed to very injurious influences in the prison?"—Ans. Yes they did.

Ques. Did the Commissioners unanimously report that Mr. Smith had "grossly neglected his duties as Warden?"—Ans. They did.

Ques. Did the Commissioners unanimously report that the sharpening of stone-cutter's and quarrymen's tools, in the Penitentiary, was alleged to have cost, in the year 1847, £877 12s. 10d.; that the shoeing of 12 oxen in the same year was alleged to have cost £120 6s. 5d.; that an establishment of carriages sleighs and horses was kept up, on the plea of bringing the Inspectors about once a month, to the Board Meetings, at a cost of a thousand pounds per annum, and that in many other ways there had been "culpable mismanagement of the business affairs of the Penitentiary?"—Ans. They did.

Ques. Did the Commissioners unanimously report that the Books of the Penitentiary had not been once balanced in 14 years; that among numberless errors in the Books one of £1000 Is., had existed for four years in the addition of an account in the Ledger, and another similar error of £1000 for over a year, without being discovered, until the Commissioners pointed them out; and 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 were ever received in the Penitentiary?"—Ans. They did.

Ques. Did the Commissioners unanimously report that "from 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?"—Ans. They did. It was also clearly shown to them in evidence

taken from the Books of the Penitentiary, that some months together, the convicts must have been deprived of about one-third of their daily rations, as fixed by the rules of the prison.

Ques. Did the Commissioners unanimously report, that in the year 1845 there were 1,877 instances of corporal punishment and in 1846, 2,133 instances; that in these years the number 'of corporal punishments' alone averaged between "four and five "punishments in each year for every man, woman and child in "the Prison; that 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"; and that "crowds of full grown men were, day after day, and "year after year, stripped and lashed in the presence of four or "five hundred persons, because they whispered to their neighbor, "or lifted their eyes to the face of a passer-by, or laughed at some "passing occurrence"?—Ans. They did.

Ques. Did the Commissioners unanimously report that in the course of one year, one convict had received corporal punishment twenty times, one, twenty-one times, three, twenty-two times, two, twenty-three times, two, thirty times, one, thirty-two times, two, thirty-four times, one, forty-eight times, and one, sixty times; that Alex. Lafleur, a child of eleven years, when he entered the prison, was stripped and flogged forty-four times in three year; that Peter Charboneau, a child of ten years, for offences "of the "most trifling description" was "stripped to the shirt and "publicly lashed fifty-seven times in eight and a half month; "that Antoine Beauché, a child of eight years, "received the la. "within a week of his arrival, and that he had no fewer than "forty-seven corporal punishments in nine months, and all for "offences of the most childish character;" that John Donovan a convict exhibiting symptoms of insanity, had "seven floggings "with the cats in a fortnight, and fourteen floggings in four "weeks with cats or raw hide;" that the Warden in the middle of the night, and while evidently laboring under personal excitement "flogged a maniac lad, (Narcisse Beauché,) with his own hands, and that convict Reveille came to the Penitentiary in bad health and probably with a predisposition to insanity" that "the severe punishment she received has greatly aggravated her maladies, physical and mental;" and that "the Warden has "endeavored to shield himself from the censure which his "treatment of this woman so well deserved, by deliberate falsification of the Prison Records?"—Ans. They did so report in all those cases.

Ques. Did the Commissioners unanimously report, that the Warden had been guilty of "deliberate misrepresentation," in

officially reporting to Government, on 19th September, 1846, that only three women had been flogged, up to that time, while the Punishment Ledger, in the Warden's own handwriting, shewed that eight women had been flogged, in the aggregate, nineteen times; That the Warden had been guilty of "gross and wilful "misrepresentation," in omitting from an official return to the Physician, a large number of punishments inflicted on convict James Brown; that the Warden had been guilty of "wilful and "deliberate misrepresentation" in written statements made to Government, to procure, and that did procure, the dismissal of Assistant Warden Utting; that a "number of misstatements" had been made by the Warden in his annual official returns to the Imperial Government; and that "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?" —Ans. They did.

Ques. On the charge of peculation, did the Commissioners unanimously report as follows: "The charge of peculation is "therefore fully established, and Your Excellency will perceive, "that the transactions are just those which were most calcu- "lated 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?"—Ans. They did. Among the particular acts of peculation were, the feeding of a horse, a cow, a large quantity of poultry, a large number of hogs, a number of pigeons, his own property, at the expense of the Penitentiary; of feeding a pair of gray horses, the property of his son, Henry Smith, Esq., M. P.P., at the expense of the Government, for the space of nine months; of feeding a pair of bay mares, the property of one Ritchie, also at the expense of the Penitentiary; with other acts of peculation, which will be found enumerated in the Report.

Ques. Are you aware that, after the Commissioners sent in their Report to the Governor General, Mr. Smith made formal complaint to Government, as to the manner in which the Commissioners had conducted their proceedings; that the Government delayed action on the Report for a year, to enable Mr. Smith to make out his case if he could; that he sent in a number of written statements to establish his complaints; that in February, 1850, he was notified by Order in Council, to close his case forthwith; that he did thereupon close his case; and that all Mr. Smith's charges, were formally considered and reported

upon by the Cabinet, pronounced groundless, and his papers ordered to be sent back to him?—Ans. I am aware that Mr. Smith did make such a complaint, that the Government did delay action on the Report, but for what time I cannot say from recollection, but an extract from a report of a Committee of the Executive Council being shewn to me, I find by it, that in February, 1850, Mr. Smith was notified to close his case as soon as possible; I am aware also, that, subsequently, Mr. Smith's charges were formally considered, reported upon by the Cabinet, and the approbation of the Government was conveyed to the Commissioners, of their report, as a fair and impartial statement of facts. I find also by a Minute of Council, dated April 13th, 1850, that the various letters addressed by Mr. Smith to Mr. Secretary Leslie, were ordered to be returned to the former gentleman.

Ques. Were the charges thus maturely considered by Government and dismissed by it, the same charges that were preferred by Mr. Smith in his petition to the House of Assembly, and repeated by Mr. Macdonald on the floor of the House in 1849, 1850 and 1851?—I did not see the charges presented by Mr. Smith, and consequently cannot reply to this.

Ques. Were the charges preferred by Mr. Smith against the Commissioners, and by Mr. Macdonald in 1849, 1850 and 1851, at all of the same character as those levelled at Mr. Brown by Mr. Macdonald in the House of Assembly in the debate on the Speech from the Throne of the present Session?—Ans. I speak in both cases from the perusal of newspapers only, but they were decidedly different as there reported; I have before me the petition of Mr. Smith, which is also directed entirely against the Commissioners as a body, with the exception of a reference in one clause, to one of the Commissioners, as being an editor of a public newspaper, and having written in his paper articles prejudicial to the petitioner, prior to his sitting in judgment on him; the charges of Mr. Macdonald, on the other hand, from the reports I have seen, were directed at Mr. Brown individually.

Ques. Were not Mr. Macdonald's charges against the Commissioners always, up to this year, expressly stated by him, to rest on Mr. Smith's information and authority?—Ans. I believe they were.

Ques. Having paid particular attention to the charges preferred in 1849, 1850 and 1851, did you ever hear such charges preferred as those uttered by Mr. Macdonald, in the House of Assembly in February last?

Question objected to by the Chairman.

Objection over-ruled.

Ans. The charges preferred on the three occasions mentioned, from my recollection of them as given in the newspapers, were altogether different from the charges reported to be uttered by Mr. Macdonald in the House of Assembly in February last.

Ques. Are you aware that the report of the Commissioners was formally approved by Government; that Mr. Warden Smith and his son, the Kitchen Keeper of the Penitentiary, were dismissed by Government at the suggestion of the Commissioners; and that the resignation of Mr. Hopkirk and his brother Inspectors, was accepted at the suggestion of the Commissioners?—Ans. I am aware that such was the case.

Ques. Are you aware that the Commissioners were appointed by Government, Inspectors of the Penitentiary, with a view to the practical reformation of the prison; that they acted gratuitously, as Inspectors from December 1848 till the Fall of 1851; that in this period, they reduced the corporal punishments from 2,133 in 1846 to 5 in the year 1850; and that they reduced the expenditure from an average of \$65,256 in 1846, 1847, and 1848, to \$45,000 in 1849; \$30,000 in 1850, and \$20,000 in 1851?

Mr. *Macdonald* objected to this question.

Objection sustained unanimously.

Ques. Are you aware that the Commissioners, after Mr. Smith's complaints against them, had been examined and dismissed, were invited by the same Order of Council in which they approved of the report, to aid Government in the preparation of bills for the better management of the Penitentiary, and the better regulation of county Gaols; that they did prepare such bills; and that they were submitted to Parliament and recommended in the Speech from the Throne, at the opening of the Session of 1850?

Mr. *Macdonald* objected to this question.

Objection sustained on the following division:

Yeas:

Mr. Masson,

Mr. Stevenson,

Mr. Wilson,

The Chairman,—4.

Nays:

Mr. Sanborn,—1.

Ques. Mr. Macdonald having charged Mr. Brown with "falsification of evidence," in omitting from the testimony of Mrs. Chase, as quoted in the printed report, the words "witness is sure that Reveille is not insane," which appear in her original depositions; will you please examine the draft report, and say if the extracts from Mrs. Chase's evidence were made precisely as directed by the Commissioners?—Ans. From reference to the draft report, I find they are.

Ques. Please refer to page 36 of the printed report, and say if it is not there recorded as part of Mrs. Chase's evidence given

on a different charge, "Witness thinks Reveille is not insane?"—
 Ans. It is.

Ques. Do you recollect why the Commissioners omitted to give Mrs. Chase's opinion, that Reveille was not insane, between 11th July, 846, and 7th October, 1847; the period of time embraced in the charge against the Warden; and did give her opinion to the same effect as to a transaction on the 18th February, 1848?—Ans. I cannot speak from distinct recollection, but a perusal of the report affords a satisfactory reason, the charges have a reference to certain acts, which had the effect of goading Charlotte Reveille into a state of insanity or aggravating any symptoms of insanity under which she might labour at the time the acts of punishment were committed. Mrs. Chase was not an officer of the Institution until after the time at which those punishments were inflicted, and consequently could be no competent judge of the state of mind of convict Reveille, at that time. To the subject referred to in page 36, the evidence of Mrs. Chase was manifestly relevant, she being an officer of the Institution at that time.

Ques. Had the Surgeon of the Penitentiary officially reported, that Reveille laboured "under that species of mental derangement which may be termed moral insanity?"—Ans. He did so report.

Ques. Please refer to the report of the Commissioners, page 208, and say from it, what was the character of Reveille's insanity?—Ans. The opinion of the Commissioners is conveyed in the following: "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."

Ques. Did the Commissioners attach any value to the evidence of Mrs. Chase, and if not, why not?—Ans. The Commissioners could not attach a high opinion of the competency of Mrs. Chase, to decide on such a question, as the sanity or insanity of convict Reveille; independent of this Mrs. Chase's testimony as given before the Commissioners was full of the most palpable contradictions, such as to render it unworthy of credibility.

Ques. During the time that Mrs. Chase had the charge of Reveille, had the Warden been prohibited from inflicting further punishment upon her, and was she under treatment by the Physician for insanity?—Ans. Yes.

Ques. Mr. Macdonald having charged Mr. Brown with "falsification of evidence" in stating on page 120 of the printed

report, that convict Henry Smith "Has had beer 3 or 4 times by order of Mrs. Smith the Warden's wife" whereas as Mr. Macdonald alleges, he should have added the words "was told so by some of the convicts," will you please examine the draft report, and say, if the extracts from Smith's evidence, were made precisely as directed by the Commissioners?—Ans. They were.

Ques. Please look at the printed Report (page 120) and say if the whole of Smith's evidence on the point is professed to be given by the Commissioners, or if the words in question, do not occur in a brief summary of the testimony of seven witnesses all embraced in twenty-four lines?—Ans. It is a mere extract, marked as such, and the whole is a brief summary as stated in the question.

Ques. Was it at all material, whether the beer was, or was not, given to Smith and other convicts, by Mrs. Smith's orders?—Ans. It was not material, the charge referred to obtaining intoxicating liquor by stealth.

Ques. Did not several other witnesses besides Smith, testify that Mrs. Smith had given liquor to convicts?—Ans. Keeper Keely, Assistant Warden Utting, keepers McGarvey and McCarthy did, also convicts Cameron and DeBlois did.

Ques. Mr. Macdonald having charged Mr. Brown with falsification of evidence in the following words used in the printed Report, page 153: "We are of opinion that it is clearly proved by the evidence of McCarthy, 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 McCarthy 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 McCarthy, 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.” Please refer to the original draft report and say who wrote this portion of the report, and if it is not precisely as adopted by the Commissioners?—Ans. That portion of the report was written by me and it was adopted by the Commissioners.

The Committee adjourned until 10 o’clock, A. M., to-morrow.

Thirty-eighth Day—Thursday, 8th May, 1856.

PRESENT:—Messrs. Wilson, Stevenson, Sanborn, and Masson. The Hon. Mr. Macdonald, and Mr. Brown were present.

Mr. *Bristow’s* examination resumed.

Ques. Mr. Macdonald professes to rest this charge against Mr. Brown, on the fact that in drawing up this portion of the Report you did not quote a passage of the evidence of Mr. Horsey, recorded on page 1189 of the official evidence; please refer to that passage of Mr. Horsey’s testimony, and say why it was not quoted?—Ans. I speak of course on this, as in reference to Mrs. Chase’s testimony, not from any distinct recollection, but from a perusal of the Report before me, it will be found that all the material part of Mr. Horsey’s evidence, is there inserted, the passage to which the question refers, would neither have added to, nor detracted from the force of the portion of the evidence of Mr. Horsey there given.

Ques. The Commissioners say in the Report that neither the Clerk nor Architect who could have “proved the deduction” if it had been made, were examined upon that point. Does Mr. Horsey’s evidence at all meet that point of the case?—Ans. It does not.

Ques. Did Mr. Muckleston testify, “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.” Did Mr. McCarthy testify “that the Bills of Parcels contained the “gross weight of the heavy iron, and that no deduction was “made.” Did you personally examine the bills of parcels and find no deduction marked on them; and was there an absence of all evidence, that any cash deductions had been made?—Ans. Mr. Muckleston and Mr. McCarthy did so testify. I personally examined the Bills of Parcels and found no deductions marked on them, and there was an absence of all evidence, that any deduction was made, the decision of the Commissioners was conveyed in the following terms. “Enough has been proved to shew that the “whole transaction is of a most equivocal cha-

“racter. It is to be regretted, that none of the requisitions for
 “the Iron by keeper Mr. McCarthy, 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 facts.”

Ques. Mr. Macdonald having charged Mr. Brown with falsification of evidence, in omitting the testimony of Mr. Bickerton on page 300 of the original evidence, in regard to the refusal of the Warden to fill Patrick Quinn’s order for 1000 ends of stove pipe; pray refer to the original draft report, and say, if the passage as printed is not precisely as adopted unanimously by the Commissioners?—Ans. It is.

Ques. Pray refer to Mr. Bickerton’s evidence and say if it affected, in the slightest degree the merits of the case?—Ans. Certainly not.

Ques. Would the evidence of Mr. Bickerton that he was in the habit of drawing up written contracts, disprove sworn testimony that the Warden had made a verbal contract with Mr. Quinn; was the fact of the contract for 1000 ends proved, or was it ever denied by the Warden?—Ans. Certainly indirect evidence of that kind could not disprove direct evidence; the contract with Mr. Quinn was clearly proved to the Commissioners, nor was it ever denied by any of the evidence given before them.

Ques. Mr. Macdonald having charged Mr. Brown with falsification of evidence in the following extract from the printed Report; please refer to the draft report, and say, if these words are precisely as adopted unanimously by the Commissioners?

“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 Peniten-
 “tiary, 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.”—Ans. It is.

Ques. Please refer to Mr. Horsey’s additional evidence on page 845 of the original record, and say if it is not precisely to the same purport as given above?—Ans. It is.

Ques. Did the Commissioners intend Mr. Horsey’s statement to be a complete offset to the statement of Mr. Coverdale, and do not the words as they stand, convey this meaning?

Mr. *Macdonald* objected to this question.

Objection sustained unanimously.

Ques. Mr. Smith having, before this Committee, in answer to question 171 declared that the words “in favor of the latter”

were omitted by Mr. Brown in taking down Mr. Horsey's deposition as above; will you please refer to your own notes of evidence, and say if the passage as written by Mr. Brown, was, or was not truly recorded?—Ans. It was truly recorded, as far as I can judge from my own independent record of that part of Mr. Horsey's testimony, which is given in these words, "The Penitentiary is constructed better than the ordinary buildings of the Town, 25 per cent. better;" this is the whole of my record.

Ques. According to Mr. Smith's declaration, Mr. Horsey's testimony would have run thus: "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. *in favor of the latter.*" Please state whether the addition of these words would have been favorable or unfavorable to the Warden?—Ans. It would certainly have been unfavorable to the Warden, had these words been put in.

Ques. Mr. Macdonald having charged Mr. Brown with falsification of evidence in regard to the following words on page 173 of the printed Report; "Thos. Kirkpatrick, says: He always presumed the Convicts had enough of food, while he was an Inspector; and their appearance indicated that they got sufficient food." Please to refer to the original draft report and say, if the passage is in the words of the Commissioners unanimously directed to be employed, and as they adopted it?—Ans. It is.

Ques. Please refer to Mr. Kirkpatrick's evidence in the original record, and say, if the passage as condensed by the Commissioners, is not a fair and accurate collation of that gentleman's testimony?—Ans. I consider it so.

Ques. Please refer again to the draft report, and say if Mr. Kirkpatrick's words are professed to be given, or only a summary of his evidence, in the words of the Commissioners?—Ans. It is merely a summary.

Ques. Mr. Macdonald having charged Mr. Brown with falsification of evidence, on the ground that it is stated in the printed Report (page 189) that "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" will you please refer to the draft report, and say if this statement is precisely as the Commissioners unanimously ordered it to be drawn, and as they adopted it?—Ans. It was.

Ques. Mr. Macdonald's objection to this statement is that there is no proof of its truth on the minutes of evidence, please say if the statement is true and on what authority the Commissioners made it?—Ans. Mr. Thomas, one of the Commissioners,

was deputed particularly to examine the punishment Books of the Penitentiary; he drew tables, from them and laid them before the Board. I know it was from reference to these tables that the statement was made in the report, and I may add, that I can speak from my own observation, that those books shewed the truth of the statement made by the Commissioners.

Ques. In whose hand-writing was the punishment Ledger kept?—Ans. In the Warden's.

Ques. Mr. Smith having stated before this Committee that "a garbled extract" from a letter of Dr. Sampson of 24th January, 1848, to himself "by which it was made to bear quite "a different meaning from what it would have shewn had the "whole been given," was contained "in the book of charges "against him," will you please state if that extract was made precisely as directed by the Commissioners?—Ans. Yes.

Ques. Was the list of charges in which this extract appears, simply intended for Mr. Smith's own use, and to enable him to explain the statements contained in it?—Ans. Certainly it was.

Ques. Was the original letter from which the said extract was taken, in Mr. Smith's own hands, when the charges were sent him, and were the Commissioners aware of this at the time?—Ans. It was a Penitentiary document, and it is to be presumed was in his own hands.

Ques. Now, was the said extract, a "garbled extract" or did it contain every word in the letter pertinent to the point at issue?—Ans. The extract was not garbled, and it did contain every word pertinent to the point at issue.

Ques. Did this letter of Dr. Sampson, arise out of a demand by Mr. Hopkirk and his brother Inspectors of 15th January, 1848, for a report on the mental condition of convict James Brown?—Ans. It did.

(Mr. Felton entered the room.)

Ques. Did Dr. Sampson, to enable him to form a correct opinion on Brown's case, by letter of 18th January, 1848, make two demands: 1st, for "access to the records 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)?"—Ans. He did.

Ques. Did the Warden, on 21st of January, in reply to Dr. Sampson's first demand, write him "I have enclosed a return of "the acts of violence committed by the convict in question, "during his confinement in this Institution" and in reply to Dr. Sampson's second demand "I beg leave further to state, that all "the keepers and guards in the establishment are cognisant of "the several acts of violence recorded?"—Ans. He did.

Ques. Dr. Sampson having received, as he supposed, a return of "the several acts of violence" committed by Brown, and having been referred to the forty keepers and guards, as witnesses of Brown's proceedings; did he, by *the* letter of 24th January, make two further demands: first 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 second, in the following words: "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?"—Ans. He did.

Ques. Do these two extracts comprise the whole of Dr. Sampson's letter of 24th January, and is the first portion the extract sent by the Commissioners to the Warden for explanation?—

Ans. They do comprise the whole, and the first portion is the extract sent to the Warden by the Commissioners.

Ques. What was the charge against Mr. Smith founded on the said extract, and did the latter portion of the letter in any manner affect that charge?—Ans. The charge was of making false representations in a return to Dr. Sampson, Surgeon of the Penitentiary, of the convict James Brown; and the latter portion of that letter, in no way affected that charge.

Ques. In Mr. Smith's letter of 21st January, was there a return enclosed, entitled "Return of the several acts of violence committed by the convict James Brown, as recorded in the punishment Books of the Provincial Penitentiary;" was it a true or a false return?—Ans. There was such a return and it was false.

Ques. Were not a large number of acts of violence, clearly shewn on the Punishment Books, suppressed in the said return?

—Ans. There were.

Ques. Did the Warden lay Dr. Sampson's letter before the Board of Inspectors, and did the Board instruct him to furnish the Surgeon a statement of "the several amounts and descriptions of punishments inflicted upon the convict?"—Ans. He did, and the Inspectors did order the Warden to make such a return.

Ques. Did the Warden write Dr. Sampson on 3rd February, 1848, that the Inspectors had directed him "to lay the statement of punishments inflicted upon that convict before you, as soon as it can be prepared;" was such statement furnished to Dr. Sampson, and was it a true or a false return?—Ans. He did so

write, and the Warden did furnish a statement which was false.

Ques. Were eighty-three punishments omitted from that return, twenty-three of them being punishments by the lash, and twenty-five shutting up in a coffin-shaped box, set upright?—Ans. There were eighty-three punishments omitted, of which twenty-three or twenty-four were punishments with the lash, and twenty-four incarcerations in the box.

Ques. Mr. Smith has stated before this Committee, that while examining Mr. Hopkirk in his defence before the Commissioners, he stated to Mr. Brown, that the copy of Dr. Sampson's letter served upon him was "merely an extract," that Mr. Brown replied that he could assure him it was a true copy of the whole "letter, and that he had taken it from the original;" that he (Mr. Smith) told Mr. Brown, "that was impossible, because he (Mr. Smith) had the original in his pocket;" that he thereupon produced the letter; and that he endeavoured to prove Mr. Brown's mis-statement by Mr. Hopkirk, but was prevented doing so by the Commissioners; please to state if you recollect the occurrence upon which all this is founded?—Ans. I recollect some conversation about a letter, whether it was an extract or a copy, but without something further to lead my recollection I cannot answer this question more precisely.

Ques. Please to refer to the original Record of Evidence of 3rd January, 1849, commencing on page 1162, examine the evidence given by Mr. Hopkirk on that occasion, and the questions proposed to be put to him on this matter, by Mr. Smith, but over-ruled by the Commissioners, and say, if that was not the occasion on which the circumstance referred to occurred?—Ans. I have done so and that was the occasion.

Ques. Now please turn back to page 1069 of the original record, and say if it is not there recorded, that eight days previously, or on the 26th December, 1848, while Mr. Hopkirk was under examination by the Commissioners, he had placed in his hands by the Commissioners, the whole of Dr. Sampson's letter of 24th Jan., 1848?—Ans. I have done so, and I find it there so recorded.

Ques. Do you recollect while Mr. Hopkirk was giving evidence on one occasion, of his referring to some statement he supposed he had made on a previous day, when Mr. Brown suggested that he was in error as to what he had previously sworn; that reference was thereupon made to Mr. Hopkirk's previous deposition, and some words passed between Mr. Brown and Mr. Hopkirk?—Ans. I have some recollection of the circumstance.

Ques. Did this happen only once during Mr. Hopkirk's examination, or on more than one occasion?—Ans. I am satisfied it occurred only on one occasion.

Ques. Please refer to the words as originally written on page 1162 of the official record, *but erased* with the explanatory note in the margin, that "by reference to his previous evidence, witness found he was in error here, and this answer was struck out," and say if the words erased were not as follows: "In witness' direct examination, he swore that he was under the impression that 'acts of violence' were mentioned in Dr. Sampson's letter of 24th January, 1848, in reference to convict 'Brown?'"—Ans. I have referred, and the words erased were as put in the question.

Ques. Was not this the occasion, and the only occasion, on which dispute arose as to Mr. Hopkirk's previous evidence, and on which reference was made to it; and did not Mr. Brown by his suggestion on that occasion, save Mr. Hopkirk from making a misstatement under oath?—Ans. This was the only occasion on which disputes arose of that nature, and Mr. Brown's suggestions did save Mr. Hopkirk from making a misrepresentation under oath.

Ques. Now please turn to page 919 of the original record, and say if the following words there recorded were not the words to which reference was made on that occasion: "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?"—Ans. I have referred, and that was the passage to which Mr. Hopkirk referred, when Mr. Brown corrected him and his evidence was struck out.

Ques. Mr. Hopkirk has stated before this Committee that when he was dictating this passage of his evidence to Mr. Brown, he used the words "acts of violence;" that Mr. Brown wrote down the passage omitting these words; that he insisted on Mr. Brown's putting them down, and they were interlined; that Mr. Brown thereupon produced the extract from Dr. Sampson's letter of 24th January, stating it to be a copy of the entire letter; that he was "staggered as to his speaking correctly when he said Dr. Sampson's letter contained reference to 'acts of violence;'" and that the words *states so from recollection* were added to his evidence in consequence; is this a true account of any occurrence during the sitting of the Commission?—Ans. I am certain this statement of Mr. Hopkirk's is the product of his own imagination, and has no foundation whatever in facts.

Ques. Please refer to the copy of the evidence which you

took down for your own use, and say if the passage as originally recorded by Mr. Brown was not correctly recorded in the words of Mr. Hopkirk?—Ans. The record in my Book is as follows: “Recollects a return of the punishments inflicted on James Brown being procured, at the request of Dr. Sampson, that the Warden then mentioned, that there was some portion of the time for which the returns could not be procured, the Board ordered that they should be returned for the portion of the time for which they were procurable.” The words “acts of violence” do not occur in my own report of evidence.

Ques. Please to look at the passage as recorded in the original depositions, and say if the words “acts of violence” interlined, had not exclusive reference to the directions given by the Board of Inspectors to the Warden, for the preparation of a list of punishments inflicted on convict Brown?—Ans. They have exclusive reference.

Ques. Had the words “acts of violence” as interlined, any reference to Dr. Sampson’s letter?—Ans. They have not.

Ques. Was there any reference made on that day to the extract of the letter of Dr. Sampson of 24th January, 1849?—Ans. Not that I am aware of.

Ques. Did the Minutes of the Board of Inspectors contain any reference to “acts of violence”?—Ans. No, it did not.

Ques. Then was the passage as originally recorded by Mr. Brown, true; and as amended by Mr. Hopkirk *false*?—Ans. It was correct as originally written by Mr. Brown, and the inference is, that it was incorrect as altered by Mr. Hopkirk.

Mr. *Macdonald* here stated that if Mr. Brown would read over the questions proposed to be put to the witness by him, that he would permit the written answers to be handed in at witness’s leisure.

Which was done accordingly.

The Committee adjourned until 10 o’clock A. M. to-morrow.

Thirty-ninth Day—Friday, 9th May, 1856.

PRESENT:—The Chairman, Messrs. Stevenson, Wilson, Clarke. The Hon. Mr. Macdonald and Mr. Brown were present.

The Clerk laid before the Committee the following written answers of Mr. Bristow, to the questions, as proposed by Mr. Brown yesterday, as follows:—

Ques. Mr. Macdonald having brought Mr. Warden Smith before this Committee to prove, that the words “but if she had been a quiet woman the punishment would not have hurt her”

were omitted by Mr. Brown, in recording the evidence of Dr. Sampson on page 379 of the original Record; please refer to the passage, and say who recorded the evidence in question, and whether Mr. Brown was in Canada at the time it was so recorded?—Ans. I find upon reference, that the evidence was taken down by Mr. Commissioner Thomas, Mr. Brown was absent in the United States at the time.

Ques. Mr. Macdonald having charged Mr. Brown with obtaining the pardon of murderers confined to the Penitentiary, to induce them to give false evidence, and Mr. Smith having stated before this Committee, that convicts Cameron, De Blois and Henessy were pardoned, but how, he did not know; will you be good enough to state, if any one of these convicts was pardoned, at the solicitation of Mr. Brown or of the Commissioners, or of the Inspectors while you were a member of the Board?—Ans. They were not, nor was any one of them.

