PROCEEDINGS

AND

MINUTES OF EVIDENCE,

HAD BEFORE THE

SELECT COMMITTEE,

APPOINTED TO INQUIRE INTO

CERTAIN CHARGES

AGAINST GEORGE BROWN, ESQUIRE,

A Member of the House.

COMMITTEE APPOINTED BY MOTION OF MR. BROWN, ON 27TH FEBRUARY, 1856.

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1856.

ORDERS OF REFERENCE.

LEGISLATIVE ASSEMBLY,

WEDNESDAY, 27*th February*, 1856.

Resolved,—That the Honorable John A. Macdonald, 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 inquire 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. And

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.

And the said Honorable John A. Macdonald having pledged himself to substantiate these charges; that a Committee of seven members be appointed to inquire and report with all convenient speed as to the truth of the said charges, with power to send for persons, papers and records.

Ordered—That

Mr. Sanborn,
Mr. Stevenson,
Mr. Wilson,
Mr. Masson,
Mr. Felton,
Mr. Clarke, and
Mr. Ferres.

do compose the said Committee.

TUESDAY, 6*th May*, 1856.

Ordered—That the Return relative to the proceedings of the Penitentiary Commission, presented this day, be referred to the said Committee.

PROCEEDINGS OF THE COMMITTEE.

MEMBERS OF THE COMMITTEE.

JAMES MOIR FERRES, Esquire,

(*Chairman.*)

MR. SANBORN,
MR. STEVENSON,
MR. WILSON,
MR. MASSON,
MR. FELTON, and
MR. CLARKE.

Saturday, 1st March, 1856.

Committee met—

MEMBERS PRESENT:

Mr. Felton,
Mr. Sanborn,
Mr. Stevenson,
Mr. Wilson.
Mr. Masson,
Mr. Clarke,
Mr. Ferres,—7.

READ the order of reference.

James Moir Ferres, Esquire, was called to the Chair.

The Room was cleared of strangers.

The Committee deliberated.

It was *Ordered*, That for the present the proceedings of the Committee be not published.

Strangers were admitted.

The order of the Committee was read.

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

Monday, 3*rd March*, 1856.

Committee met—

MEMBERS PRESENT :

JAMES MOIR FERRES, Esquire,
(*Chairman.*)

Mr. Felton,
Mr. Wilson,
Mr. Clarke,
Mr. Masson,—5.

The Honorable Mr. Attorney General Macdonald and Mr. Brown, were present.

THE room was cleared of strangers.

The Committee deliberated.

Strangers were admitted.

On motion of Mr. *Felton*, it was—

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.

The Hon. Mr. *Macdonald* being called upon to proceed with his evidence, requested that the Committee would adjourn for a week to enable him to send for witnesses who reside at a distance from Town.

On motion of Mr. *Felton* it was—

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.

Ordered, That summons do issue for *Henry Smith*, senior, of Montreal, Esquire, and for *James Hopkirk*, of Kingston, Esquire.

Mr. Brown asked that Mr. Macdonald should state his case specifically in writing,—the particular acts of his (Mr. Brown) on which his charges rest,—or that he might be allowed to call Mr. Macdonald as a witness and examine him.

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

Monday, 10*th March*, 1856.

Committee met—

MEMBERS PRESENT :

JAMES MOIR FERRES, Esquire,
(*Chairman.*)

Mr. Stevenson,
Mr. Sanborn,
Mr. Masson.
Mr. Clarke,
Mr. Felton,—6

The Honorable Mr. Macdonald was present.

HENRY SMITH, of Montreal, Esquire, and *James Hopkirk*, of Kingston, Esquire, were in attendance, in obedience to the summons of the Committee.

Ordered,—That these witnesses remain in attendance until called for to give evidence.

In consequence of the absence of Mr. Brown, the Committee adjourned till 11 o'clock, A. M., to-morrow.

Tuesday, 11*th March*, 1856.

Committee met,—

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,
(*Chairman.*)

Mr. Felton,
Mr. Wilson,
Mr. Masson,
Mr. Stevenson,
Mr. Sanborn,
Mr. Clarke,—7.

The Honorable Mr. Macdonald was present.

IT was *Ordered*,—That the petition of *Henry Smith* Esquire, presented to the House in 1850, be printed for the use of the members of the Committee.

Ordered,—That the Honorable the Provincial Secretary be requested to appear before the Committee on to-morrow, and to produce the Report of the Commissioners on the management of the Provincial Penitentiary in 1848.

Ordered,—That summons do issue for the attendance of the following witnesses:

E. Cartwright Thomas, Esquire, Hamilton,
Mr. *Thomas Smith*, Kingston,
Mr. *Thomas Gosten*,
Mr. *Edward Horsey*, Kingston, and
Mr. *George Sexton*, Kingston.

Owing to the continued absence of Mr. Brown, the Committee adjourned till 10 o'clock, A. M., to-morrow.

Wednesday, 12*th March*, 1856.

Committee met,—

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,
(*Chairman.*)

Mr. Felton,
Mr. Stevenson,
Mr. Masson,
Mr. Sanborn,
Mr. Clarke,
Mr. Wilson,—7.

The Honorable Mr. Macdonald and Mr. Brown, were present.

MR. *Brown* explained to the Committee, with reference to his absence on Monday and Tuesday, that it was owing to a misconception on his part as to the

day to which the Committee stood adjourned from its sitting on the 3rd instant; and that in consequence of supposing there was to be no meeting of the Committee until Wednesday, he was absent from Town.

The room was cleared of strangers.

The Committee deliberated.

Mr. *Wilson* proposed that the Committee should, in the conducting of this matter, adopt the usual course of examination, and require that the evidence intended to be applied to each charge shall be given by itself, so that each witness shall exhaust his knowledge of facts applicable to one charge, before he proceeds to another.

Mr. *Felton* proposed, as an amendment, that the usual course adopted in Courts of Justice be followed in receiving testimony to be offered in support and disproof of the charges submitted to the Committee.

On which proposition of amendment, the Committee divided as follows:

Yeas:	*Nays:*
Mr. Felton,	Mr. Sanborn,
Mr. Masson,	Mr. Wilson,—2.
Mr. Stevenson,	
Mr. Clarke	
The Chairman,—5.	

So it was carried in the affirmative.

Strangers were admitted.

Grant Powell, Esquire, attended the Committee, and being interrogated, stated that he was a Clerk in the Upper Canada Branch of the Provincial Secretary's Office. That the Honorable Mr. Cartier, the Provincial Secretary, having been requested by the Committee to produce the Report of the Commissioners appointed to inquire into the management of the Provincial Penitentiary in 1848, and all papers in his custody having reference to the same; he now appeared, by direction of Mr. Cartier, to give to the Committee all the information in possession of the Department in reference to the said Report and papers. The Reports and documents cannot be produced; they are not among the Records in the Provincial Secretary's Office. There were two Reports, a preliminary and a final one. The first Report, dated 20th March, 1849, was received 21st March, 1849, at the Secretary's Office, and was referred to the Executive Council for their information, on the 23d of the same month. The second Report, dated 16th April, 1849, was received on the same day at the Secretary's Office, and referred to the Executive Council on the same day. They were never returned to the Secretary's Office. On enquiry at the Executive Council Office, I find that both the original Reports, according to a memorandum in the Minute Book, were handed to Mr. Attorney General LaFontaine on the 25th of April, to be laid before the Legislative Assembly.

I am sure there was a Book of Evidence which accompanied the Reports sent to the Executive Council. I do not know that the Book of Evidence accompanied the Reports when sent to the Legislative Assembly. I do not know in whose custody those documents would be in, in the Legislative Assembly. I was instructed within the last few days by the Assistant Secretary to search for them, and on inquiring of Mr. Spink, the Clerk of Routine and Records to the Legislative Assembly, was told by him that these documents had been in his possession, and had been burned at the time of the first fire at the Legislative Buildings in Quebec.

Ques. 1. [*By Mr. Wilson.*] Do you speak of the original documents, among which was the Book of Evidence taken before the Commissioners?—Ans. I do.

Ques. 2. [*By Mr. Sanborn.*] Can you state positively whether the Book of Evidence, to which you refer, was the original evidence signed by the witnesses, or a

certified copy?—Ans. I am unable to state. I know that as the documents were received at the Secretary's Office, so they were sent to the Executive Council.

Ques. 3. [*By Mr. Felton.*] From whom were those documents received, and by whom were they transferred to the Executive Council?—Ans. They were received from George Brown, Esquire, the Secretary to the Commissioners, and transferred to the Executive Council by the Provincial Secretary, by command of the Governor General.

Ques. 4. [*By the Hon. Mr. Macdonald.*] Did you ascertain at the Executive Council Office that the papers connected with the Reports as well as the Reports were given to Mr. Lafontaine?—Ans. I obtained no further information than is contained in the following extract from the Register in the Executive Council Office:

"746. *Provincial Penitentiary Commission of Enquiry.*—Transmitting
" Second and final Report received 16th April, 1849.
" Given to Mr. Lafontaine 25th April.
" Sent to Legislative Assembly with first Report, 30th May."

Truly extracted.

(Signed,) WM. H. LEE,
C. E. C.

I saw the original entry, of which this is a copy.

(*Witness withdrew.*)

At the request of Mr. *Macdonald*, Mr. Lee, Clerk of the Executive Council, and Mr. Spink were ordered to be called for the next sitting.

Wm B. Lindsay, Esquire, Clerk of the House, being called, stated:

I am the Custodier of all original documents laid before the Legislative Assembly by the Government. I recollect that the Reports of the Penitentiary Commissioners were laid before the House in 1849.

Ques. 5. Did a Book of Evidence accompany the Reports?—Ans. To the best of my recollection it did.

Ques. 6. Do you recollect particularly whether the minutes of evidence were the originals or copies?—Ans. I cannot say positively.

Ques. 7. What became of them?—Ans. They were burned at Quebec at the time of the burning of the Parliament Buildings.

(*Witness withdrew.*)

The Hon. Mr. *Macdonald* handed to Mr. *Brown* a notice, of which the following is a copy:

" To George Brown, Esq.,
" Late Secretary of the Commission for investigating the
" affairs of the Provincial Penitentiary.

" Take notice that you are required to produce to the Special Committee " forthwith, all original documents, Books of Evidence and papers laid before the said " Commission, and all copies thereof in your possession, or over which you may " have control.

"(Signed,) JOHN A. MACDONALD."

The Chairman was requested to examine the Journals and Records of the House relative to the Report of the Penitentiary Commission of 1848.

Committee adjourned till Friday next, at 11 o'clock, A. M.

Friday, 14*th March,* 1856.

Committee met—

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,

(*Chairman.*)

Mr. Wilson,
Mr. Masson,
Mr. Sanborn,
Mr. Clarke,
Mr. Felton,
Mr. Stevenson,—7.

The Hon. Mr. Macdonald, and Mr. Brown were present.

MR. *Brown* stated to the Committee that not being acquainted with the practice of Courts, by which the Committee have determined to be guided in their investigation, he had appointed Miles O'Reilly, Esquire, of Hamilton, as his Counsel.

P. M. Vankoughnet, Esquire, D. C. L. and Q. C., of Toronto, appeared as Counsel for the Honorable Mr. Macdonald.

In obedience to the Order of the Committee of yesterday, Mr. *Spink,* Clerk of Routine and Records attended;

In answer to questions from the Chair, stated:

I am official Custodier, under the Clerk of the House, of all original documents in possession of the House; I recollect having under my charge the Report of the Penitentiary Commissioners in 1849; I don't recollect what documents accompanied the Report; I don't know that a Book of Evidence accompanied the Report; I have not that Report now; it was burned or destroyed with the Assembly buildings at Quebec; all the papers given me by Mr. Lindsay, as the Report of the Commissioners, were destroyed; I recollect the Clerk having given me them; I have charge of the written as well as printed documents of the House; I cannot say whether the documents referred to were the originals or only copies.

(*By* Mr. *Felton.*)—I recollect that the Report in question formed a large and almost square parcel, and tolerably thick; I handled the Report several times, and it appeared to me to be made up of several documents together in the parcel; it was tied up and I cannot say if part was printed; I never saw it again after the fire at Quebec.

(*Witness withdrew.*)

Mr. *Macdonald* handed to the Chairman a certificate by *W. H. Lee,* Esq., the Clerk of the Executive Council, as follows:

"EXECUTIVE COUNCIL OFFICE,
"13th March, 1856.

"I certify that the only Record to be found in the Books of the Executive Council Office, respecting the 1st and 2nd Reports of the Penitentiary Commission is the following note by my predecessor Mr. Joseph, in the Index on State Matters under No. 747, being the number under which the 2nd Report was indexed, viz:

"'Given to Mr. Lafontaine 25th April, 1849. Sent to Legislative Assembly with 1st Report 30th May, 1849.'

"In conformity with the usual practice, I have no doubt the whole of the papers connected with the case accompanied the Reports; they are not now in this office.

"W. H. LEE,
"Clerk Executive Council."

The Counsel for Mr. *Macdonald* stated that the evidence submitted was all that could be procured in proof of the destruction of the original Book of Evidence.

The Counsel for Mr. *Brown* replied, and urged that the proof was insufficient.

The room was cleared.

The Committee deliberated.

Mr. *Felton* moved that there is not sufficient evidence before this Committee to prove the destruction of the original Book of Proceedings before the Penitentiary Commission.

This motion was carried.

Ordered—That the Chairman do telegraph the following despatch to Sir L. H. Lafontaine:

"I am directed by Committee on Charges against Mr. Brown to inquire whether you recollect that the original Book of Evidence was given in to Government along with the Report of the Penitentiary Commissioners in 1849; whether you received the original documents from Executive Council Office, and laid them before the Assembly. Please state what you do recollect concerning them."