Ques. Did the Board of Inspectors, of which you were one, refer to the case of convict Cameron, in a report to Government, dated 9th August, 1849, in the following terms: "The Board also enquired into the case of convict Hugh Cameron, committed on the 30th May, 1843, for 14 years, for the murder of his wife. It appeared that Cameron committed the act under the influence of liquor, and under circumstances of strong provocation, and he positively declared that while he has no doubt he committed the deed, he has no recollection of it. The Board were satisfied, that unless the Government were aware of local circumstances which would render his pardon prejudicial to the public morality, Cameron is a man towards whom mercy might be properly and advantageously extended, and the more so, as his conduct in the prison has been exemplary in the highest degree, and in the absence of such circumstances, the board recommend the case to the consideration of His Excellency?"—Ans. They did.

Ques. Witness is shewn a written memorandum, and is asked if that is the original memorandum on which the said report was brought before the Board of Inspectors and considered, and also to state in whose hand-writing it is?—Ans. It is the original memorandum in my hand-writing, and the name of Cameron appears with several other convicts whose cases were submitted to the Inspectors for their consideration, whether they ought to be recommended for pardon by the Executive.

Ques. Are you aware that the Government did make reference to local considerations as suggested by the Inspectors, and on that ground declined to pardon Cameron?—Ans. Yes.

Ques. Are you aware that convict Cameron was pardoned in 1852, three years after the Commission closed, on the application

of Mr. James Moir Ferres, Chairman of this Committee, and other citizens of Montreal?—Ans. Yes.

Ques. Are you aware that convict DeBlois was pardoned on 30th May, 1849, subsequent to the closing of the Commission, on the written application of his wife and twelve Roman Catholic Priests?—Ans. I learn this fact from the official return sent down by Government to the House of Assembly, now exhibited to me.

Ques. Are you aware that convict Henessy was pardoned on 16th March, 1849, on the written application of John P. Roblin, Robert C. Wilkins, and other inhabitants of the County of Prince Edward?—Ans. I learn this fact from a similar return; as in the case of De Blois.

Ques. Do you believe that Mr. Brown was in any way concerned, directly or indirectly in the release of any of the said convicts, or even knew of their release?—Ans. I have no reason to believe so.

Ques. Mr. Smith having declared before this Committee, in answer to a question by Mr. Macdonald, that he "saw Cameron at large shortly after the close of the examination, and when some of the Commissioners were in Kingston," was this statement of Mr. Smith's true or false?—Ans. It was untrue.

Ques. Mr. Hopkirk having declared before this Committee that he knew that "a murderer was pardoned about that time, a man of the name of Cameron. I cannot say when he was pardoned, it was after the sitting of the Commission, but whether after it closed I do not know," was this statement of Mr. Hopkirk's true or false?—Ans. It was incorrect, as the facts I have already mentioned prove.

Ques. Was Mr. James Hopkirk the chief witness in the defence of the Warden, and did his depositions in reply to Mr. Smith's questions, extend over 43 pages of a large Royal book?—Ans. He was a witness on whom the Warden apparently strongly relied, and I find, on examination, that his evidence does cover about the number of pages mentioned in the question.

Ques. Mr. Macdonald having made the length of Mr. Hopkirk's cross-examination by the Commissioners, subject of inquiry by this Committee, in support of his charges against Mr. Brown, will you please state, why it was necessary to examine Mr. Hopkirk so minutely?—Ans. His evidence touched on so many different points, rather insinuating than proving, numbers of circumstances connected with the management of the Institution, which were the subject of enquiry, that it became necessary to sift the accuracy of his statements.

Ques. Was Mr. Hopkirk the most active Inspector of the Penitentiary during the period when the most gross irregularities in the administration of its affairs were permitted?—Ans. He was.

Ques. Were not many statements made by witnesses before the Commissioners, in regard to personal transactions of Mr. Hopkirk's of a very irregular character; such as borrowing articles, the property of the Penitentiary, and trafficking in various commodities, while he was an Inspector?—Ans. They were.

Ques. Did it come out in evidence before the Commissioners, that Mr. Solicitor General Smith, son of the Warden, was one of the two sureties for Mr. Hopkirk as Collector of Customs for the Port of Kingston?—Ans. It did.

Ques. Witness is shewn the Annual Report of the Penitentiary Inspectors for 1855, and his attention directed to an item among the debts due to the Institution "James Hopkirk, £78 5s. 5d." and is asked if this is the same James Hopkirk who gave evidence before the Commissioners, how long that debt has been standing, and if it was incurred while Mr. Hopkirk was an Inspector of the Penitentiary?—Ans. It is I presume the same James Hopkirk, and has reference to an old outstanding debt due by him to the Penitentiary for many years, incurred in fact at least while he was Inspector of that Institution, or previous to his appointment as such.

Ques. Was there a general expectation that a Commission of enquiry into the condition and management of the Penitentiary would be issued, for many months previous to its actual issuing?—Ans. Evidence was produced before the Commission to that effect.

Ques. Was Francis W. Smith, son of Mr. Warden Smith, and brother of Mr. Solicitor General Smith; kitchen keeper of the Penitentiary; was he tried on 29th October, 1847, by Mr. Hopkirk and some of his brother Inspectors, on charges of improper conduct, including peculation and shooting out the eye of a convict with an arrow, and did they acquit him, the said Smith, on the said charges?—Ans. Yes.

Ques. Did the Judge of the Midland District Court, after carefully perusing the evidence received by the Inspectors at the trial, testify under oath before the Commissioners "that the judgment of the Board (of Inspectors) was not in accordance with the evidence before them?"—Ans. Yes.

Ques. Did the Commissioners inquire into the conduct of the said Francis W. Smith, and report to Government that he was guilty of "cruelty to the prisoners," "peculation" and "conduct subversive of the rules and good order of the Prison?" Did they at the same time report that "the conduct of the Board

“of Inspectors in reference to this case” had produced a painful impression on their minds, and that the evidence before the Inspectors, did not warrant their acquitting Smith; and was the said Francis W. Smith dismissed by Government, on the said report of the Commissioners?—Ans. Yes.

Ques. Are you aware that Guard Robinson was nearly five years an officer of the Penitentiary; that he gave evidence at Francis W. Smith’s trial by Mr. Hopkirk and his brother Inspectors, prejudicial to said Smith, and that he was dismissed a fortnight afterwards by Mr. Hopkirk for “impertinence” or “insolence”?—Ans. Yes.

Ques. Are you aware that Keeper Keely was an officer of the Penitentiary for eleven years, that he gave evidence at Francis W. Smith’s trial, prejudicial to said Smith, that he was called before Mr. Hopkirk and other Inspectors, immediately after the Government had resolved to issue a Commission of Enquiry, and asked if he knew any thing against Mr. Smith’s conduct as Warden; and that on his refusal to be sworn in that matter; he was suspended, and afterwards dismissed within a few days of the arrival of the Commissioners at Kingston?—Ans. Yes.

Ques. Are you aware that Keeper Gleeson has been for ten years an officer of the Penitentiary, that he gave evidence at Francis W. Smith’s trial, before Mr. Hopkirk and other Inspectors, prejudicial to said Smith; that he was dismissed a few weeks after giving such evidence, for an alleged statement by himself, which he denied having made, that he had used a York shilling’s worth of Penitentiary property, in making blacking for his own use?—Ans. I cannot speak as to the time during which Keeper Gleeson has been employed in the Penitentiary, he went there in April, 1845. I answer in the affirmative to the remainder of the question.

Ques. Are you aware that Keeper McCarthy has been an officer of the Penitentiary over twenty years; that he gave evidence at Francis W. Smith’s trial, before Mr. Hopkirk and other Inspectors, prejudicial to said Smith; that he was called before the Board immediately after the Government had resolved to issue a Commission of Enquiry; and asked by Mr. Hopkirk if he knew anything against Mr. Smith’s conduct as Warden; and that on his refusal to be sworn on that matter, was he suspended, and afterwards dismissed, a few days before the Commissioners arrived in Kingston?—Ans. Keeper McCarthy had been fifteen years in the employment of the Penitentiary, prior to the sittings of the Commission, but whether he has been constantly so since that time I am unable to state. I answer yes to the remainder of the question.

Ques. Are you aware that Keeper McGarvey was an officer of the Penitentiary for seven years, that he gave evidence at Francis W. Smith's trial, prejudicial to said Smith; that he was called before the Inspectors immediately after the Government had resolved to issue a Commission of enquiry; and asked by Mr. Hopkirk if he knew anything against Mr. Smith's character and conduct as Warden; that he was dismissed a few days before the arrival of the Commissioners in Kingston, on the plea that he would not pay the value of two pairs of boots which were missing from his shop; but which were found after his dismissal, and that articles had very frequently been missing from all of the shops, but no Keeper was ever before called to pay the value, or dismissed because he would not?—Ans. Yes.

Ques. Are you aware that Guard Wilson was for several years an officer of the Penitentiary; that he gave evidence before the Commissioners prejudicial to the Warden on the 24th July, 1848; that on the very next day (25th July) he was punished for an offence alleged to have been committed four months previous, and that he was some weeks after dismissed, for saying to Guard Fee, "I'll twist your nose if you don't give up that key?"—Ans. Yes.

Ques. Are you aware that Keeper Skynner was an officer of the Penitentiary for over three years; that he gave evidence before the Commissioners prejudicial to the Warden on 21st August, 1848; that he stopped certain machinery from going through the gate of the Prison without a pass, and on the 22nd August laid a complaint against two officers of being wrongfully in possession of the said machinery, as the property of the Penitentiary, that the matter was investigated by Mr. Hopkirk and other Inspectors on 29th July, and Skynner dismissed for bringing the charge, though he was fully justified by the evidence, in preferring it?—Ans. Yes.

Ques. In all these proceedings was Mr. Hopkirk the leading agent?—Ans. He appears to have been so, he took down the evidence and mainly conducted the proceedings.

Ques. Were you at any time absent from the Commission room while Mr. Hopkirk was being examined, and Mr. Brown was recording his evidence?—Ans. I do not think I was; if I was, it could only have been for a minute or two at a time.

Ques. Did the Hon. J. A. Macdonald (now Attorney General for Canada West) make an attack on the Commissioners in the House of Assembly in January 1849, before the Commissioners had made their report to Government, and while they were yet sitting at Kingston, and did the Commissioners im-

mediately reply to the said attack, in an official letter to Government, dated 28th January, 1849, in the following terms :

“ Provincial Penitentiary,
Commission Room,
Kingston, 28th January, 1849.

“ SIR,—The attention of the Commissioners has this morning
“ been called to certain statements reported in the ‘ Pilot’ news-
“ paper of the 26th inst., as having been made on the floor of
“ the House of Assembly by the Honorable John A. Macdonald
“ and John Prince, Esq., as to the official conduct of the mem-
“ bers of this Commission. These statements are of so extra-
“ ordinary a character that the Commissioners feel it due to
“ themselves to repel them at once, without waiting the publi-
“ cation of their Report for a full justification of all their
“ proceedings; I am therefore instructed by the Commissioners
“ to take up and explain *seriatim*, the several imputations made
“ against them.

“ 1st. Mr. Macdonald is reported to have said, ‘ On the same
“ authority he would state, that Mr. Brown took the evidence,
“ and falsified the evidence, which afterwards, when the
“ error was pointed out, he was with some difficulty induced
“ to alter, and which in some cases he would not alter.

“ This statement is totally without foundation. The evidence
“ has been taken down by Mr. Brown with great care and
“ particularity; the answer to each question was read aloud
“ as it was written down, and carefully amended to suit the
“ witnesses, when suggestions were made by them; at the
“ close of each witness’s examination his deposition was read
“ aloud, slowly and distinctly; corrections were often made in
“ the course of reading; when read through, the witness was
“ invariably asked, if he was satisfied that his evidence was
“ correctly taken down; Mr. Warden Smith was then invariably
“ asked if he was satisfied that the evidence was correctly
“ taken down; their answers being obtained, the Secretary in-
“ variably wrote the following words at the end of the deposition:
“ ‘ The foregoing evidence was read aloud, the Warden
“ Smith declared the evidence correctly taken down, witness
“ did the same and signed it.’ These words were then read
“ aloud, and the witness signed his name.

“ 2nd. Mr. Macdonald is reported to have said, ‘ Mr. Brown
“ has also told some of the witnesses, that what they said was
“ not true, but might go for what it was worth.

“ This statement is also utterly without foundation, neither
“ Mr. Brown nor any other member of the Commission ever
“ told any witness, that what he had said was untrue.

“3rd. Mr. Macdonald is reported to have said, ‘One witness was cross-examined for twelve and a half consecutive days, and when he asked why he was subjected to so severe an examination, he was told, you are the chief witness for the Warden, and it is our business to destroy your testimony.’

“The witness alluded to is James Hopkirk, Esq. When the evidence is published it will be seen whether the Commissioners were blameable for making his examination so minute; when his own proceedings were being enquired into: as to certain of the charges against the Warden, Mr. Hopkirk said, ‘You are trying me not the Warden, why do you inquire in this way into my conduct,’ or words to that effect, Mr. Brown said, ‘You are a chief witness for the Warden, and it is our duty to shew how much you are yourself personally mixed up in these very transactions,’ and Mr. Bristow added, ‘Every point on which you have been examined by the Commissioners was brought up in your direct examination by the Warden.’

“4th. Mr. Macdonald is reported to have said, ‘That witness (Mr. Hopkirk I presume) replied that the Government would do him justice, and he was told, we are the officers of the Government and it must support us.’

“This statement is totally without foundation, no such observations having been made by any witness, and no such reply having been made by any Commissioner, or any language used, which could be so construed.

“5th. Mr. Macdonald is reported to have said, ‘The copy of a letter was produced by Mr. Brown as evidence against the Warden; and Mr. Brown declared upon his honor that it was a correct copy of one written by the Warden. This the Warden denied, asserting that it was an ingenious extract from the real letter; everything favourable to the Warden having been left out. He was informed that Mr. Brown’s declaration could not be true, for the Warden at that very time had the letter in his pocket; that he produced it, and that when Mr. Brown saw it, he was confounded, and asked why it was not in the archives. It was of great importance to have that fact in evidence, and Mr. Brown consented to give his testimony upon it; afterwards, however, he refused to give his evidence; and when the Warden called up other witnesses to that fact, Mr. Brown would not allow the testimony to be entered on the notes.’

“The above contains a great amount of error, on the foundation of a very little truth. The Warden was charged with making a false return to the Surgeon, of punishments in-

"ficted on an insane convict; in the formal charges, the letter
 "of the Surgeon to the Warden asking the return, was given
 "in so far as it related to the point at issue, the latter part had
 "no reference to the point at issue and was not given; it hap-
 "pened that the words 'acts of violence' occur in the latter
 "portion, and the Warden looked on these words as favorable to
 "his defence, and tried to make it appear that the latter portion
 "was kept back by design on the part of the Commissioners.
 "The extract from the letter of Dr. Sampson was a full and fair
 "extract, and it was not quoted in the charges as the entire
 "letter; the idea of garbling a letter, the original of which was
 "in Mr. Smith's own possession, is palpably absurd. It is
 "true the Commission refused to allow Mr. Brown or Mr.
 "Hopkirk to answer certain questions put by the Warden as to
 "this letter, but they affected in no way the charges against
 "the Warden, and tended only to impugn the integrity of the
 "Commissioners.

"6th. Mr. Macdonald is reported to have said: 'one of the
 "charges against the Warden, was, that he allowed Mr.
 "'Hopkirk to steal six cords of wood;'" "The Commissioners
 "examined a witness, named Ballantyne one of the gate-
 "keepers, who said, he knew Mr. Hopkirk had the wood, and
 "he knew that he had returned it. The other named Cooper,
 "only proved that Mr. Hopkirk had the wood, and his evi-
 "dence alone was entered on the Minutes, but he was now
 "prepared to swear, that the only reason he did not state that
 "Mr. Hopkirk had returned it, was, because he was not asked."

"The witness referred to, under the name of Ballantyne,
 "it is presumed is Guard Bannister, this witness' deposition
 "is as follows: 'Witness recollects of Mr. Hopkirk getting
 "'four or five cords of fire-wood from the Penitentiary stores.'
 "That Bannister stated to the Commissioners, that this wood
 "was returned is altogether untrue; Guard Cooper does not
 "appear by his deposition, to have made any statement what-
 "ever as to the fire-wood, when first before the Commissioners;
 "he was called however by the Warden Smith to prove, that
 "when before the Commission he had stated that Mr. Hop-
 "kirk got some fire-wood which was returned, and he then
 "gave the following testimony: 'Does not know that Mr.
 "'Hopkirk got five cords of wood from the Penitentiary in
 "'the early part of 1847, nor does he know that Mr. Hopkirk
 "'sent that quantity to the Penitentiary in 1847. Knows he
 "'got wood out and sent wood in, but knows nothing as to
 "'quantities.' Witness in answer to an enquiry from Mr.
 "Hopkirk one Sunday, as to whether witness had informed
 "the Commissioners of wood having been taken out of the

“Penitentiary to Mr. Hopkirk, and returned by him, said that he did not recollect positively whether the Commissioners had asked him about the wood, but if they had, he had told them that he thought the wood was returned; witness does not recollect if the Commissioners asked witness about the wood, believes he mentioned to them that Mr. Hopkirk had received wood from the Penitentiary, and that Mr. Hopkirk had returned it; believes he was under oath when he told the Commissioners of the wood.”

“The Commissioners have no recollection of Guard Cooper stating anything to them about fire-wood at his preliminary examination, but it is quite possible that among the numerous transactions voluntarily brought before them by witnesses and not taken up this may have been one.”

“7th. Col. Prince is reported to have said: ‘He might also state that the gentleman placed at the head of that Commission, no sooner found that the duties of the office ran counter to his interest, otherwise, than he neglected the business for which he had been appointed.’

“The truth is, that the Hon. Adam Fergusson attended closely at the proceedings of the Commission from 23rd June to 5th December, 1848, and only left when summoned home, by the alarming indisposition of Mrs. Fergusson.

“8th. Col. Prince is also reported to have said: ‘He had heard a gentleman state at a large public meeting at Kingston, that the greatest partiality had been exhibited by Mr. Brown, in taking the evidence during the sitting of the Commission.’ That gentleman stated that Mr. Brown would not take down those parts of the evidence which went to exculpate Mr. Smith from charges made against him, and when Mr. Smith was called to sign the evidence, he objected that all was not down which he had stated, Mr. Brown, however, said that he must sign what was shewn him, as if he had said any thing more he had not heard him. This he could prove if required.”

“The Commissioners cannot say what Mr. Prince may have been told, but they know that the whole statement of his alleged informant is utterly without foundation, no such occurrence, nor any incident on which such a statement could be founded, ever having happened during the sitting of the Commission.”

“I believe these are the only points which require explanation.

“The Commissioners cannot, within the compass of this letter, adequately explain the disagreeable duties which have devolved upon them, in the course of this protracted enquiry;

“and the painful position in which they have been placed
 “by their determination to act fearlessly and independently :
 “They rely with confidence, that the Report which they will
 “have the honor to present, at the close of their proceedings,
 “will vindicate their conduct to the Country, and amply justify
 “the confidence which His Excellency has been pleased
 “to repose in them.”

“I have &c.,

“(Signed,)

GEO. BROWN,
 Secretary.”

“The Hon. Provincial Secretary.”

Ans. Yes.

Ques. Was this letter adopted unanimously by the Commissioners then present, and was Mr. Commissioner Amiot at the time acting as Chairman in the temporary absence of Mr. Fergusson?—Ans. Yes.

Ques. Do you recollect of Mr. Brown using the expression as to some answer of Mr. Hopkirk’s, “it was not evidence, but “if Mr. Hopkirk desired it, he would write it down and it “would go for what it was worth” or words to that effect?—
 Ans. I do remember something of the kind occurring.

Ques. On Mr. Hopkirk’s referring to the observation, did Mr. Brown at once explain that he had no intention of speaking discourteously but merely referred to the irrelevancy of the testimony?—Ans. He did.

Ques. While Mr. Hopkirk was being examined, did Mr. Brown or any other Commissioner say to him: “The Commissioners must support their own witnesses?”—Ans. Never to my knowledge.

Ques. Had Mr. Hopkirk any difficulty in getting his evidence recorded as he desired, was there one amendment asked to be made by him, or any other witness, that was not made?—Ans. No.

Ques. While Mr. Hopkirk was being examined, did he ever make the remark; that he “saw an Attorney General, alluding to Mr. Brown, and a Solicitor General, alluding to “Mr. Bristow, but no Counsel for the Prisoner, neither did the “Judges appear to act as Counsel for him” or any words to that effect?—Ans. I do not remember any remark of the kind being made.

Ques. Witness is shown Mr. Hopkirk’s answer to question 380, and is asked if such a conversation as therein stated by Mr. Hopkirk ever occurred before the Commissioners?—Ans. I remember at times, half jocular, half serious conversations between Mr. Hopkirk and Mr. Brown, but certainly nothing that bears the complexion put upon them by Mr. Hopkirk in the above answer, or that bears any resemblance to it.

Ques. In answer to question by Mr. Macdonald, if he had known "any instances in which keepers and guards were intimidated by Mr. Brown in giving their evidence or in consequence of giving their evidence" Mr. Hopkirk cited the case of Hugh Manuel, and in answer to question 379, he stated that he had reason to believe "that Manuel's dismissal was in consequence of the evidence he had given before the Commissioners, and also of his having been brought up as a witness in McCarthy's case"; please to state if this was true or false?—Ans. It is not true.

Ques. At what date did the Commissioners close their labors at Kingston?—Ans. I think it was in February; it must have been some weeks previous to the date our first report, which was made on 16th March, 1849.

Ques. Please look at these official returns sent down by Government, and say, if the date of McCarthy's trial is not stated therein as 1st October, 1849?—Ans. It is so stated.

Ques. Had the Inspectors of the Penitentiary by Minute of 1st September, or one month before McCarthy's trial, resolved to dismiss Manuel?—Ans. Yes.

Ques. When the Inspectors ordered the dismissal of Manuel, were they aware that he was to be a witness at McCarthy's trial, or had his dismissal the slightest reference to that trial?—Ans. I certainly had no such knowledge, nor am I aware that any of my brother Inspectors had. The dismissal of Manuel did not arise from any circumstances connected with McCarthy's trial.

Ques. Please look at the official papers, and say if there is among them a letter of Mr. Hopkirk to the Provincial Secretary, complaining of Manuel's dismissal, and enclosing affidavit on the subject by Manuel; state also if these two documents were referred by Government to Mr. Brown for explanation, and the following reply, dated 16th October, 1849, sent in by Mr. Brown:

"GLOBE OFFICE,

"Toronto, 16th October, 1849.

"SIR,—I have the honor to acknowledge receipt of your letter of the 9th instant, together with copy of a letter from Mr. James Hopkirk, demanding an enquiry into the cause of the dismissal of Keeper Hugh Manuel, from the Provincial Penitentiary, and copy of an affidavit by said Manuel, professing to detail the circumstances attending his dismissal.

"In reply, I have merely to state by the following Minute of 1st September last, the Board of Inspectors ordered Manuel's dismissal: 'The Board took into consideration the suit-

““ ableness of Keeper Manuel for his situation, and resolved
 ““ that from what had come under their notice, they could have
 ““ no confidence in him, as an officer of the Penitentiary; and
 ““ instructed the Warden to inform Manuel that his services
 ““ would be no longer required.”

“Hon. James Lesslie,
 “Provincial Secretary.

“The Inspectors took active steps to procure a competent
 “person as Manuel’s successor, and at the Warden’s request, no
 “notice was to be given to Manuel until one should be found.
 “On 21st September, I happened to be in Kingston, and in
 “course of conversation with the Warden, as to the prospect of
 “procuring a good man, he suggested that a successor might be
 “dispensed with altogether. I immediately procured a return
 “from the Clerk of the number of convicts employed in each gang
 “of masons and stone cutters, and finding that Manuel’s gang
 “was very small, and might be distributed among the other mason-
 “keepers, without exceeding the statutory strength of the several
 “gangs, I agreed with the Warden, that no successor to Manuel
 “should be appointed, at any rate, until the Board of Inspectors
 “considered the matter. There was thus no necessity for delay-
 “ing Manuel’s dismissal further than to arrange the distribution
 “of his gang, and this the Warden agreed to have done before
 “I left Kingston.

“Mr. John Sandfield McDonald, Counsel for the Crown at the
 “Midland District Assizes, which were then proceeding, visited
 “the Penitentiary while I was there, and hearing the Warden
 “and myself name Manuel, he afterwards said casually that
 “Manuel was one of the witnesses for the Crown in McCarthy’s
 “case.

“Of this I had no idea previous to the moment when Mr.
 “McDonald mentioned it, and I immediately suggested that his
 “dismissal would be charged to us as influenced by the fact of
 “his being a witness, and asked the opinion of the Crown Officer,
 “whether Manuel’s dismissal had not better be deferred until the
 “trial was over. On consideration, we agreed it was much
 “better that the dismissal should take place before, than after
 “the trial, as in the former case Manuel would only be less
 “shackled in giving his evidence, while in the latter it might be
 “said that his dismissal was a punishment for the character of
 “his evidence.

“The Warden also thought it best to dismiss Manuel before
 “the trial, and would have himself dismissed him on Monday
 “morning, the 24th of September, but Manuel had gone into town
 “to attend the Court. The Warden, however, informed me of
 “the fact, that he had missed seeing Manuel.

“ Shortly afterwards, as I was passing out of the Court room, I saw him standing in the crowd, and asked him to step down stairs with me. He went down, and I then told him the Board of Inspectors at their last meeting, had resolved to dispense with his services; he asked why, and I said because they had no confidence in him as an officer. I told him he need not return to the Institution, as the Warden had made arrangements for the care of his gang, and left him. The details given in Manuel’s affidavit further than this, though immaterial to the matter, are entirely imaginary.

“ In conclusion, I have only to state that Manuel’s dismissal had not the remotest connection with McCarthy’s trial. The Inspectors had no knowledge that he was to be a witness in that case, and if they had, it was a matter of perfect indifference to them personally, what evidence he might give at it, or what might be the result of the trial; and besides, when Manuel was put in the witness-box, the only evidence he gave, was as to his own dismissal that morning, not one word of testimony could he give in McCarthy’s case.

“ It is unnecessary for me here to explain why the Inspectors had no confidence in Keeper Manuel, but should His Excellency desire it, the Inspectors can readily state reasons for it of the most conclusive character.

“ I have the honor to be, Sir,

“ Your most obedient servant,

(Signed,)

“ GEORGE BROWN.”

Ans. There is such a letter and affidavit, and I find on reference to the official papers before me, that it was referred to Mr. Brown, and the reply contained in the question made by him.

Ques. Are the contents of Mr. Brown’s letter true, so far as your knowledge extends?—Ans. Yes.

Ques. Mr. Hopkirk has stated before this Committee, that “ Mr. Brown, in pursuance of his practice of supporting such witnesses, insisted that these men (Cooper and Bannister) should be restored to the gate.” Was this statement true?—Ans. All the matters connected with Cooper and Bannister, referred to in this question, occurred whilst Mr. Brown and myself were in the United States, and we had no cognizance of them, until after they occurred.

Ques. Mr. Hopkirk has stated before this Committee that Mr. Brown “ applied to the Inspectors to restore them,” meaning Cooper and Bannister: was this statement true?—Ans. For the reason given in my last answer, it could not be true.

Ques. Mr. Hopkirk has stated before this Committee, that the Inspectors having refused to restore Cooper and Bannister,

“he (meaning Mr. Brown) then “applied to Government,” as he (Mr. Hopkirk) was led to believe, from the letter of the Secretary to the Board of Inspectors. Was this statement true?—Ans. It also could not be true.

Ques. Mr. Hopkirk has further stated “the men Cooper and Bannister were immediately restored by Mr. Brown:” Was this statement true?—Ans. It could not be true.

Ques. Mr. Hopkirk has complained before this Committee that Mr. Brown refused to give evidence before the Grand Jury at the Kingston Fall Assizes of 1848, in the matter of his complaint against McCarthy for alleged perjury, committed in evidence given before the Commissioners. Will you please to state why Mr. Brown refused to give evidence on that occasion?—Ans. I do not know.

Ques. Was not the said prosecution against McCarthy got up while the labors of the Commission were yet in progress, and the Report to the Governor General had not yet been made?—Ans. It was.

Ques. Was not McCarthy tried in 1849; did not Mr. Brown give evidence on that occasion, and was not McCarthy acquitted?—Ans. Yes.

Ques. Mr. Hopkirk has stated in answer to question 392, that while he was being examined he “frequently made explanations which Mr. Smith sometimes wished to have taken down, and his desire was overruled.” Is this statement true?—Ans. It is untrue, if Mr. Hopkirk’s intention in the remark,

is to convey the inference that his evidence was unfairly taken down, or any corrections he might desire to have inserted, made

Ques. Did the Report of the Commissioners to the Governor General profess to give the whole evidence received on each point, in the words of the witnesses, or was it avowedly a summary of the investigation?—Ans. It was avowedly a summary.

Ques. Were you aware that Mr. Brown had all the original papers of the Commission in his possession, and that only the official report had been transmitted to Government?—Ans. I did know the fact.

Ques. Was there any prosecutor, nominally or in fact, in the conduct of the inquiry into the conduct of the Warden?—Ans. There was not.

Ques. Did any inconvenience arise from Mr. Brown’s acting in the double capacity of Commissioner and Secretary? Was any objection ever made by any one on that score in your hearing?—Ans. There did not arise any inconvenience, but the reverse. Mr. Brown was both an excellent and active Secretary, as well as Commissioner; I do not remember to have ever heard of such an objection.

Ques. Did all the Commissioners reside at the same hotel and occupy the same parlor? Was Mr. Brown ever "closeted" with witnesses" to your knowledge, except in common with his brother Commissioners?—Ans. The Commissioners occupied the same parlor in the same hotel, and, as all had access to that parlor at all times, no one could have been closeted there.

Ques. Mr. Smith, in reply to question 251, quoted a passage from the evidence of Hugh Manuel, given before the Commissioners, in which the following words occur: "Keely has told witness that officers who gave testimony in favor of the Warden would be dismissed, and more than him have said so; Skynner has said so; he said Pollard and Manuel and a good many others, who would be in the Warden's favor, would be dismissed; Skynner said the Commissioners told him so, when he was before them." Please to say if any such statement was made to Skynner, or any other person by the Commissioners?—Ans. So far as my knowledge extends, no such intimation was ever made by any Commissioner, and certainly was not made by the Commissioners collectively.

Mr. *Brown* concluded his examination in chief of Mr. *Bristow*. The Committee adjourned until 11 o'clock, A. M. to-morrow.

Fortieth Day—Saturday, 10th May, 1856.

PRESENT:—Messrs. Felton, Stevenson, Wilson, and Sanborn. Mr. Brown was present.

At 12 o'clock noon, the Committee adjourned in consequence of the absence of Mr. Macdonald, until 10 o'clock, A. M. on Monday, the 12th instant.

Forty-first Day—Monday, 12th May, 1856.

PRESENT:—The Chairman; Messrs. Masson, Sanborn, Wilson, Clarke, and Felton.

The Hon. Mr. Macdonald and Mr. Brown were present.

Mr. *Bristow* cross-examined by Mr. Macdonald.

Ques. In your answer to question 423, you say that "the Commission under which the Commissioners were appointed states that 'divers charges had been made against the conduct and management of the Penitentiary.'" Do you not know such charges had been made in the *Globe* newspaper, as stated by Mr. Smith in his petition?—Ans. I have no knowledge on that point.

Ques. In your answer to question 430, you give the names of several gentlemen who gave valuable information, which led to further enquiry by the Commissioners; did those gentlemen or any of them, point out to the Commissioners the convicts in prison; the discharged convicts; the officers in employ, and the officers dismissed, who were examined by you as witnesses, and if so, name the witnesses so pointed out, and the person or persons by whom they were named?—**Ans.** I cannot pretend to say whether these gentlemen named the particular individuals who subsequently appeared before the Commissioners, whether convict or other witnesses, but I am sure some of them must have named witnesses as suitable to be called; it may be necessary to add also that the information obtained from these gentlemen was followed up by information obtained from numerous officers of the Institution, I know that one of the gentlemen (Mr. Manahan,) formerly an Inspector of the Penitentiary, furnished the Commissioners with a memorandum, which I think led to some enquiry, I may mention also that the commissioners received information from every person who offered to give it, one of the witnesses, formerly a convict, named Maurice Phelan was brought before us through the instrumentality of Mr. Manahan, referred to before in my answer.

Ques. By question 441 you are asked as follows, “of the remaining four witnesses, was not Mr. M. B. White, a merchant “in Carbondale, Pa., and Maurice Phelan, a hand on an American “steamer, and might not both have been produced, had the “Warden so requested,” and you reply as follows; “I know no “reason why they might not have been.” Was not Maurice Phelan examined by the Commissioners at the request of Mr. Manahan, contrary to the arrangement made by the Commissioners; as they were informed that the said Phelan was to leave town on the American war steamer, on which he was employed, on the following morning?—**Ans.** With regard to Maurice Phelan, the examination was not contrary to any arrangement made by the Commissioners, the only change was that at the time the examination was taken, he was about to leave the place, and it was deemed advisable to postpone, until after his examination, such other matters as the Board was then occupied in.

Ques. Did not M. B. White mentioned in the last question, state in his examination, that he was then merely on a visit to his friends in Canada?—**Ans.** He did state so, I will mention with reference to the examination of the two individuals referred to in the last two questions, that at the time they were examined, no charges were preferred by the Commissioners against any of the officers of the Penitentiary, and they were

engaged merely in the preliminary enquiries into the conduct, discipline, and economy of that Institution.

Ques. Was not the evidence of M. B. White and Maurice Phelan, quoted by the Commissioners in their report in support of the charges against Mr. Smith?—Ans. I do not recollect of any thing more than a passing observation, in which their names are introduced; Maurice Phelan's testimony is quoted with reference to the nature and manner of the punishments inflicted, and the following remark is made upon it, and the testimony of others, which show clearly that the Commissioners founded no charge upon the testimony which he gave:

“The foregoing statements were merely given in the charges to enable the Warden to offer any explanations he desired, as the nature of the punishments must be taken into account in considering the extent to which they have been carried.”

As remarked in my examination in chief, no charge whatever was by the Commissioners predicated on the testimony of these two individuals.

Ques. Was not the evidence of Maurice Phelan extensively used in support of the charges against kitchen keeper Francis W. Smith?—Ans. No doubt it did form a considerable part of the evidence transmitted to kitchen keeper, Francis W. Smith, for his answer.

Ques. You mean to say that the evidence of Maurice Phelan was only used against the Warden in the one instance you name?—Ans. I do not recollect any, and should be happy to have any pointed out to me for explanation.

Ques. Was or was not the evidence of M. B. White used against the Warden, and quoted in the report?—Ans. I am satisfied no more than the incidental reference, to which I have alluded, is made to it.

Ques. In answer to question 442, you say you have no reason to doubt that James Brennan and Eustache Coté might have been produced, had the Warden so requested. Have you any reason to believe they might have been so produced?—Ans. I have no reason to doubt; on the contrary, I believe they could have been produced without difficulty.

Ques. Do you not know, or were you not informed, that Eustache Coté had committed a larceny shortly after having been examined before the Commissioners, and that he had absconded in consequence thereof?—Ans. I certainly am not aware that any such circumstance occurred prior to the closing of the Commission. I have heard since that time that such was the case, but how long after he was examined before us, I have not the slightest reason of speaking from recollection.

Ques. Was not the evidence of Eustache Coté quoted in the Report, as evidence against Mr. Smith?—Ans. I have no doubt it was quoted, but whether for or against Mr. Warden Smith, I cannot, without reference to the particular passages, state; and with reference to his testimony, and to that of other convicts examined before the Commissioners, I unhesitatingly repeat the assertion made in my examination in chief, that no absolute reliance was placed by the Commissioners in their conclusions, on convict testimony, unsupported by the reliable testimony of other witnesses; on this subject I will quote the following paragraph from the printed Report, page 106: “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.”

Ques. Did the Commissioners, in their Report, quote evidence of any witnesses that they considered to be material?—Ans. I have no doubt they did; they felt it their duty to give a *resumé* of the testimony brought before them, leaving it to those to whom the Report was submitted, to judge of the reliancy of that testimony, and of the correctness of the conclusions to which the Commissioners arrived.

Ques. Do I understand you then to say, that the Report contains a *resumé* of the evidence adduced before the Commissioners?—Ans. I do, on the several points you referred to in the Report.

Ques. Did not Mr. Hopkirk, in your presence, frequently object to the way in which his evidence was taken down, and did you reprove him for his language?—Ans. Mr. Hopkirk objected, or caused alterations in the manner in which his evidence was taken down, perhaps as frequently as I do in the manner in which my testimony is taken down at the present time, that is to say, he frequently suggested alterations; most of these were really of a very trifling character, and it was, I considered, very difficult to put down his answers in such a form as to make them comprehensible. I certainly never reprovéd him for desiring to change his testimony, but it is more than probable that I did reprove him, though I have no distinct recollection of having done so, for his language and bearing towards the Commissioners.

Ques. Did not Mr. Smith frequently complain that his witnesses were brow-beaten and intimidated by Mr. Brown?—Ans. I never knew him to make such a complaint.

Ques. Did not Mr. Amiot, while acting as President, object to witnesses being brow-beaten and intimidated by Mr. Brown?—Ans. He certainly did not.

Ques Did not Mr. Amiot, while acting as President, express his opinion on that subject in writing, and is not the paper, now placed in your hand, such an opinion?—Ans. I never recollect having seen such a paper as this, and I do not know the hand-writing. I never heard any such opinion as expressed therein, being made by Mr. Amiot. (By order of the Committee, the paper exhibited was marked E.) I may mention that in all cases where questions of any description were objected to by any of the Commissioners, or anything occurred between any of the Commissioners and a witness, which rendered mutual explanations advisable, the Court was cleared, and the Commissioners consulted among themselves as to the matter.

Ques. Did not Mr. Amiot, as President, clear the room at any time, in order to discuss an alleged intimidation of witnesses by Mr. Brown?—Ans. I have no recollection of any clearing of the Court on any such grounds.

Ques. In answer to question 467, you say: “The only questions I remember being over-ruled, apparently had for their object to impeach the Commissioners;” On what principle did you hold the conduct of the Commissioners as free from impeachment?—Ans. I am not aware that the conduct of the Commissioners could be considered free from impeachment, but I certainly do not consider it consonant with a Court of Justice or Inquiry, that parties whose conduct is under examination, should be at liberty to examine the parties who formed the Court, as to their conduct in matters relating to the inquiry, such matters having no connection with the subject of the inquiry.

Ques. Were not the following questions proposed to be put to the witness, James Hopkirk, Esquire, and over-ruled:

“Were you told by Mr. Secretary Brown, that you must be mistaken in your impressions that ‘acts of violence’ were mentioned in Dr. Sampson’s letter to the ex-Warden, respecting the convict, James Brown?”

“Did not the Secretary shew you a letter in the Book of Charges against the Warden, to prove that you were mistaken?”

“Did not the Secretary assure you that he made that copy from the original letter of Dr. Sampson?”

“Did not the Secretary say that the copy shewn to you in the book, had been carefully compared by him with the original, and that it contained the whole of the letter?”

“Do you think it was Dr. Sampson’s wish that he should be bound over to keep the peace?”

Ans. They were.

Ques. As a matter of fact, were not several discharged officers examined against Mr. Smith, and as a matter of fact, were not several of such officers restored after having given their evidence, by the Commissioners, as such, or in their capacity of Inspectors?—**Ans.** Several witnesses of that character were examined by the Commissioners on matters relating to the conduct, discipline and management of the Penitentiary; portions of their evidence did incriminate Warden Smith; the cases of those officers to whom I allude, will be found particularly narrated in the Report of the Commissioners, and in my evidence in chief, and the grounds of the reinstatement in the offices of which they had been unjustly deprived are there also given.

Ques. Then several discharged officers were so restored, after having given their evidence?—**Ans.** I have already stated so, and the time at which their restoration was made, I think was subsequent to the drawing of the report, but at all events, subsequent to the time of inquiry.

Ques. Were not several officers of the Penitentiary, who gave evidence for Mr. Smith discharged, and ordered to be discharged after having given their evidence, by the Commissioners, acting as such, or in their capacity of Inspectors?—**Ans.** There were several, and each of them on sufficient grounds.

Ques. Were not all the officers who gave evidence in favor of Mr. Smith, discharged, or ordered to be discharged?—**Ans.** Certainly not. No person was recommended to be discharged, except on grounds that the Commissioners considered to be sufficient.

Ques. Were not T. Cooter, T. Smith, W. Smith, H. Manuel, W. Martin, A. Ballantyne, H. Grass, F. Little, T. Sexton, T. Somerville, James McMahan, R. Tyner, and J. Watt dismissed; and were not E. Horsey, F. Bickerton, and M. Pollard ordered to be dismissed by the Commissioners?—**Ans.** I cannot recollect the whole of these names, but I have no doubt the major part of them were dismissed, or recommended to be dismissed by the Inspectors, and on very good and sufficient reasons in every case, as the minutes of the Board of Inspectors will show in each case. I will remark here, that no man was punished or intended to be punished, in any way for any evidence he might give before the Commissioners except in those cases, where there was palpable and deliberate perjury; the evidence before the Commissioners teemed with such cases and with proofs of the thorough incapacity of other officers of the Penitentiary, whose removal subsequently occurred.

Ques. Did not Hugh Manuel state before you in evidence, on the 3d Jan., 1849: "Witness expects nothing else than that he would be dismissed from the Penitentiary for giving evidence in favor of the Warden?"—**Ans.** He did.

Ques. Did not Hugh Manuel on the same day testify as follows:—"Kelly has told witness that officers who gave testimony in favor of the Warden would be dismissed, and more than him have said so—Skinner has said so; he said Pollard and Manuel and a good many others who would be in the Warden's favor would be dismissed; Skinner said the Commissioners told him so, when he was before them."—Ans. He did.

Ques. Could you possibly know that the Warden had exhausted his case upon his refusing to proceed with his defence, on the plea that the Commissioners over-ruled his questions to Mr. Brown?—Ans. I never stated that I knew that the Warden had exhausted his case, and you, with my evidence before you, must be aware that I did not so state.

Ques. Could you know whether Mr. Smith had exhausted his case or not?—Ans. I certainly could not know.

Ques. Will you look at the draft Report, and say who principally prepared it?—Ans. Mr. Brown did.

Ques. Is it not all in Mr. Brown's handwriting except in one case?—Ans. A small portion is in my hand-writing, and two small portions also in Mr. Thomas'.

Ques. In whose hand writing are the figures in the draft Report, indicating the lines in the Book of Evidence, from which evidence had to be extracted, to form the report?—Ans. Mr. Brown's.

Ques. Were the extracts selected by the Commissioners or by Mr. Brown, and subsequently approved of?—Ans. We all assisted in the selection. I know that I, in many instances, pointed out passages that ought to be inserted. The greater portion I have no doubt were Mr. Brown's selection, and they were approved by the Commissioners. Mr. Brown had a regular index of his own, to which he frequently referred, and I had my own copy of the evidence, to which I also referred on various points.

Ques. Were the original Books of Evidence, or copies of them, transmitted to the Government, or ordered so to be?—Ans. They were not, to the best of my knowledge.

Ques. You have stated in your evidence that only extracts of evidence were made for the report, and in your answer to question, you state "that the approbation of the Government was conveyed to the Commissioners of their report, as a fair and impartial statement of facts." How could the Government judge from the extracts, in the absence of the context, as to the fairness or impartiality of the statement of facts?—Ans. I have stated the facts correctly in my evidence; the reasons on which the Government acted, it is for them to give. I do not feel myself responsible or bound to account for their acts.

Ques. In your answer to question 503, you say on page 36, in the printed Report, it is recorded as part of Mrs. Chase's evidence on a different charge, "witness thinks Reveille is not insane." Was not this quotation made in the report as to a charge against the Surgeon of the Penitentiary, and not against the Warden?—It is made in a statement of the differences between the Surgeon, the Warden, and the Inspectors, in relation to convict Reveille's case.

Ques. In your answer to question 508, you state, "Mrs. Chase's testimony as given before the Commissioners was full of the most palpable of contradictions, such as to render it unworthy of credibility," why then was such testimony quoted in the report at all?—Ans. We made it a point to insert very fully, the testimony given, and her testimony on the whole, was rather favorable to the Warden, and it would have appeared an act of injustice to omit it.

Ques. Are the tables of punishments stated by you in your answer to question 530 to have been prepared by Mr. Thomas, set out in the Report or appended to it, in any way?—Not exactly in the same form, but the substance of them is there accurately given.

Ques. Do any of the tables inserted in the report, shew that "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?—Ans. They do not give the daily punishments, but the Commissioners from the prison books, ascertained the fact to be as they stated.

Ques. Were those tables, or copies of them transmitted to the Government by the Commissioners?—Ans. I am not aware that they were.

Ques. Are those tables copied in the written books of evidence?—Ans. They are not, as are also not included a vast number of other accounts drawn from the Penitentiary books.

Ques. In your answer to question 556 you state that the words "acts of violence" do not occur in your report of the evidence, are not those words interlined in the original evidence, as taken by Mr. Brown, and how do you account for the difference?—Ans. They are so interlined, and I presume the difference arose from Mr. Hopkirk having desired those words to be inserted, and that I, considering the alteration did not affect the sense, did not feel it necessary to alter my informal copy of the testimony.

Ques. You answer in the affirmative question 583, which is as follows: "Are you aware that Guard Robinson was nearly five years an officer of the Penitentiary; that he gave evidence at Francis W. Smith's trial, by Mr. Hopkirk and his

“brother Inspectors prejudicial to said Smith; and that he
 “was dismissed a fortnight afterwards by Mr. Hopkirk for
 “impertinence or insolence?” Was not Robinson on his trial
 before the Inspectors under a charge of breach of duty on the
 occasion, when he was so impertinent or insolent to Mr. Hop-
 kirk?—Ans. He was brought before them on such a charge,
 and his statement of the case will be found on page 25 of the
 printed Report in the following words:—*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 investi-
 “gation 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 com-
 “plaint 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 in-
 “vestigation 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 In-
 “spectors decided that witness was guilty, but that in consi-
 “deration 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 a 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 lying 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.”

Ques. Was Robinson after his said discharge examined as a witness by the Commissioners against the Warden?—Ans. He was examined as a witness as I mentioned with relation to all the witnesses who were examined by the Commissioners, into the conduct, management and discipline of the Penitentiary.

Ques. Was not his evidence condemnatory of the Warden?—Ans. His evidence was so.

Ques. Was he not subsequently restored by you and your brother Inspectors?—Ans. I have already mentioned, that several officers, amongst whom he was one, whom the Commissioners considered to have been improperly dismissed, was reinstated.

Ques. Was he not a second time dismissed for misconduct, and is he not now himself a convict in the Penitentiary?—Ans. I really have no knowledge or recollection of his having been secondly dismissed; and I believe I have seen in some of the public journals that he was so, and that he committed some act of dishonesty for which he was tried and found guilty, but whether he is now in the Penitentiary I do not know.

Ques. In answer to question 614, you state that the report was avowedly a summary: what do you mean by the word summary?—Ans. The report was a full, impartial and accurate statement, in which was condensed, into as clear a form as possible, the whole of the information obtained by the Commissioners on the various subjects there reverted to.

Ques. Are not extracts in general, given of the evidence under the several charges in the very words of the witnesses, and do they not generally profess to be extracts?—Ans. There are numerous extracts in the report, and they are generally marked as such.

The Committee adjourned until 10 o’clock A. M. to-morrow.

Forty-second Day—Tuesday, 13th May, 1856.

PRESENT:—The Chairman; Messrs. Stevenson, Sanborn, Masson, Felton, and Wilson.

The Hon. Mr. Macdonald and Mr. Brown were present.

Cross-examination of Mr. *Bristow* resumed :

Ques. You have stated in answer to Mr. Brown's question 433 that copies of statements, in which Mr. Hopkirk's name occurred, were, on his demanding it, transmitted to him. Was there any disinclination shewn by Mr. Brown to furnish Mr. Hopkirk with these statements?—Ans. I am not aware of any.

Ques. Will you please refer to the letter book of the Commissioners, and state whether Mr. Hopkirk had not applied for these statements upon 25th September, 1848, and whether he was not informed by Mr. Brown, in a letter of that date, that "the extracts alluded to form part of the charges submitted to the Warden for his explanation. If the Warden explains satisfactorily the transactions with which your name is connected, there will be no occasion to trouble you. If, on the contrary, the Warden does not explain them satisfactorily, it has ever been the intention of the Commissioners, to afford you full opportunity of doing so, as well as any other matters affecting you, which have come under their notice, before reporting to the head of the Government. I trust, therefore, there will be no further occasion to communicate with you on this subject; but should there be so, you may rely on receiving every facility for disproving all statements injurious to you?"—Ans. I have referred, and the foregoing is a true extract.

Ques. Please refer also to the Commissioners' letter book, and say whether Mr. Hopkirk had not again applied on 27th September, 1848, and whether there is not recorded a letter from Mr. Brown to him of the 28th September, 1848, assuring him "that his application for an immediate investigation into the charges referred to, would receive the earliest attention of the Commissioners on their re-assembling?"—Ans. I have referred, and it is a true extract; I would also add the following extract from the same letter: "I beg to express my regret that circumstances prevented your obtaining any remedy, to which you may have considered yourself entitled, through another tribunal; the course taken by me in that matter was only adopted from a strong sense of public duty."

Ques. Please refer again to the Commissioners' letter book, and state if Mr. Hopkirk did not again apply on 28th September, and was not on 2nd of October informed by Mr. Brown in

reply, "that he would be afforded an opportunity of explaining
 "or disproving the statements made to his prejudice to the
 "Commissioners, at the earliest moment consistent with their
 "other arrangements;" and whether Mr. Hopkirk did not receive a letter from Mr. Brown, in reply to one of his, dated the 3rd, stating as follows: "I have to acknowledge the receipt
 "of your letter of yesterday, and having laid it before the Com-
 "missioners, I am instructed to refer you in reply, to our previ-
 "ous correspondence. The Commissioners will go on with
 "your case at the very earliest moment consistent with their
 "other arrangements;" and whether in reply to another applica-
 "tion of 30th October, he was not informed by Mr. Brown in
 "a letter of that date, "The Chairman of the Commission has
 "laid before the Board a communication, of this day's date,
 "addressed by you to him, respecting your request for an im-
 "mediate investigation into certain statements made before
 "the Commissioners. I am instructed to say, in reply, that
 "you will be afforded an opportunity of explaining or dis-
 "proving any statements prejudicial to you, at the earliest mo-
 "ment consistent with the other arrangements of the Com-
 "missioners."—Ans. They are true extracts.

Ques. Please further refer to the Commissioners' Letter Book, and say whether the extracts or statements in which Mr. Hopkirk's name occurred, and to which you refer, in your answer to Mr. Brown's question 433, as having been transmitted to Mr. Hopkirk, were not so transmitted to him by Mr. Brown, in a letter dated 4th November, 1848, after the before mentioned repeated applications on his part, and promises on the part of Mr. Brown, and does not Mr. Brown, in his letter transmitting them, state, that they are transmitted "in compliance with
 "his urgent and oft repeated requests?"—Ans. In reply, I give the entire letter, as follows: "I am desired by the
 "Commissioners, in compliance with your urgent and oft re-
 "peated requests, to forward for your information, the enclosed
 "statements affecting you, which have been made under oath
 "before the Commissioners, and to say that they will be pre-
 "pared to receive any explanations thereupon which you may
 "desire to offer. You will distinctly understand that this
 "step is taken at this moment entirely at your desire, and
 "that the Commissioners had otherwise intended to have in-
 "quired into the truth or falsity of these statements before
 "calling on you for an explanation."

Ques. Please again to refer to the Commissioners' Letter Book, and say whether there does not appear a letter from Mr. Commissioner Thomas to Mr. Hopkirk, under date 6th November, 1848, after the statements affecting him had been at last

obtained, assuring him in reply to his letter of 4th November, that the Commissioners "would communicate with him at their earliest convenience;" and is there not another letter to the same effect from the Chairman of the Commission, dated 17th November, in reply to Mr. Hopkirk's of the 16th, and is there not also another letter from the Chairman, dated 23rd November, to Mr. Hopkirk, stating that "The Commissioners will be ready to-morrow morning at 11 o'clock to hear from you (Mr. Hopkirk) any explanation you may think proper to offer respecting the evidence taken before them (the Commissioners) which may reflect on you?"—Ans. The three letters referred to in this question are as follows :

" PROVINCIAL PENITENTIARY COMMISSION ROOM,
" Kingston, 6th November, 1848.

" SIR,—In the temporary absence of Mr. Brown, the Secretary of the Commission, I have to acknowledge receipt of your letter of the 4th instant; and I am desired by my colleagues to express our regret, that our present occupations will prevent us from giving our immediate attention to the explanations which you desire to afford us on the subject of your letter, and I have further to assure you that we will again communicate with you at the earliest convenient opportunity.

" I have the honor to be, Sir,

" Yours very faithfully,

" E. CARTWRIGHT THOMAS,

" Commissioner P. P.

" To James Hopkirk, Esq.,

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

" PROVINCIAL PENITENTIARY COMMISSION ROOM,
" Kingston, 17th November, 1848.

" SIR,—I have to acknowledge receipt of your letter of yesterday's date, and to inform you that, in reference to certain circumstances connected with yourself, which have incidentally come before the Commission in the course of the Penitentiary Enquiry, the Commissioners have the subject of your letter under their consideration.

" I have the honor to be, Sir,

" Your obedient servant,

" ADAM FERGUSSON,

" Chairman.

" To James Hopkirk, Esq.,

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

“PROVINCIAL PENITENTIARY COMMISSION ROOM,
“Kingston, 23rd November, 1848.

“SIR,—The Commissioners will be ready to-morrow morn-
“ing at eleven o'clock, to hear from you any explanations
“you may think proper to offer respecting the evidence taken
“before them, which may reflect upon you, with the under-
“standing, however, that the Commissioners have come to no
“determination upon the expediency or in expediency of hear-
“ing any witnesses at this time.

“I am, Sir,

“Your obedient servant,

“ADAM FERGUSSON,

“Chairman.

“To James Hopkirk, Esq.,
“&c., &c., &c.”

Ques. Please refer again to the Commissioners' Letter Book, and state whether there is not there recorded a letter from Mr. Fergusson, the Chairman, dated 26th November, 1848, in answer to Mr. Hopkirk's of the 24th, complaining of the non-attendance of the Commissioners on the day and hour appointed, which is in the following terms: “In the confusion of yesterday, the Commissioners neglected to reply to your communication of the 24th instant; I have now to inform you that the Commissioners propose to postpone the explanations which you desire to make to them, until the return of their colleagues, which they have reason to presume will be in a few days.”—Ans. I have referred, there is such a letter, it is marked in the margin as having been “cancelled, Mr. Amiot not consenting, and Mr. Fergusson withdrawing his approval of the terms of the letter;” from which memorandum I presume it was not sent.

Ques. Were not the promises contained in the Commissioners' letters of the 6th November, 17th November, 23rd November, and 26th November, made by your brother Commissioners in the absence of Mr. Brown and yourself, and were not Mr. Brown and you “the colleagues” until whose return they proposed to postpone the explanations which Mr. Hopkirk desired to make?—Ans. Mr. Brown and myself were absent on a visit to the United States at the time these letters were written.

Ques. Is there not also recorded in the Commissioners' Letter Book, a letter from the Chairman to Mr. Hopkirk, under date 27th November, 1848, stating that “they (the Commissioners) will acquaint you (Mr. Hopkirk) when they deem it expedient to hear them” (his explanations)?—Ans.

There is a letter in the following terms, which apparently was substituted for the letter of the 26th November, which was cancelled :

“PROVINCIAL PENITENTIARY COMMISSION ROOM,
“Kingston, 27th November, 1848.

“SIR,—In the confusion of yesterday, the Commissioners have neglected to reply to your communication of the 24th instant.

“I have now to inform you that the Commissioners propose to postpone the explanations which you desire to make, and will acquaint you when they may deem it expedient to hear them.

“I am, Sir,

“Your obedient servant,

“ADAM FERGUSSON,

“Chairman.

“To James Hopkirk, Esq.,

“&c., &c., &c.”

Ques. Did not Mr. Brown and you return to Kingston a few days after the date of this last letter, 27th November, 1848; and did you not refuse to allow Mr. Hopkirk an opportunity of making the explanations desired by him, and promised by the Commissioners?—Ans. We returned on the 10th December, 1848. I am not aware of any communication with Mr. Hopkirk on the subject after our return; during our absence there had been some differences between the Commissioners, who were then in Kingston, and the then Inspectors of the Penitentiary, which led to the resignation of the Inspectors, and the acceptance of it by the Government; after that resignation, the Commissioners had not the duty imposed upon them to examine the conduct of those Inspectors, with relation to all the points referred to in that part of the evidence which appeared to affect Mr. Hopkirk, he told his own story, in his evidence given in favor of the Warden.

Ques. Refer to the Commissioners' Letter Book, and state if the Commissioners ever did acquaint Mr. Hopkirk, when they “deemed it expedient to hear his explanations,” as promised in the Chairman's letter of the 27th of November, 1848?—Ans. I believe the Commissioners did afford him such an opportunity, but those matters occurred during the absence of Mr. Brown and myself in the United States; I will add also, that all those letters between the 6th and 29th of September were written by Mr. Brown, as Secretary only, there being no quorum at the time, he being alone left in Kingston whilst the other Commissioners took a temporary recess.

Ques. Did the extracts or statements alluded to in the foregoing correspondence, materially affect the Warden as well as Mr. Hopkirk; and were they not prejudicial to them both?

—**Ans.** The Warden was furnished with full extracts of any portion of the evidence taken before us, affecting him, and on these alone we predicated our inquiries as respecting his conduct; I have already stated the reason why we did not proceed further in the inquiry into Mr. Hopkirk's conduct. Where improper conduct was imputed to either in the statements made, they of course affected his character.