Mr. *O'Reilly*, for Mr. Brown, handed to the Chairman the following:

"The Committee having decided that the proof necessary to enable the parties "to give secondary evidence on the charges against Mr. Brown, is not sufficient, the "objection to the insufficiency of this proof is now waived, and it is consented that "the prosecutor may proceed to give secondary evidence as if the original Book "of Evidence were proved to be lost or destroyed."

The Committee adjourned till Monday next, at 10 o'clock, A. M.

Monday, 17th March, 1856.

Committee met—

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,

(*Chairman.*)

Mr. Wilson, Mr. Clarke,
Mr. Masson, Mr. Stevenson,—5.

The Hon. Mr. Macdonald and Mr. Vankoughnet, Mr. Brown, and Judge O'Reilly, were present.

ORDERED—That Wm. *Bristow*, Esq., of Montreal, be summoned for the first day of sitting of the House after the Easter recess.

Mr. *Vankoughnet*, on behalf of Mr. Macdonald, called Geo. Brown, Esq., M. P. P., and put the following questions to him.

Ques. 8. What book or books, document or documents, was or were returned by the Penitentiary Commission to which you were Secretary, to the Government? Ans. The documents that appear in the Appendix to the Journals of the House of Assembly, and nothing more, so far as I recollect.

Ques 9. Did you return to the Government or did you in any way dispose of, and how, the original Book or Minutes of Evidence subscribed by the witnesses examined

before the Commissioners, and if so, when?—Ans. The original books of evidence, containing the depositions of the witnesses and the whole proceedings of the Commission, are now in my possession, and have never been out of it for a single hour.

Mr. *O'Reilly*, for Mr. Brown, then submitted the following:

"Mr. Brown, producing the books in which the original evidence was taken down, the Committee are asked to take order that the witnesses to be called against Mr. Brown may not be allowed, before giving their evidence, to examine these books, so that they may not be enabled to make up a statement to suit their purpose; there can be no objection to Mr. Macdonald's Counsel or the Committee using the books. It is only asked that the witnesses to be called may not see them before being examined or giving their evidence, for the reason before stated."

The original Books of Evidence were laid on the table.

The room was cleared.

Committee deliberated and Mr. *Felton* moved; "that the original Books containing the depositions of the witnesses and the proceedings of the Penitentiary Commission, now produced by Mr. Brown, be used and treated precisely as the same would have been, had they been returned to the Government and laid before this Committee in the regular way, or as if they were now produced as Exhibits or documentary evidence in a Court of Justice."

Carried unanimously.

Adjourned until 10 o'clock, A.M., to-morrow.

Tuesday, 18*th March*, 1856.

Committee met—

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,
(*Chairman.*)

Mr. Felton,
Mr. Wilson,
Mr. Sanborn,
Mr. Clarke,
Mr. Masson,
Mr. Stevenson,—7.

Mr. Brown and Mr. Vankoughnet were present.

MR. *Brown* again submitted to the Committee that before proceeding to call his witnesses, Mr. Macdonald should be called upon to state in writing the specific acts of Mr. Brown which he relies upon, to establish the charges preferred against him.

The room was cleared.

Committee deliberated, and

The proposition being put, was negatived on the following division:

Yeas:	*Nays:*
Mr. Wilson,	Mr. Masson,
Mr. Sanborn,—2.	Mr. Felton,
	Mr. Stevenson,
	The Chairman,—4.

Adjourned until Wednesday, 26th instant, at 10 o'clock, A. M.

Wednesday, 26th March, 1856.

Committee met—

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,
(*Chairman.*)

Mr. Stevenson and Mr. Sanborn.

Mr. Brown was present.

THE Committee adjourned for want of a Quorum.

Thursday, 27th March, 1856.

Committee met—

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,
(*Chairman.*)

Mr. Sanborn, Mr. Stevenson.
Mr. Clarke, Mr. Felton—5.

The Hon. Mr. Macdonald, Mr. Vankoughnet, Mr. Brown and Mr. O'Reilly, were present.

MR. *Brown* presented a letter to the Committee, dated 26th March, instant, as follows:

"To the Chairman of the Committee appointed to enquire into the truth of certain charges preferred by Mr. Attorney General Macdonald, against Mr. George Brown, M. P. P.

"SIR,—It is now twenty-eight days since the Committee over which you preside was appointed, but as yet not one witness has been called by Mr. Macdonald to establish his charges. Nay, up to this moment I am in utter ignorance as to the alleged acts of mine on which Mr. Macdonald professes to have based his accusations. When the Committee commenced its sittings, I urged that Mr. Macdonald should be called as a witness, to declare what he knew, so that all parties might perfectly understand what was alleged, and to be inquired into. Mr. Macdonald refused to state his case. He said that Mr. Henry Smith, Sen., the late Warden of the Penitentiary, was his chief witness and informant, and that until that individual arrived, he could not state his case or the names of his witnesses. In vain I protested that the Committee was not appointed to investigate complaints by Mr. Smith, but the charges directly and publicly preferred by the Attorney General in the House of Assembly on his own personal responsibility, and that no one but himself could know the grounds of his accusations. You decided that Mr. Macdonald should not be called upon to state the special acts of mine on which his accusation was made.

"Eighteen days passed away; Mr. Smith, Mr. Hopkirk, Mr. Costen and other witnesses had been several days in town; Mr. Macdonald had enjoyed full opportunity of getting up his case; when I once more asked of you that the specific acts

alleged against me should be put in writing by my accuser. Mr. Vankoughnet, acting as Counsel for the Attorney General, thereupon stated that his client could not state particulars; that he did not know what they were. Again I was refused my request, and the Committee adjourned for eight days on account of the Easter holidays without one word of testimony received in support of the charges.

The Committee having once more assembled, I desire respectfully but most earnestly to protest against my being longer kept under the weight of undefined charges of criminalty so frightful in character. The session is rapidly wearing away, and to allow it to close without the inquiry being terminated, would be the grossest injustice. I ask that Mr. Macdonald may be compelled to proceed with the examination of his witnesses without further delay, and that the Committee may sit from day to day until the inquiry is closed.

"I also again urge as a simple act of justice, denied to no one on trial before any legal tribunal under British Law, that I may be told specifically what is laid to my charge. Mr. Macdonald either relied on certain specific acts, or he did not; if he did, why should they be concealed; if he did not, still what just reason for concealment? Have I not the right, in either case, to know the facts alleged? Mr. Macdonald has charged me with having "recorded falsely the evidence of wit-"nesses examined before the Penitentiary Commission;" I ask the names of those witnesses, and the portions of their evidence so falsely recorded. Mr. Macdonald has charged me with having "altered the written testimony given by witnesses, "after their evidence was closed and subscribed;" I ask the names of those witnesses, and the passages whtch were so altered. Mr. Macdonald has charged me with having "suborned convicts to commit perjury;" I ask the names of those convicts, the inducement offered them, and the false evidence which they gave. Mr. Macdonald has charged me with having "obtained the pardon of murderers "confined in the Penitentiary to induce them to give false evidence;" I ask the names of those murderers, or of any other convicts, whose pardon I obtained to induce them to give false evidence, and the false evidence which they gave.

"I am persuaded that the Committee will at once see the reasonable character of this application, and accede to it.

"I have the honor to be, Sir,

"Your most obedient servant,

"GEORGE BROWN.

P. S., 27th March.—I intended presenting this letter yesterday, but the Committee adjourned from want of a Quorum."

E. Cartwright Thomas, Esq., Sheriff of Wentworth, was then called on part of the Hon. Mr. Attorney General Macdonald, and examined.

Ques. 10. Were you one of the Commissioners acting in the matter of the Penitentiary Commission?—Ans. I was.

Ques. 11. Were you constantly present during the investigation by such Commissioners?—Ans. Not constantly.

Ques. 12. Who acted as Secretary to the said Commissioners?—Ans. Mr. Brown.

Ques. 13. By whom was or were the first and second Reports of the said Commissioners, transmitted to the Government, prepared?—Ans. They were both prepared by Mr. Brown.

Ques. 14. State what part the Commissioners, other than Mr. Brown, took in the preparation of the said Reports?—Ans. I am not aware of any; I presume the duty to have fallen naturally to Mr. Brown as Secretary.

Ques. 15.—Did you as a Commissioner, or did any other of the said Commissioners, examine the said Reports so prepared, before signing them, or compare the evidence therein detailed or transcribed, with the original minutes of evidence as taken before the said Commissioners; or did you and they, trust to Mr. Brown for an accurate report or transcript of the same?—Ans. I did not examine the Report before signing it, and I am not aware that my colleagues did so; I left the matter to Mr. Brown, and I believe my colleagues did so also.

Ques. 16.—Whom do you consider responsible for any unfair, erroneous or improper statement of fact or evidence which may have appeared in those Reports or either of them?—Ans. This must be left to public opinion. I do not feel that I have been a willing or a knowing party to such a statement of facts, if such a statement exists. What I mean to convey is, that perhaps I am responsible, because I ought to have read and examined the Report before signing. I do not feel responsible for any errors, because I am not a party to such errors. I wish to state that at this distance of time I may state matters inaccurately from wanting recollection of points of fact; my strong impression is, that I did not read or see the extracts of evidence after the Commission had come to a general conclusion upon the charges.

Ques. 17.—Did you yourself or did any of the Commissioners, other than Mr. Brown, make any extract from the evidence for the purposes of the Report, or decide what portions of evidence should be transcribed, or how the evidence should be reported, or was not this duty left to Mr. Brown?—Ans. My impression is strongly, that the charges were considered by us separately, and that the evidence upon such charges as taken in the Minute Books were referred to; the charges were then determined upon by the Commissioners, and it was left to Mr. Brown to report the charge and such evidence from the Minute Books as would bear thereon; I made no extracts from the Minute Books for the Reports.

Ques. 18.—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 of evidence which should appear in the Report, or was this left to Mr. Brown, and did you see such Report until it was ready for signature?—Ans. My strong belief is, as I have said before, that having agreed upon a charge, the evidence bearing upon such charge was intrusted to Mr. Brown to extract, without specific selection by the Commissioners thereon; I do not think that I saw the Report when finally completed: I remember signing a blank paper, when in Montreal, with the understanding that such paper should form the final page of the Report, and be our signatures to such Report, the basis or skeleton of that Report having been agreed upon, and the Commissioners taking it for granted that the completed Report would be in accordance with such basis; I do not remember distinctly whether these signatures were so given to the first or second Report, but I incline to the opinion that it was to the first.

Ques. 19.—(*By Mr. O'Reilly.*)—Who were the other Commissioners besides Mr. Brown and yourself?—Ans. The Commissioners were Mr. Fergusson, Chairman, Mr. Amiot, Mr. Cartwright Thomas, Mr. Bristow, and Mr. Brown.

Ques. 20.—Was the skeleton of the Reports examined and approved by the Commissioners?—Ans. After the evidence had been taken, the Commissioners met to read and examine such evidence, it was then agreed that such evidence as bore upon each charge should accompany the charge; this I call the skeleton of the Report as examined and approved by the Commissioners.

Ques. 21.—Have you read the printed Report, and did you find it different on any point from what had been decided upon by the Commissioners?—Ans. I have never read the Report; I have attempted to examine it since the Committee commenced its sittings, but I have always closed the Book in disgust.

Ques. 22.—(*By Mr. Clarke.*)—Were you aware in whose possession the original notes of evidence and the skeleton of the Report, as agreed upon by the Commis-

sioners were, or have you ever had any opportunity of examining them since?—Ans. I am not aware; I have not sought any opportunity to examine them.

Ques. 23. In whose possession did you suppose they should have been?—Ans. I should not have doubted that all the papers and books were handed in to the Government with the Reports; I was much surprised when I heard that they were not in the hands of the Government.

Adjourned till 10 o'clock A. M., to-morrow.

Friday, 28th March, 1856.

Committee met,—

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,
(*Chairman.*)

Mr. Clarke, Mr. Felton,
Mr. Stevenson, Mr. Sanborn,—5.

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

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. Browns' 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."

Ques. 24. (*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. 25. 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 intrusted to Mr. Brown, as is clearly shewn 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. 26. 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. 27. 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. 28. 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. 29. 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.

Ques. 30. (*By Mr. Vankoughnet.*) Did not Mr. Brown generally and principally conduct the examination of the witnesses?—Ans. He did.

Ques. 31. 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. 32. 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. 33. 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. 34. 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?—I presume that we did not ex-

amine the questions to see that nothing wasomitted; such a course would have exhibited a want of confidence in the Secretary, which we could have no reason to feel.

Ques. 35. (*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. 36. 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. 37. 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.

Monday, 31*st March*, 1856

Committee met,—

MEMBERS PRESENT.

J. Moir Ferres, Esquire,
(*Chairman.*)

Mr. Felton, Mr. Sanborn,
Mr. Stevenson.

The Hon. Mr. Macdonald and Mr. Vankoughnet; Mr. Brown and Mr. O'Reilly were present.

MR. *Brown* stated that he had handed to Mr. Patrick, Chief Clerk of Committees, all documents connected with the Penitentiary Commission which he had in his possession so far as he knew at present; he also submitted the following memorandum:

"Mr. *Brown* handed in a tin 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 yet remaining which he could not lay his hands on. In handing in these "documents, Mr. *Brown* states that among them is a book containing minute in- "structions 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 in- "structions were given upon a minute examination of the evidence. He also "states that the original draft Report is among the papers, and that it was minutely "examined, compared with the evidence, amended, adopted by the Commissioners, "and ordered to be copied; that the said draft Report was handed over to the Clerk "of the Commission to copy and that when made, the fair copy as sent to Govern- "ment, was examined, amended and adopted by the Commissioners."

The Chairman read a letter from Mr. Vankoughnet, dated 27th March, 1856, in reply to that of Mr. Brown, of the 26th instant, complaining of delay, which is as follows:

"Toronto, 27th March, 1856.