Ques. Did the Warden, in the opinion of the Commissioners, explain satisfactorily the transactions with which Mr. Hopkirk's name was connected, as anticipated in Mr. Brown's letter of 25th September, 1848?—**Ans.** I should say, in reply, I do not feel bound to express my opinion respecting Mr. Hopkirk's conduct further than what has been already expressed in the Report made by the Commissioners; the following extracts will be found to give a full narration of the relations between Mr. Hopkirk and Mr. Warden Smith.

“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 shew 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 over charge by Keeper McGarvey for binding shoes for witness; McGarvey 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, snow-berries, roses, snowball trees, goose-berries, 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 purchase, 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 odd; 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 odd, 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 odd 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 recollects, 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 were repaired by Keeper McCarthy; 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 Kingston, 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 Parliamentary matters, since the Commission 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 Mr. 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.

* * * * *

"Ques. 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?—Ans. They were sent to witness by her, but Mrs. Smith has since told witness that some of them came from Mrs. Pollard.

"Ques. Were these plants not presented to you direct by Mrs. Pollard?—Ans. 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.

"Ques. When were you first told that Mrs. Pollard had sent you those plants?—Ans. Is not very positive; shortly after witness got them.

"Ques. 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?—Ans. Cannot tell which.

"Ques. 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. Smith) had got some of the boxes and plants from Mrs. Pollard?"—Ans. 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.

“Ques. 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?—Ans. 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.

“Ques. 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.”—Ans. 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.

“Ques. How could Mrs. Smith say these plants were from her?—Ans. 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, 1843; 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."

* * * * *

"Ques. Was there any concealment in sending out the stove-pipes purchased by you from the Penitentiary?—Ans. Not that he is aware of; was not present.

"Ques. If the Gate-keepers allowed them to go through without a pass, did they not neglect their duty?—Ans. Yes.

"Ques. Have you ever got any second-hand stove-pipes from the Warden, or from the Penitentiary?—Ans. Never in his life.

"Ques. Have you paid the Penitentiary for the work done at the pump at your own house, by Pollard?—Ans. Yes; once it was charged 6s. 3d. when Pollard came to the house. and for the other, when Pollard did not come to the house, 1s. 3d. or 1s. 10½d. The same description of work was done on both occasions.

“ Ques. Was Mr. Henry Smith, M. P. P., one of your sureties as Collector, before you were appointed an Inspector? —Ans. Yes; a very short time before; he had signed the bonds previous to either Commission issuing.

“ Ques. How came you to ask him to be one of your sureties? —Ans. Did not ask him at all; he volunteered.

“ Ques. Was he one of the parties you intended to ask?—Ans. No.

* * * * *

“ Ques. Was your furniture landed at the Penitentiary by your own desire?—Ans. Gave orders to Mr. Greer to that effect; did so because less cartage and less breakage were incurred, the wharf being near his own house.

“ Ques. Do you think the Warden could, with any propriety, have prevented you from doing so?—Ans. Would have thought it very odd if he had objected.

“ Ques. When the messenger took the furniture to your house, did he bring back articles to the Penitentiary to be repaired?—Ans. Believes he did.

“ Ques. Is it not the habit of the messenger to take home articles made or repaired at the Penitentiary?—Ans. Has understood it was; he has done so for witness, and witness has seen him taking other articles elsewhere, which he presumed were from the Penitentiary to customers.

“ Ques. Did you pay Conlan for carting your furniture?—Ans. Yes.

“ Ques. Were your own horses employed in carrying the furniture?—Ans. Yes, they took the light articles.

“ Ques. Did you ever reside in the Penitentiary in the Warden's House?—Ans. No.

* * * * *

“ Ques. Was your complaint as to the overcharge for shoe-binding made at the first meeting of the Board after you got in your bill?—Ans. Thinks it was.

“ Ques. Did you make your complaint on the day in question, because another charge had been entered the same day against M'Garvey?—Ans. Certainly not. Made no complaint against M'Garvey; only complained of the overcharge.

* * * * *

“ The spade, shovel, and two hoes repaired for witness 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.”

Ques. Did not the Commissioners conceive "that the Warden, on the "contrary, had not explained them satisfactorily," and did the Commissioners, in consequence, as proved by Mr. Brown's letter of 25th September, "afford Mr. Hopkirk a full "opportunity of explaining them, as well as any other matters "affecting him; which had come under their notice, before re- "porting to the Head of the Government," or did they, in terms of the Chairman's letter, of 27th November, inform him, "when they deemed it expedient to hear his explanations;" or did they not, on the contrary, notwithstanding his oft repeated and urgent requests, to that effect, "close the Commission, and report to the Head of the Government, without having afforded him such opportunity?"—Ans. The Commissioners, never, to my knowledge, expressed any opinion whether the explanation of the Warden was satisfactory or not. There was no charge made against the Warden, on account of them. Mr. Brown's letter does not contain any promise, it merely expressed an intention to afford Mr. Hopkirk full opportunity of explaining anything that might affect him: Mr. Hopkirk did explain fully, in his examination, the matters referred to, and the Commissioners pursued the matter no further; they could not indeed have done so, Mr. Hopkirk having ceased to be an officer of the Penitentiary, a very few days after the return of Mr. Brown and myself from the United States. They took no evidence against him, and as will be observed in the extract included in my last answer, they let him tell his own story, which they communicated to the Government in the Report.

Ques. You have stated in your answer to Mr. Brown's question 611, that the prosecution for perjury against McCarthy, took place while the labors of the Commission were yet in progress, and the Report to the Governor General had not yet been made. Was not McCarthy a very material witness against the Warden, and has not the Warden been found guilty of some of the charges against him, mainly on McCarthy's evidence?—Ans. I have so stated, he gave full and material testimony on all matters relating to the Penitentiary, and some of his evidence was very prejudicial to the Warden. I have no idea, however, that any charge against the Warden was considered as mainly established on the evidence of that witness.

Ques. You have stated in answer to Mr. Brown's question 612, that McCarthy was tried in 1849; was he not tried in October, 1849, and had not the Commission been previously closed in February or March, 1849?—Ans. The Commission closed in April, 1849, and the trial took place in the Autumn of that year.

Ques. You have also stated in answer to the same question, that Mr. Brown did give evidence on McCarthy's trial in 1849. Had he not previously, and during the sitting of the Commission, viz., in September, 1848, when the charge of perjury against McCarthy was preferred, refused to give evidence before the Grand Jury, or to produce the Book in which McCarthy's alleged false statements upon oath were recorded; and did he not at last produce that book and appear and give evidence at McCarthy's trial in consequence of Mr. Hopkirk's complaint to the Government that he had refused to do so, and the consequent letter from the Secretary of the Province, ordering him to attend?—Ans. I have no knowledge of the facts referred to in this question.

Mr. *Macdonald* closed his cross-examination of this witness. The Committee adjourned until 10 o'clock, A.M. to-morrow.

Forty-third Day—Wednesday, 14th May, 1856

PRESENT:—The Chairman, Messrs. Sanborn, Stevenson, Clarke, Masson, Wilson.—6.

The Hon. Mr. *Macdonald* and Mr. Brown were present.

E. Cartwright Thomas, Esquire, Sheriff, of the County of Wentworth called and examined by Mr. Brown.

Ques. Were you present at all the meetings of the Penitentiary Commission, from the 23rd June, 1848, to the 5th July, 1848; from 12th July to 29th July; from 19th August to 6th September; from 17th October to 10th December, 1848; and from some day in February, 1849, to the close of the Commission?—Ans. I was present at these dates up to the 5th December, as I find, by reference to the minute book. I cannot state positively after the date of the 5th December, 1848, but I think it probable that I was in attendance up to the 18th December; after the latter date, I see no minute of my attendance, but I was certainly in Kingston for a longer or shorter period, to consider the Report, and in Montreal for the same purpose.

Ques. Have you any knowledge that Mr. Brown "recorded falsely the evidence of witnesses examined before the said Commission?"—Ans. I have no such knowledge.

Ques. Have you any knowledge that Mr. Brown "altered the written testimony of witnesses after their evidence was closed and subscribed?"—Ans. I have no such knowledge.

Ques. Have you any knowledge that Mr. Brown "suborned convicts to commit perjury?"—Ans. Certainly not.

Ques. Have you any knowledge that Mr. Brown "obtained the pardon of murderers confined to the Penitentiary, to induce them to give false evidence?"—Ans. Certainly not.

Ques. Did the Commissioners on assembling at Kingston, carefully consider the course they should pursue in conducting their enquiries; did they communicate their intended course to Mr. Warden Smith and Mr. Hopkirk; and did these gentlemen declare themselves "highly satisfied" therewith?—Ans. My own impressions are so, and the minutes of evidence confirm these impressions.

Ques. Was the course thus adopted, strictly followed by the Commissioners?—Ans. I have reason to believe that this course was strictly followed.

Ques. Did the Commissioners hold preliminary conversations with a number of gentlemen residing in Kingston, including several former Inspectors of the Penitentiary, in regard to the alleged abuses in the Institution?—Ans. They did so.

Ques. Did the Commissioners, on the information of these gentlemen, and the written documents placed in their hands by Government, proceed to examine under oath such parties as they were led to believe cognizant, from personal knowledge, of the actual condition of the Penitentiary?—Ans. It was mainly on such information and such documents. I cannot say whether or no the prosecution of the Commissioners' enquiries may have been based upon other information.

Ques. Did the Commissioners extract from the evidence of the parties so examined, such portions as seemed to affect the character or conduct of any officer, and serve a written copy thereof upon him for explanation?—Ans. I believe it was so.

Ques. Were those extracts of evidence carefully considered by the Commissioners, and minute instructions given to the Secretary as to the portions of testimony to be extracted, or was the selection left to the Secretary's discretion?—Ans. The extracts may have been carefully considered by the Commissioners; but my impression is, that the instructions were general, that the Secretary should inform the several parties with the nature of such charge, and that the Commissioners returned home, while the Secretary prepared such charges.

Ques. Were such extracts transmitted to Mr. Henry Smith, Warden, Dr. Sampson, physician, and Mr. Francis W. Smith, kitchen keeper, and on his demanding it, were copies of statements in which his name incidentally occurred furnished to Mr. Hopkirk, one of the Inspectors?—Ans. I have always understood that such was the case.

Ques. Was it arranged between the Commissioners and the Warden before he commenced his defence, 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 taken down;” state also if the practice was not strictly in accordance to this rule?—Ans. I believe that this was so.

Ques. Was this practice strictly followed throughout the investigation?—Ans. I think it was.

Ques. Was each question, when put to the witness, if not objected to by a Commissioner, held to be put with the consent of the whole Board?—Ans. Certainly.

Ques. Did Mr. Smith or his clerk, keep a record of the whole evidence, and did they compare his record with the answers read aloud by Mr. Brown, and make suggestions in amendment from time to time?—Ans. I have no recollection on the subject; but there can be no doubt that the evidence being read aloud, the Clerk or Warden would so compare it, and would offer amendments when considered necessary.

Ques. Was there ever a suggestion made by any witness in amendment of his testimony, that was not made in the record by Mr. Brown, or one suggestion made by any Commissioner, or Mr. Smith, that was not referred to the witness, and if sustained by him, at once carried out?—Ans. I do not recollect any refusal to make necessary alterations, nor do I think it probable that reasonable requests would be refused.

Ques. Was there ever any unwillingness shewn by Mr. Brown to correct the evidence of any witness, or any disposition shewn by him, to give the testimony other than its true coloring?—Ans. I think the examinations were conducted principally by Mr. Brown, and the Commissioners left it to him to draw out in his own way, the evidence which we all thought it necessary to be produced. Mr. Brown necessarily exhibited pertinacity in eliciting testimony from a witness who was considered to be unwilling to give testimony, or to give testimony under prejudice; but I consider that the evidence was truthfully taken down.

Ques. When the evidence of each witness was closed for the time, was his whole deposition re-read to him, amended to suit him, and a distinct assent to its correctness asked and obtained in every case?—Ans. I believe it was so in every case.

Ques. When the assent of the witness had been so asked and obtained to the correctness of his deposition, was not the assent of the Warden in every case, also asked and obtained as to its correctness?—Ans. I believe it was so in every case.

Ques. When the assent of the witness and the Warden to the correctness of the testimony had been obtained, were not the

following words invariably appended to the deposition : “ The foregoing evidence was read aloud ; Mr. Warden Smith declared the evidence correctly taken down ; witness did the same and signed it ? ” —Ans. I recollect no exception to this rule.

Ques. Did the Secretary then read aloud these words, and was the deposition in every case, then signed by the witness ? —Ans. This was the case.

Ques. Had you frequent occasion before the Commissioners closed their labors, to examine the official record, and did you ever discover the slightest variation between the testimony as recorded by Mr. Brown, and that actually given ? —Ans. I daresay that I may have had frequently examined the official record. I never discovered, and had never reason to believe, that there were any variations.

Ques. Was there any discourtesy shewn to any witness by any of the Commissioners ; was any witness brow-beaten or insulted ? —Ans. I remember no instances of discourtesy or of insult. It is difficult to determine the meaning of “ brow-beating.” The Commissioners had occasionally, witnesses under examination, who were considered as partizans of the Warden and the Inspectors, and whom they believed to be very unwilling to give testimony to the prejudice of these parties. Under these circumstances, it was considered necessary to make their examinations rigid, and Mr. Brown acted as a Counsel would be expected to do, under such circumstances, and with that pertinacity and impulsiveness which is natural to him, and which might have been expected from a person determined to obtain what he considered the proper replies. I should observe, however, that I was not present at the examination of Mr. Hopkirk, or Mr. Costen, or at those of some other of the principal witnesses, called by the Warden, and whom the Commissioners had certainly reasons to believe, came before them much prejudiced. These parties would necessarily be subjected to stringent cross-examination.

Ques. Did any witness refuse to sign his deposition ? —Ans. I recollect no instance of such refusal.

Ques. Was any intimidation used towards any witness by any of the Commissioners ; were any threats of dismissal or promises of any kind, held out to any witness ; or were the Commissioners, on the contrary, most careful to guard against doing anything that might unduly influence the testimony of parties, who might be witnesses before them ? —Ans. The Commissioners were most anxious to assure all parties connected with the enquiry, that their testimony would be received without prejudice, and the Commissioners would have scorned to

use threats or intimidation, or to make promises of any kind, in reference to the examination of witnesses.

Ques. Are the conclusions arrived at in the Report, strictly in accordance with the evidence, and with justice?—Ans. I continue to believe, that the conclusions are generally in accordance with the evidence, and with justice, and I concurred in the Report accordingly.

Ques. It having been alleged by Mr. Smith, that he was condemned by the Commissioners on convict testimony; will you please say if this is true, or if the Commissioners did not state truly in their Report, page 106, “As to convict testimony, it was only used in the charges to complete the evidence of other witnesses; and even then to so small an extent, that had it been expunged altogether, the charges would not have been materially affected”?—Ans. I believe that the charges would have been fully made out, if the convict evidence had been expunged.

Ques. Were the charges preferred by Mr. Smith against the Commissioners; and by Mr. Macdonald in 1849, 1850, and 1851; at all of the same character as those levelled at Mr. Brown by Mr. Macdonald, in the House of Assembly, in the debate on the Speech from the Throne, of the present Session?—Ans. I do not remember the character of those charges, they never made any impression upon my mind, not conceiving that they affected my character or conduct.

Ques. Mr. Macdonald having charged Mr. Brown with “falsification of evidence,” on the ground that it is stated in the printed Report, on page 189, that “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;” will you please say if the statement was true, and on what authority it was made?—Ans. I cannot speak of the number of men flogged, but I have the best reason to know that the flogging was excessive, and calculated to destroy proper discipline; I am satisfied that the tables of punishment are correct.

Ques. Mr. Macdonald having charged Mr. Brown with obtaining the pardon of murderers confined in the Penitentiary, to induce them to give false evidence, and Mr. Smith having stated before this Committee that convicts Cameron, De Blois and Henessy were pardoned, but he did not know by whom; will you be good enough to state, if any one of these convicts were pardoned at the solicitation of Mr. Brown, or of the Commissioners, or of the Inspectors, while you were a member of the Board?—Ans. I do not remember any circumstance connected with the pardon of these parties. I do not think that

any action, in relation to such pardons, was taken while I was in attendance upon the Commission.

Ques. Mr. Macdonald having brought Mr. Warden Smith before this Committee, to prove that the words "but if she had been a quiet woman, the punishment would not have hurt her," were omitted by Mr. Brown, in recording the evidence of Dr. Sampson, on page 879 of the original record; please refer to the passage, and say who recorded the evidence in question, and whether Mr. Brown was in Canada at the time it was so recorded?—Ans. I recorded this evidence, Mr. Brown being at the time in the United States. I have no reason to believe that the words quoted, formed a portion of Dr. Sampson's evidence before the Commissioners on the 4th December, 1848; if such words were used, the omission on my part was unintentional. I observe that the Minute Book states, "the foregoing evidence was read aloud, the ex-Warden declared the same to be correctly taken down, the witness did the same, and signed it."

Ques. Was the evidence of Dr. Sampson correctly recorded on that occasion?—Ans. I desired it to be correctly recorded, and I believe that it was so.

Ques. Mr. Smith, in reply to question 251 quoted a passage from the evidence of Hugh Manuel, given before the Commissioners, in which the following words occur: "Keely has told witness that officers who gave testimony in favor of the Warden would be dismissed, and more than he have said so; Skynner has said so; he said Pollard and Manuel, and a good many others who would be in the Warden's favor, would be dismissed. Skynner said, the Commissioners told him so when he was before them;"—please to say if any such statement was made to Skynner, or any other person, by the Commissioners?—Ans. Most certainly no such statement was ever made by the Commissioners in my presence.

Mr. Brown closed his examination of Mr. Thomas.

Ques.—[By Mr. Sanborn.]—When you say, in your previous examination, "that you have never read the Report, that you have attempted to examine it since the Committee commenced its sittings, but have always closed the book in disgust;" do you mean to convey the impression that your disgust was occasioned by the injustice done by the Commissioners to the Warden or any other party, or by the revolting disclosures brought out in the evidence?—Ans. I do not mean to convey that I considered injustice had been done to the Warden by the Commissioners, but that the condition of the Penitentiary, as evinced by the inquiries, the disagreeable position of having to condemn parties with whom I had

previously been on good terms, and many reminiscences connected with my position as a Commissioner, always made the subject of the Penitentiary Commission painful to me.

Mr. *Thomas* cross-examined by Mr. *Macdonald*.

Ques. Have you any statements to make, in your opinion, material, which have not been elicited by your previous examination. If so, please make those statements?—Ans. I wish that the proceedings of this Committee should shew :

1st. That I was not present at the Commission when Counsel was refused to the Warden, although from circumstances related to me upon my return to Kingston, I had reason to believe that the refusal was well grounded.

2nd. That I was not present (September 23rd) when it was agreed to use evidence, not forthcoming for cross-examination, as *corroborative testimony*.

3rd. That the restoration of officers of the Penitentiary, or removal of others, was not effected by the Commissioners, but that such restoration or removal was after the Commissioners had delivered their final Report to Government.

4th. That I had always declined to act as an Inspector to the Penitentiary after the Commission had closed, conceiving that, having solicited the appointment from the Government for the purposes of the Penitentiary Enquiry, the object of such appointment was obtained by the close of the Commission, and that it was very undesirable that the parties who had conducted the Commission should be engaged in the permanent duties of Inspectors, unless specially called upon by the Government for that purpose.

Mr. *Macdonald* closed his cross-examination of Mr. *Thomas*.

(*Witness withdrew.*)

W. B. *Lindsay, Jr., Esq.*, called, and examined.

[*By Mr. Brown*].—Are you Clerk Assistant of the House of Assembly?—Ans. I am.

Ques. Did Mr. *Brown*, on the 28th April, 1856, move in the House of Assembly for an Address to the Governor General, praying His Excellency to cause to be laid before Parliament a “copy of the application to the Government, with the signatures attached to it; in consequence of which, Hugh Cameron, a convict in the Penitentiary, was pardoned, before the expiration of his sentence?”—Ans. Mr. *Brown* did, on the 28th April, 1856, move for an Address to His Excellency, praying, among other things, for a copy of the application in question.

Ques. Did the Governor General send down to the House of Assembly on 6th May, instant, the document so applied for?—Ans. The return to the said Address was laid before the

House by the Honorable the Provincial Secretary, on 6th May, instant; it contains the application prayed for.

Ques. Are the contents of the document so sent down by the Governor General as *the* application on which Cameron was pardoned, as follows :

To His Excellency the Right Honorable James, Earl of Elgin and Kincardine, Baron Elgin, K. T., 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 PETITION OF THE UNDERSIGNED

“ HUMBLY SHEWETH :

“ That at the Criminal Term held at the City of Montreal, in the year eighteen hundred and forty-three, one Hugh Cameron was convicted of the crime of murder of his wife, but that the circumstances of the case being, in the opinion of the Jury, of an extenuative character, they strongly recommended that the extreme penalty of the law should not be executed, and His Honor, the presiding Judge, acting on the said recommendation, sentenced the said Hugh Cameron to imprisonment in the Provincial Penitentiary for the term of fourteen years, which sentence has been duly carried into effect, and the said Hugh Cameron is still in the Penitentiary undergoing the punishment so ordered to be inflicted on him.

“ That Your Petitioners have good reason to believe that the conduct of the said Hugh Cameron, has, whilst in prison, been of the most exemplary character; and that he is duly impressed with the enormity of the crime, which in a moment of passion, and when bereft of reason, and under the influence of intoxication, he committed, and that Your Petitioners have been led to understand that the Commissioners appointed to examine into the conduct of the Penitentiary have strongly recommended the said Hugh Cameron to Your Excellency's clemency, with a view that the remainder of his imprisonment be dispensed with.

“ That from the information derived from the said Commissioners, and from officers of the prison, Your Petitioners feel a confident assurance that should it be Your Excellency's pleasure to grant a pardon to the said prisoner, and thus to shorten the duration of his imprisonment, he will be a steady and useful member of society.

“ Your Petitioners would further respectfully state, that prior to the commission of the act which has led to the incarceration of the said Hugh Cameron, he bore a most excel-

“lent character for honesty, and that at the time of his trial
 “numerous witnesses of the highest respectability gave the
 “most favorable testimony on his behalf.

“Wherefore Your Petitioners respectfully pray, That Your
 “Excellency will be pleased to take the premises into your
 “favorable consideration, and that you will grant a discharge
 “from the residue of the term of imprisonment to which the
 “said Hugh Cameron was sentenced,

“And Your Petitioners, as in duty bound, will ever pray.

“Montreal, February, 1852.

“(Signed) CHARLES WILSON, Mayor,
 “ W. BRISTOW,
 “ A. MATHIESON, D. D.,
 Minister of St. Andrew’s Church,
 “ PETER MCGILL,
 “ HUGH ALLAN,
 “ J. LESLIE,
 “ MATHEW CAMPBELL,
 “ J. B. MEILLEUR, S. E. C. E.,
 “ R. BELLERMARE,
 “ WILLIAM MURRAY,
 “ WILLIAM EDMUNDSTONE,
 “ DAVID VASS,
 “ P. LE SUEUR,
 “ LOUIS PERRAULT,
 “ JOHN G. DINNING,
 “ JAMES CAMERON,
 “ JAMES ADAMSON,
 “ ANDREW WATSON,
 “ A. DAVIDSON PARKER,
 “ ARCH. MACFARLANE, Alderman,
 “ JOHN DODS,
 “ JAMES MOIR FERRES,
 “ COLIN MACDONALD,
 “ R. CHALMERS,
 “ JOHN SUTHERLAND,
 “ J. RATTRAY,
 “ A. SIMPSON,
 “ G. R. ROBERTSON,
 “ WILLIAM LAWRIE,
 “ ROLLO CAMPBELL?”

Ans. They are.

Ques. At what date do the Returns from the Governor
 General shew Cameron to have been pardoned?—Ans. On
 reference to the said Return I find that the order for the dis-
 charge of Hugh Cameron was given by the Honorable Mr.

Secretary Morin to the Warden of the Provincial Penitentiary on the 24th February, 1852:

Ques. Did Mr. Brown, on 28th April, 1856, move in the House of Assembly for an Address to the Governor General, praying His Excellency to cause to be laid before Parliament a “copy of the application to the Government with the signatures attached to it, in consequence of which A. B. DeBlois, a convict in the Penitentiary, was pardoned before the expiration of his sentence?”—Ans. The Address in question was moved for by Mr. Brown, on the 28th April, 1856.

Ques. Did the Governor General send down to the House of Assembly, on the 6th May instant, the document so applied for?—Ans. Yes, the said document forms part of the Return to the said Address which was laid before the House on the 6th May, instant.

Ques. Are the contents of the document so sent down by the Governor General, as *the* application on which A. B. De Blois was pardoned, as follows :

“ *A Son Excellence le Très-Honorable James Comte d’Elgin et Kincardine, C. C., Gouverneur Général de l’Amérique Britannique du Nord, etc., etc., etc.*

“ HÉLÈNE JALBERT, DE QUÉBEC, EXPOSE TRÈS RESPECTUEUSEMENT,

“ Que le plus affreux malheur est arrivé à votre exposante, mère de sept enfants en bas âge, pour la condamnation et sentence portée contre son époux, Ambroise Bernard De Blois, notaire, au pénitencier provincial, sur conviction du crime de faux.

“ Que la durée de l’incarcération de l’époux surnommé de votre exposante, au dit pénitencier, est de quatorze ans, dont trois sont expirés.

“ Que les sentiments de repentir et de regret manifes par le dit A. B. De Blois, et les excellents témoignages donnés par ceux sous le contrôle desquels il se trouve, portent votre exposante à croire que son époux, rendu à la liberté, s’en servirait pour revenir au bien.

“ Que votre exposante ne peut seule subvenir aux besoin de ses petits enfants, tous trop jeunes encore pour être capable de gagner leur vie, et l’offre faite à son époux d’une situation, est tellement avantageuse et pour elle et pour ui, que votre exposante, vû la conduite actuelle de son époux et cette dite offre,

“ Supplie humblement Votre Excellence d’accorder au nom de Sa Gracieuse Majesté au dit A. B. De Blois, une remise

“ pleine et entière de la punition et sentence portée contre lui
 “ comme susdit.

“ Et votre exposante ne cessera de prier.

“ Québec, 19^{me} août 1848.

“ Signé, HÉLÈNE JALBERT.

“ Nous soussignés prenons la liberté de recommander la
 “ pétition des autres parts à la considération de Son Excellence
 “ le Gouverneur Général.

“ Québec, 19 août 1848.

“ Signé,

C. F. CAZEAU, Ptre.

“ B. O'REILLY, Ptre.

“ L. M. MONTING, Ptre.

“ H. RENTIER, Ptre.

“ P. POULIOT, Ptre.

“ W. BEAUBIEN, Ptre.

“ E. A. PAYMENT, Ptre.

“ J. MALTE, Ptre.

“ Ls. PROULX, Ptre.

“ H. CHAREST, Ptre.

“ P. L. LAHAYE, Ptre.

“ L. Rcy, Ptre.”

Ans. They are.

Ques. Did Mr. Brown on 28th April, 1856, move in the House of Assembly for an Address to the Governor General, praying His Excellency to cause to be laid before Parliament a “ copy of the application to the Government, with the signatures attached to it, in consequence of which James Henessy, a convict in the Penitentiary, was pardoned before the expiration of his sentence ? ”—Ans. The Address in question was moved for by Mr. Brown; on the 28th April, 1856.

Ques. Did the Governor Général send down to the House of Assembly on the 6th May last, the document so applied for?—Ans. Yes, the document so applied for is contained in the return which was laid before the House on the 6th May inst.

Ques. Are the contents of the document so sent down by the Governor General as *the* application on which Henessy was pardoned as follows :—

“ *To His Excellency The Right Honorable James, Earl of Elgin and Kincardine, Governor General of British North America, &c., &c., &c.*

“ The Petition of the undersigned children of James Henessy, now a prisoner in the Provincial Penitentiary at Kingston,

“ HUMBLY SHEWETH :

“ That James Henessy was sentenced to ten years' imprisonment in the Penitentiary, six years ago, leaving a

“ young and helpless family, without any means of support.
 “ That since his imprisonment he has conducted himself in
 “ such a way as to gain the confidence of the authorities in
 “ whose charge he has been placed.

“ That your Petitioners trust that Your Excellency will
 “ favorably regard the prayer of this petition, and remit the
 “ remaining term of the imprisonment of the said James
 “ Henesey, and order him to be discharged; and as in duty
 “ bound your petitioners will ever pray.

“ Ameliasburg, February 1st, 1849.

“ (Signed,)

“ JAMES ROYAL HENESSY,
 “ TIMOTHY HENESSY,
 “ SARAH HENESSY,
 “ HANAH HENESSY,
 “ MARY ANNE HENESSY,
 “ ELIZABETH HENESSY,
 “ CATHERINE HENESSY,
 “ MARY JANE HENESSY,
 “ OLIVE HENESSY,

“ We do certify that we are acquainted with the family of
 “ James Henesey named in the within petition, and recom-
 “ mend the prayer of the within petition to the favorable con-
 “ sideration of His Excellency the Governor General.

“ (Signed,)

“ ROBERT C. WILKINS,
 “ CHARLES BIGGAR,
 “ B. WELLER,
 “ P. G. BARTLETT, Clerk,
 “ REUBEN YOUNG,
 “ JOHN P. ROBLIN,
 “ GEORGE CUNNINGHAM,
 “ WILLIAM FITZGIBBON,
 “ MARSHALL B. ROBLIN ?

Ans. They are.

(Witness withdrew.)

The Committee adjourned until 10 o'clock, A. M., to-
 morrow.

Forty-fourth Day—Thursday, 15th May, 1856.

PRESENT:—The Chairman, Messrs. Stevenson, Wilson,
 Felton.

The Hon. Mr. Macdonald and Mr. Brown were present.

The Hon. *Adam Fergusson* called in and examined by Mr.
 Brown.

Ques. Are you a member of the Legislative Council and a

member of the Scottish Faculty of Advocates?—Ans. I am a member of the Honorable Legislative Council. I am a member of the Faculty of Advocates of Scotland.

Ques. Were you Chairman of the Commissioners appointed by Government in May, 1848, to inquire into the condition and management of the Provincial Penitentiary?—Ans. I was.

Ques. Were you present at all the meetings of the Commissioners, and did you act as Chairman of the Board from its opening on 23rd June, 1848, to its close on 16th April, 1849, with the exception of a period from 11th December, 1848, to 29th January, 1849, when you were necessarily absent?—Ans. I was, and to the best of recollection my period of absence was that stated.

Ques. Have you any knowledge that Mr. Brown “recorded falsely the evidence of witnesses examined before the said Commission?—Ans. I had particularly good means of judging how Mr. Brown discharged his duties as Commissioner and Secretary, because I kept no notes myself but directed my best attention to the conduct of Mr. Brown, and to the general progress of the examinations. I have no knowledge of Mr. Brown ever recording any evidence which had not been distinctly given by the witnesses in succession, and which evidence was regularly read over to, and approved by each witness before signature, and that, of course I feel perfectly satisfied, that no curtailment, extension, or alteration of any deposition, either was made, or could have been made, without my knowledge, and that of the other Commissioners.

Ques. Have you any knowledge that Mr. Brown “altered the written testimony of witnesses after their evidence was closed and subscribed?”—Ans. I have none.

Ques. Have you any knowledge that Mr. Brown “suborned convicts to commit perjury?”—Ans. I have none.

Ques. Have you any knowledge that Mr. Brown “obtained the pardon of murderers confined to the Penitentiary, to induce them to give false evidence?”—Ans. Certainly not.

Ques. Did the Commissioners on assembling at Kingston, carefully consider the course they should pursue, in conducting their inquiries; did they communicate their intended course to Mr. Warden Smith and Mr. Hopkirk, and did these gentlemen declare themselves “highly satisfied?”—Ans. When the Commission was opened at Kingston, it became immediately evident that the investigation would meet with every opposition on the part of the Warden, which he could with safety bring to bear. It was at first attempted to give the inquiry a go-bye, but it was soon found the inquiry would be a searching one, though conducted with all due delicacy and feeling

towards the Warden; a system of inquiry was agreed upon by the Commissioners, which was communicated to, and met with the approval of the Warden and his friends.

Ques. Was the course thus adopted, strictly followed by the Commissioners?—Ans. It was.

Ques. Did the Commissioners hold preliminary conversations with a number of gentlemen residing in Kingston, including several former Inspectors of the Penitentiary, in regard to the alleged abuses in the Institution?—Ans. They did.

Ques. Did the Commissioners, on the information of these gentlemen, and the written documents placed in their hands by Government, proceed to examine under oath such parties as they were led to believe cognizant from personal knowledge of the actual condition of the Penitentiary?—Ans. They did.

Ques. Did the Commissioners extract from the evidence of the parties so examined, such portions as seemed to affect the character or conduct of any officer, and serve a written copy thereof upon him for explanation?—Ans. They did.

Ques. Were these extracts of evidence carefully considered by the Commissioners, and minute instructions given to the Secretary as to the portions of testimony to be extracted, or was the selection left to the Secretary's discretion?—Ans. They were regularly considered and approved by all the Commissioners.

Ques. Were such extracts transmitted to Mr. Henry Smith, Warden, Dr. Sampson, physician, and Mr. Francis W. Smith, kitchen keeper, and on his demanding it, were copies of statements in which his name incidentally occurred, furnished to Mr. Hopkirk, one of the Inspectors?—Ans. Yes.

Ques. Was it not arranged between the Commissioners and the Warden before he commenced his defence that "the Secretary should read out his 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 taken down?—Ans. It was so agreed.

Ques. Was this practice strictly followed throughout the investigation?—Ans. Certainly it was.

Ques. Was each question, when put to the witness, if not objected to by a Commissioner, held to be put with the consent of the whole Board?—Ans. Unquestionably, no question was put to any witness, without the concurrence of all the Board.

Ques. Did Mr. Smith or his clerk, keep a record of the whole evidence, and did they compare their record with the answers read aloud by Mr. Brown, and make suggestions in amendment, from time to time?—Ans. I cannot recollect.

Ques. Was there ever a suggestion made by any witness in amendment of his testimony, that was not made in the record by Mr. Brown, or one suggestion made by any Commissioner or Mr. Smith, that was not referred to the witness, and if sustained by him, at once carried out?—Ans. Never.

Ques. Was there ever any unwillingness shewn by Mr. Brown to correct the evidence of any witness, or any disposition shewn by him, to give the testimony other than its true colouring?—Ans. Never.

Ques. When the evidence of each witness was closed for the time, was his whole deposition re-read to him, amended to suit him, and a distinct assent to its correctness asked and obtained in every case?—Ans. Certainly.

Ques. When the assent of the witness had been so asked and obtained to the correctness of his deposition, was not the assent of the Warden in every case also asked and obtained as to its correctness?—Ans. Certainly.

Ques. When the assent of the witness and the Warden to the correctness of the testimony had been obtained, were not the following words invariably appended to the deposition:—“The foregoing evidence was read aloud; Mr. Warden Smith declared the evidence correctly taken down; witness did the same and signed it?”—Ans. This was regularly done.

Ques. Did the Secretary then read aloud these words, and was the deposition in every case, then signed by the witness?—Ans. Yes.

Ques. Had you frequent occasion before the Commissioners closed their labours, to examine the official record, and did you ever discover the slightest variation between the testimony as recorded by Mr. Brown, and that actually given?—Ans. I had the evidence always before me, no such variation was ever made.

Ques. Was there any discourtesy shewn to any witness by any of the Commissioners; was any witness brow-beaten or insulted?—Ans. Never. I hope as chairman, I would never have permitted any such conduct.

Ques. Did any witness refuse to sign his deposition?—Ans. None.

Ques. Was any question pertinent to his defence, sought to be put to any witness by Mr. Smith, but overruled by the Commissioners?—Ans. None, on the contrary, I consider that the Warden met with uncalled for license in respect of the latitude of examination allowed to him.

Ques. Was any intimidation used towards any witness by any of the Commissioners; were any threats of dismissal or promises of any kind held out to any witness, or were the

Commissioners, on the contrary, most careful to guard against doing any thing that might unduly influence the testimony of persons who might be witnesses before them?—Ans. The Commissioners were particularly careful upon all such points to avoid any thing which could give rise to suspicions or complaints of undue influence over any witness brought before them.

Ques. When Mr. Smith had closed his defence did the Commissioners proceed to examine the evidence received on each charge; was an index made to the several points of evidence, and the testimony referred to, and carefully weighed, and were minute instructions on each count thereupon given to Mr. Brown for his guidance in drawing up a draft report?—Ans. The book will answer this question, shewing as it does, that this was the course adopted and practised by the Commissioners.

Ques. Was the draft report considered paragraph by paragraph, by the Commissioners under each count, the extracts of evidence carefully referred to and read, and the whole report amended and adopted unanimously, by all five of the Commissioners?—Ans. Certainly it was.

Ques. By whom was the fair copy of the report made from the draft report?—Ans. I believe Mr. Alexander Campbell was employed on this work, and I saw him at Montreal engaged in making the copy.

Ques. When the fair copy was completed, was it carefully read over by the Commissioners, amended and adopted unanimously at a full Board?—Ans. Certainly.

Ques. Was the extracting, collating, and arranging the evidence, quoted in the report, either legally, or in fact, the individual act of Mr. Brown, or were the whole Commissioners, equally with him, responsible for it?—Ans. All equally responsible.

Ques. Are the conclusions arrived at in the report, strictly in accordance with the evidence, is there one passage you would alter now, with the additional light you have since acquired, and the severe criticisms that have been applied to the document by the partisans of those condemned in it?—Ans. All was strictly in accordance with the depositions made. I am not aware of any alteration desirable, or requisite to be made.

Ques. It having been alleged by Mr. Smith, that he was condemned by the Commissioners on convict testimony: will you please say if this is true, or if the Commissioners did not state in their report, page 106; "as to convict testimony "it was only used in the charges, to complete the evidence of

“other witnesses, and even then, to so small an extent, that had it been expunged altogether, the charges would not have been materially affected?”—Ans. Convict evidence was only received as corroboratory or confirmatory of other testimony, and the minute is quite correct.

Ques. Were the charges preferred by Mr. Smith against the Commissioners, and by Mr. Macdonald in 1849, 1850, and 1851, at all of the same character as those levelled at Mr. Brown by Mr. Macdonald, in the House of Assembly, in the debate on the speech from the Throne of the present session?—Ans. They were very different indeed. No charge, morally affecting Mr. Brown, *individually*, was made at that time; what was then stated, amounted to a general complaint of the mode in which the investigation was conducted, and alleged injustice consequently done to the Warden.

Ques. Mr. Macdonald having charged Mr. Brown with “obtaining the pardon of murderers confined in the Penitentiary, to induce them to give false evidence,” and Mr. Smith having stated before this Committee, that convicts Cameron, DeBlois, and Henessy were pardoned, but he did not know at whose instance; will you be good enough to state if any one of these convicts was pardoned, at the solicitation of Mr. Brown, or of the Commissioners, or of the Inspectors, while you were a Member of the Board?—Ans. None, to my knowledge or belief.

Ques. Do you believe that Mr. Brown was in any way concerned, directly or indirectly, in the release of any of the said convicts, or even knew of their release?—Ans. I do not believe that Mr. Brown interfered in any such cases.

Ques. Was there any prosecutor, nominally, or in fact, in the conduct of the enquiry into the conduct of the Warden?—Ans. None that I am aware of, the Commission acted by order of Government, in making the inquiries called for.

Ques. Did any inconvenience arise from Mr. Brown acting in the double capacity of Commissioner and Secretary; was any objection ever made by any one on that score in your hearing?—Ans. None that I am aware of.

Ques. Mr. Smith, in reply to question 251, quoted a passage from the evidence of Hugh Manuel, given before the Commissioners, in which the following words occur: “Keely has told witness that officers who gave testimony in favor of the Warden would be dismissed, and more than he have said so; Skynner has said so, he said Pollard and Manuel and a good many others who would be in the Warden’s favour, would be dismissed; Skynner said the Commissioners told him so when he was before them;” please to say if any

such statement was made to Skynner, or to any other person by the Commissioners?—Ans. I am aware of no such conduct by the Commissioners or by any of the members.

Mr. *Brown* here closed his examination in chief of this witness.

Mr. *Fergusson* was cross-examined by Mr. Macdonald.

Ques. You state in your answer to question 736, that you had “particularly good means of judging how Mr. Brown discharged his duties as Commissioner and Secretary, because you kept no books of notes yourself,” and that you “feel perfectly satisfied that no curtailment, extension, or alteration of any deposition, either was made, or could have been made, without your knowledge, or that of the Commissioners;” were you not absent during the cross-examination of many of the witnesses on whom the Warden particularly relied for his defence?—Ans. I was absent for two or three days, but I do not particularly recollect.

Ques. Can you speak of the manner in which the examination was conducted in your absence?—Ans. Of course not.

Ques. Who had charge of the Books of the Commission?—Ans. I presume they were in charge of the Secretary, but were never out of the Commission parlour, to the best of my knowledge.

Ques. Who took down the evidence?—Ans. The evidence was taken down by the regular Secretary of the Commission, the other Commissioners except myself, seeming also to take it down in separate books.

Ques. Could not interlineations, erasures, and other alterations have been made after the evidence was taken, without your being personally aware of it?—Ans. Certainly not; if the books were removed in the night, of course it might have been done. I did not keep them under my own lock.

Ques. You have stated in answer to Mr. Brown’s question 740, that “when the Commission was opened at Kingston, it became immediately evident that the investigation would meet with every opposition on the part of the Warden, which he could with safety bring to bear, and that it was at first attempted to give the inquiry a go-bye;” will you please to state how it became apparent that the Commission would meet “every opposition from the Warden,” and how and by whom it was attempted “to give the inquiry a go-bye?”—Ans. It was of so general a nature that I could not give particular instances, such was the general impression of myself and brother Commissioners.

Ques. You have stated that the course which the Commis-

sioners agreed on to pursue, in conducting their inquiries, was strictly followed by the Commissioners; have you personal knowledge that it was strictly followed by Mr. Brown, at the period of your own absence from Kingston?—Ans. I cannot personally speak as to anything that was done in my own absence.

Ques. You have stated that you held preliminary conversations with a number of gentlemen residing in Kingston in regard to alleged abuses of the Institution; were those conversations always held in your presence, or were they frequently held by Mr. Brown in your absence, and their results reported by him to you?—Ans. To the best of my knowledge, in the presence of all the Commissioners.

Mr. *Felton*, a member of the Committee, entered.

Ques. Were the extracts from the evidence of the parties to be examined, and referred to in your answer to question 744, made by yourself or by Mr. Brown?—Ans. Always written by the Secretary, but determined upon by the Commissioners.

Ques. Were the extracts referred to in answer to Mr. Brown's question, 745, as having been "carefully considered by the Commissioners," compared by you with the original evidence?—Ans. I could not pretend to recollect.

Mr. *Clarke*, a member of the Committee, entered.

Ques. You have given unhesitating answers to questions 751, 752, 753, 754, 755 and 756; could you uniformly know that the things which you there affirm to have positively taken place, and those which you, with equal certainty, declare never to have taken place, could have been, on all occasions, as you state them, when you were yourself absent during the cross-examination of many of the Warden's chief witnesses?—Ans. I have already stated that I could not speak of things during my absence, all of my affirmative or negative answers are correct to the best of my knowledge.

Ques. In answer to question 757 you state that you had frequent occasion to examine the official record, and never found the slightest variation between the testimony as recorded by Mr. Brown, and that actually given; you have also stated in answer to question 736, that "you kept no book of notes of the evidence yourself:" what means therefore could you have had, of discovering variations between evidence actually given, and that recorded by Mr. Brown, seeing that the recorded testimony extends over three folio volumes and upwards of 1335 pages?—Ans. By the satisfaction of each witness, before he signed his deposition it was read over to him very carefully, and he was always asked if it was correct.

Ques. You have stated in answer to Mr. Brown's question,

760, that no question pertinent to his defence, sought to be put to any witness by Mr. Smith, was over-ruled by the Commissioners, but that, "on the contrary, you considered that the Warden met with uncalled for license, in respect of the latitude allowed to him;" will you be pleased to state in what that 'uncalled for license' consisted, and will you point out instances thereof?—Ans. The Warden was allowed full time to consider the evidence before he entered on his defence, and it was the opinion of the Commissioners that it was more favorable to the Warden than *viva voce* cross-examination, that mode of examination had been approved of by the Warden and his friends.

Ques. You state in answer to question 761, that "the Commissioners were particularly careful upon all such points, to avoid anything which could give rise to suspicions or complaints of undue influence over any witness brought before them." Do you mean to answer as to the conduct of your brother Commissioners, except when you were personally present?—Ans. Of course I can speak of nothing that occurred in my absence.

Ques. To what book do you refer when you say, in answer to Mr. Brown's question, 762, that "the Book" will answer the question, shewing, as it does, the course adopted and practised by the Commissioners?—Ans. The Book detailing our proceedings.

Ques. When you say in answer to question 763, that the Commissioners in forming the Report carefully referred to the extracts of evidence; do you mean that you had yourself compared these extracts with the original evidence?—Ans. The comparison was made before the Commissioners, and duly considered by them, whether each individual Commissioner compared the extracts I cannot recollect.

Ques. When you say in answer to question 766, that all the Commissioners "were equally responsible for the collating and arranging the evidence "quoted in the report," do you mean to say that you had yourself, as an individual, collated or arranged any part of it, or by whom was it collated and arranged?—Ans. It was done to our full satisfaction, but whether separately, or individually by the Commissioners, I cannot recollect.

Ques. Did you make extracts yourself and with your own hand from the Book of Evidence?—Ans. No.

Ques. You say in answer to question 767, that the conclusions of the Report were "all strictly in accordance with the depositions made." Had you yourself carefully compared the original depositions made; or only the extracts used in

drawing up the Report?—Ans. I did not myself individually, but the Commissioners were perfectly satisfied.

Ques. You have stated in answer to Mr. Brown's question, 762, "that convict testimony was only received as corroboratory or confirmatory of other testimony," do you state positively that this was invariably the case?—Ans. To the best of my knowledge it was so.

Ques. You have stated in answer to Mr. Brown's question 763, that the charges preferred by Mr. Smith and Mr. Macdonald in 1849, 1850 and 1851 were very different indeed "from those levelled by Mr. Macdonald against Mr. Brown in the House of Assembly, in the debate on the speech from the Throne this Session," and that "no charge morally affecting Mr. Brown *individually*, was made at that time," were you present on all or any of these occasions, and did you hear Mr. Macdonald's charges, and if not, how can you testify to anything occurring then?—Ans. No, I was not present.

Ques. With reference to your answer to Mr. Brown's question 774, were you present when Manuel gave the testimony referred to, or when he was dismissed by Mr. Brown on the day of McCarthy's trial?—Ans. If I was in Kingston, I was certainly present.

Ques. Do you remember whether you were in Kingston or not when Manuel gave his testimony?—Ans. The Books shew that I was.

Mr. *Macdonald* closed his cross-examination of Hon. *Adam Fergusson*.

Mr. *Fergusson* was re-examined by Mr. Brown.

Ques. Do you know of any alteration or interlineation in the original evidence after it had been subscribed, or has Mr. Smith or Mr. Macdonald, or any one else, been able to point out to you any such alteration or interlineation in the original evidence?—Ans. No.

Ques. You have stated in answer to question 787, that the Warden was allowed great license in the manner of preparing his defence; was he not also allowed the widest latitude in the character of the defence offered by him, and his mode of examining his witnesses?—Ans. Yes, certainly he was.

Ques. Did the Commissioners make a true statement when they wrote officially to Government on 16th October, 1848, "Not a tithe of the evidence received is relevant to the matter at issue, and when the Commissioners hint to the Warden the propriety of his coming to the point, he exclaims immediately that if he is to be trammelled in his defence, he would give it up at once. The Commissioners being desirous to

“prevent the Warden’s availing himself of such a plea for retirement, have hitherto allowed him full scope?”—Ans. It is quite correct.

Mr. *Brown* closed his re-examination of Mr. *Fergusson*.
(*Witness withdrew.*)

The Committee adjourned until 10 o’clock, A. M., to-morrow.

Forty-fifth Day—Friday, 16th May, 1856.

PRESENT:—The Chairman, Messrs. *Stevenson*, *Masson*, *Samborn*,—4.

The Hon. Mr. *Macdonald* and Mr. *Brown* were present.

Robert Bell, Esquire, a Member of the House, examined by Mr. *Brown*:—

Ques. Were you a Member of Parliament, and in attendance at the sittings of the House of Assembly, during the sessions of 1849, 1850, and 1851?—Ans. I was.

Ques. Do you recollect of the Hon. J. A. *Macdonald* moving, in the House of Assembly, in the sessions of 1850 and 1851, to refer to a Select Committee, the petition of Mr. *Henry Smith*, Senior, complaining of the mode of proceeding adopted towards him by the Penitentiary Commissioners, and the debates that ensued thereon?—Ans. I do.

Ques. Did you, on both of these occasions, vote against the motion of Mr. *Macdonald*?—Ans. Yes, I think I did.

Ques. Were you on terms of personal friendship with Mr. *Brown*? Was your vote in any manner influenced by him? Did he apply to you to vote against the appointment of a Committee?—Ans. I was on friendly terms with Mr. *Brown*, but my vote was not in the slightest degree influenced by that friendship. Mr. *Brown* did not ask me to vote against the appointment of the Committee.

Ques. Were the charges preferred in Mr. *Smith*’s petition, and urged by Mr. *Macdonald* in his speeches, on moving for its reference, aimed at the Commissioners generally, or at Mr. *Brown* alone?—Ans. I think Mr. *Macdonald*’s charges were against the Commissioners generally; from the great length of time, I can only state what my impressions are.

Ques. Did Mr. *Macdonald* then profess to make any statement on his own personal knowledge, or did he avowedly rest his whole case on the authority of Mr. *Smith*?—Ans. So far as I can recollect, the whole case was based on Mr. *Smith*’s petition.

Ques. A copy of Mr. *Smith*’s petition being put into the hands of witness, he is asked if there is one charge in it against Mr.

Brown individually, if he is even once named in it?—Ans. I do not see his name mentioned.

Ques. Were the charges preferred against the Commissioners in 1850 and 1851, at all of the same character as those launched at Mr. Brown by the Attorney General West, in the House of Assembly, in the debates of February last, and referred to this Committee?—Ans. The charges now made are against Mr. Brown personally; In 1850 and 1851 they were, I think, against the Commissioners generally. The charges now made seem to be of a different character.

(*Witness withdrew.*)

Mr. Brown closed his examination of Mr. Bell.

The Committee adjourned until ten o'clock, A. M., to-morrow.

Forty-sixth Day—Saturday, 17th May, 1856.

PRESENT:—The Chairman, Messrs. Felton, Masson, Sanborn,
—4.

The Honorable Mr. Macdonald was present.

Minutes of yesterday read and approved.

Ordered, That notice be given to the parties interested, that on Monday morning next, at 10 o'clock, the Committee would peremptorily proceed to the final disposal of the order of reference.

The Committee adjourned until 10 o'clock, A. M., on Monday next.

Forty-seventh Day—Monday, 19th May, 1856.

PRESENT:—The Chairman, Messrs. Felton, Masson, Stevenson, Sanborn,—5

The Honorable Mr. Macdonald and Mr. Brown were present.

Minutes of Saturday read and approved.

The Hon. Mr. Justice *Richards* called, and examined by Mr. Brown.

Ques. Are you one of the Justices of the Court of Common Pleas of Upper Canada?—Ans. I am one of the Justices of the Court of Common Pleas of Upper Canada.

Ques. Were you a Member of Parliament, and in attendance at the sittings of the House of Assembly, during the sessions of 1849, 1850, and 1851?—Ans. I was a Member of the Legislative Assembly of Canada, during the years 1849, 1850, and 1851, and attended the sittings of the Legislature held during these years.

Ques. Do you recollect of the Hon. J. A. Macdonald moving in the House of Assembly, in 1850 and 1851, for the reference to a Select Committee of the petition of Henry Smith, Senior, complaining of the mode of proceeding adopted towards him by the Penitentiary Commissioners, and the debate that ensued thereon?

—**Ans.** I recollect of the Honorable John A. Macdonald moving in 1851, to refer to a Select Committee the petition of Henry Smith, Esquire, late Warden of the Provincial Penitentiary, complaining of the manner in which the investigation of charges against him was conducted by the Commissioners appointed for that purpose, and I have some recollection of the debate that arose thereon. I have no doubt a similar motion was made in 1850, but I have no particular recollection of the debate which then ensued.

Ques. Were the charges preferred in Mr. Smith's petition, and urged by Mr. Macdonald in his speech on moving for its reference, aimed at the Commissioners generally, or at Mr. Brown alone, as an individual?—**Ans.** Most of the charges made in the petition were against the Commissioners generally, but some were against Mr. Brown personally; my impression is, that in Mr. Macdonald's speech, the charges were chiefly directed against Mr. Brown as one of the Commissioners.

Ques. Did Mr. Macdonald profess to make any statement on his own personal knowledge; or did he avowedly rest his whole case on the authority of Mr. Smith?—**Ans.** I cannot at this distance of time recollect precisely what was said; most of the charges were made by Mr. Macdonald on the information of others, but he was very emphatic in declaring that if a Committee were appointed he should be able to prove certain of his charges by witnesses, not merely by Mr. Smith alone; I think there was one charge, but I cannot say what it was, he stated to be true of his own knowledge.

Ques. Did you on both of these occasions speak and vote against the motion of Mr. Macdonald?—**Ans.** I voted on both occasions against Mr. Macdonald's motion. I do not know if I spoke against the motion in 1850. I am sure I did in 1851.

Ques. Were you in any manner influenced by Mr. Brown in the course you took on that occasion?—**Ans.** I am not conscious that I was in any way influenced by Mr. Brown in the course I took on these occasions. My present impression is that after the Government had so far adopted the conclusions of the Commissioners as to remove the Warden, I considered the reference of the petition to a Committee would be a censure on the Government, and in that view of the case I should have voted against the motion. If Mr. Brown, with a view of having the charge made enquired into, had desired me to vote for the reference, I

might have done so, otherwise as I have already intimated, I should not have felt disposed to do so.

Ques. Do you recollect while one of the debates in question was proceeding, of your communicating with Mr. Brown at the Bar of the House in reference to the subject?—Ans. I remember communicating with Mr. Brown at the Bar of the House whilst the debate was going on in reference to the subject.

Ques. Was the object of your communication with Mr. Brown to obtain explanations, so that you might reply to attacks made on the Commissioners in the debate?—Ans. My object was to obtain information from him to enable me to reply to attacks made on the Commissioners during the debate.

Ques. Did Mr. Brown on that occasion apply to you to resist the appointment of a Committee of inquiry into the conduct of the Commissioners?—Ans. I have no recollection that Mr. Brown so applied to me to resist the appointment of a Committee.

Ques. Did you advise Mr. Brown on that occasion to consent to the appointment of such a Committee?—Ans. I have not any recollection of having advised him to consent to such appointment. If anything of the kind referred to in these two questions occurred, I can only say I have no recollection of it.

Ques. Did Mr. Brown on that occasion express strong indignation with the members of Government, because they had not prepared themselves for the debate, and did not properly defend the Commissioners from the unjust attacks of the opposition?—Ans. Mr. Brown was very indignant with the members of the Government, and I understood the ground of his complaint against them was, that they had not properly defended the Commissioners from the attacks made against them during the debate, which he declared were false and unjust. I was not at that time a member of the Government and do not know if he had any other cause of complaint against them in this matter.

The Chairman having frequently called the attention of the Committee to the fact that the minutes had not been extended regularly for some time at the commencement of their sittings in consequence of the frequent changes of the clerk, and having stated the importance of having the proceedings of that period duly read and approved, the Committee ordered the minutes from the first day of their sittings to be read.

The notes of the minutes of the 4th April having been read, Mr. *Macdonald* called the attention of the Committee to the omission of the following extracts laid before them by Mr. *Vankoughnet* as his Counsel on that day:

PRINTED REPORT, PAGE 218.

MS. MINUTES OF EVIDENCE, PAGE 528.

*Evidence of Convict McNair,
alias McKeener.*

*Evidence of Convict McNair,
alias McKeener.*

“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 shew to them he speaks truth; any convict can manage to get full rations, notwithstanding the Prison Rules, that when under punishment they shall get nothing but bread and water. Witness always managed some way or other to get full rations, except when closely confined to his cell.”

“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 shew to them he speaks truth, any convict can manage to get full rations, notwithstanding the Prison Rules, that when under punishment they should get nothing but bread and water. Witness always managed some way or other to get full rations, except when closely confined to his cell.”

“*Mr. Frank Smith never on any occasion knew of witness getting full rations, while under punishment.*”

PAGE 532.

“*When on punishment witness gets more food than the bread and water allowance; convicts fetch it out to witness, the food they give him is part of their own rations, none of the officers ever gave witness any extra food, except Mr. Whatl who did so once or twice; was not under punishment those days.*”

He desired that this case of falsification of evidence which had been omitted from the minutes should be inserted.

Mr. *Brown* contended that this would not be fair, and should not be allowed, inasmuch as he had founded his defence upon the certified copy of the minutes of evidence which had been handed to him and which did not contain the case alluded to. From this not having been entered he (Mr. Brown) concluded that Mr. *Macdonald* did not intend to go on with it.

Mr. *Macdonald* replied, that as a matter of fact the case should be upon the minutes in the place in which it had been brought up. The places in the printed report and the Commissioners' minutes shewing the discrepancy between the two on which the charge was based had been marked by the Chairman, and he, (Mr. *Macdonald*) was not responsible for the omission of the clerk. As a matter of fact this charge had been proved and he had a right to have it inserted in the minutes where it occurred.