"To the Chairman of the Committee,

"Sir,—In answer to Mr. Brown's letter of complaint of yesterday's date I beg "to state that Mr. Macdonald cannot be in any way chargeable with the delay "which Mr. Brown alleges has taken place in the proceedings of the Committee. "The Committee assembled for the first time on the first of March, instant, and on

"that day entered upon the discussions which would necessarily occupy the Com-
"mittee at their first meeting. The Committee adjourned over Sunday till Monday
"the third of March, when after further discussions, an adjournment of a week was
"granted to enable Mr. Macdonald to procure the attendance of Mr. Smith late
"Warden of the Provincial Penetentiary, and others his informants and witnesses
"from Montreal and elsewhere. On the 10th the Committee re-assembled, and so
"also on the 11th and on both occasions adjourned in consequence of the absence of
"Mr. Brown; Mr. Macdonald being in attendance. On the 13th and following
"days the Committee met and Mr. Macdonald proceeded with evidence to account
"for the absence of the original minutes of evidence and papers, on the supposition
"that they were burnt in Quebec.

"On the 17th of March Mr. Brown himself was examined as to any knowledge
"he might have in regard to those original minutes and papers, and to the astonish-
"ment of Mr. Macdonald, and I believe of every one else, except his own Counsel,
"he declared the fact that those minutes contained in three large folio books were
"then in his possession and had never left it 'for one hour.' Mr. Brown undertook
"to produce the books and to send them to me for examination, which he did in the
"course of the day. In the evening I was able to give them but a cursory exami-
"nation, and Mr. Macdonald being occupied in the House, could not examine them
"at all. The following morning the Committee met, and I then stated that it was
"utterly impossible for me to proceed without a further inspection of the original
"minutes and Books of Evidence, as Mr. Macdonald had been getting up his case on
,'the assumption and belief that these minutes had been destroyed and could not be
"procured, and that much of the labor he had been allowed by Mr. Brown to go to
"for that purpose, would now be thrown away; that of course the whole manner of
"giving evidence, &c., &c., would now be altered. All parties seemed to admit the
"reasonableness of this position, Mr. Brown himself having allowed us to proceed
"from day to day under a false impression and for the purpose of being enabled to
"give secondary evidence of that which he actually had in his own possession all the
"while. The Committee spent some time the same day in deliberating on a motion
"of Mr. Brown, and then adjourned over for the Easter recess, and as I, Mr. Mac-
"donald, and several of the Committee understood, till Thursday, the 27th March,
"though it seems the Clerk entered the adjournment (as till Wednesday.) In con-
"sequence of this misunderstanding there was no quorum on Wednesday.

"I think, Sir, the above statement of facts will show how little open to the
"charge of delay is Mr. Macdonald, and it will, I think, also justify the retort which
"I made on the reading of Mr. Brown's letter, that Mr. Brown himself had been the
"chief cause of the only delay which did take place and which could have been
"avoided.

"I have the honor to be, Sir,
"Your obedient servant,
"PHILIP M. VANKOUGHNET,
"Counsel for the Attorney General."

Mr. Sheriff *Thomas* was called in and the following questions were put to him in writing, which he answered in writing, viz.:

Ques. 38. [*By Mr. Attorney General Macdonald*]—Was there not a preliminary secret investigation had before the Commissioners, at which the Warden was not present?—Ans. There was.

Ques. 39. At such preliminary examination who got up the evidence and produced the witnesses?—Ans. I think an advertisement was inserted in the Kingston papers announcing the sitting of the Commissioners; the evidence which came before them was presumed to be the result of such advertisement.

Ques. 40. Did such advertisement cause the offer of convicts under sentence to be examined?—Ans. I cannot tell; directly or indirectly, I may presume that the convict evidence was the result of the advertisement.

Ques. 41. Had you or 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 am aware from Mr. Brown that he had seen witnesses, and that he was aware of the general nature of the evidence they would offer; 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, and the Commissioners certainly felt that the character of their enquiries and the evidence in support thereof were dependent upon the Secretary's preparation of such evidence.

Ques. 42. Do you not know as a matter of fact that Mr. Brown was constantly or frequently in communication with witnesses before being sworn; do you not know that he was closeted with them before being sworn at his hotel and else where?—Ans. I do not remember this as a matter of fact, but my impression has always been that he saw the witnesses, or most of them, before they were brought forward for evidence.

Ques. 43. Who prepared the charges based on the preliminary investigation against the Warden?—Ans. The Secretary of course.

Ques. 44. Did you or any of your brother Commissioners object to Mr. Brown being both judge and accuser, or prosecuting party, and did you not hold his being so improper?—Ans. I do not remember that any formal objections were made, or that Mr. Brown's position was ever discussed by the Commissioners specially; I foresaw difficulties from this course from an early period of the investigation, and have always thought that it was the leading error of the Commission.

Ques. 45. Was the evidence of parties taken at the preliminary investigation used on the subsequent trial; was it not understood that no such evidence should be used unless the Warden had an opportunity of cross-examination?—Ans. Such evidence wasnot used; the parties were brought up in Mr. Smith's presence for examination; when otherwise, my impression is that the preliminary evidence was not used against the Warden.

Ques. 46. Any use of the preliminary evidence in the Report (when the Warden had not the opportunity of cross-examination) was, as I understand from the last answer, not sanctioned knowingly by the Commissioners. Is this so or not?—Ans. I have not knowingly sanctioned anything contrary to the letter and spirit of the last reply, nor am I aware that the Commissioners have done so.

Ques. 47. 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, and cannot say, therefore, whether the Warden had such opportunity, and if so why he did not embrace it.

Committee adjourned till to-morrow morning at 10 o'clock.

Tuesday, 1st April, 1856.

Committee met,—

MEMBERS PRESENT:

WILLIAM L. FELTON, Esq., in the Chair.

Mr. Masson,
Mr. Wilson,
Mr. Sanborn,
Mr. Stevenson,
Mr. Clarke.—6.

The Hon. Mr. Macdonald and Mr. Vankoughnet, Mr. Brown and Mr. O'Reilly, were present.

THE examination of Mr. Sheriff *Thomas* resumed.

Ques. 48. [*By Mr. O'Reilly.*]—Did you not necessarily in all cases take a pro-

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

Ques. 49. Will you please state how you proceeded generally: Did you first take information from sundry witnesses, called preliminary evidence, and upon this form your charges, and then furnish the then Warden with these charges and the evidence on which they were based, and afterwards on 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. 50. Did the then Warden in fact call a great many witnesses who had not previously been heard before the Commissioners?—Ans. I do not remember any instances thereof, but have no doubt that it was so.

Ques. 51. Did you not take down the whole evidence of the witnesses yourself from the 6th of November to the 9th of December, 1848, inclusive?—Ans. I took evidence during the absence of Messrs. Bristow and Brown in the United States, viz., from the 6th November to the 5th December, inclusive.

Ques. 52. Who "prepared or suggested the questions for the witnesses; who "shaped them; who urged the answers and shaped them when given" during these thirty-three days?—Ans. My impression is that the evidence during these days was called for the defence, and that the questions therefore were mainly put by the Warden; I think there is but little examination by the Commissioners, and I have not any recollection by whom the questions or such examinations were put; probably by each of the Commissioners occasionally.

Ques. 53. Was not the evidence of each witness carefully read over to him and its correctness acknowledged by the witness before signing it?—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 signed it." This is a true minute, and the fact was strictly in accordance therewith in all cases.

Ques 54. In reference to question and answer No. 41, please refer to the official letter book of the Commission, and say if Mr. Smith did not demand to be informed who was his accuser, and if he was not replied to on 25th September, 1848, in the following terms: "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 inquire into divers charges and complaints 'made to our Governor "General, of our said Province, respecting the conduct, economy, system of dis-"cipline 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 "whomsoever, or which you may see fit to be preferred or investigated; and also "into, of, and concerning the whole conduct, economy, system of discipline and "management pursued in or with respect to our said Penitentiary.' In performing "the duties thus entrusted to them, the Commissioners have received a large amount "of evidence as to the general management of the Penitentiary and its affairs; in "that evidence there is much seriously affecting your conduct as an officer of the "Institution, and before submitting it to the head of the Government, the Commis-"sioners 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?"—Ans. The reply to Mr. Smith's letter, as given in the question, is correctly taken from the official letter of the 25th September, 1848; I do not think this fact at variance with my answer to question No. 41.

Ques 55. Will you please explain what took place in reference to making use of the preliminary evidence touching the first four charges against the Warden?—Ans. The Warden declined to recall the witnesses Phelan, Coté, Brennan, Quinn, Hern, White and Henry Robinson, and it was mutually agreed that the preliminary evidence of these parties should not be used in support of the first four charges.

Ques 56. Did not the Commissioners inform the Warden by letter, of 23rd September, 1848, that the course to be pursued in regard to the evidence taken in the preliminary examination would be as follows: "You will have any assistance in the "production of witnesses which the Commissioners can give you; you will be en- "titled 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 wit- "nesses who have given testimony against you (which I do not anticipate) the evi- "dence of such parties will only be used against you as corroborative testimony," and was not this course strictly followed?—Ans. I find such a letter among the official correspondence of the Commissioners; I was absent from the Commission at this period; I have reason to believe that the course proposed was strictly followed.

Ques 57.—Did Mr. Brown "record falsely" the evidence of witnesses examined before the Commissioners?—Ans. Not within my knowledge, and I feel confident that he did not.

Ques 58.—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 last query.

Ques 59.—(*By Hon. Mr. Macdonald.*) Could not Mr. Brown have so altered the evidence after its having been closed and subscribed without your knowledge?—Ans. I presume that it was quite possible to do so.

Mr. *O'Reilly* placed a paper marked with an asterisk [thus *] before the Committee which it was agreed should lay over for consideration till a subsequent meeting of the Committee.

Mr. *Vankoughnet* addressed the Committee on behalf of the Hon. Mr. Macdonald in reference to sustaining the charges against Mr. Brown. Mr. O'Reilly replied to Mr. Vankoughnet on behalf of Mr. Brown.

The Committee adjourned till to-morrow at 10 A. M.

Wednesday, 2nd April, 1856.

Committee met,—

MEMBERS PRESENT:

W. L. Felton, Esquire, in the Chair.

Mr. Masson,
Mr. Stevenson,
Mr. Clarke,
Mr. Sanborn,—5.

Hon. Mr. Macdonald, and Mr. Vankoughnet, Mr. Brown and O'Reilly were present.

Mr. *Vankoughnet* proposed now to show that the evidence in the printed report to the Government varies from that which is written down in the original minutes of the evidence and subscribed by the witnesses.

Mr. *O'Reilly* objects, that this cannot be admitted as proof of any of the four charges for which Mr. Brown is on his trial;—That the charge under which it is offered is the first, namely, "having recorded falsely the evidence of witnesses examined before "the Commission;"—And urges that the only meaning that could be fairly attached to this charge is that Mr. Brown wrote down and recorded the evidence given by the witnesses falsely" or in a manner different

from what the witnesses gave it. That the transcribing of such portions of the evidence in the printed report as the Commissioners thought it proper to send to the Government is not what must be understood by "recording" the evidence. That this now proposed to be proved is a new and entirely distinct charge from any that was preferred. Mr. Brown does not object to meet such charge as is now attempted to be advanced, when it shall be regularly made; on the contrary, he pledges himself to meet it fully and promptly, but he protests against evidence of any such charge being offered or given under the charges now under investigation; it would be simply accusing him of one offence, and under colour of pretending to prove such offence, offering evidence of an entirely different one.

The Committee adjourned till 10 o'clock A. M. to-morrow.

Thursday, 3rd April, 1856.

Committee met,—

MEMBERS PRESENT:

W. L. FELTON, Esquire, in the Chair.

Mr. Masson, Mr. Clarke,
Mr. Stevenson, Mr. Sanborn,—5.

Mr. Brown was present.

Mr. *Sanborn* moved that the Committee be adjourned till to-morrow at 11 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, and that the members of the Committee be specially summoned for this purpose.

The Chairman entered and took the Chair.

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

Carried in the affirmative on the following division:

Yeas:	*Nay:*
Mr. Felton,	Mr. Sanborn.—1.
Mr. Masson,	
Mr. Stevenson,	
Mr. Clarke,	
The Chairman.—5.	

The Committee adjourned until 11 o'clock A. M. to-morrow.

Friday, 4th April, 1856.

Committee met,—

MEMBERS PRESENT:

J. Moir Ferres, Esquire.
(*Chairman.*)

Mr. Felton,
Mr. Masson,
Mr. Stevenson,
Mr. Wilson,
Mr. Clarke,
Mr. Sanborn,—7.

Hon. Mr. Macdonald, and Mr. Vankoughnet, Mr. Brown and Mr. O'Reilly were present.

MINUTES of yesterday read and approved.

Mr. *Wilson* moved that the Committee reconsider the decision of yesterday, in reference to the mode by which the Hon. Mr. Macdonald proposes to prove that Mr. Brown recorded falsely the evidence of the witnesses examined before the Penitentiary Commission.

Passed in the negative on the following division:

Yeas:	*Nays:*
Mr. Sanborn,	Mr. Stevenson,
Mr. Wilson,—2.	Mr. Masson,
	Mr. Clarke,
	Mr. Felton,
	The Chairman.—5.

The Committee having over-ruled the objection of Mr. O'Reilly, made on the ground that the evidence proposed to be offered is not evidence admissable under any one of the charges preferred against Mr. Brown, being evidence of an entirely different charge.—

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 secondly 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 adjourned till Monday at 10 o'clock, A. M.

Monday, 7th April, 1856.

Committee met,—

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,
(*Chairman.*)

Mr. Wilson, Mr. Masson,
Mr. Sanborn, Mr. Felton,—6.
Mr. Stevenson,

The Hon. Mr. Macdonald and MR. Brown, were present.

Mr. *Macdonald* brought up the following cases of alleged falsification of evidence:

FIRST CASE.

He produced the evidence of Mrs. Chase as given in the Printed Report, page 205, under charge 8; "*Pursuing a system of punishment in the management of the discipline, cruel, indiscriminate and ineffective,*" and count 18; "*In goading Charlotte Reveille a convict by excessive punishment into a state of insanity or agravating the malady under which she labored.*" It is as follows in said Report:

Mrs. Chase examined, page 205:

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 had never been put into the Box since witness has been in the Penitentiary, nor has she had any punishment. Reveille has told witness that she could contract her leg by tying it up; convict Cook had told her how to do it. Cook is in a similar state. She cannot stand without a crutch; another convict has tried the same experiment; witness discovered it. Reveille told witness that the cause of the lump in her side, was falling down stairs, and falling against some candlesticks, when in Montreal; she said that Dr. Nelson had attended her for a long time. Reveille has always shown the same temper and disposition since witness has been here .....Witness never stated before the

The evidence as it appears in the original Book of evidence, is recorded as follows at page 867.

Evidence of Mrs. *E. Chase*:

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 Cook had told her how to do it. Cook is in a similar state. She cannot stand without a crutch; another convict has tried the same experiment; witness discovered it. Reveille told witness that the cause of the lump in her side, was falling down stairs and falling against some candlesticks when in Montreal; she said that Dr. Nelson attended her for a long time. Reveille has always shewn the same temper and disposition since witness has been here.

Witness is sure that Reveille is not insane. Reveille told witness this morning that she wished Mrs. Smith was here; that she would not then be left in the state she is; she also said to witness, that she misses Mrs. Smith's kindness. Reveille used sometimes to speak badly of the Warden; she said that she never would have done so, if she had not been put up to it.

Inspectors, that she believed Reveille to be mad, nor before the Commissioners.

SECOND CASE.

Charge 2.—page 116.

By mismanagement or negligence, reducing the Penitentiary to a state of the utmost disorder.

Count 4, page 118.

The convicts obtain intoxicating liquors by stealth.

Page 120:

Convict *Henry Smith* "has had beer three or four times, by orders of Mrs. Smith, the Warden's wife," "when witness was working in the Warden's private apartments;" "there were three or four convicts; they were cleaning the house; they all got beer; the cleaning lasted four or five days; they had beer three times."

Evidence of *Henry Smith*, a convict.

Page 133:

Has had beer since he came to Peni tentiary three or four times, got it by order of Mrs. Smith, the Warden's wife.

Henry Smith continued, page 426:

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 the beer it was when witnsss was working in the Warden's private apartments, and they were cleaning house.

Henry Smith continued, page 431:

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.

THIRD CASE.

Charge 5.—page 142.

Culpable mismanagement of the business affairs of the Penitentiary.

Count 9, page 151.

In allowing contractors to deviate from their contracts to the injury of the Institution.

The Printed Report states as follows at 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

M. S. evidence omitted.]

Mr. Muckleston's evidence is as follows:

Samuel Muckleston, page 152, preliminary examination.—Is a partner in the house of John Watkins & Co.; the firm has had large transactions in Iron and hardware with the Penitentiary; recollects that a large quantity of English iron, $2\frac{3}{4}$ x $\frac{5}{8}$ inch, was ordered for the Penitentiary last year, or the year previous, when the firm had not iron sufficient of that description on hand. English iron of a larger size, and Swedish iron of the right size were furnished to supply the order; the regular contract price of $2\frac{3}{4}$ x $\frac{5}{8}$ in 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

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 Company 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 were 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."

FOURTH CASE.

Page 153.

The second transaction under this Count, is in regard to a quantity of stove pipes ordered by Mr. Patrick Quinn. Several witnesses gave evidence on this matter, but it is fairly explained in Mr. Quinn's testimony.

Patrick Quinn, preliminary examination:—Is a tavern keeper near the Penitentiary; made a bargain last fall with the Warden of the Penitentiary for a thousand ends of stove pipe at the rate of 8d. per end; made a positive bargain; they were to be finished in less than three weeks, offered to pay them in advance, but the Warden said it would answer to pay them when delivered. The Warden refused to implement his bargain on the ground that he had not got full price for the substituted articles) having been read over to witness, he declares it to be untrue. There was very little of $2\frac{3}{4}$ x $\frac{5}{8}$ inch iron short, not more than 2 tons out of 20.

Page 153.

The evidence of the Architect respecting this transaction and McCarthy's credibility is as follows:

Evidence of Mr. *E. Horsey*.

Page 1189.—Witness cannot say whether he could 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.

Ques. If McCarthy has sworn before the Commissioners that "he was told by Mr. Muckleston that he (Muckleston) 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?—Ans If he so testified, witness thinks he did not tell the truth.

Ques. If McCarthy has sworn that "he received the iron, attended to and certified the quantity received, at the full weight delivered," has he sworn truly?—Ans. He has not.

[*M. S. evidence omitted.*]

Evidence of *Mr. Bickerton.* Page 1,300. Thirty lengths of stovepipe 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 & Macdonald; never drew up one between the Warden and Quinn for stove-pipes; knows of no bargain between them for 1,000 lengths of stovepipe, under the Warden's order of 29th October, 1849; 1,000 lengths of stovepipe were made and paid for by Quinn; should think McCarthy must have exceeded his instructions when he made 100 in place of 30 ordered by the Warden.

sheet iron; witness told him he (the Warden) had received there loads of sheet iron that very day; the Warden said, that was for roofing the houses; witness reminded him that he could do no roofing work for some months, and the Warden said he knew that, but the iron must be kept for it. Witness got about a hundred ends of the contract executed, but could get no more; considered it very dishonorable conduct on the part of the Warden. The Warden never denied that he had broken his contract. Iron had risen very rapidly at the time of the contract; the stove-pipe was worth 1s. per end shortly after the contract was made.

The whole of the evidence corroborates Mr. Quin's statement.

FIFTH CASE.

Charge 5.—Page 142.

Culpable mismanagement of the business affairs of the Penitentiary.

Count 13, page 160.

In sundry unbusiness-like transactions.

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. uess by contract." And to meet this, *Mr. Horsey* testifies that "the ordinary ruln of stone-cutting work done, in the Penitentiary, is better than the ordinary crn of work outside; here the stones are cut with sharp edges, which lay close on the wall, but outside they are not particular; would say the difference on the host of the work is 25 per cent."

SIXTH CASE

Charge 7.—Page 169.

Starving the convicts in the Penitentiary.

Counts 3, page 169.

That the food served to the convicts was not sufficient to sustain hard working men.

Count 4, page 169.

That the convicts have been habitually so exhausted by want of food, as to be unable to work.

Thomas Kirkpatrick, Esq., page 173, says, He always presumed the con-

Mr. Edward Horsey's evidence.

Page 845.—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 twenty-five per cent. better than they would have been by contract labor. Contractors try to get along as fast and as cheap as they can, but by the present method permanency is looked for.

Page 1188.

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 on the wall, but outside they are not so particular; would say the difference on the cost of the work is 25 per cent.

The actual evidence of Mr. Kirkpatrick as on page 906 of M. S. is as follows:

Page 906.—*Witness 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 liitle food; cannot say if the convicts could have done the work they performed, had their*

victs had enough of food, while he was an Inspector, and their appearance indicated that they got sufficient food.

food been insufficient; never turned his attention to the subject of the convicts' food, always presumed they had enough. Has occasionally seen the food served out t the convicts' breakfast, more frequently than dinner; was very frequently present in the dining hall at breakfast during the six years witness was an Inspector; thinks the food at breakfast, was generally of sufficient quantity.

SEVENTH CASE.

Charge 8.—Page 182.

Pursuing a system of punishment in the management of the discipline—cruel, indiscriminate and ineffective.

Count 6, page 186.

In the very great extent of the punishment inflicted on the inmates of the Penitentiary.

"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."

No evidence inthe manuscript minutes to shew this.

Mr. *Brown*, after the above proceedings submitted the following paper:

"Mr. Brown objects to the reception 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 Commissioners and would not in any manner sustain the charges of individual criminality preferred against Mr. Brown by Mr. Macdonald.

The Committee adjourned till 10 o'clock tomorrow.

Tuesday, 8th April, 1856.

Committee met,—

MEMBERS PRESENT:

J. Moir Ferres, Esquire,
(*Chairman*,)

Mr. Wilson,
Mr. Sanborn,
Mr. Stevenson,
Mr. Masson,
Mr. Felton,—6.

The Hon. Mr. Macdonald, and Mr. Brown, were present.

Mr. *Brown* withdrew the objection given in by him yesterday and submitted the following in lieu thereof, viz.:

"Mr. *Brown* objects to the evidence this day laid before the Committee, by Mr. McDonald, inasmuch as even if well-founded, it could 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. McDonald."

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

The reception of which being put to the vote passed in the negative on the following division :

Yeas:	*Nays:*
Mr. Wilson,	Mr. Stevenson,
Mr. Sanborn,—2.	Mr. Felton,
	Mr. Masson,
	The Chairman,—4.

At the request of Mr. Brown the witnesses not under examination were directed to withdraw.

Henry Smith, Esq., called in and examined, and in answer to questions from the Chair, stated :—

Was Warden of Penitentiary from 1834 to November, 1848; was suspended as Warden in November, 1848, and then removed from the Penitentiary grounds and finally ceased as Warden in April 1850. Remembers the Penitentary Commission. There were charges delivered against witness in the handwriting of Mr. Brown. Charges were made and evidence upon those charges was furnished to me; was not present when this preliminary evidence was taken, had no opportunity of cross-examining those witnesses when the preliminary evidence was given. I was called upon afterwards to defend myself upon those charges before the Commissioners of the Penitentiary. The course adopted in the examination was to bring in the witnesses and take their evidence separately, witnesses were called upon as I pointed them out. Mr. Brown took down the evidence during nearly the whole time on the part of the Commissioners, and I had a party to take it down on my behalf for my own private use. I wished to have counsel during examination, but was not permitted. The witnesses on my behalf were examined by myself, on one or two occasions during my necessary absence, Mr. Henry Smith, junior, [my son] was permitted to put one or two questions; he was acting at this time for me as clerk, taking down the evidence ; he acted as such for six days. Three other persons acted as clerks for me, at different times, during the examination. Mr. Brown principally cross-examined the witnesses on the part of the Commissioners, and Mr. Bristow occasionally ; a few questions, but very seldom, were put by other members of the Commission. The evidence was read over to the witnesses after their examination was completed. They did not read it themselves. Mr. Brown generally read over the evidence to the witnesses; and upon one or two occasions when Mr. Brown was absent for a few days, Mr. Thomas did so.

Ques. 60. (By Mr. *Macdonald*)—Did Mr. Brown take down the answers of the witnesses fairly?—Ans. He did not upon all occasions take down the exact words given by the witnesses. The witnesses upon some occasions objected to the words which were taken down, Mr. Brown maintaining that the words he had taken down implied the same ; and there was a discussion among the Commissioners, some of the Commissioners objecting to the mode in which Mr. Brown took down the evidence.

The Commissioners sometimes objected to the manner in which Mr. Brown took down the evidence, and the witnesses more frequently. On some occasions Mr. Brown refused to alter the evidence when desired by the witnesses to do so, but not generally.

Ques. 61. (By Mr. *Macdonald*)—Were not your witnesses insulted and brow-beaten by Mr. Brown in giving their evidence?—

Objected to by Mr. *Brown*, as not pertinent to the charges, and a leading question. Whereupon Mr. *Macdonald* withdrew this question.

Ques. 62. Were the witnesses who gave evidence in your favor, brow-beaten and insulted, or were they courteously treated?—

Mr. *Brown* objected to the above question on the same grounds as the preceding. The Committee held the objection good, and decided it to be a leading question.

Ques. 63. What was Mr. Brown's demeanour towards the witnesses who gave testimony in your favor?

Objected to by Mr. *Brown*, as irrelevant. Objection over-ruled by the Committee. Ans. Very offensive generally. He spoke very sharply to the witnesses, and appeared to intimidate them. I did not object to it, as I found it was of no use as many of my objections had been over-ruled. Mr. Amiot, one of the Commissioners, objected on one occasion in my hearing, to the manner in which Mr. Brown was questioning my witnesses; he objected to their being improperly treated; to their not being courteously treated by Mr. Brown.

Ques. 64. Do you remember who presided upon that occasion?—Ans. I believe it was Mr. Fergusson; the Court was cleared immediately after the objection was made by Mr. Amiot. There was no announcement made when the Court resumed. The Court went on with the examination. I do not know Mr. Amiot's hand-writing. Mr. Hopkirk was one of my witnesses, and was under examination during ten or eleven days, and sometimes at nights, being under the cross-examination of Mr. Brown during the most of that time. My examination-in-chief of Mr. Hopkirk lasted for two or three days of that time.

Ques. 65. Did Mr. Hopkirk object to the length of the examination?—Ans: He did.

Ques. 66. What was the reply given to him, and by whom?

Question objected to by Mr. Brown as irrelevant.

Objection over-ruled on a division, as follows:

Yeas:	*Nays:*
Mr. Stevenson,	Mr. Wilson,
Mr. Felton,	Mr. Sanborn,—2.
Mr. Masson,	
The Chairman—4.	