The Chairman explained that the clerk had been ill and the minutes had not on that account been properly made up. The part of the minutes alluded to had not yet been confirmed.

Mr. *Sanborn* said that all Mr. Brown desired was that it should be stated in the minutes how the affair took place.

Mr. *Brown* would not allow that—he would appeal to the House first. The case referred to was not in the certified minutes sent to him on which to conduct his case.

Mr. *Felton* said that Mr. Brown ought to have looked after that himself. He could not conceive that minutes which had not been read ever were binding. Mr. Brown must have known that they did not hold themselves responsible for minutes that they had never heard read.

Mr. *Brown* insisted on his objection.

Mr. *Stevenson* then moved the following resolution: "That the minutes of the 4th April, be amended by inserting the extract put in on that day by Mr. *Vankoughnet*, counsel for Mr. *Macdonald*."

Mr. *Brown* objected to this as unfair and it was opposed by Mr. *Sanborn*.

Mr. *Macdonald* then suggested an explanation of the facts, which was agreed to by Mr. *Brown*.

Mr. *Felton* would not consent to this and insisted on the resolution being put.

Mr. *Sanborn* said that it would involve an absurdity for the Committee to decide upon what was a matter of fact and he would, therefore, move Mr. *Macdonald's* explanation in amendment.

After some further discussion it was agreed that the matter should be settled by the insertion of the following explanations:

Mr. *Brown* objected to the insertion of the said extracts as he had received from the Clerk a copy of the minutes of that day.

in which these extracts did not appear, and he therefore supposed that any charge founded on such extracts had been abandoned.

Mr. Macdonald having stated that he had not abandoned such charge, the Committee do order that the said extracts from portions of to-day's proceedings, be considered to stand as part of the proceedings of 4th April last.

Mr. Brown desires to state that he is at a loss to comprehend what charge can be founded on the omission from the Report of the Commissioners of the words in question. He calls the attention of the Committee to the fact that by the draft Report it is shewn that the extract from McNair's evidence was made precisely as ordered unanimously by the Commissioners; and further, that the words in question were in no way pertinent to the matter in which McNair's testimony was cited. The general charge against the Warden, under which his testimony appears, was "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;" and the special charge as distinctly sworn to by guards of the prison, Wilson and Waldron, was, that McNair had been employed by the Warden in trumping up evidence from among the convicts to be elicited before the Commissioners. The evidence of the guards on this point is clearly stated in the Report, and the passage from McNair's evidence was given for the purpose of shewing the character of the man who was thus used in trumping up evidence. The reference to his obtaining food occurs incidentally only, and had no bearing on the charge at issue—that point being fully referred to elsewhere in the Report. Whether McNair got extra food was a matter of no importance to the point at issue, and Frank Smith's knowledge of the fact, if it was a fact, was of as little importance. Moreover, Frank Smith, at the date of McNair's testimony, had been dismissed from the Penitentiary several weeks before. Mr. Macdonald has quoted McNair's evidence in a way to deprive it of its full bearing. He should have quoted the whole passage, by which the object of the quotation would have been clearly shewn.

Hon. *J. Sandfield Macdonald*, a Member of the House examined.

Ques. [*By Mr. Brown.*].—Were you a Member of Parliament and in attendance at the sittings of the House of Assembly during the Sessions of 1849, 1850, 1851?—Ans. Yes.

Ques. Do you recollect the Hon. *J. A. Macdonald* moving in the House of Assembly, in the Sessions of 1850 and 1851, to refer to a Select Committee the petition of Mr. Henry Smith, Senr., complaining of the mode of proceeding adopted towards him by the Penitentiary Commissioners, and the debate thereon?

—Ans. I recollect on two separate occasions Mr. Macdonald speaking and presenting a petition on the subject of the Penitentiary Commissioners.

Ques. Did you on both of these occasions vote against the motion of Mr. Macdonald?—Ans. On reference to the Journals of the House I find that on the 5th August, 1850, and 24th June, 1851, I voted against Mr. Macdonald's motion.

Ques. Were you Solicitor General for Upper Canada at both of these periods, and were you on terms of personal friendship with Mr. Brown?—Ans. Yes.

Ques. Were your votes in any manner influenced on these occasions by Mr. Brown; did you advise him to consent to the appointment of a Committee, or did he urge you or the Government of which you were a member to resist the appointment of a Committee?—Ans. No conversation in relation to the Penitentiary took place between Mr. Brown and myself until after the debate in 1851.

Ques. Were the charges preferred in Mr. Smith's petition and urged by Mr. Macdonald in his speeches on moving for its reference, aimed at the Commissioners generally, or at Mr. Brown alone as an individual?—Ans. Up to a short time ago I was under the impression that the charges then made had more particular reference to Mr. Brown, but since reading the debates of that period, I am now of opinion that they were directed at the Commissioners generally.

Ques. Did Mr. Macdonald then profess to make any statement on his own personal knowledge or did he avowedly rest his whole case on the authority of Mr. Smith?—Ans. I am under the impression that Mr. Macdonald stated he "was instructed to say what he said," and that he did not pretend to say anything of his own knowledge.

Ques. Were the charges preferred in 1850 and 1851 against the Commissioners at all of the same character as those launched at Mr. Brown by Mr. Attorney General Macdonald in the House of Assembly, in the debate of February last, and referred to the Committee?—Ans. I think some of the charges, if not so pointed, were of the same description, but more against the Commissioners; some of the charges were made by Mr. Macdonald, but I cannot say that all of them were.

Ques. Did you act as Crown Counsel at the Kingston Fall Assises of 1849, and among the cases tried on that occasion, was there a prosecution against James McCarthy for alleged perjury in evidence given by him before the Penitentiary Commissioners?—Ans. Yes.

Ques. Did Mr. Brown give evidence at the said trial, and was McCarthy acquitted?—Ans. Yes.

Ques. Do you recollect of Mr. Brown consulting you on that occasion as to the best course for him to pursue (as Inspector of the Penitentiary) in reference to a witness named Manuel, who was expected to give evidence for the prosecution at the said trial?—Ans. I have a recollection of Mr. Brown speaking to me at the British Hotel, with reference to the name of a witness for the prosecution on my list, Mr. Brown having mentioned the man as one of my witnesses, remarked that, "that man had been ordered to be dismissed by the Inspectors some time before." Mr. Brown then put it to me under the circumstances, whether as he was to be dismissed, he ought to be dismissed before or after the trial then pending. I remarked, "that if I was in his place and intended to dismiss him I would do so before the trial," and in point of fact, as far as I recollect, the man was dismissed before giving his testimony.

Mr. Brown closed his examination of this witness.

Ques. [*By Hon. Mr. Macdonald*].—Did not the Counsel for the Defendant at that trial in his address to the Jury admit the fact of McCarthy's having sworn untruly before the Penitentiary Commissioners, but argued that such untrue statements had not been made wilfully?—Ans. I believe the Counsel did make some such admission, but argued that the necessary ingredient to constitute perjury, was not to be inferred by that admission.

(*Witness withdrew.*)

The Committee adjourned until 10 o'clock A. M., on Wednesday next.

Forty-eighth Day—Wednesday, 21st May, 1856.

PRESENT:—The Chairman, Mr. Wilson,—2.

Mr. Brown was present.

The Committee adjourned at half-past 11 o'clock A.M., from want of a quorum, until 10 o'clock A. M., on Friday next.

Forty-ninth Day—Friday, 23rd May, 1856.

PRESENT:—The Chairman, Messrs. Stevenson, Sanborn, Wilson, Clarke,—5.

Mr. Brown was present.

The Committee adjourned until 10 o'clock A. M., on Monday next.

Fiftieth Day—Monday, 26th May, 1856.

PRESENT:—The Chairman, Messrs. Felton, Sanborn,—3.

Mr. Brown was present.

The Committee adjourned until 10 o'clock A. M., to-morrow, for want of a quorum.

Fifty-first Day—Tuesday, 27th May, 1856.

PRESENT:—The Chairman, Messrs. Wilson, Sanborn, Stevenson, Felton,—5.

The Hon. Mr. Macdonald and Mr. Brown were present.

Mr. *Sanborn* wished to call Mr. Brown as a witness. As a member of the Committee he desired to ask him some questions.

Mr. *Macdonald* did not think it was fair to allow a man who was charged as Mr. Brown was to give evidence in his own behalf.

Mr. *Sanborn*—No man can give evidence in his own favor, but there are certain points in the evidence in which he would like to have Mr. Brown's explanation.

Mr. *Ferres*—Mr. Brown can do so in his speech. He can then give any explanation he thinks proper, but it was not right for any member of the Committee to call up one of the parties to give evidence in his own defence.

Mr. *Brown*—Does Mr. Macdonald want to stifle any question that may remove any difficulty in the minds of the Committee.

Mr. *Ferres* did not think that the word *stifle* was a very proper expression.

Mr. *Brown* replied that that was a matter of opinion and he had a right to use the expression.

Mr. *Sanborn* contended that Mr. Brown had already been called as a witness by Mr. Macdonald, and surely if one party had a right to call the other as a witness, a member of the Committee might call either of them.

Mr. *Ferres* never knew of a Court calling a witness in any case.

Mr. *Wilson*—A court in *banc* often calls a witness to explain a point but not before a jury.

Mr. *Macdonald*—This Committee is to all intents and purposes a jury.

Mr. *Wilson* thought it very desirable that some points should be cleared up in the matter.

Mr. *Brown* was willing to be examined in any particular and he challenged Mr. *Macdonald* to do so.

Mr. *Sanborn*—According to the practice of the Courts in Lower Canada, he would have a right to examine Mr. *Brown*, and he was satisfied that as a member of the Committee he had a right to do so. His questions related to evidence already given on some points of which he desired to have Mr. *Brown's* explanation.

Mr. *Macdonald*—Whatever evidence Mr. *Brown* gives must be either for or against, and to allow him to give evidence in that way would be most improper. The questions that he had put to Mr. *Brown* related only to matters which did not affect the case and which were known only to Mr. *Brown*, and he did not ask him until every other means had failed.

Mr. *Sanborn*—In the *Hincks' Committee* Mr. *Hincks* was called upon to give evidence, although they did not ask him any questions.

Mr. *Macdonald*—The two cases are not analagous. In the case of Mr. *Hincks* the whole administration was charged, but here, there was a distinct issue between himself and Mr. *Brown*.

Mr. *Brown* said that there were many points which he might explain to the satisfaction of those who now had doubts with regard to them.

Mr. *Felton* did not think that it would be proper for members of the Committee to put questions to either party to enable them to make out their own cases, but that whatever explanation Mr. *Brown* chose to give in writing would be received.

Mr. *Brown*—That was all he required.

Mr. *Sanborn* was not acting on behalf of Mr. *Brown*, he insisted on his rights as a member of the Committee.

Mr. *Wilson* contended that Mr. *Brown* was already before them as a witness and could be recalled.

Mr. *Macdonald*—In calling Mr. *Brown* as a witness he had no choice, he was obliged to call him as a matter of necessity, and he did not call him with regard to the charges. He was called as the custodian of certain books to say what had become of them.

Mr. *Sanborn*—The question was whether he as a member of the Committee had a right to put questions to one of the parties in the case, and if he put any motion on the subject it would be admitting that his right was questionable.

The result of the discussion was then entered as follows:

Mr. *Sanborn* proposed to submit some questions to Mr. *Brown* to elicit his explanation upon certain facts given in his evidence in this case.

Mr. *Felton* moves with reference to Mr. Sanborn's proposition, That if Mr. Brown has any explanation to offer on the evidence produced, this Committee will receive it either verbally or in writing.

The motion of Mr. Felton was carried in the affirmative upon the following division.

<i>Yeas :</i>	<i>Nays :</i>
Mr. Felton,	Mr. Sanborn,
Mr. Stevenson,	Mr. Wilson,—2.
The Chairman,—3.	

Mr. *Sanborn* handed in the following memorandum :

Mr. *Sanborn* as a member of this Committee claims the right to examine Mr. Brown upon certain points of evidence, and submitted the following question :

Did you furnish to Mr. Smith, late Warden, the extract of Dr. Sampson's letter as the whole letter. Did you state to him it was the whole letter? From what did you take the extract, and were you, or were you not aware he Mr. Smith had the original?

Mr. *Stevenson* moves in amendment, That Mr. Brown being a party cannot be used as a witness in this case unless called by the opposite party.

Mr. *Wilson* moves in amendment, to the amendment, That Mr. Sanborn has the right to put any question to Mr. Brown, who has been called already as a witness before the Committee, at the instance of Mr. Macdonald.

Committee divided upon Mr. Wilson's amendment.

<i>Yeas :</i>	<i>Nays :</i>
Mr. Masson,	Mr. Stevenson,
Mr. Wilson,	The Chairman,—2.
Mr. Sanborn,—3.	

It was carried in the affirmative,

And the main motion as amended being put it was then moved by Mr. Stevenson in amendment, That Mr. Brown was called as a witness by Mr. Macdonald of necessity, after the Committee had decided that the destruction of the original books of evidence had not been sufficiently proved, and then only to exhaust all possible testimony on that subject, by declaring what he had done with them, or what he knew respecting them, but he was not called as a witness to establish any point of the order of reference to this Committee, nor was he, in fact, asked any question relative to said order, and that Mr. Brown cannot be called to give evidence on the case unless by desire of the opposite party.

And the said motion in amendment being put, it was carried on the following division :

<i>Yeas :</i>	<i>Nays :</i>
Mr. Stevenson,	Mr. Wilson,
Mr. Masson,	Mr. Sanborn,—2.
The Chairman,—3.	

And the main motion as further amended, being again put, passed on the same division.

The Committee adjourned until 10 o'clock A. M., to-morrow.

Fifty-second Day—Wednesday, 28th May, 1856.

PRESENT :—The Chairman, Messrs. Wilson, Stevenson, Sanborn, Felton,—5.

The Hon. Mr. Macdonald and Mr. Brown were present.

Minutes of yesterday were read and approved.

Mr. *Brown* states that he will not produce any further evidence.

The Committee adjourned until 10 o'clock A. M., on Friday next.

Fifty-third Day—Friday, 30th May, 1856.

PRESENT :—The Chairman, Messrs. Wilson, Sanborn, Stevenson, Masson, Clarke.

The Hon. Mr. Macdonald and Mr. Brown were present.

The Committee adjourned until 10 o'clock A. M., to-morrow.

Fifty-fourth Day—Saturday, 31st May, 1856.

PRESENT :—The Chairman, Messrs. Stevenson, Wilson, Clarke, Masson, Sanborn, Felton.

The Hon. Mr. Macdonald and Mr. Brown were present.

Mr. *Brown* then after some preliminary remarks addressed the Committee as follows: What are the charges which have been brought before this Committee? In the first place, I am charged with "recording falsely the evidence taken before said Commission." Now before proceeding to that let me call your attention to the character of the case which is attempted to be made out. Mr. Macdonald comes before the public and

makes these charges against me, and says that if he has a Committee he will prove them to be all true. He has had his Committee and who did he bring as his witnesses. His whole case rests on the evidence of two people. He failed with Mr. Horsey and then he brings here Messrs. Smith and Hopkirk. Mr. Smith is the person whom the Commissioners declared to be guilty of everything, as Mr. Macdonald himself said, that a man in his position could be guilty of, except murder. Every kind of evil was allowed to exist in the Penitentiary under his management, even to allowing a man's eye to be put out by irregularity. Every sort of charge that could be brought against a man in his position was gravely asserted against him. He was brought before the public and was dismissed from his situation, and this is the man that Mr. Macdonald has brought here to make all sorts of accusations against those who tried him; not only against me but against the whole Commissioners. Mr. Hopkirk, who is mixed up in all these transactions to the same extent as Mr. Smith, so much so that he tried to get some of the witnesses convicted of perjury, shewing that he felt how much he was implicated, is also brought. These are the persons brought as witnesses against those who were appointed to be their Judges, who were appointed by the Crown to do a painful duty and having done it to the satisfaction of the Government all these persons are brought against them. In the whole history of Canada I do not think you could find anything so monstrous. Suppose that I should in this House some ten years hence get up and charge Mr. Ferres with having falsified the evidence of this Committee and should endeavour to prove it by bringing myself to testify that he had done these things. What sort of case would that be? The thing would be laughed at as absurd and ridiculous. Now what have these witnesses done. Let us state the different points in the charges: The first is having falsely recorded evidence. I put the question to each of the witnesses. "Did such a thing ever take place?" The answer was "No, I know nothing of it." To every one of them the same thing was put and the same reply given, and is there the least shadow of proof in the evidence. Mr. Hopkirk says "Mr. Brown did not write the evidence down as I gave it" but he could not point out a single instance of the kind. He says "when I had given the evidence I could not get him to put it down correctly" but he could not point out a single instance in which it had not been correctly put down. Now I ask you Mr. Chairman if in all the course of your experience you ever saw such a witness. I never met with such a witness. He gave 43 pages of evidence before Mr. Smith, full of insinuations of every kind, distortions of

evidence to give plausible insinuations in favor of the Warden in cases where we knew he was speaking falsely. He knew these points and he tried to evade them; we were obliged to chase him to a corner to get the truth out of him. It is quite clear that so far from his being ill treated, from his being brow-beaten, the great difficulty was to have his evidence fairly taken down, and so far from any temper being shewn to him, the whole temper was on his part. Then when I brought him to the point and told him, "you say this," "you had great difficulty in getting Mr. Brown to put down the words: now take your evidence and shew this." He went through the whole evidence to shew that it had been distorted and in the only case which he could point out I proved by Mr. Bristow that it was perfectly untrue. I proved by Mr. Bristow that the words as put in were false and that the first words were true. Had it been true that I tried to induce him not to put in these words it was to prevent him from recording under oath what was not true. That was the only case which he could point out, and here we are to have all these charges brought in on such a thing is that. Then with regard to writing down the evidence the first thing was when we asked a question about such and such a thing, you know so and so, tell us about it. Well, I had to listen to the witness for some time before I could begin writing down what he said; well then I would put it down. Mr. Hopkirk carefully corrected the whole of his evidence and all the corrections are of the most minute character and I cannot find one single error which is not merely clerical or which effects the evidence in the slightest degree. These corrections are in all some where about 70, and they are not to make the evidence more pointed but to make it more loose. I will defy any man to take the evidence and say that it is not the most utter bundle of trash that was ever laid before a Court, trying to have the language put in that dubious style in which it could read either one way or the other. How is it that Mr. Hopkirk is the only witness called out of 108. How is it that Mr. Costen was kept here for forty days and that Mr. Macdonald did not dare to put him in the box. Look at the evidence of Mr. Hopkirk and I will show 50 cases in which he was clearly wrong and in which many deliberate statements were made without the least foundation. Then I call the attention of the Committee to this, that not one witness but Mr. Hopkirk has been produced here who has not stated that every word of his evidence is correct or that he has no reason to doubt that it is correctly recorded. Is there one page on which he could put his finger and say that his evidence was recorded falsely? Why did not Mr. Henry Smith come and say "why

my evidence is recorded falsely." This is the way I have been slandered and maligned and not one point is established. Now Mr. Macdonald comes up and says "Mr. Hopkirk was a lawyer. He was exceedingly acute and prevented his evidence from being recorded falsely," why did he not bring some of those weak witnesses here to say that the evidence was incorrect. The charge against Mr. Smith did not rest on any particular charge. It was a general charge, and the whole case rested on the evidence of his own witnesses. This is not the only record. Mr. Smith had every word of the evidence taken down, why did he not bring his copy and shew where the evidence had been falsely taken down, where this writing and distortion was. The whole thing is one of the most gross outrages on propriety that ever was witnessed, that a man should be brought up at the end of ten years on such evidence as this. Mr. Macdonald says there is proof of the falsification of the evidence because he compares certain pages in the printed report and compares them with certain pages in the written evidence, and says this is not a fair collation of the evidence. Supposing that were true, I have proved that in every case it was the doing of the Board. The whole thing was carefully adopted by a full Board, the evidence was carefully read over, so that this charge has nothing to do with the case. Take the cases that he has adduced, what do they amount to? In the first place we have the evidence of Mrs. Chase. The Warden who of course was trying to make out his case had a great advantage over us, who were in utter ignorance of the witnesses to be brought before us. For instance he was accused of never having been in the Chapel. This appeared to be very strange and he was called upon to explain. He brought up one witness after another and asked them "how long have you been in the prison." "So many years." "Did you ever see Mr. Smith in the Chapel?"—"Yes, always when I was there."—"How often were you there?" "Every sixth Sunday." How could this be? At last I said, where was he standing? And we found that he was in the habit of coming down to a peep hole, looking in and going up stairs again. So it was with Mrs. Chase, and so even with the McNair case. I recollect distinctly with regard to Mrs. Chase. We went to the Penitentiary in June, 1848. There was a charge made by Dr. Sampson, who had appealed against the Warden, and a great dispute was going on about it, and Dr. Sampson laid as a charge against the Warden, that convicts had been goaded into insanity by hard treatment. We asked proof of these things and they bring up Mrs. Chase, who was found guilty of clear perjury. The Warden brings up this woman, who says that Reveille was not goaded

into insanity. After a little we found that instead of knowing anything about the charge, she had not entered the Penitentiary till three years after the convict had been treated as an insane person. They brought Mrs. Chase to prove that the charge could not be true, when the affair had taken place three years before she entered the Institution. This is a charge against us of falsely recording evidence; but were the Commissioners not sent there to judge of what they were to rely on and what they were not? Were they to go into every minute case and say why they left out this and put in that? It was a perfect trick to bring in this woman. But there was another charge against Dr. Sampson, in February, 1848, at the time when the woman Chase was in charge of Reville. On that point we have her evidence fully brought to bear upon the case. What did it signify what her opinion was. Did not the Surgeon prove that the convict was insane, did not a number of Surgeons in Kingston say that she was insane, and yet we are to take this woman who knew nothing about it as evidence in preference to the Surgeons. By this woman who was brought up to testify what she knew nothing about we were to set aside their opinion. Take the next case about convict Henry Smith getting beer. It is quite true he got beer and it is made a great charge, that it is given in the report by Mrs. Smith's orders. The question is, did he get the beer? It is rather in Mr. Smith's favor that it was by Mrs. Smith's orders, for it may have been very correct for Mrs. Smith to give beer to the convicts under certain circumstances, but the whole thing is too absurd. With regard to Mr. Muckleston, it was proved by Mr. Bristow to be his doing and not mine, and his evidence was perfectly correct in that, and I am satisfied that there is no evidence at all upon the case. The same thing applies to the case of Quinn, the contract had been made for the thousand *ems*. It was not only Quinn who proved that, we had plenty of witnesses besides and the Warden never denied it, only putting in this indirect evidence which does not bear upon it at all. With regard to the stone work it is attempted to be shewn, that it would appear from the evidence that the 30 per cent. was lost, whereas, in the way we put it, the 25 per cent. was intended to be a complete offset to that. Mr. Smith says there is a false statement here because the words "in favor of the latter" were not put in. He makes it 25 per cent. worse than we do.

With regard to the evidence of Mr. Kirkpatrick, as to the food given to the convicts, what is given in the report is only intended to be a digest of his evidence and not the whole of it. I shewed this abstract to Mr. Kirkpatrick who said that it was perfectly correct, with regard to the number of punishments. We

had the whole of the books before us and were we to send them all to the Government? These statements were made up by Mr. Thomas, and there is no doubt they were absolutely correct. Suppose the Government sent Commissioners, and they do not choose to send a bit of evidence in their report, it is their judgment that is to be relied on. With regard to the McKinnon case the extract from his evidence is given to shew the character of the man. It incidently occurs to shew the impudence with which he spoke. He stated if you let me go now I will get a ration which I have no doubt is waiting for me. It was to shew the utter irregularity which prevailed in the management of the prison. He was allowed to wander over the prison for the purpose of collecting evidence. If it had been thought advisable to bring any charge by this witness it would have been stated under the proper head. Suppose an error had really been made what more is it than a mere error of judgment, are we not allowed to be guilty of some errors of judgment, are we to be infallible? Is it possible that we could avoid making mistakes. Has there ever been a report which has stood the examination which this has. Did any one ever hear of evidence being taken more correctly; every letter, every scrap of paper being now to the fore? I doubt if any one could establish a better business capacity than is established in this matter, but any evidence to shew errors of judgment on the part of the five Commissioners is not to make a charge of criminality against me. I am not personally responsible for the proceedings of the Commissioners in the manner stated by the Attorney General. I was not so foolish as to allow myself to be placed in that position. A large portion of the evidence put in by Mr. Smith was taken by Mr. Thomas and not by me, in fact there were more witnesses before him than before me, and there are more of the points brought out during the time that he took the evidence than all the time that I was there, and although some of the Commissioners may not have been present at particular times alluded to, they were present when the mass of the evidence was taken. Mr. Smith says, "My witnesses were brow-beaten," and he says that his questions were objected to and his objections to questions over-ruled. There was not one single question of Mr. Smith's over-ruled till late in January, 1849. There were one hundred witnesses examined before any objection was taken to his questions, and when the Warden handed in his objections they were recorded in every case, and it was only at the end of the case that he objected to our proceedings. Then as to the absurdity of imagining that men could be brow-beaten in the manner spoken of. The thing is ridiculous; it is true that some witnesses had to be forced

into their evidence to get them to give evidence of the truth of what we knew before was the truth. The statement that any one was used discourteously is utterly false. I just wish that any of you had to go through what we had. At that time the Commissioners were charged by Mr. Macdonald in Parliament, with treating Mr. Smith unfairly, they were assailed through the press, and in every possible way, and how was it possible that they could do these things. The whole thing was a parcel of trash from beginning to end. Then with regard to the charge of perjury, has it been shewn that one man gave false evidence with the exception of McCarthy who was not a convict, and who I believe at this moment said nothing but what was perfectly true. Has there been any attempt to shew that any convict gave false evidence. Has there been any attempt to shew that any indemnity was offered to any of the witnesses, and yet the Attorney General has dared to make such a charge against me. Now with regard to the charge of obtaining the pardon of murderers to induce them to give false evidence. What evidence is there of that? I asked every witness that has been examined before the Committee if they knew that I endeavoured to obtain the pardon of any convict, and they all said *no*. There were three convicts pardoned. Cameron, Hennessy and DeBlois. I had the official documents brought down, and it was shewn that I had nothing more to do with the pardon of these men than any of you had. In fact I was always opposed to any interference with the course of the law. When we went to Kingston Mr. Smith presented a report already cut and dry for us to adopt, and he recommended a number of men for pardon, and all of them were men who could speak as to the irregularities in the prison, and among them were Hennessy, Cameron, and DeBlois. There was one very hard case in a man who had been made drunk and in that state brought into a store and while in that state had been guilty of larceny; he was sent to the Penitentiary for three years, and that was the only case in which I felt any interest, but he was not a witness before the Commission. It was determined that those which appeared to be cases of great hardship should be forwarded to the Government, and there were ten or twelve prepared and of these six or seven were pardoned, and it happened that of them one or two had incidentally given evidence. With regard to DeBlois and Cameron, I know nothing of their being pardoned, nor did I recollect when those charges were made that we had recommended anybody for pardon. The Commission left Kingston in 1849, and Cameron was not discharged till 1852. When Cameron was sent to prison there was a recommendation from the judges who tried him that he should be pardoned. He was a man of good con-

duct, except in this, that he was in the habit of getting drunk, and in one of those sprees he struck his wife over the head and killed her. He professed to be perfectly unconscious of what he had done, and from the manner in which he acted the judges believed that this was true. When the statement of the Inspectors went down, months after the Commission closed their report, we suggested that the conduct of Cameron had been such as to make him a fit subject for pardon, unless there were local considerations which rendered it advisable that he should not be pardoned. Mr. Ferres, the Chairman of this Committee, took an interest in this case, and finally on the representations that were made by parties in Montreal, the man was discharged, so that it is evident that if I wished to discharge this man I could have done it at any time. As regards myself I have no knowledge of the matter. Then with regard to Hennessy, supposing all that was stated about him was true it would only amount to this, that in 1849 we gave him his pardon to induce him to give false evidence in 1848. He was pardoned on the application of John P. Roblin, R. C. Wilkins and other inhabitants of the County of Prince Edward, but the whole thing is a falsification from beginning to end. The object of Mr. Macdonald has been to put as much evidence of a damaging character as possible on the record against me. I can only just say that a comparison of Mr. Bristow's evidence with the trashy stories hunted up by Messrs. Hopkirk and Smith, will enable the public to judge how far he has succeeded in doing so; just compare the one story with the other and recollect how far Mr. Hopkirk's statement was to be relied on in the case of Cooper and Bannister, when it was found that Mr. Bristow and Mr. Brown were away in the States all the time, and it was very questionable whether Mr. Brown would have approved of what was done with regard to these men. The idea of my being the *factotum* of the Commission is an utter mistake. When we began to collate the evidence I made an index with all the points marked, I then took the book and read out the pages and got my instructions as to the counts I was to make up. This document was sent to the Warden for him to make out his defence, and he was allowed to call the same witnesses who had been before us at the preliminary examination. Each Commissioner had a book, I read the evidence and they instructed me what I was to put in, and what I was not to put in. At a full Board this was read over and handed to the Clerk and a fair copy made, and we then compared the copy with the original and a number of alterations were made. I am quite ready to admit the part that I took in the whole thing, and I think it was a very poor payment that we got for our pains. With regard to Dr. Samp-

son's letter Mr. Hopkirk and Mr. Smith have been asked if Mr. Brown stated that this was a copy of the letter or the original letter. The point was this, the dispute which arose was whether this was a fair extract, not whether it was a copy or not and did these acts of violence apply to the former extract. I got the letter from Dr. Sampson as an extract from the original. It was just the same with regard to this as with regard to other things. A great many things were taken away from the prison and Mr. Hopkirk was sent to for papers and he uttered a deliberate falsehood with regard to them. With regard to another point, with regard to what took place between Judge Richards and myself, the case has not been fairly put before the Committee. There are two points to be considered, the charges made before were against the members of the Commission for things done in open Court, not for things done privately, and we felt that so long as the charges only came from Mr. Henry Smith, and when Mr. Macdonald only acted as his agent, we held that it was a matter for the Government, and we never applied to the Government with regard to them, and I blamed the Government because they did not defend us from their attacks, and we did feel that it would be most undignified for those who had approved of all our doings to allow these things to pass unanswered. Mr. Smith brought up all those things and Mr. Lafontaine examined his papers minutely and made a formal report upon them, and the result was that the papers were sent back to him, and after that ought the Government to have allowed the Commissioners to be charged with those things which were very different to what Mr. Macdonald now charges against me. It is said that the evidence was not fairly recorded, why then did they not put their finger upon some single page and point out where the false record was. They have not done so in one single instance. How Mr. Casault could have come here and say that I urged Mr. Richards to appeal against the the Petition of Mr. Smith I cannot understand. A more deliberate falsehood was never uttered by man. We were indignant with the Government because they did not take up our cause. That was what caused the indignation which Mr. Casault speaks of. At first we said that we would demand a Committee, but then we saw that it would all be based on what Mr. Smith said, and the thing would have been perfectly absurd, but the matter assumed an entirely different shape when Mr. Macdonald said that he knew these things and was prepared to prove them to be true, and that Mr. Brown did them and not the Commissioners, and then when Mr. Macdonald says, why did not Mr. Brown ask for this Committee before, it is most unjust. Then Mr. Macdonald put a question to Mr. Casault

which was not allowed to be put, to shew that Mr. Brown had stated that he was opposed to a Committee. What I was going on to explain was the difference between the charge on the former occasion and that made now. The charges were then made against the Commissioners and not against me, for things that they could not have been guilty of. It is false that I ever asked the Government not to grant a Committee, I was not the man to ask such a favor of any Government or any other body. It has been stated here and questions put to prove that Mr. Brown went down to Kingston determined to remove Mr. Smith. That is utterly false. The real fact is that I never wrote one single word on the subject before going, or until after the whole thing was closed. There were two letters written, not against the Warden but merely stating that grave charges existed, and these letters were published during my absence, so that that statement is utterly untrue. It appears to me that all the evidence adduced has no relevancy whatever to the charges made by Mr. Macdonald, and that there is not one single point to sustain the charges, or to justify their being brought.