Ans. 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 rather warm altercation followed between Mr. Brown and Mr. Hopkirk. I recollect on another occasion Mr. Hopkirk objected to the manner in which Mr. Brown had taken down his testimony, saying "those were not the words he had made use of.' Mr. Brown replied he would alter the testimony, but it would go for as much as 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. I remember an occasion on which Mr. Hopkirk asked Mr. Brown to read over his evidence; 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 remarks as to his being permitted to read the evidence for his own satisfaction; it was decided by the Commissioners present, that Mr. Hopkirk should see the evidence; Mr. Brown replied, "Well, it is of no consequence, I shall not press the question;" I do not recollect what the question was, but it was a question which had just been put to Mr. Hopkirk by Mr. Brown; the evidence was not read by Mr. Hopkirk, nor did he see it.

The Committee adjourned till 10 o'clock, A. M., to-morrow

Wednesday, April 9th, 1856.

Committee met,—

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,
(*Chairman.*)

Mr. Felton,
Mr. Wilson,
Mr. Stevenson,
Mr. Sanborn,
Mr. Clarke,
Mr. Masson—7.

Honorable Mr. Macdonald and Mr. Brown were present.

THE minutes of yesterday read.

Mr. *Smith*, on his Evidence of yesterday being read over to him, stated in reference to his answer to the last question, that he is not quite sure whether Mr. Hopkirk's evidence was read over by that gentleman himself or not, but is under the impression it was not; but as it is now seven years ago, he cannot be certain.

Mr. *Smith's* examination resumed.

I had no cause to complain of the manner in which the evidence of the witnesses was taken, or the witnesses were treated during the time of Mr. Brown's absence; there were ten convicts then in confinement, who were examined as witnesses against me; I think three of these were pardoned; one was Cameron, confined for the murder of his wife; another, Hennessy for the murder or manslaughter of his wife; and the third was DeBlois, who, I think, was in for larceny; I do not know at what time those parties were pardoned, but I saw Cameron at large shortly after the close of the examination, and when some of the Commissioners were in Kingston; I think it was some weeks after the close of the examination; there were four or five officers of the Penitentiary, keepers and guards, examined against me, who had been dismissed for improper conduct; on reference to a memorandum I find there were ten.

Mr. *Macdonald* handed the witness a document marked C 1, asked him what it was. Witness replied, "It is a copy of my petition to the Legislative Assembly, forwarded by me to Mr. Macdonald for presentation to the House, it is my handwriting and dated 19th August, 1852." Mr. *Macdonald* handed the witness a document marked C 2, and asked him what it was. Witness replied, "It is a copy of my petition to the Legislative Assembly, dated 13th May, 1850, sent by me to Mr. Macdonald for his private use; the petition first mentioned was not presented to the House, the last one mentioned was; the copies also contain references for my own guidance as well as Mr. Macdonald's, in case they should have been referred to a Committee; they were written on the copies sent to Mr. Macdonald at the time they were so sent.'

The witness then went on to state, as follows in reply to queries. There were five of the keepers and guards alluded to, restored to their offices in the Penitentiary; they had all given evidence against me; they had all been called by the Commissioners, as far as my memory serves me; their names were McCarthy, Gleeson, Wilson, Robinson, and Keely; I do not know who they were restored by; the Commissioners were also Inspectors of the Penitentiary; they are not all now in the service of the Penitentiary; Robinson is not, he is now a convict under sentence for 5 years; Wilson and Keely were dismissed for bad conduct after their restoration; the other two, I believe, are still in the Penitentiary service; there were seven discharged convicts examined as witnesses against me; there were several witnesses whose evidence was taken *ex parte*, at the preliminary examination, and who had absconded from the Province after having been privately examined against me; the evidence of some of those men has relied upon by the Commissioners, as substantiating the charges made against me; the names of some of those witnesses are Phelan, Brennan, Coté, and I think Eliza Quinn; the persons now named were discharged convicts; White was an ex-guard; and another of those witnesses also left the Province before I could serve a notice on him to appear before the Commissioners for cross-examination.

Ques. 66. (By Mr. *Macdonald*)—Will you read the paragraph in your petition, I now show you?—Ans. I have done so.

Ques. 67. After having so refreshed your memory, what is your recollection as to facts contained in the paragraph?—Ans. I believe every word to be true; I refer to the following words: "That 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 had given evidence in favor of your petitioner, has been dismissed from the Penitentiary by the Commissioners."

Ques. 68. Will you mention the names of those officers who so gave evidence in your behalf and were so dismissed?—Ans. Costen, Thomas Smith, Manuel, William Smith, Martin, Ballantine, Grass, Little, Sexton, Somerville, McMahon, Tyner, and Watt.

Ques. 69. Were there any other officers ordered to be dismissed, who gave evidence in your favor?—Ans. Yes, three, Horsey, the master builder, Bickerton, the Clerk, and Mrs. Pollard, the matron, Horsey and Bickerton remain in the Penitentiary in their same situations, Mrs. Pollard resigned through fear of being dismissed, I believe.

Ques. 70. Who told H. Manuel that he was to be dismissed, or was so?—Ans. Manuel is now dead, but he told me that Mr. Brown dismissed him when on his way to give evidence against McCarthy for perjury.

Mr. *Brown* objects to witness making any statement upon this point, unless from personal knowledge.

Objection sustained.

Mr. *Brown* stated his willingness to admit that he had communicated to Manuel that the Board of Inspectors had dismissed him, but objected to the reception of hearsay evidence, as a matter of principle.

Ques. 71. Do you know who told Thomas Smith that he was dismissed?—Ans. I only know from hearsay. There was an arrangement made between the Commissioners and me, as to their being personally examined on my part. 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, I called Mr. Brown as a witness, he was sworn, refused to give answer to any question put to him by me. Mr. Amiot, as President of the Court at the time, told Mr. Brown that one of the questions was a proper one, as relating to a circumstance which occurred prior to the appointment of the Commission.

Ques. 72. What was that question?—Ans. It was, "Did you at any time prior to "your appointment to this commission, write, print, publish or say anything dero- "gatory to my character as Warden of the Penitentiary?"

Mr. Macdonald asked witness to refer to the printed report of the Penitentiary Commissioners Charge, 10 count 9, page 236, and to refer also to Appendix B. upon page 315.

Ques. 73. Look at No. 4, in that appendix, B., page 316?—Ans. It is a letter from the Surgeon to the Warden, dated 24th Januaty, 1848, as follows:

("Copy) LETTER, SURGEON TO WARDEN.

"KINGSTON, 24th January, 1848.

"SIR,—In order to enable me to form a more correct opinion with respect to the "mental state of convict, James Brown, it would be requisite that I should be "acquainted with the several amounts and description of punishment, inflicted for the "offences committed by him since his admission to the Prison, and I beg to submit "that instead of calling on all the keepers and guards to answer such questions as "I might put to them touching this case, it would be more convenient if I were fur- "nished with the names of the officers who reported the convict on the various oc- "casions of violence for which he was punished."

"(Signed,) JAMES SAMPSON.

"To H. Smith, Esq.,
"Warden, P. P."

Ques. 74. Was that letter produced before the Commissioners at the examination under that count? Ans. It was not.

Ques. 75. Was a copy of that letter produced?—Ans. A partial copy of that letter was contained in the book of charges against myself given to me.

Ques. 76. Was there any discussion before the Commissioners respecting this letter? Ans.—I made an objection to the letter as it appeared in the said book as it was merely a garbled extract, about one-half of the letter having been given, by which it was made to bear quite a different meaning from what it would have shown had the whole been given. I am not aware of any particular discussion among the Commissioners respecting the letter, but I stated to Mr. Brown that the copy served upon me was merely an extract. Mr. Brown replied that he could assure me it was a true copy of the whole letter, and that he had taken 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." Mr. Brown then replied that I had no right to keep a document belonging to the Penitentiary in my possession; I told Mr. Brown the reason 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.

Ques. 77. 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. 78. Was the statement of Mr. Brown that he had copied the said letter from the original, true or untrue?—Ans. It was untrue.

Ques. 79. Could he by possibility have copied the letter from the original?—Ans. No, he could not.

Ques. 80. Was any party present at the time of this conversation except the Commissioners and yourself?—Ans. Yes, Mr. Hopkirk was present.

The Committee adjourned till 10 o'clock A. M., to-morrow.

Thursday, 10*th April*, 1856.

Committee met—

MEMBERS PRESENT :

JAMES MOIR FERRES, Esquire,
(*Chairman*,)

Mr. Wilson,
Mr. Sanborn,
Mr. Clarke,
Mr. Stevenson,
Mr. Masson.—6.

The Hon. Mr. Macdonald, and Mr. Brown were present.

THE minutes of the last meeting were read and approved.

Mr. *Smith's* examination resumed.

Mr. *Francis W. Smith* was kitchen keeper at the Penitentiary ; his duties were to receive the provisions and see them served out to the convicts when cooked. Mrs. Chase was Assistant Matron ; convict Reveille was under her charge as such. Some of the witnesses objected to the manner in which Mr. Brown took down their answers. 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. In some instances the necessary alterations were made and in other cases the witnesses did not insist upon any alteration being made, being satisfied Mr. Brown's statement was correct. There were very frequent altercations between Mr. Hopkirk and Mr. Brown, as to the manner in which the evidence of the former was taken down. I recollect some observation by Mr. Bristow to Mr. Brown relative to the evidence of Mr. Hopkirk as taken down by Mr. Brown ; Mr. Bristow looked over the Book of Evidence and said to Mr. Brown "that will answer your purpose." I sent my petitions C 1 and C 2 to Mr. Macdonald, for the purpose of being presented to the House of Assembly, in the hope that a Committee would be appointed to enquire into the allegations of the said petitions. I instructed Mr. Macdonald to move for such a Committee in the House.

Ques. 81. (*By Mr. Macdonald*) Did you instruct me as to the truth or untruth of the allegations contained in said Petition ?

Mr. *Brown* objected to the question as having nothing to do with the charges against him.

Mr. *Felton*, a member of the Committee, entered.

In answer to Mr. Brown's objection, Mr. Macdonald said, "The question is relevant as to all the charges inasmuch as the answer tends to justify me in having made those charges, by the instruction, and on the authority and statement of the witness."

Mr. *Brown*, on the other hand, stated "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 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."

The question being then put as to whether the witness should answer the question above written, it passed in the affirmative on the following division :

Yeas :
Mr. Clarke,
Mr. Stevenson,
Mr. Masson,
Mr. Felton,
The Chairman.—5.

Nays :
Mr. Wilson,
Mr. Sanborn.—2.

And the question being put.—Ans. I did. I said I had every reason to believe I could easily substantiate every allegation in these petitions. I furnished with the Petition, the names of the witnesses and references to the report upon which I could substantiate the allegations of the Petitions.

Ques. 82. 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 objected to the above question put by Mr. Macdonald, which was over-ruled on the same division as last.—Ans. Yes, you were instructed to make those charges.

Ques. 83. Does this Petition contain any thing which in your opinion is incapable of proof?

Mr. Brown objected to this question.

Mr. Macdonald repeated the question as follows:

Does this Petition according to the best of your knowledge and belief contain anything which is untrue or incapable of proof.

Mr. Brown objected to this question.

Objection over-ruled on the following division:

Yeas:	*Nays:*
Mr. Felton,	Mr. Wilson,
Mr. Stevenson,	Mr. Sanborn.—2.
Mr. Masson,	
The Chairman.—4.	

Ans. 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.

(Witness withdrew)

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 witnesses' 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 the work is 25 per cent."

Ques. 84. (*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. 85. Did you convey to the Commissioners your opinion as to the comparative cheapness of the works in money?—Ans. I did.

Ques. 86. 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.

Ques. 87. (*By the Chairman*)—Do you mean to say that the work by convict labour is 25 per cent. better in quality, at the same price as contract labour? Ans. I do.

Ques. 88. (*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 labour was 25 per cent. more than contract labour?—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.

Friday, April 11th, 1856.

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,

(*Chairman.*)

Mr. Stevenson, Mr. Sanborn.—4.
Mr. Masson,

The Hon. Mr. Macdonald and Mr. Brown, were present.

Henry Smith, Esquire, cross examined by Mr. *Brown:*

Ques. 89. 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. 90. 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 witnesses 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.

Ques. 91. (*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. 92. 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 believed there was a predetermination to deprive me of my office.

Ques. 93. When the Commissioners had completed their preliminary 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. 94. Did you receive the said extracts on the 23rd September, 1848?—Ans. I received them some time in the fall of 1848; but do not know the exact date.

Ques. 95. 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. 94. 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. 97. Did you recommence 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. 98. Have you no means of ascertaining?—Ans. I have no means of ascertaining here.

Mr. *Felton* a member of the Committee entered.

Ques. 99. 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-pro-"duce 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. 100. 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. 101. 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. 102. 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. 103. 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. 104. 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. 105. 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. 106. Was the evidence of any of these parties used against you by the Commissioners in reporting on the first four Charges?—Ans. No.

Ques. 107. 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. 108. 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. 109. 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. 110. How do you know that he absconded?—Ans. I was so informed by an officer of the Penitentiary.

Ques. 111. What was the name of that officer?—Ans. Thomas Costen. I think also Dr. Sampson mentioned it.

Ques. 112. Did you apply to the Commissioners to issue process for the production of Phelan?—Ans. I did not, as I thought it was useless.

Ques. 113. [*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."

Ques. 114. (*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. 115. What do you mean then?—Ans. I mean he left the country, as I said before.

Ques. 116. 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. 117. 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. 118. 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. 119. 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. 120 What did you mean when you said Brennan had "absconded?"—Ans. That he had left the Province.

Ques. 121. 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. 122. How do you know that Eliza Quinn absconded?—Ans. By common report.

Ques. 123. 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. 124. 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. 125. 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. 126. How do you know that Mr. White absconded?—Ans. I was informed so by some of the Penitentiary people, who knew the fact.

Ques. 127. 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. 128. 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 witness.

Ques. 129.—[*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 of the 28th June, 1848?—Ans. It is the same person.