Mr. Macdonald—In making a short *resumé* of this case, I will not allude to the causes which have led to those charges being brought under the consideration of the Committee. It must be apparent to every one who was present when those charges were made, that they do not come within the scope of your reference. The language I used was a breach of Parliamentary courtesy, for which I was amenable to the discipline of the House, and which I regret; but at the same time I must say that the language was only used after peculiar and bitter provocation. Mr. Brown has said that he was surprised that evidence should be brought forward, after eight years had elapsed, to support those charges, after eight years had elapsed since the transactions occurred on which they were founded; and that it was unheard of and monstrous that such evidence should be received. That evidence was offered by me and received by you in consequence of Mr. Brown having himself asked for the appointment of the Committee. The Committee will remember that I did not settle the language of the charges in the order of reference. That was done by Mr. Brown conjointly with myself, and not at all to my satisfaction, for the language that I used was not taken down by the clerk at the time. It ought to have been a matter of evidence, and the evidence of Members of the House should have been taken; and I should have been called on to prove the statement that I made. But the matter stands as it is before you; and it appears to be the general feeling of the House that I should prove the charges I have made if possible.

Mr. Brown has endeavored to draw a distinction between the charges brought against him, as a member of the Commission, formerly, and the charges brought by me during the present session. He states that the charges brought by me against him in '49, '50 and '51 were brought against the Commissioners as a body, and on the evidence of Mr. Smith, the petitioner; and that the charges brought by me against him this session were on my own responsibility as a legislator, and on my own cognizance. Now, that is not the case. The first time I made those charges, it was against the Report of the Penitentiary Commission, and against Mr. Brown as the leading spirit of that Commission. I think that it will be found that though Mr. Brown has tried with a great deal of zeal to shew that all the statements contained in the petition of Mr. Smith were made against the Commissioners as a body, and that he could not be inculpated except as an individual; though that were so it would not affect the nature of the case. Though those charges affected all, and Mr. Brown were one of all, he must still be liable, though he was liable with the rest, and culpable with them. If he was guilty; if he was chargeable with misconduct it cannot free him if others were culpable with himself; but the evidence of Mr. Smith and Mr. Hopkirk, the chief witness for Mr. Smith, shews that Mr. Brown was the most culpable, that he got up the evidence and got up the charges, that he was the witness, accuser and judge; that he it was that got up the charges, and got up the whole of the case. And the evidence shews that he was the leading spirit of the Commission, that he prepared the evidence, that he prepared the draft Report, that he counted the very lines in the evidence, showing what was to be quoted and what was to be excluded. However, it is not correct to say that the charges brought by me as representing Mr. Smith were against the Commissioners solely and did not inculpate Mr. Brown. The Hon. John S. Macdonald says he was under the impression that they were directed against Mr. Brown particularly, but on reading the Report of the debate of that period he finds that that impression was wrong. Now I say it was right. Judge Richards who was in the House of Assembly in 1851, and conducted the defence of the Commissioners and of the Report, and answered the attack made by me, states in his evidence that though the attack was made against the Report and the Commissioners, yet the chief part of it was against Mr. Brown. Mr. Casault, whose evidence has been impeached by Mr. Brown, is a gentleman of undoubted veracity and honor; and when Mr. Brown says he thinks it strange that Mr. Casault should remember what was said eight years ago, yet the facts given in his evi-

dence shew that it was not extraordinary. It was the first time he had been in Toronto, and he heard a very exciting debate, and very strong language used; he saw Mr. Richards in his place in the House defending the Commissioners, and saw him get up and saw him go to the bar and speak to a gentleman, whom he did not then know, and heard that gentleman, whom he afterwards found to be Mr. Brown, asking Mr. Richards to refuse the Committee. These are the facts proved by Mr. Casault. I will read a Report of the debate as an illustration of what I said at that time—it was reported in the *Globe*—to show that the charge was not made against the Commission, but that Mr. Brown alone was inculpated.

[Mr. Macdonald read an extract from the *Globe* of 1851.]

So that it is evident that the charges were made as strongly about falsification of evidence then as they were made the other day. They were made in the face of the House, and perhaps in the presence of Mr. Brown, in 1850.

Mr. *Brown*—No, I was in Kingston.

Mr. *Macdonald*—At all events, it was reported in his paper. He saw by those reports that the attacks were not made on the conduct of the Commissioners as a body, but expressly on him by name for all these offences. I do not know whether the editorial referred to the subject, but on turning to it I find the following article.

[Mr. Macdonald read again from the *Globe*.]

Thus it is clear that the charges made by me recently in the House formed no new case got up by me on the irritation of the moment, in consequence of the provocation offered to me on the spot. It was the reiteration of what I had stated before in the House in the exercise of my duty as a Member of Parliament, as the representative of a petitioner for redress. The Report was of course cited in the motions made for a Committee of Inquiry in 1850 and 1851. Mr. Smith's petitions of course were appealing to the House and to the Government against the Report, and they appealed of course against the whole of the Commissioners; but he states and he swears distinctly that the principal in the management of the Commission was Mr. Brown, that during his absence there was no attempt to brow beat the witnesses, and there was no attempt to put down the evidence unfairly. And Mr. Hopkirk swears that while Mr. Brown was present there were constant attempts to put down the evidence unfairly, and that in fact he was the presiding judge. These are the same charges I made the other day, and they were only the reiteration of the charges I made in 1850. The report of my speech made in 1850 I cannot find, and Mr. Brown informs me that it was not reported

at all. I do not know that it was reported at all. Now, the House and the country are aware that those charges were made in 1849, and they know also that no Committee was asked for by Mr. Brown or any of the Commissioners. Those charges were repeated by me in 1850, and I made a motion for a Special Committee and that motion was refused. At the time that I made that motion, the Hon. Adam Fergusson was standing below the bar of the House, and he got up the next day in his place in the Legislative Council, denied the truth of the charges contained in the petition of Mr. Smith, and said that he would demand a strict and searching investigation. Two of the other Commissioners, Mr. Brown and Mr. Bristow, were each of them in charge of papers, the *Pilot* and the *Globe*, and they said in the columns of their papers that they would see that a Committee was appointed at the next session to examine into those charges; and, in fact, expressed great indignation that the Government had not allowed it to go to a Committee. The motion was repeated by me in 1851, and I then laid Mr. Smith's petition before the House, and got the consent of the Government to appoint a Committee. I placed a copy of the petition in the hands of Mr. Hincks, who was at the time Inspector General, together with a list of the witnesses Mr. Smith intended to bring to support the charges it contained, so that the Government had a full opportunity of examining the case. Mr. Hincks agreed to it, and actually agreed with me to the names of Members who were to be on the Committee. Mr. Hincks named the Members on the part of the Government and I on the part of Mr. Smith. The Hon. Mr. Fergusson said that he would insist on a Committee; Mr. Bristow said that he would insist on a Committee; Mr. Brown said that he would insist on a Committee; Mr. Hincks said that he would grant a Committee; the Government said that they would grant a Committee; and to my astonishment, when I made the motion in the House, the Government refused it! Was not that a strong proof that the Commissioners dare not grant a Committee, and a strong proof of the truth of what Mr. Casault stated that he had overheard in the gallery of the House. After stating in the strongest language in one of the Houses of Parliament and in two influential journals that the Commissioners would insist on a Committee, what could I think when I saw this sudden opposition but that Mr. Brown, against whom all the attacks were directed, was afraid that the matter should be investigated by a Committee; and I believe that when you remember what Mr. Casault has said it will be found that the whole objection

came from Mr. Brown. I will read from the report published in the *Globe* in 1851, and it will be seen that Mr. Baldwin objected to my motion.

(Mr. McDonald read from the columns of the *Globe*.)

So that you see in 1851 the charges were made strongly and expressly, and were chiefly directed, according to Mr. Casault's recollection, and according to Mr. Richards' recollection, against Mr. Brown. Now, there is a long editorial in his paper, which admits that they had insisted on a Committee, and it goes on and gives the reasons why the Commissioners had changed their minds. What, then, could Mr. Smith think, or I think, or the public think, of the course adopted by Mr. Brown; and the Government, after the Government had agreed to a Committee, and Mr. Brown had insisted on it in his paper, and Mr. Bristow had insisted on it in his paper, and Mr. Fergusson had insisted on it in his place in the Legislative Council, and that the Government should then refuse it,—what could I think but that Mr. Brown was afraid to allow the Committee to be appointed to go into an inquiry, and that the Commissioners were also afraid of an enquiry? It clearly shews Mr. Casault's recollection of the conversation between Mr. Brown and Mr. Richards to have been correct. I dwell on this for the purpose of pressing on the attention of the Committee the consideration that in making these charges against Mr. Brown at the beginning of this Session, I brought no new charges, but was then repeating in irregular phrase what I had formerly stated in regular phrase, and that I conceived from the information which had been given me that I had a right to throw them in the teeth of Mr. Brown. As to the ground taken by Mr. Brown that I said I would prove these charges of my own knowledge, Mr. Brown knows as well as any person can know that I could not prove the facts contained in those charges of my own knowledge. I was not a convict; I was not a discharged servant; I was not a witness before the Commission; I had not possession of the evidence. Mr. Brown kept the books of that evidence in his own possession, and never allowed them to leave him. I said I was as ready to prove those charges as I was eight years ago. I was not aware then of the death of some of the witnesses. If the investigation was made eight years ago, and the evidence had been taken then to support those charges, I think I could have shewn that they could have been clearly proved. It will be remembered that at the beginning of this investigation Mr. Brown took legal grounds; he attempted and succeeded in having it settled that the investigation should proceed on strictly legal rule. He got legal assistance,

and got counsel to aid him in conducting his defence, which he had refused to Mr. Smith, an old man, a man with far less legal knowledge than he possesses, and who was labouring under a charge of higher criminality; and the consequences of which, if proven, would have been of much greater importance, much more injurious to him than these charges are to Mr. Brown. Every effort was made to throw the Committee off the scent and to frustrate the object for which it was named. Mr. Brown allowed seven or eight days to be spent by the Committee in hunting up secondary evidence, when he could at once if he chose have spared all that time by saying, "I have got the books at my own house, and can bring them." But he was at length forced to bring them down, and I beg to call the attention of the Committee to the fact that he took the ground that I had not sufficiently proved the destruction of the books to enable me to put in secondary evidence to sustain the charges, and the Committee sustained him, and kept me at a stand, yet he kept me there and did not offer to bring down those books. I can see what the intention was—to allow me to prove my own case as well as I could by secondary evidence, and then bring down those books for the purpose of rebutting the evidence, and impeaching the character of the witnesses by catching them in an inaccuracy. He makes a distinction between those books and the draft report, alleging that though the draft report may be incorrect, that that will not bear out the charge of falsification of evidence. That point has been discussed by the Committee, and decided, and I think decided correctly. It decided that this draft report must be taken. Mr. Brown says that in making out that report the Commissioners might have stated the conclusion they arrived at without giving any of the evidence. That is true, they might have stated their conclusions; but if they did give the evidence, or any extract from it, they should not have garbled or falsified that evidence. Mr. Smith, when he petitioned in 1850, and when I moved for a Committee, took it as a matter of course that the Government had the evidence before them. He never supposed that they would have discharged him with contumely and disgrace upon the mere report of the Commissioners without having the evidence before them; and when the Committee was struck in pursuance to the order of the House, I was told, much to my astonishment, that the books were destroyed. In 1851 Sir H. Lafontaine, when the subject came up again, agreed to examine the whole of the evidence, and I took it for granted that he did so, but it appears that he did not, and that he merely perused the evidence contained in this report. This report then was the only document furnished to the Government.

The evidence contained in these original books are like the notes of a trial taken by a Judge for the satisfaction of his own conscience. The Committee may see, then, how important it was to the prospects and the character of Mr. Smith, and his family, that the whole of this evidence should have been furnished to the Government—should have been furnished to the public *verbatim et literatim*. If it be falsified in the report furnished to the Government then the first charge is fully made out. That report is the only document coming from the Commission which was ever made public, and there is no doubt that the moment it appeared it became a matter of great public interest, that many of the witnesses examined it to see what they had been made to swear, and to see what conclusions were drawn from the evidence; that they said to each other, "I have not sworn this," or "there is a wrong conclusion drawn here," and they no doubt remarked that the evidence in favor of Mr. Smith was left out, while the evidence against him was put in. They saw this, and there was only one conclusion they would come to—that the report was drawn up for the purpose of crushing Mr. Smith. It was on this report they founded their opinions. They looked on it as the record of the proceedings of the Commission, and you have heard the statement of my counsel, Mr. Vankoughnet, himself a gentleman of high legal ability, that all the legal men in Toronto agree that it is the record. This is the document that Mr. Smith appealed against in his petitions. They formed their conclusions from the statement contained in this book. This is the instrument of wrong. This is the evidence that falsification was committed. Whether it was done by the hand that marked out these extracts from the original evidence I do not say. Who it was that garbled the evidence contained in the extracts given in that report I think I have shewn to the Committee. This is the report, garbled and falsified, that did the wrong. This is what I appealed against in the motions I made in 1850 and 1851. Now, Mr. Brown objects to the nature of the witnesses that I brought forward to sustain the charges—the two chief were Mr. Smith and Mr. Hopkirk. Now, I say that notwithstanding the report of the Commission, Mr. Smith's character now stands as high as it ever did, as a good citizen, as a worthy and respectable man, as a worthy magistrate, and now filling an office of high trust in the Grand Trunk Railroad. Mr. Hopkirk is also a gentleman who has always borne a high character. Mr. Smith may be considered to have every qualification as a witness for he never left the room from the time that the Commission opened till the close. He could therefore speak confidently as to the manner in which the proceedings of the Commission were conducted. Mr. Hopkirk, also, may be considered as well qualified to give evidence for his ex-

amination lasted for twelve days and a half. I cannot understand how it is that Mr. Brown proposes to impeach his testimony. He was personally cognizant of many of the circumstances which formed the subject of investigation; he was a firm friend of Mr. Smith and therefore intimately acquainted with all that occurred, not only with Mr. Smith's mode of managing the institution but with his views and opinions. I am perfectly sure that no objection can be taken to the character or standing of these two witnesses, and their evidence is conclusive upon the points on which they have been examined. It has been shewn by them that the evidence, as taken down by Mr. Brown, was the subject of frequent conflicts between him and the witnesses; and it has also been shewn to the Committee that the evidence so taken down has not been quoted correctly in the report. The Committee has decided that that report is the record of the proceedings of the Commission; and I want to shew whether it was a true record or not, and compare it with the notes taken by Mr. Brown. I have not had time to go through more than three books of the evidence; but I beg to call the attention of the Committee to the interlineations of Mr. Brown, where the animus which guided him can clearly be seen; and even where the evidence is first taken down, before any interlineations are made, it will be seen that it is done in the strongest and most deliberate manner to give a coloring to the evidence against Mr. Smith. Where a witness was unwilling to swear to what was put in his mouth by Mr. Brown, it then became necessary for him to interline. There is no appearance of the evidence having been taken down too favourably anywhere towards Mr. Smith, and I would call the attention of the Committee to pages 108, 109, 116, 152, 169, 178, 192, 202, 252, 253, 410, (see Mr. Richards' evidence *passim*,) 413, 429 and 473. I did not go any farther. I did not peruse it farther as I might have done with the certainty of pointing out more instances of the same kind; but I wish merely to call the attention of the Committee to those pages to observe the manner in which the evidence has been taken down, to observe that it was not merely the intention of Mr. Brown to content himself with taking down the evidence, but to take it down in the manner most damaging to Mr. Smith. Mr. Smith was on his trial on certain charges affecting in the most serious manner his reputation and character, and one of the most important points, so far as he was concerned, was that the character and respectability of his witnesses should stand unimpeached. The Commission knew that, Mr. Brown knew it, and the value of the evidence given in his favor was at once destroyed by the assertion that Mr. Smith had bribed the witnesses. You see

that that struck at the very root of his defence, and threw doubt and suspicion over every statement made in his favour. In fact, it was a charge which, if not shewn to be wholly unfounded, would have destroyed his case and destroyed the usefulness of his witnesses. Well, here the charge against him says that he tried to bias the evidence of the witnesses who were to appear before the Commission. I will read from the printed report to shew the nature of this charge so far as it affected the convict Smith.

(*Extract read.*)

Now what was the effect of making that charge? The charge was made, and the evidence quoted and used for the purpose of making it appear that Mr. Smith had been in the habit of favoring this convict to make him a good witness, had bribed him with food. that when under bread and water punishment he ought to have got no other food, but that he always got a good ration, that in fact it was a sham punishment, that instead of being without food he always knew where to get his dinner, that he even got a full ration, that he could always get his full dinner except when confined to his cell. Now the meaning of that, if it means anything, for it was quoted under the head of bribing witnesses and Mr. Smith was found guilty on this charge, means that Mr. Smith bribed this convict with food; and when Mr. Brown stopped his quotation at the word "cell," he did so because he knew that in the written evidence the very next words shew that neither Francis Smith nor Mr. Smith knew anything of the convict getting these rations. Francis Smith gave out the rations to the convicts; he knew nothing of this convict getting the food; and there is an admission in the evidence of this man which destroys the whole charge founded by Mr. Brown on the garbled extract to which I have called your attention. He says that when he said he could get a full ration he meant to say that the convicts helped each other, that when convicts were on bread and water rations they knew where to get a full ration, because the other convicts would clandestinely save a portion of their rations for them. All this part of the evidence was omitted. Yet the Report affirms that the charge was fully proved. This man's testimony, taken in full, is proof that he had not been bribed by Mr. Smith, or by his son, who gave out the rations. One part of the evidence is used to shew that the charge was established,—that part which completely exculpates and acquits the Warden is left out, and Mr. Smith is declared to be guilty. Is not that a *suppressio veri*, a garbling of evidence, a most dangerous power to be assumed by a Judge? The next point is the falsification of Henry Smith's evidence with regard to the beer that he received. Though this is a matter of minor importance,

Mr. Smith was very sensitive about it. Now, it is very strange that in this case Mr. Brown had actually taken the trouble to select the words from the prisoner's evidence to be used in the report; sometimes taking a few words from the middle of a sentence, and sometimes a few words from the end, leaving half of a sentence out, making out a case against the Warden, and omitting wholly what was in his favour. Now, by looking at the manuscript evidence that the words to be inserted in the Report are marked by quotations; and in the printed Report the words are those, "Convict Henry Smith has had beer three or four times by order of the Warden's wife." Now here is a distinct quotation given for the purpose of proving that the Warden's wife, for whose misconduct the Warden might be supposed to be liable, gave beer to this convict. Then the passage next quoted says that "the convicts got beer from the Warden's servant, and was told that it was so by some of the other convicts;" that was selected from the end of a sentence. Here it is made out, though it is a small matter apparently, it is made out with a great deal of industry by cutting out words here and there, and making one sentence out of parts of several sentences, that these convicts were given beer by the Warden's wife. Now, it appears actually, by the manuscript evidence, that it was given him by his fellow convicts, and that the other convicts told him it was by her orders. And what does Mr. Smith say, that there was a barrel of such beer in the kitchen, and that those men got at it. The consequence is, that by neglect or misconduct of the Warden's wife, who left the beer in the kitchen, when the convicts were employed there they got at it, and this is converted into a charge that they got beer by order of the Warden's wife. The third case is more serious—Mr. Brown attempts to throw all the blame on the Commissioners when he can, and free himself, and he attempts to throw all the blame of the garbling on the head of Mr. Bristow; but it will be found that one half of the charge is in the handwriting of Mr. Bristow while the other half was in the handwriting of Mr. Brown. They were acting together, and getting the case up together. Now that case involved the charge of corruption in the management of the affairs of the Penitentiary, by paying Messrs. Watkins Mucklestone and Co., a higher price and for a heavier weight of iron than was required, and Mr. Smith is found guilty on the charge of this great act of fraud against the Penitentiary. It says, "it is clearly proved by the evidence of McCarthy, and admitted by the other witnesses, that the firm of Watkins and 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 McCarthy is most direct—that the weight which he certified to in the bills of parcels under which Watkins and 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 regularly vouched by McCarthy 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 abut that strong array of facts is the declaration of Mr. Mucklestone that “to the best of his knowledge 5 or 6 cwt. were deducted on account of the larger size being furnished.” The evidence of McCarthy is, that the iron was heavier than that contracted for, and that it was paid for by weight; you will find in McCarthy’s printed evidence that this is untrue, that in answer to Mr. Smith he says, “Mr. Mucklestone 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.” You will also find that the quotation from Mr. Mucklestone’s evidence is not correct in the printed report; but that he states most distinctly that the evidence of McCarthy that he got full price for the substituted articles is untrue. Yet they found him guilty of combining with Mr. Mucklestone to defraud the Penitentiary. By the evidence of Mr. Mucklestone, given in the Report itself, it will be seen that 5 or 6 cwt. was deducted on account of the larger size being delivered; and it will be seen that Mr. Horsey, the architect, who knew all about the contract, says that Watkins and Co. 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,” and in his cross-examination by Mr. Smith he says he “considers that the institution was benefitted by this transaction to the amount of £20 or £30.” In spite of all this they find that the Warden was guilty of combining with Mr. Mucklestone in a fraud, and they say that there was no evidence against it, and that although Mr. Mucklestone, in the evidence they quote, comes forward and states distinctly that it was false.

Mr. *Brown*.—No, he does not.

Mr. *Macdonald*.—I really wish that Mr. Brown would allow me to speak without interruption; I did not interfere with him when addressing the Committee, although he made many statements to which I took exception in my own mind. It is a most glaring instance of garbling evidence for the purpose of making out a case. Mr. Brown endeavours to throw all the blame of this garbling on Mr. Bristow, just in the same spirit which induces

him to try and get rid of all blame himself. You will find that Mr. Brown was equally guilty in that most glaring case of garbling about the stove-pipes. On that charge Mr. Smith is found guilty of refusing to perform a contract; the only evidence given in the report is that of Quinn, who says he made a bargain with Warden for 1000 ends of pipe, it was not a legal contract, Quinn says he had "a bargain." Now, Mr. Smith denies that, and the whole of the evidence which supports his denial is omitted. It was no interest of Mr. Smith to cheat Quinn or anybody else; it was his business to make contracts for the Penitentiary for such articles as were manufactured in it, and to furnish those articles on contract to the parties who wanted them. It will be observed that the rebutting evidence of the clerk, who says that there was an entry in the "work-book" of 30 ends of pipe, ordered by Quinn, is wholly omitted. The clerk says that Quinn got the 30 links which were ordered from McCarthy; Quinn finding that he had got a good bargain, and that he could sell the stove-pipes for more than he paid for them, naturally enough was anxious to get more on the same terms, and ordered McCarthy to make some more for him. Now, the whole of the Clerk's evidence, shewing that the bargain was for 30 links, not for 1000, is left out of the report. I will not discuss the difference between contract and convict labour, but I must call the attention of the Committee to the manner in which the charge is made out against Mr. Smith that he has wasted the public money, and that the Penitentiary buildings cost 30 per cent. more than if they were built by contract. That charge is made and said to be established on the evidence of Coverdale. In order to meet Coverdale's evidence, Mr. Horsey, the architect of the Penitentiary was brought forward by Mr. Smith to prove that the difference was not 30 but 5 per cent., and that the advantage was on the side of the convict labour. Mr. Horsey swore that the work was as cheap as if it had been done by contract, and 25 per cent. better; but the object of the Commission was to shew that the Warden had been shamefully extravagant in using convict labour, and the report was framed so as to carry out that impression. The other charge to which I will allude is one of a very grave nature; it is a charge of barbarity and scoundrelism, which, if proved, would ruin the character of any man. No one could suppose that with a charge so grave as that of starving convicts, so that they could not support nature, and were too weak to work, any attempt would be made to deprive the accused of every tittle of evidence that could be adduced, yet you will find that Mr. Brown has passed over the evidence of Mr. Kirkpatrick very slightly, as if it were of no importance. If the Commission had gone to work fairly it would have given

Mr. Smith the full benefit of all the evidence, exculpating him from the atrocious charge of starving the poor unfortunate creatures who were placed under his control, and at his mercy; but if you will observe all the evidence brought to support this charge is in Mr. Brown's hand-writing, and he has not even taken the trouble to make a quotation from the evidence. All that he inserts in the draft report is that Mr. Kirkpatrick supposed that he saw food enough given the convicts to support nature. That is all he puts in of the palliating or rebutting evidence brought forward by Mr. Smith to relieve himself from this atrocious charge. Now, that report ought to have shewn that Mr. Kirkpatrick was not only one of the Inspectors for years, but was chairman of the Board, that he was in the Penitentiary again and again, when the convicts got their meals and that he knew that they got food enough from his personal observation. Why, as a matter of common fairness, was not that evidence put in? But Mr. Smith was found guilty of starving the unfortunate wretches committed to his custody, of this most atrocious conduct, and in order to make him appear really guilty the evidence in his favor is treated slightly, while that which went to establish the charge which shewed that he had actually starved his prisoners is put in at full length. Mr. Kirkpatrick was in the Penitentiary every day; from the fact of his living next door he had peculiar facilities for attending from day to day in the discharge of his duty, and he says that he was there repeatedly when they were going to their breakfast and he thought that they were too well fed; he was present when they were at their dinner and he thought that they were too well fed, but not a word of this appears in the draft report; if ever there was a want of ingenuousness and a determination to make out a case, this proves it conclusively. The charge which Mr. Brown considers to be of great gravity is that of the convict Reveille, and I must call the attention of the Committee to the subject: the charge as regards the Warden is that of having goaded Reveille into a state of insanity, by repeated floggings and punishment of every kind. Here is one of the gravest charges that could be made against a man—that of depriving a fellow-being, and that fellow-being a woman, of her reason, by a long course of brutal treatment. The observations that I made in the other case, are the same that I should make in this, that every extenuating circumstance, every point of evidence which could throw any doubt on such a charge should be given; but on reference to the printed report sent to the government, you will find that the contrary is the case, that the evidence shewing the punishments inflicted on this convict is given most voluminously—and here I may remark that Mr. Brown says that no importance is to be attached to Mrs. Chase's evi-

dence, that she committed perjury. Now, if that was the case, why was it quoted in this report? If it was to be used at all it should have been quoted fairly and honestly.