Ques. 130. [*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. 131. 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. 132. 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. 133. 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. 134. 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. 135. 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. 136. Do you refer to the preliminary examination?—Ans. I do refer to the preliminary examination.

Ques. 137. 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. 138. 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. 139. When you were producing evidence on your defence before the Commissioners and during the cross-examination of your witnesess, were there not at least three Commissioners always present?—Ans. Yes.

Ques. 140. 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. 141. 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. 142. 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. 143. 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. 144. 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. 145. In what cases was this not done?—Ans. I cannot recollect, as the number of questions was so great.

Ques. 146. 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. 147. Can you designate one case in which this was not done?—Ans. I can not.

Ques. 148. 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. 149. 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. 150. Did he generally do so?—Ans. He did upon several occasions.

Ques. 151. Can you designate one instance in which he did not do so?—Ans. No.

Ques. 152. Did each witness subscribe his name to his depositions after it had been read over to him?—Ans. I do not know.

Ques. 153. 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. 154. 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. 155. 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 if 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. 156. 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. 157. 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.

Monday, 14*th April*, 1856.

Committee met,

MEMBERS PRESENT :

JAMES MOIR FERRES, Esquire,
(*Chairman*,)

Mr. Stevenson,
Mr. Wilson,
Mr. Sanborn,
Mr. Masson,
Mr. Clark,
Mr. 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. 158. 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. 159. 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. 160. [*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. 161. [*By Mr. Brown*]—When the evidence taken in your presence was readout by the Secretary, and you or your clerk compared it with your own copy of the evidence,—was there one variance between your copy and the official copy which was not amended?—Ans. If the evidence was correctly read over, there was not.

Ques. 162. 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 163. What did you mean then, by your answer to the question 159?—Ans. I meant what I said.

Ques. 164. 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. 165. 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 Reveille is a very violent woman; has understood that she has been "frequently punished for her bad conduct; thinks the punishments she has received "have been instrumental in causing her illness;" the words omitted are, "*but if "she had been a quiet woman, the punishment would not hurt her.*"

Ques. 166. 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. 167. 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. 168. 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. 169. 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. 170. 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. 171. 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. 172. 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. 173. 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 ordi- "nary 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. 174. 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. 175. Were you present when Mr. Horsey gave that evidence?—Ans. I was.

Ques. 176. 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. 177. 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. 178. 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. 179 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. 180. 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. 181. 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. 182. 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. 183. 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 apart-"ments, and they were cleaning house." * * * Heard the convict "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 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 orders 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. 184. Are you cognizant 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. 185. 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. 186. Have you personal knowledge that Mr. Brown "suborned convicts to commit perjury?"—Ans. I have not.

Ques. 187. 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. 188. 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. 189. 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. 190. Did your petition to Parliament contain this charge against Mr. Brown?—Ans. No.

Ques. 191. 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. 192. Do you as to convict DeBlois?—Ans. I do not know it personally.

Ques. 193. Do you as to convict James Hennessy?—Ans. No.

Ques. 194. 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?—Ans. 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. 195. 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. 196. 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. 197. 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. 198. What was the conduct of convicts Cameron, DeBlois and Hennessy 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. 199. Have you personal knowledge that Mr. Brown "obtained the par- "don of murderers confined to the Penitentiary, to induce them to give false evi- "dence?"—Ans. No, I have no personal knowledge of the fact.

Ques. 200. Did your Petition to Parliament contain this charge against Mr. Brown?—Ans. No.

Ques. 201. 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. 202. Did Mr. Macdonald in that year, comply with your request, and apply for a Committee of Inquiry?—Ans. He did.

Ques. 203. Did you in 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.

Tuesday, April 15th, 1856.

The Committee met,—

MEMBERS PRESENT:

J. Moir Ferres, Esquire,
(*Chairman.*)

Mr. Masson, Mr. Wilson,
Mr. Stevenson, Mr. Sanborn,—5.

The Hon. Mr. Macdonald and Mr. Brown were present.

MINUTES of yesterday were read and approved.

Mr. *Smith's* cross-examination resumed.

Ques. 204. 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. 205. 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. 206. 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. 207. 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. 208. 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. 209. 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. 210. 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. 211. 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. 212. 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. 213. 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. 214. 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. 215. 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. 216. Who were present on this occasion; which of the Commissioners were present?—Ans. I do not recollect.

Ques. 217. 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. 218. 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. 219. 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. 220. 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 McCarthey, James Wilson, Thomas Fitzgerald, and James Skynner. I do not recollect the tenth.

Ques. 221. 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. 222. Were all these persons appointed while you were Warden and with your assent?—Ans. Yes.

Ques. 223. 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. 224. 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?—I do not recollect the parties, but it came out in evidence in my defence.

Ques. 225. In whose evidence did this come out?—Ans. I do not recollect, but it is stated in the minutes of evidence.

Ques. 226. 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. 227. 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. 228. Do you know of your own knowledge, that any one person made such threats?—Ans. No, not personally, only through evidence.

Ques. 229. 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 allow- "ed 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. 230. 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 the 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 copy extract of letter from Dr. Sampson."

"GEORGE BROWN."

" A large number of questions were put to the last witness, as to the proceed-
" ings of the Commissioners, and the manner in which they received their infor-
" mation, 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
" gentlemen, 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. 231. 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. 232. Do you mean that the questions put by you to Mr. Brown and over-ruled by the Commissionors, 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. 233. Were all the questions over-ruled by the Commissioners but this one?—Ans. I have given evidence to that effect in my preceeding answer.

Ques. 234. Is the minute which follows Mr. Brown's deposition a true record, from the words, " a large number," to the end?—Ans. Yes.

Ques. 235. Is it stated in that minute that the questions put to Mr. Brown " were all over-ruled by the Court "?—Ans. Yes, it is stated so.

Ques. 236. 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 a 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. 237. 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 you, and during your defence?—Ans. It was written and sent me by Dr. Sampson and was in my possession.

Ques. 238. 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 War-
" den 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 favorable to his defence, and tried to
" make it appear that the latter portion, was kept back by the design of the Com-
" missioners; 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. Smiths' 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. 239. 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. Hopkinks' 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. 240. 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. 241. 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. 242. 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. 243. 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. 244. 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. 245. 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. 246. 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. 247. Specify the names of the witnesses mentioned in answer to Question 244, 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. 248. Was Samuel Pollard a witness for you?—He was, and is now dead.

Ques. 249. Was he a material witness?—He was, a very material witness.

Ques. 250. 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. 251. 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. 252. Does the letter from Dr. Sampson to you, stated in the Book of charges, appear to be an extract?—Ans. Yes!

Ques. 253. 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. 254. Had he any reason to suspect it was in your possession?—Ans. I think not, from what subsequently took place.

Ques. 255. 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. 256. Do you remember how many questions you put to Mr. Brown, when sworn as a Witness?—Ans. I think twenty questions.

Ques. 257. Did not Mr. Brown refuse to answer any of them?—Ans. He would not answer any one of them.

Ques. 258. Did any of those questions refer to the garbling of this letter of Dr. Sampson?—Ans. I think the first question did.

Ques. 259. 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. 260. Who was the Witness?—Ans. Mr. Hopkirk.

Ques. 261. Were you allowed to put the question?—Ans. I was not.

Ques. 262. 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, 12.

Ques. 263. 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 re- "turned 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 con- "versation with Cooper, relative to his evidence before the Commissioners "respecting the cord wood? Did he tell you that he had informed the Commis- "sioners 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. 264. 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. 265. 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. 266. 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. 267. 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. 268. 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. 269. Why did you then close your defence?—Ans. Because I saw it was useless.

Ques. 270. Why useless?—Ans. Because justice was not done me; my questions were unanswered by the decision of the Commissioners.

Ques. 271. In addition to Cameron, did you certify as to the good conduct of any other convicts?—Ans. I did.

Ques. 272. 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. 273. Were any of the convicts, witnesses in your favor, pardoned?—Ans. I know of none.

Ques. 274. Did you state to me that convicts had been promised pardon, on giving evidence against you?

Mr. *Brown* objects to this question.

Objection over-ruled on the following division:

Yeas:	*Nay:*
Mr. Clarke,	Mr. Sanborn.
Mr. Masson,	
Mr. Stevenson,	
The Chairman.	

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, 16*th April*, 1856.

Committee met.

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,
(Chairman.)

Mr. Stevenson, Mr. Felton,
Mr. Clarke, Mr. Sanborn.—
Mr. Masson,

The Hon. Mr. Macdonald and Mr. Brown were present.

MINUTES of yesterday were read and approved.

James Hopkirk, Esquire, Collector of Customs, Kingston, called in and examined by Mr. Macdonald.

Ques. 275. Were you Inspector at the Penitentiary?—Ans. I was one of the Board of Inspectors.

Ques. 275½. During what period?—Ans. From the beginning of 1847 to the end of 1848 or beginning of 1849.

Ques. 276. Were you examined as a witness before the Penitentiary Commissioners?—Ans. I was.

Ques. 277. Who were the Commissioners present?—Ans. There were various Commissioners present on various occasions.

Ques. 278. 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, 17*th April*, 1856.

Committee met.

MEMBERS PRESENT:

DAVID B. STEVENSON, Esquire, in the Chair.

Mr. Felton, Mr. Sanborn,
Mr. Masson, Mr. Clarke.—5.

The Hon. Mr. Macdonald and Mr. Brown were present.

ON motion of Mr. *Felton*, the Committee adjourned until ten o'clock A. M on Friday next.

Friday, 18*th April*, 1856.

Committee met.

MEMBERS PRESENT:

DAVID B. STEVENSON, Esquire, in the Chair.

Mr. Felton, Mr. Masson, Mr. Sanborn.—4.

The Hon. Mr. Macdonald and Mr. Brown were present.

THE minutes of Wednesday were read, and Mr. Hopkirk stated, 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. 279. How many days were you examined?—Ans. I speak from memory, when I say I was, I should think, 13 or 14 days.

Ques. 280. 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. 281. Who cross-examined you?—Ans. Mr. Brown, I think, on every occasion, as far as I can remember.

Ques. 282. 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:	*Nay:*
Mr. Stevenson,	Mr. Sanborn.—1.
Mr. Felton,	
Mr. Masson.—3.	

Ques. 283. 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.

Ques. 284. Did Mr. Brown make any remark on your answer, and what was it?

Mr. *Brown* objected to the question.
Objection over-ruled on the following division:

Yeas:	*Nay:*
Mr. Felton,	Mr. Sanborn.—1.
Mr. Stevenson,	
Mr. Masson.—3.	

Ans. He remarked sneeringly that the evidence would go for what it was worth.

Ques. 285. Was your answer taken down?—Ans. I think it was, but am not quite certain.

Ques. 286. Did you remonstrate against the length of your examination?

Mr. *Brown* objected to this question.
Objection over-ruled on the following division:

Yeas:	*Nay:*
Mr. Felton,	Mr. Sanborn.—1.
Mr. Stevenson,	
Mr. Masson.—3.	

(Mr. *Clarke*, a member of the Committee, entered the room.)
Ans. I did.

Ques. 287. What was Mr. Brown's answer?

Mr. *Brown* objected to this question.
Objection over-ruled on the following division:

Yeas:	*Nay:*
Mr. Felton,	Mr. Sanborn.—1.
Mr. Stevenson,	
Mr. Masson,	
Mr. Clarke.—4.	

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. 288. 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. 289. 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. 290. 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. 291. 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 reluctancy 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. 292. 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. 293. 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. 294. 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. 295. 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. 296. 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. 297. 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 show 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. 298. Did not Mr. Brown on that occasion quote your evidence falsely?

Mr. *Brown* objected to this question.

Objection over-ruled on the following division.

Yeas:	*Nay:*
Mr. Clarke,	Mr. Sanborn,—1.
Mr. Felton,	
Mr. Masson,	
Mr. Stevenson,—4.	

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. 299. 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. 300. Did Mr. Brown ever warn you as to the evidence you were to give in answer to questions put to you?

Mr. *Brown* objected to this question.

Objection over-ruled unanimously.

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 show me, that if my impression was different from theirs, I must be mistaken, or words to that effect.

Ques. 301. Do you remember giving evidence about some Green-house 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. 302. 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. 303 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:	*Nay:*
Mr. Clarke,	Mr. Sanborn.—1.
Mr. Felton,	
Mr. Masson,	
Mr. Stevenson.—4.	

Ans. I remember a case of a guard named Manuel; I had caused him to be subpœnaed as a witness in a prosecution against McCarthy for perjury; I had also caused Mr. Brown to be subpœnaed 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 Manual, as he considered I had been the means of depriving him of his bread.

Ques. 304. 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.

Monday, April 21st, 1856.

Committee met—

MEMBERS PRESENT:

Mr. Masson, Mr. Sanborn.

Hon. Mr. Macdonald and Mr. Brown were present.

THE Committee adjourned for want of a quorum until 10 o'clock A. M., tomorrow.

Tuesday, April 22nd, 1856.

Committee met—

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,
(*Chairman.*)

Mr. Felton, Mr. Stevenson,
Mr. Masson, Mr. Sanborn.—5.

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. 305. 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. 306. 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. 307. 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. 308. Have you personal knowledge that Mr. Brown suborned convicts to commit perjury?—Ans. I have no personal knowledge.

Ques. 309. 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. 310. 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. 311. 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. 312. 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. 313. 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, sometimes 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. 314. 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. 315. 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. 316. 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. 317. 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. 318. Were three Commissioners invariably present while you were under examination?—Ans. Yes, I have no doubt they were.

Ques. 319. 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. 320. 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. 321. Which of the Commissioners were present when this occurred?—Ans. I cannot speak with certainty as to that.

Ques. 322. 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. 323. 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. 324. 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. 325. 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 testi-*"'*mony*.'"

"The witness alluded to is James Hopkirk, Esq., when the evidence is published it will be seen whether the Commissioners were blamable 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 War-"den, 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. Bris-"tow 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:	*Nays:*
Mr. Sanborn,	Mr. Felton,
Mr. Stevenson,	The Chairman.—2
Mr. Masson.—3.	

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. 326. 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. 327 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. 328. 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. 329. 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. 330. 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. 331. 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. 332. 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. 333. 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. 334. 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. 335. 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. 336. 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.

Wednesday, April 23rd, 1856.

Committee met,—

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,
(*Chairman.*)

Mr. Felton,
Mr. Stevenson,
Mr. Clarke.
Mr. Sanborn,
Mr. Masson,—6.

Hon. Mr. Macdonald and Mr. Brown were present.

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After the adjournment of the Committe 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 alterationsand 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. 337. 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 return of punishments inflicted on 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 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 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. 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. 338. 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. 339. 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. 340. 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. 341. 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. 342. 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. 343. 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. 344. 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. 345. 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. 346. 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. 347. 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. 348. 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. 349. 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. 350. 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. 351. 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,

Thursday, April 24th, 1856.

Committee met.

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,
(*Chairman.*)

Mr. Masson,
Mr. Stevenson,
Mr. Sanborn,
Mr. Clarke,—5.

Honorable Mr. Macdonald and Mr. Brown were present.

MINUTES of yesterday read and approved.

Mr. *Hopkirk's* cross-examination resumed.

Ques. 352. 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. 353. 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. 354. 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. 355. Was it on the day you gave the evidence recorded on page 919, that the whole of Dr. Sampsons'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. 356. 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. 357. 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. 358. 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. 359. 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. 360. 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. 361. 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. 362. 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. 363. 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. 364. 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. 365. 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. 366. 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. 367. 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. 368. 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 misstatement of Mr. Brown's, 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. 369. 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. 370. 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 misstatements 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. 371. Are you not now satisfied that you were entirely wrong in saying 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 misstatement of Mr. Brown in regard to it occurred?—Ans. No, I am still of the same opinion.

Ques. 372. Is it not clear that if the alleged misstatement 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 3rd January, 1849?—Ans. I do not see that it is clear at all.

Ques. 373. Did the Commissioners write truly or untruly to the Government when they wrote officially on 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"—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. 374. 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. 375. 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. 376. 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 witnesses 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. 377. 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.

Friday, April 25th, 1856.

Committee met—

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,
(*Chairman.*)

Mr. Masson, Mr. Felton,—4.
Mr. Sanborn,

Honourable Mr. Macdonald and Mr. Brown were present.

MINUTES of yesterday read and approved.

Mr. *Hopkirk's* cross-examination was resumed.

Ques. 378. 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 Commissson 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. 379. 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. 380. 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 Commisssioners, and almost every thing 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 can get an inquiry," or words to that effect.

Ques. 381. 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. 382. 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. 383. 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. 384. 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. 385. 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. 386. Are you quite sure that Cooper and Bannister were immediately restored to the gate by Mr. Brown?---Ans. I have reason to believe so.

Ques. 387. 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. 388. 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.

Monday, 28th April, 1856.

Committee met—

MEMBERS 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.

Tuesday, 29th April, 1856.

Committee met—

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,
(*Chairman.*)

Mr. Stevenson,
Mr. Felton,
Mr. Sanborn,
Mr. Clarke,—5.

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* 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.

Wednesday, 30th April, 1856.

Committee met—

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,
(*Chairman.*)

Mr. Felton,
Mr. Stevenson,
Mr. Sanborn,
Mr. Clarke,—5.

The Hon. Mr. Macdonald and Mr. Brown were present.

MINUTES of yesterday read and approved.

Mr. *Hopkirk* re-examined by Mr. Macdonald.

Ques. 390. In answer to Mr. Brown's question 312, you state that you have no personal knowledge that in the evidence of any witneses 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. 391. 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. 392. 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 inconsistant with truth; I frequently made explanations which Mr. Smith some times 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. 393. 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. 394. 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 was at the time 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. 395. 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 Willim Martin, A. B. DeBlois, Henry Smith, (convict,) and Hugh Manuel.

Grant Powell, Esquire, again called.

Ques. 396. [*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. 397. Among these papers, is there a letter dated 7th October, 1848, signed George Brown, Secretary?—Ans. There is.

Ques. 398. In whose hand-writing is that letter?—Ans. It is Mr. Brown's. I also produce papers 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 Lilias and William Humbert, to be in his hand-writing.

Mr. *Powell* cross-examined by Mr. Brown.

Ques. 399. 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. 400. 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. Cazeau, Rev. B. O'Reilly, Rev. L. A. Montairay, Rev. H. Boutier, Rev. P. Pouliot, Rev. N. Beairbien, Rev. E. Payment, Rev. S. Matti, Rev. L. Proulx, Rev. Z. Chareot, Rev. P. L. Laharge and Rev. L. Roy?—Ans. There is.

Ques. 401. Please refer again to the papers, and say if the Provincial Secretary, in consequence of the said application, did not, by letter of 25th September, 1848, 'apply to the Peniteniary Commissioners to report, whether DeBlois' conduct "has "been such during his detention therein, as to render him a fit subject for the exer- "cise of the Royal clemency?

Mr. *Macdonald* objected to this question.

Objection sustained unanimously.

Ques. 402 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.

Friday, 2nd May, 1856.

Committee met,—

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,
(*Chairman.*)

Mr. Clarke,
Mr. Stevenson,
Mr. Sanborn,
Mr. 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. 403. [*By Mr. Macdonald*]—Were you in Toronto in 1850?—Ans. I was in Toronto on the 5th August, 1850.

Ques. 404. Did you attend the Legislative Assembly?—Ans. I did on that day.

Ques. 405. 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. 406. 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:	*Nay:*
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. 407. 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. 408. Was Mr. Brown present when those remarks were made in 1850?—Ans. He was.

Ques. 409. 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 Councillors, 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. 410. 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. 411. What was the result of Mr. Macdonald's motion?—Ans. It was lost.

Ques. 412. 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 Honorable Mr. *Macdonald* stated he had completed his evidence.

The Committee adjourned until 10 o'clock, A. M., on Monday next.

Monday, 5th May, 1856.

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,
(*Chairman.*)

Mr. Masson,
Mr. Stevenson,
Mr. Sanborn,
Mr. Felton,—5.

The Hon. Mr. Macdonald and Mr. Brown were present.

MINUTES of Friday read and approved.

William Bristow, Esquire, of Montreal, called in and examined on behalf of Mr. Brown.

Ques. 413. 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. 414. 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 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. 415. 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. 416. 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. 417. 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. 418. 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. 419. Have you any knowledge that Mr. Brown "suborned convicts to "commit perjury"?---Ans. I have not.

Ques. 420. 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. 421. 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. 422. Witness's attention is called to two letters, of August and October, 1848, in reference to convicts Duncan and DeBlois, 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 Commission- "ers, 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 Commis- "sioners 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. 423. 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. 424. 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:	*Nays:*
Mr. Masson,	Mr. Felton,
Mr. Stevenson,	The Chairman.—2.
Mr. Sanborn.—3.	

Ans. It did.

Ques. 425. What was the nature of your commission. Was it to try any particular officer or officers, or was it to enquire into the conduct of the Penitentiary in all its departments, and suggest ameliorations?

Question objected to by the Chairman.

Objection sustained unanimously.

Ques. 426. Did the Commissioners carefully consider the course they should take in pursuing their inquiries, and is the following extract from their printed report (p. p. 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 enquiries, 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 over-balanced 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. 427. 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. 428. 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, thereof, 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. 429. Was the course of procedure thus adopted and approved, strictly followed throughout, by the Commissioners?—Ans. It was.

Ques. 430. 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. DeBlaquiére, James Nickalls, 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 Sadlier, late an Inspector, Hon. John Macaulay, first President Board of Inspectors, His Lordship the Roman Catholic Bishop of Kingston, and Rev. Angus McDonnell, Vicar General.

Ques. 431. 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. 432. 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. 433. 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. 434. 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. 435. 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 of that effect was made to Mr. Smith.

Ques. 436. 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. 437. 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. 438. 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, Bannnister, Waldron, and Martin, Guards; Messrs. Keely, McGarvey, McCarty, and Gleeson, late Keepers; Mr. Fitzgerald, late Guard; J. H. Freeland, discharged convict, and Cameron, Chagnon, Dyas, Smith, DeBlois, and McCormick, convicts.

Ques. 439. 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, Herns, Leahy, Travis, Christmas and Lemmon?—Ans. Yes.

Ques. 440. 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. 441. 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. 442. 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. 443. 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. 444. 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. 445. 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. Hall, Mark Hermeston, Thomas Kirkpatrick, F. Little, Phebe Martin, Hugh Manual, Henry Montgomery, Grace Marks, Mary Matthews, James Mills, John Matthews, P. McDonegle, Richard McNair, James McMahon, 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. 446. 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. 447. 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. 448. How many convict witnesses did the Warden call, in his defence?—Ans. I believe 16.

Ques. 449. 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 posi- "tion 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. 450. 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. 451. 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. 452. 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. 453. 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. 454. 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. 455. 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 innacuracy, 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. 456. 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. 457. 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. 458. 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 snggestion 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. 459. 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 460. 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. 461. 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. 462. 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. 463. Did the Secretary then read aloud these words, and was the deposition in every case then signed by the witness?—Ans. It was.

Ques 464. 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. 465. Was there any discourtesy shown to any witness, by any of the Commissioners, was any witness brow-beaten or insulted?—Ans. No.

Ques. 466. 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. 467. 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. 468. 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. 469. 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. 470. 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. 471. 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. 472. Witness is shown 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. 473. Witness is shown 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 instrucions given him?—Ans. It is.

Ques. 474. Were some portions of that draft report prepared by you, and other portions by Mr. Thomas?—Ans. Yes.

Ques. 475. 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. 476. 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. 477. 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. 478. 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. 479. 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 wont 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 respectively submitted," was made when Mr. Thomas left or not; the other I am certain was.

Ques. 480. 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.

Tuesday, 6*th May*, 1856.

Committee met—

MEMBERS PRESENT:

Mr. Wilson and Mr. Masson,—2.

The Committee adjourned until 10 o'clock, A. M., to-morrow from want of a quorum.

Wednesday, 7th May, 1856.

Committee met,

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,
(*Chairman.*)
Mr. Wilson, Mr. Sanborn,—4.
Mr. Masson.

The Hon. Mr. Macdonald and Mr. Brown were present.

MR. *Bristow's* examination resumed.

Ques. 481. 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. 482. 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. 483. Was the collation of the evidence in the Report, justly and accurately made? Ans. It was, and with great care.

Ques. 484. 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. 485. 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. 486. 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. 487. Did the Commissioners unanimously report that Mr. Smith had "grossly neglected his duties as Warden?"—Ans. They did.

Ques. 488. Did the Commissioners unanimously report that the sharpening of stone-cutters 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. 489. 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 1s., 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. 490. 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. 491. 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 whis- " pered to their neighbor, or lifted their eyes to the face of a passer-by, or "laughed at some passing occurrence"?—Ans. They did.

Ques. 492. 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 Aleix Lafleur, a child of eleven years, when he entered the prison, was stripped and flogged forty-four times in three years; 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 months;" that Antoine Beauché, a child of 8 years, "received the lash 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. 493. 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. 494. 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 "calculated to be injurious to the moral tone of a Penitentiary. The Warden's "conduct, in all these matters, was perfectly well known to most of the forty officers "of the establishment, and to many of the convicts; and though self interest made "the former close their eyes to what was passing before them, the effect on their "principles, must have been seriously injurious to the Institution?"—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. 495. 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. 496. 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. 497. 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. 498. 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. 499. 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. 500. 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. 501. 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. 502. 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:	*Nay:*
Mr. Masson,	Mr. Sanborn,—1.
Mr. Stevenson,	
Mr. Wilson,	
The Chairman,---4.	

Ques. 503. 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. 504. 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. 505. Do you recollect why the Commissioners omitted to give Mrs. Chase's opinion, that Reveille was not insane, between 11th July, 1846 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. 506. Had the Surgeon of the Penitentiary, officially reported, that Reville laboured "under that species of mental derangement which may be termed "moral insanity"?—Ans. He did so report.

Ques. 507. Please refer to the report of the Commissioners page 20[illegible], 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 predisposi- "tion 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. 508. 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. 509. 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. 510. 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. 511. 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. 512. 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. 513. 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. 514. 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 par- "ticular 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 deduc-"tion, 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.

Thursday, 8th May, 1856.

Committee met,—

MEMBERS PRESENT:

Mr. Wilson, Mr. Stevenson,
Mr. Sanborn, Mr. Masson.—4.

The Hon. Mr. Macdonald, and Mr. Brown were present.

MR. *Bristow's* examination resumed.

Ques. 515. 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. 516. 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. 517. 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 character. 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. 518. 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. 519 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. 520. 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. 521. 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 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."—Ans. It is.

Ques. 522. 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. 523. 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. 524. 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. 525. According to Mr. Smith's declaration, Mr. Horsey's testimony would have run thus: "The ordinary run of stone cutting work, done in the Peni- "tentiary, 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 par- "ticular; 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. 526. 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. 527. 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. 528. 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. 529. 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. 530. 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. 531. In whose hand-writing was the punishment Ledger kept?—Ans. In the Warden's.

Ques. 532. 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. 533. 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. 534. 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. 535. 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. 536. 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. 537. 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 "witnesssed them (the acts of violence)?"---Ans. He did.

Ques 538. 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 re-"corded!"---Ans He did.

Ques. 539. 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. 540. 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. 541. 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. 542. 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. 543. Were not a large number of acts of violence, clearly shewn on the Punishment Books, suppressed in the said return?---Ans. There were.