Mr. *Brown*.—What answer was it to say that it should not be given at all?

Mr. *McDonald*.—That is no answer to the charge that that part of the evidence which is of no consequence in freeing the Warden from that charge is quoted in this report, and that that portion which would acquit him from this charge is left out. From her evidence it appears that this convict was insane for some time, and had been put under her charge; that she saw her morning, noon and night; and that the punishments inflicted on her had nothing to do with the cause of her insanity. Now, I say that the argument that this woman, Mrs. Chase, committed perjury, and was not a competent witness, is no answer to the statement that I make that that portion of her evidence which would acquit the Warden is left out, and that another portion of her evidence, wholly immaterial, is quoted. I do not know why this portion of the evidence was quoted, except for the purpose of shewing that such a person as Mrs. Chase lived, and was examined. There is a stop and then three asterisks after the portion of her evidence which is quoted, to shew that that is the end of the quotation; and would you believe that it actually stops in the middle of a line; that this evidence which is of no consequence at all is quoted, and that the very next sentence, which is the only part of her evidence that is worth a farthing, is left out? "That Reveille has said she was not insane;" and if the woman was not insane, then her statement should go for something. "That Reveille said"—this was after Mr. Smith had been ejected from the Penitentiary—"that if Mr. Smith was there she would not be in that state; that he was the best friend she had; that she also missed Mrs. Smith." Here is a charge of gross cruelty brought against the Warden; here is the evidence garbled for the purpose of shewing that he had committed that cruelty; and here is the woman's own statement that instead of being cruel he was very kind to her and that his wife was very kind, and that if he was back she would not be in such a state, all left out.

Mr. *Wilson*.—In what way would you make the statement of the convict refer to Mrs. Chase's evidence?

Mr. *McDonald*.—What I say is this! if Reveille was not insane, and stated that she was satisfied with the way in which she was treated by Mr. Smith, instead of being treated with gross cruelty, Mr. Smith ought to have had the benefit of that statement in the printed Report.

Mr. *Wilson*.—When was that statement made?

Mr. McDonald.—The very morning that Mrs. Chase gave her evidence. Now, I ask any fair dealing man, any man who would deal with this case as he would wish to be done by, if that is an honorable and a just mode of dealing with the evidence. If it is not a decided suppression of evidence for the purpose of bolstering up a most horrid and abominable charge; there was the the evidence of a woman who said that she saw the woman Reveille that morning, that this woman said she wished to return under the care of Mr. Smith because he treated her kindly, and that evidence is suppressed while Mr. Smith is found guilty of the charge. I think I have gone over all the charges of falsification of the record that I have had time to go into. There are, however, one or two other cases to which I would wish to call your attention: one is a case partially proved by Mr. Smith, and proved altogether by Mr. Hopkirk. It was the wilful distorting and misrepresentation of Mr. Hopkirk's evidence by Mr. Brown. Mr. Hopkirk had given his testimony before the Commission and it was closed and subscribed. He was kept days and days afterwards giving new testimony, and as he was giving it Mr. Brown said "stop; you swore so and so the other day," "No, I did not" said Mr. Hopkirk. Mr. Brown opened the book and said "you did;" Mr. Hopkirk said "I did not." Mr. Brown read the passage to him, and said "these are your very words." Mr. Hopkirk was convinced that they were not, and asked to be allowed to see the book. Mr. Brown refused, but the other Commissioners forced him to allow Mr. Hopkirk to read his evidence; and, on looking at the passage, he found that Mr. Brown had written the statement one way, and read it to him another way. There was a distinct and flagrant falsification of evidence if ever there was one. The last case is that of Dr. Sampson's letter. That is no new case, for I have read from the *Globe* that I made those specific charges in 1849 and 1850, in the year in which the event happened which called forth that letter; and I made those charges in the House of Assembly. Both Mr. Hopkirk and Mr. Smith proved and attested the truth of that statement. They say that Mr. Brown produced this document in evidence, and that it was only half of a letter not the whole; Mr. Brown will say that it was a fair extract of the portion he wished to use, but that was not for him to judge. When Mr. Hopkirk said that it was not the whole letter, Mr. Brown said that "it was, and that he had copied it that morning from the original." So far from that being the case it was actually only a portion of the letter, the letter was in the Warden's possession, and he had never seen it. It is clear that one or the other of these parties told calmly and deliberately what

was false. I do not wish to state which of these parties has done so ; but here is proof of the truth of the charge that I made. Credible men told me these facts ; and I stated them in my place in the House. All that I want to say is that these charges were not trumped up by me, but that when I made them I had good reason to believe them to be true. Whether I would rather believe the persons who told me that, or Mr. Brown, I do not choose to say. If the Committee will look at that letter of Dr. Sampson they will see the very important nature of the correspondence, that it was most important to the interests of Mr. Smith that the half of that letter should not be produced alone, and that the omission of half of it was most prejudicial to him. Mr. Smith naturally was indignant at the production of a mutilated correspondence in evidence against him, said that it was only the half of the letter. Mr. Brown said that it was not, and gave his honor that it was the whole letter.

Mr. *Brown*.—There were three judges there who say that is false.

Mr. *McDonald*.—I have proof that I was correct. I have proof that the charge I made was well founded, I do not wish to say that Mr. Brown was guilty of the charges contained in the petitions I presented to Parliament, and which I repeated on the authority of those petitions. All that I want to shew is that I had authority to say from the statements made to me by the petitioner and other credible persons that it was so. God knows no man has regretted more bitterly than I do that I used the language which has led to this investigation in a moment of irritation. If the copy he produced was a copy from a draft of the letter he should have copied the whole of it, and not copied a half. Now what I state is that this proof by two witnesses is distinct, that in this case there was a falsification of evidence. Whether they are to be believed I do not say. All that I say is that I brought the proof here to sustain the charge, and that proof is before the Committee. Now, with regard to the two last charges of suborning evidence, and getting convicts pardoned, they are nearly identical. Pardoning convicts because they gave evidence unfavourable to Mr. Smith, and suborning evidence are the same. There is nothing so difficult to prove as suborning perjury, because it can only be proved by the man who was guilty of it, and we say at once that such a man is not worthy to be believed on oath, so that in all cases of subornation of perjury, if improper inducements are held out to witnesses to give false testimony, you can only draw your conclusions from circumstances, not from the evidence of the men who committed the act of perjury. Now, that evidence exists of most unwarrantable and suspicious conduct on the part of the Commissioners

is clear, and beyond a doubt, not only with regard to convicts, but, as I stated in my speech in the House of Assembly, towards all the witnesses, towards guards and dismissed officers of the Penitentiary as well as with respect to convicts; if it is clear that inducements were held out to witnesses, inducements that no man can get over, situated as these men were; then there is strong evidence in favour of the argument that I am about to use; Every officer of the Penitentiary that gave evidence in favour of Mr. Smith was dismissed. Mr. Smith swore that. I think that he states they were dismissed, and in the statement I made at the time I presented his petition, from the particulars furnished to me by Mr. Smith, I think that I alleged that that was the case. In his petition he uses these words; "that threats were held out against the petitioner;" this petition was presented in 1850, "thirteen officers were examined; all gave evidence in favour of the petitioner; all were dismissed." He also says that there were three other officers who gave evidence in his favour, the architect, the clerk, and Mr. Pollard; ordered to be dismissed. I believe that Mr. Pollard resigned for fear of being kicked out, and that the other two held on by some means or other. Well, when you find this fact that all the witnesses who were under the control of the Commission, and sworn upon the Bible to give their testimony truly, and some of them were as respectable as any men in Canada, I can bring all Kingston to prove that, and when they gave their testimony according to their conscience, because that testimony was in favour of the Warden, and thirteen of them were kicked out, I ask if it does not strike the mind of any honest man that the witnesses were tampered with?

Mr. Brown.—It is false.

Mr. McDonald.—I must ask the Chairman if I am thus to be interrupted? I put myself under the protection of the Chairman. Are the statements that I make here to be termed "false" by Mr. Brown? I speak from the evidence. I state most distinctly that Mr. Smith repeated the names of the officers who were dismissed.

Mr. Brown.—They were dismissed by the Inspectors.

Mr. McDonald.—If I remember correctly, they were dismissed by the Commissioners, and, if I remember rightly, I think you will find these words in Mr. Bristow's evidence "that they were dismissed for valid and sufficient reasons."

Mr. Brown.—Not a word of it.

Mr. Stevenson.—Here it is in Mr. Bristow's evidence.

Mr. Macdonald.—Well, I hope that I will be allowed to go on without any more interruptions from Mr. Brown. I am arguing the case as best I may. I do not wish to prostitute the evidence

in any way. I speak of it from recollection, for I have not read the evidence at all. I say that it was stated by myself in Parliament in 1849, and 1850, and it was stated by Mr. Smith with as much solemnity as if he were under oath, that those men were kicked out, and deprived of their places and emoluments, because they gave evidence in his favour. Well, as it was evident, that there was a large number of discharged guards and keepers of the Penitentiary, who had been discharged by Mr. Smith, these were all industriously taken up as witnesses against him, and they of course, combined for the purpose of ejecting him from the institution. He had reported them to the Inspectors for misconduct or negligence, and they had been dismissed, and were rankling with hatred against him, for the position and the emoluments at that time were much sought after. If you look at the evidence, you will find that the whole of the case was got up by men who had a bitter, rankling hatred against Mr. Smith, that it was got up at meetings held at Dr. Sampson's house, that it was got up at meetings held with Mr. Brown.

Mr. *Brown*.—It is untrue.

Mr. *Macdonald*.—It is untrue! I say that it is established by the evidence.

Mr. *Brown*.—There is not a word of it. It is false.

Mr. *Macdonald*.—I must ask the protection of the Chairman from these repeated interruptions and insults by Mr. Brown. I am satisfied that there is such a statement in the evidence, that this case was got up at meetings held for the purpose, but I am not sure that the name of Mr. Brown was mentioned. Now, I call the attention of the Committee to the case of the man named Robinson. He was a guard, and was brought before the Inspectors on a charge of leaving the gate open, and having two stone jars in his sentry-box. He was brought before the Inspectors on this and similar charges, and said that he expected no justice from them, or something of that kind, and without going into the case they dismissed him very properly for his insolence. That man was, of course, embittered against Mr. Smith, gave testimony against him, was as a reward for it again appointed a guard by the Commissioners, and is now a convict in the Penitentiary, having actually arranged plans for burglary with the convicts who were leaving the Penitentiary, and who were harboured at a small tavern kept by his wife near it. All I have to say, is, that those officers who gave evidence for the Warden were punished by the loss of their places, and those who gave evidence against him were favoured. It does not appear at whose instigation, or at whose recommendation it was done. However, he who gave evidence against the Warden was favoured

if he was a dismissed guard, and he was pardoned if a convict. The murderer Cameron, gave evidence against the Warden, and was pardoned, not immediately. On the contrary, the Government would not agree to the recommendation for a pardon; but that makes the case still stronger. Here is a man that was sentenced for murder, the murder of his own wife, the Government refused to pardon him, but strong representations were made and the pardon was at length granted. I don't mean to say that the convicts were pardoned at once, but that they were promised their pardon if they would give evidence against the Warden. What I want to point out to the Committee is this: Cameron, the murderer, gave evidence against the Warden, and his recommendation for pardon is in the handwriting of Mr. Brown; that is a fact. Then there was Deblois, he was a notary, a man of considerable information and astuteness, and therefore very useful as a witness. He gave evidence on several occasions against the Warden. In all, I believe, he was examined three times. With respect to that man, it was proved before the Commissioners at Kingston, and taken down in the handwriting of Mr. Brown, by two witnesses who came and swore that Deblois had stated to them that he had been promised his pardon. A convict of the name of Smith, and a guard of the name of Martin both swore that Deblois had informed them that he was to be pardoned; and they both stated at the same time that they would not believe the man whose evidence the Commissioners were so anxious to obtain, under oath. Now, these men could not have dreamt that, they could not have imagined that.

Mr. Wilson.—Was not that the man that Mr. Smith had recommended for pardon?

Mr. Brown.—Certainly.

Mr. Macdonald.—In pages 487 and 488 of the original evidence you will find in Mr. Brown's own handwriting the evidence of these two men, convict Henry Smith, and guard Martin, that convict Deblois told them on the first day that he gave evidence that he had been promised his pardon. Here is an officer of the Penitentiary who swears that this man informed him that he was to be pardoned; and then we have the convict Henry Smith, who, I am bound to say in fairness, gives his evidence in very unsatisfactory terms before the Commission, he too swears that Deblois told him that the Commissioners were to get him his pardon. Here is the evidence, here are two witnesses who swear to that fact.

Mr. Brown.—Precious witnesses?

Mr. Macdonald.—I cannot speak to that; but I can speak to this; Deblois was examined by the Commissioners after Henry

Smith's evidence was taken down by Mr. Brown himself; after this, Smith and Martin had sworn that he was used again, and evidence was given to shew that Mrs. Smith, the Warden's wife, had tried to bribe the witness. Although it was sworn before their own faces by those two men that they would pardon him if he spoke all he knew; the Commissioners did not venture to ask him if he had said so to those two men, but the attempt was made to make it appear that old Mrs. Smith had tried to bribe him. Here, in the first place, are these two witnesses swearing that Deblois had told them this; and then here are the Commissioners bringing up this man as evidence against Mr. Smith, and attempting to make it out that old Mrs. Smith tried to bribe him! Now, add this last fact to all this evidence—that this man, Deblois was pardoned on the recommendation of the Commissioners in a letter written by Mr. Brown himself, stating that he was a fit subject for pardon, but that he should not be informed then of his pardon as he was at the time giving evidence before the Commission. Now, he came out very strongly on 1st September, 1848; and it will be found immediately after a petition was sent to the Government from Lower Canada praying for his pardon—a petition evidently got up somewhere else, and sent down to Lower Canada for signatures—then the Government in the usual form sent the petition back to Kingston to the Commissioners to report on it; and here is the report written by Mr. Brown himself.

“I am instructed by the Commissioners to state for the information of His Excellency, that the conduct of Deblois, while in the Penitentiary, has been very good, and that in the opinion of the Commissioners, he is a fit subject for the exercise of the Royal clemency.”

“In their investigation of the affairs of the Penitentiary, the Commissioners have availed themselves, to a limited extent, of convict evidence, and important testimony, adverse to the management, has been given by several convicts, whose general conduct has been meritorious; of these Deblois is one. The Commissioners have in consequence deferred for the present, bringing such cases under the notice of His Excellency the Governor General, to avoid misconstruction, or prejudice to the officers on their defence. Should His Excellency see fit to extend to Deblois the Royal pardon, the Commissioners would respectfully submit whether the intimation of it might not be advantageously suspended, until the officers of the Penitentiary have closed their defence.”

“I have, &c.,

“(Signed),

GEORGE BROWN.

“Secretary.”

Which means simply this: This man was a useful witness; here he is on 1st September giving secret evidence against Mr. Smith, and immediately after telling two other persons that he has been promised his pardon by the Commissioners; almost immediately after a petition comes up from Montreal praying for the pardon of this man, and referred by the Government to the Commissioners; on the 7th October the answer is sent down to the Government reporting favorably on the petition, and adding that the prisoner must not be yet acquainted with the fact of his pardon; on the 9th of October he was again brought before the Commissioners to give testimony, and in November after they had extracted every admission from him, and he had been kept up to that time under their thumb at their control and at their mercy with the promise of pardon held out but not granted, they dismissed him. Let me recapitulate: Deblois was first sworn on 1st September, 1848, and gave startling and tremendous evidence against the character of Mr. Smith; a petition came up from the Government at Montreal, asking for his release on 14th October. Mr. Smith swore that Deblois had told him on 1st September (on the first day he gave evidence) that he was to be pardoned. Mr. Brown wrote to the Government that he was a fit subject for pardon, but that his pardon should not be communicated to him then for fear of misconstruction being put on it, and after he was no longer useful he was pardoned. Now, if Mr. Brown wished to act fairly toward Mr. Smith, and wished to obtain the evidence of this man free from undue influences he should have let him out of the Penitentiary. If Deblois was out of the Penitentiary before he gave his evidence, he would have been a free man, and would have given his evidence free from the influences and free from the bias which the hope of a pardon necessarily produces on him. But no! Mr. Brown kept him under lock and key, under his thumb, and he was led to suppose, to believe that his pardon rested on his giving evidence against Mr. Smith. I appeal to every man of fairness whether Mr. Smith was not perfectly justified in believing that the Government influence was used in getting up this evidence against him, and that the Commissioners lent themselves to the project to crush him and drive him out of the Penitentiary with disgrace?

I am sorry that I have detained you so long, but it is a matter of grave importance both to myself and Mr. Brown; and I hope you will come to the conclusion that the charges I made against him at the beginning of this session are no new ones, and were not trumped up by me; but that they were hastily and under great provocation repeated—the irregular reiteration of well founded charges brought by Mr. Smith against him, and reiterated on former occasions in my place in the House.

Fifty-fifth Day—Tuesday, 3rd June, 1856.

PRESENT:—The Chairman, Messrs. Stevenson, Sanborn, Masson, Wilson, Felton, Clarke,—7.

The Room was cleared of strangers and the Committee deliberated.

On motion of Mr. Masson the Committee adjourned at half-past 1 o'clock, P.M., until 11 o'clock, A.M., on Thursday next.

Fifty-sixth Day—Thursday, 5th June, 1856.

PRESENT:—The Chairman, Messrs. Stevenson, Sanborn, Clarke, Wilson, Masson, Felton,—7.

Minutes of the two last days' proceedings were read and approved.

Mr. *Stevenson* submitted the following draft of a report, and moved that it be adopted.

The Select Committee appointed to inquire and report as to the truth of certain charges made in the course of debate, by the Honorable John A. Macdonald, Attorney General West, against Mr. George Brown, a Member of the House, while acting in 1848, as a member and Secretary of the Commission appointed by Government to inquire into the condition of the Provincial Penitentiary, Beg leave to report :

That in obedience to the Order of Reference of Your Honorable House, of 27th February last, Your Committee have fully and carefully examined into the charges therein contained, and herewith beg leave to submit the whole proceedings had by them, and evidence taken before them, in connection with the subject.

Your Committee having maturely considered the same evidence, and diligently compared the testimony submitted to the Government by the Penitentiary Commissioners in 1849, with the written testimony taken by them, are of opinion that the testimony so reported by the said Commissioners, is not the true testimony given before them; they are further of opinion that to persons, such as the witnesses brought before Your Committee, acquainted with the complete evidence as really given, it would appear, that if the evidence reported by the Commissioners, was the evidence written down by their Secretary, there was a falsification of the original testimony. But how far Mr. Brown, who conducted the affairs of the Commission, and was in fact the Secretary also, was to blame separately from his colleagues, Your Committee express no opinion.

With reference to the subornation of perjury, and the promise of pardon to convicts to give evidence, Your Committee find that nearly all the witnesses, being officers of the Penitentiary, who had given evidence in favor of Mr. Smith the Warden, were dismissed, and that several, who had been dismissed by the Warden, were reinstated, after having given evidence before the Commissioners against him.

Your Committee also find that two convicts who had given evidence against the Warden, were recommended for pardon by the Penitentiary Commissioners, soon after the close of their proceedings, by letters of Mr. Brown the Secretary; and that the pardon of one, was recommended not to be intimated to the convict, until after his testimony should have been secured, and it was sworn to by two witnesses, before the Commissioners themselves, that the said convict, had made no secret of his expected pardon.

Your Committee in conclusion, have to express their regret, that Mr. Attorney General Macdonald, although he had made similar charges against Mr. Brown and the Penitentiary Commissioners in 1850 and 1851, in the performance of his duty as a member of Parliament, on information given him by one of his constituents; should have allowed himself, in the heat of debate, to reiterate them, in the position he occupied in Your Honorable House.

The whole nevertheless humbly submitted.

Mr. *Felton* moved in amendment to Mr. Stevenson's motion, that the Committee do report to the House the following in lieu thereof;

The Committee to whom was referred the enquiry respecting the charges made by Mr. Attorney General Macdonald against George Brown, Esquire, a member of Your Honorable House, Beg leave to report:

That in accordance with the instructions of Your Honorable House, Your Committee have fully and carefully enquired into the aforesaid charges, and respectfully submit herewith, the whole of the evidence received by them, in connection with the subject referred to them.

Having thus fully reported the evidence, Your Committee do not consider themselves called upon to express any detailed opinion, as the result of their deliberations, but they feel it nevertheless, not improper to declare, in general terms, that while Mr. Attorney General Macdonald appears to have acted under a firm conviction of the truth of the charges against Mr. Brown, and to have been justified in so doing, by all the evidence then within his reach, yet, that the testimony annexed to this Report, has, in the opinion of Your Committee, entirely failed to establish the truth of any of these charges against Mr. Brown.

Mr. *Wilson* proposed the following as the report in amendment to Mr. *Felton's* amendment;

Your Committee find, that the Commissioners appointed to enquire into the condition of the Provincial Penitentiary, before exhibiting any charges against the late Warden, Mr. *Smith*, or any of the officers of that Institution, determined, that "the most satisfactory mode would be, to conduct the investigation, in the first place, in private, and after maturing their enquiries, 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, they determined that he should have the opportunity of recalling the witness for re-examination, or summoning such additional witnesses as he might think proper for his defence; they conceived that this mode of proceeding would be 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 at the moment, greatly over-balanced any slight disadvantage which might attend it;" which course was communicated to and approved of by Mr. *Smith*. That in pursuance of this determination, the Commissioners held a preliminary, and *ex parte* examination of a number of witnesses on oath.

That upon the closing of this preliminary enquiry, Mr. *Smith* was served with the extracts of it, affecting his character and conduct, and he was thereupon informed, that he should have "every assistance in the production of witnesses which the Commissioners could give him, and he should be entitled to re-produce the same witnesses if he thought proper, or any other witness he might think proper. That should it be found impossible to procure the attendance of any of the witnesses who had given testimony against him, which was not anticipated, the evidence of such parties would be only used against him as corroborative testimony."

That the examination of all the witnesses, after the preliminary enquiry, was conducted in the presence of Mr. *Smith*, who was allowed full opportunity of cross-examination. That the written evidence was subscribed by every witness, and before it was subscribed, it was read over aloud to each of them, and this memorandum was made to the testimony of every witness called against, and by, Mr. *Smith*. "The foregoing evidence was read aloud, Mr. Warden *Smith* declared the evidence correctly taken down; witness did the same, and signed it."

That after the evidence affecting Mr. Smith had been finished, he was allowed to call any witnesses he chose in his defence, and so extended was it, that he occupied, from the ninth to the twenty-eighth of October, 1848, and from the tenth of November, to the nineteenth of January following, which periods included the cross-examination of his witnesses.

That the whole written testimony, exclusive of papers and exhibits put in, and exclusive of 336 pages of the preliminary evidence, filled one thousand pages of royal sized paper, no part of which, has been in any way falsified, altered, or added to, since it was signed by the witnesses, but remains as it was.

That after the whole case against, and for Mr. Smith, and other parties accused, was closed, Mr. Brown, at the request of the Commissioners, and with the partial assistance of some of them, prepared a draft report, which was submitted to all the Commissioners, discussed by them, clause by clause, and modified, so as to embody their unanimous opinions.

That in the draft report it was pointed out, what parts of the testimony were to be embodied in the report, as sustaining the particular charges; found that the whole evidence was not so quoted, but such parts only as the Commissioners in the exercise of their judgment, considered as necessary to sustain their finding on the several charges.

That the report made to the Government on the Commission was the report of all the Commissioners, and agreed to, and adopted by them all, to whom it was competent in their discretion to report their finding, with all the evidence, or with such parts of it, as in their opinion sustained it, or to have made a report, without quoting the evidence at all.

That from the manner in which the evidence was quoted, it is quite evident, that it was not intended that it should be understood to have been all quoted; that there is no evidence of Mr. Brown, or any one else, having suborned any witness to commit perjury; that the pardon of no murderers or other convicts, was obtained by Mr. Brown, or any one else, to induce them to give evidence.

Your Committee therefore find,

Firstly. That in no instance, did Mr. Brown record falsely the evidence of witnesses examined before the said Commissioners, nor was any evidence falsely recorded in the matter.

Secondly. That the written testimony given by witnesses after their evidence was closed and subscribed, was, in no case, altered by Mr. Brown, or any one else.

Thirdly. That no convict was suborned by Mr. Brown to commit perjury.

Fourthly. That Mr. Brown in no instance obtained the pardon

of any murderers or convicts confined in the Penitentiary, to induce them to give false evidence.

On Mr. *Wilson's* amendment being put, the Committee divided as follows :

<i>Yeas :</i>	<i>Nays :</i>
Mr. Wilson,	Mr. Felton,
Mr. Sanborn,—2.	Mr. Masson,
	Mr. Stevenson,
	Mr. Clarke,
	The Chairman,—5.

So it passed in the negative.

On Mr. *Felton's* amendment to the main motion being put, the Committee divided as follows :

<i>Yea :</i>	<i>Nays :</i>
Mr. Felton,—1.	Mr. Masson,
	Mr. Stevenson,
	Mr. Clarke,
	Mr. Wilson,
	Mr. Sanborn,
	The Chairman,—6.

And so it passed in the negative.

Upon Mr. *Stevenson's* main motion, the Committee divided as follows :

<i>Yeas :</i>	<i>Nays :</i>
Mr. Clarke,	Mr. Felton,
Mr. Masson,	Mr. Wilson,
Mr. Stevenson,	Mr. Sanborn,—3.
The Chairman,—4.	

So it passed in the affirmative.

Ordered—That a fair copy of the foregoing Report be prepared for presentation to the House.

The Committee adjourned until 9 o'clock, A. M., to-morrow.

Fifty-seventh Day—Friday, 6th June, 1856.

PRESENT:—The Chairman, Messrs. Wilson, Stevenson, Clarke, Masson, Sanborn,—6.

The Draft Report, as concurred in by the Committee, at its last sitting, was submitted by the Chairman and approved of.

Ordered—That the Chairman do report the same to the House.

SAMUEL PARTRIDGE,
Clerk to the Committee.

REPORT.

THE SELECT COMMITTEE appointed by Order of Reference of Your Honorable House, of the 27th February last, to inquire and report as to the truth of the following charges brought by the Hon. John A. Macdonald, Attorney General for Upper Canada, against Mr. George Brown, a Member of the House, while acting in 1848 as a Member and Secretary of the Commission appointed by Government to inquire into the condition of the Provincial Penitentiary, viz :

First. With having recorded falsely the evidence of witnesses examined before the said Commission.

Second. With having altered the written testimony given by witnesses, after their evidence was closed and subscribed.

Third. With having suborned convicts to commit perjury.

Fourth. With having obtained the pardon of murderers confined to the Penitentiary, to induce them to give false evidence, or in words substantially to the same effect.

BEG LEAVE TO REPORT :

That in obedience to the said Order of Reference, Your Committee have fully and carefully inquired into the said charges, and herewith beg leave to submit the whole proceedings had by them, and the evidence taken before them, in connection with the subject.

Your Committee having maturely considered the said evidence, and diligently compared the testimony submitted to the Government by the Penitentiary Commissioners in 1849, with the written testimony taken by them, are of opinion that the testimony so reported by the said Commissioners, is not the true testimony given before them ; they are further of opinion that to persons, such as the witnesses brought before Your Committee, acquainted with the complete evidence, as really given, it would appear that if the evidence reported by the Commissioners was the evidence written down by their Secretary, there was a falsification of the original testimony. But how far Mr. Brown (who conducted the affairs of the Commission, and was in fact the Secretary also,) was to blame separately from his colleagues, Your Committee express no opinion.

With reference to the subornation of perjury, and the promise of pardon to convicts to give evidence ; Your Committee find

that nearly all the witnesses being officers of the Penitentiary, who had given evidence in favor of Mr. Smith, the Warden, were dismissed; and that several who had been dismissed by the Warden were reinstated after having given evidence before the Commissioners against him.

Your Committee also find that two convicts who had given evidence against the Warden, were recommended for pardon by the Penitentiary Commissioners, soon after the close of their proceedings by letters of Mr. Brown, the Secretary, and that the pardon of one was recommended not to be intimated to the convict until after his testimony should have been secured, and it was sworn to by two witnesses before the Commissioners themselves, that the said convict had made no secret of his expected pardon.

Your Committee, in conclusion have to express their regret, that Mr. Attorney General Macdonald, although he had made similar charges against Mr. Brown, and the Penitentiary Commissioners, in 1850 and 1851, in the performance of his duty as a Member of Parliament, on information given him by one of his constituents, should have allowed himself in the heat of debate to reiterate them, in the position he occupied in Your Honorable House.

The whole nevertheless humbly submitted,

JAMES MOIR FERRES,

Chairman.

Committee Room,

House of Assembly,

6th June, 1856.