Ques. 544. 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. 545. 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. 546. 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. 547. 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. 548. 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. 549. 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 January, 1848?---Ans. I have done so, and I find it there so recorded.

Ques. 550. 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. 551. 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. 552. 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. 553. 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. 554. 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. 555. 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 cor- "rectly 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. 556. Please refer to the copy of the evidence which you took down for your own use, and say if the passsage 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 pro- "cured, 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. 557. 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. 558. Had the words "acts of violence" as interlined, any reference to to Dr. Sampson's letter?—Ans. They have not.

Ques. 559. 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. 560. Did the Minutes of the Board of Inspectors, contain any reference to "acts of violence?"---Ans. No, it did not.

Ques. 561. 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.

Friday, May 9th, 1856.

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,
(*Chairman.*)

Mr. Stevenson,
Mr. Wilson,
Mr. Clarke.—4.

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. 562. Mr. Macdonald, having brought Mr. Warden Smith before this Committee to prove, that the words "but if she had been a quiet woman the pun- "ishment 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 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. 563. 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 Henesy 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. 564. 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 circum-"stances 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. 565. Witness is shown 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. 566. 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. 567. 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. 568. 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. 569. Are you aware that convict Henesy 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 DeBlois.

Ques. 570. 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. 571. 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. 572. 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. 573. 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. 574. Mr. Macdonald having made the length of Mr. Hopkirk's cross-examination by the Commissioners, subject of inquiry by this Committee, in sup-

port 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. 575. Was Mr. Hopkirk the most active Inspector of the Penitentiary during the period when the most gross irregularities in the administration of sit affairs were permitted?—Ans. He was.

Ques. 576. 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 trafficing in various commodities, while he was an Inspector?—Ans. They were.

Ques. 577. 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. 578. Witness is shewn the Annual Report of the Penitentiary Inspect tors 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. 579. Was there a general expectation that a Commission of inquiry 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. 580. 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. 581. 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"?—Yes.

Ques. 582. 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 583. 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. 584. 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. 585. 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. 586. 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 any thing 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. 587. 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, prejudical to said Smith; that he was called before the Inspectors immediately after the Government had resolved to issue a Commission of inquiry; 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. 588. 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. 589. 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. 590. 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. 591. 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. 592. 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 immediately 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' newspaper 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 members of "this Commission. These statements are of so extraordinary a character that the "Commissioners feel it due to themselves to repel them at once, without waiting "the publication 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 wit-"ness's examination his deposition was read aloud, slowly and distinctly; cor-"rections 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 invariably wrote the following words at the end of the Deposition: "'The foregoing evidence was read aloud, the Warden Smith declared the evi-"'dence 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 pub-"lished 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 examina-
" ' tion 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 Com-
" missioner, 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 War-
" ' den 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 pocke ; 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 Sur-
" geon, 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 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 pos-
" session, 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 evidence 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 whatever as to the fire-wood, when first before the Com-
" missioners, he was called however by the Warden Smith to prove, that when
" before the Commission he had stated that Mr. Hopkirk 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 Commis- "sioners 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 Commis- "sioners 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 any "thing 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 pro- "ceedings 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. 593. 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. 594. 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 595. 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. 596. 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. 597. 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. 598. 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 Judg'es 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. 598. 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. 599. In answer to question 303, 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 conseqnence of giving their evidence" Mr. Hopkirk cited the case of Hugh Manual, and in answer to question 379, he stated that he had reason to believe "that Manual'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. 600. 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. 601. 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. 602. 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. 603. When the Inspectors ordered the dismissal of Manual, 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 Manual did not arise from any circumstances connected with McCarthy's trial.

Ques. 604. Please look at the official papers, and say if there is among them a letter of Mr. Hopkirk to the Provincial Secretary, complaining of Manual's dismissal, and enclosing affidavit on the subject by Manual; 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 [illegible]

"enquiry into the cause of the dismissal of Keeper Hugh Manual, from the Pro-
"vincial Penitentiary, and copy of an affidavit by said Manual, 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 Manual's dismissal: 'The Board took into
"'consideration the suitableness of Keeper Manual 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
"'Manual that his services would be no longer required.'

"Hon. James Lesslie,
"Provincial Secretary.

"The Inspectors took active steps to procure a competent person as Manual's
"successor, and at the Warden's request, no notice was to be given to Manual
"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 Manual's gang was
"very small, and might be distributed among the other mason-keepers, without ex-
"ceeding the statutory strength of the several gangs, I agreed with the Warden,
"that no successor to Manual should be appointed, at any rate, until the Board of
"Inspectors considered the matter. There was thus no necessity for delaying
"Manual'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 Dis-
"trict Assizes, which were then proceeding, visited the Penitentiary while I was
"there, and hearing the Warden and myself name Manual, he afterwards said
"casually that Manual 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 in-
"fluenced by the fact of his being a witness, and asked the opinion of the Crown
"Officer, whether Manual'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 Manual 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 Manual before the trial, and
"would have himself dismissed him on Monday morning, the 24th of September,
"but Manual had gone into town to attend the Court. The Warden, however, in-
"formed me of the fact, that he had missed seeing Manual.

"Shortly afterwards, as I was passing out of the Court-room, I saw him stand-
"ing 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 confi-
"dence 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 Manual's affidavit further than this, though immaterial to
"the matter, are entirely imaginary.

"In conclusion, I have only to state that Manual's dismissal had not the re-
"motest 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 Manual 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 Manual, 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. 605. Are the contents of Mr. Brown's letter true, so far as your knowledge extends?—Ans. Yes.

Ques. 606. 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. 607. 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. 608. 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. 609. Mr. Hopkirk has further stated "the men Cooper and Bannister "were immediately restored by Mr. Brown:" Was this statment true?—Ans. It could not be true.

Ques. 610. 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. 611. 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. 612. Was not McCarthy tried in 1849; did not Mr. Brown give evidence on that occasion, and was not McCarthy acquitted?—Ans. Yes.

Ques. 613. Mr. Hopkirk has stated in answer to question 392, that while he was being examined he "frequently made explanations which Mr. Smith some-"times 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. 614. 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. 615. 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. 616. 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. 617. 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. 618. 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. 619. Mr. Smith, in reply to question 251, quoted a passage from the evidence of Hugh Manual, 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 Manual 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.

Saturday, 10th May, 1856.

Committee met,—

MEMBERS PRESENT:

Mr. Felton,
Mr. Wilson,
Mr. Stevenson,
Mr. Sanborn.—4.

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.

Monday, 12th May, 1856.

Committee met,—

MEMBERS PRESENT:

JAMES MOIR FERRES, ESQUIRE,
(*Chairman.*)

Mr. Masson,
Mr. Wilson,
Mr. Sanborn,
Mr. Clarke,
Mr. Felton.—6.

The Hon. Mr. Macdonald and Mr. Brown were present.

MR. *Bristow* cross-examined by Mr. Macdonald.

Ques. 620. 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. 621. 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. 622. 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. 623. 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. 624. 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. 625. 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. 626. 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. 627. 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. 628. 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. 629. 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. 6 0. 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. 631. 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. 632. 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 633. 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 reproved 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. 634. 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. 635. 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. 636. 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. 637. 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. 638 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 639. 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 show 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 shown 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. 640. 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 re-instatement in the offices of which they had been unjustly deprived are there also given

Ques. 641. 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. 642. 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. 643. 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. 644. Were not T. Cooter, T. Smith, W. Smith, H. Manual, W. Martin, A. Ballantyne, H. Grass, F. Little, T. Sexton, T. Somerville, James McMahon, 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. 645. Did not Hugh Manual state before you in evidence, on the 3d Jan., 1849: "Witness expects nothing else than that he would be dismissed from the Peni- "tentiary for giving evidence in favor of the Warden?"—He did.

Ques. 646. Did not Hugh Manual 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 Manual 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. 647. 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.—648. Could you know whether Mr. Smith had exhausted his case or not."—Ans. I certainly could not know.

Ques. 649. Will you look at the draft Report, and say who principally prepared it?—Ans. Mr. Brown did.

Ques. 650. 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's."

Ques. 651. In whose handwriting 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. 652. 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. 653. 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. 654. 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 im-

partiality of the statement of facts?—Ans. I have stated the facts correctly in my evidence; the reasons on which the Govetnment acted, it is for them to give. I do not feel myself responsible or bound to account for their acts.

Ques. 655. 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. 656. In your answer to question 508, you state "Mrs. Chase's testimony "as given before the Commissioners was full of the most palpable of contradic- "tions, 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. 657. 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. 658. 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. 659. Were those tables, or copies of them transmitted to the Government by the Commissioners?—Ans. I am not aware that they were.

Ques. 660. 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. 661. 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. 662. 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. Hop- "kirk and his brother Inspectors prejudicial to said Smith; and that he was dis- "missed 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. Hopkirk?—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 investigation on the complaint of Dr. Sampson against Frank "Smith; previous to this affair Mrs. Smith, the Warden's wife, had frequently "told witness that the Warden was determined to give witness the first Keeper's "situation which fell vacant. The circumstances attending witness's dismissal "were as follows:—About four or five days after Frank Smith's trial, Warden "came to witness and informed him that a complaint had been laid against him "(witness) that he had left the outside wicket unlocked, and that the matter

" would be investigated on the Monday evening following; the investigation did " take place before Messrs. Hopkirk, Corbett, Baker, and Gildersleeve, Inspec- " tors, 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 thas it was opened afterwards, " and left so by some one; there was an inner gate which prevented persons " getting into the Prison although they had passed the wicket. The Inspectors " decided that witness was guilty, but that in consideration of his previous good " character, as testified to by the Warden, he was forgiven for that time. About " four or five days after this decision, witness was again brought before the " Inspectors, on 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 laying in the Tower for months " before the charge was brought. Before the Inspectors had decided on the case, " witness became so indignant at the treatment he had received, that he lost his " temper, and told the Inspectors that he had no confidence in any decision they " might give; that Mr. Hopkirk used the Penitentiary as a convenience; that " he often got presents from the Warden; that articles were sent him from the " Penitentiary stores, and a Guard kept almost for his and the Warden's personal " purposes. Witness likewise said that he knew the rest of the Inspectors to be " the mere tools of the Warden. The Inspectors finally found witness innocent of " the charge made against him by the Warden, as to the stove-pipe stone, but " dismissed him for gross insolence to the Inspectors."

Ques. 663. 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. 564. Was not his evidence condemnatory of the Warden?—Ans. His evidence was so.

Ques 665. 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. 666. 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 667. 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. 668. 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.

Tuesday, 13*th*, *May* 1856.

Committee met,—

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,
(*Chairman.*)

Mr. Stevenson,
Mr. Masson,
Mr. Wilson.
Mr. Sanborn,
Mr. Felton.

The Hon. Mr. Macdonald and Mr. Brown were present.

CROSS-EXAMINATION of Mr. Bristow resumed:

Ques. 669. 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 shown by Mr. Brown to furnish Mr. Hopkirk with these statements?—Ans. I am not aware of any.

Ques. 670. 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 trans- "actions with which your name is connected, there will be no occasion to "trouble you. If, on the contrary, the Warden does not explain them satisfac- "torily, 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. 671. 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. 672. 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 oppor- "tunity of explaining or disproving the statements made to his prejudice to the "Commissioners, at the earliest moment, consistent with their other arrange- "ments;" 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 Commis- "sioners, I am instructed to refer you in reply, to our previous 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 application 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 communi-

" cation, of this day's date, addressed by you to him, respecting your request for " an immediate investigation into certain statements made before the Commis- " sioners. I am instructed to say, in reply that you will be afforded an opportu- " nity of explaining or disproving any statements prejudicial to you, at the " earliest moment consistent with the other arrangements of the Commissioners."—Ans. They are true extracts.

Ques. 673. 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 repeated 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 prepared to receive any expla- " nations thereupon which you may desire to offer. You will distinctly under- " stand that this step is taken at this moment entirely at your desire, and that " the Commissioners had otherwise intended to have inquired into the truth or " falsity of these statements before calling on you for an explanation."

Ques. 674. 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 conve- " nience ;" 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 Com- " mission, 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 occupa- " tions 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 conve- " nient 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 morning 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 understanding, however, that the Commissioners have come to no determi- "nation upon the expediency or inexpediency of hearing any witnesses at this "time.

"I am, Sir,
"Your obedient servant,
"ADAM FERGUSSON,
"Chairman.

"To James Hopkirk, Esq.,
"&c., &c., &c."

Ques. 675. 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 Commis- "sioners 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. 676. 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. 677. 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. 678. 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. 679. 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. 680. 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. 681. 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.

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."

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"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.

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"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.

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"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.

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"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. 682. 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 reporting 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 here his explana-"tions;" 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. 683. 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. 684. 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. 685. 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.

Wednesday, May 14th, 1856.

Committee met,—

MEMBERS PRESENT:

JAMES MOIR, FERRES, ESQUIRE,
(*Chairman.*)

Mr. Sanborn,
Mr. Wilson,
Mr. Masson,
Mr. Clarke,
Mr. Stevenson.—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. 686. 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. 687. 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. 688. 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. 689. Have you any knowledge that Mr. Brown "suborned convicts "to commit perjury"—Ans. Certainly not.

Ques. 690. 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. 691. 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. 692. Was the course thus adopted, strictly followed by the Commissioners?—Ans. I have reason to believe that this course was strictly followed.

Ques. 693. 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. 694. 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. 695. 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. 696. 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. 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. 697. 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. 698. 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. 699. Was this practice strictly followed throughout the investigation? —Ans. I think it was.

Ques. 700. 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. 701. 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. 702. 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. 703. 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. 704. 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. 705. 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. 706. 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. 707. 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. 708. 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. 709. 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. 710. Did any witness refuse to sign his deposition?—Ans. I recollect no instance of such refusal.

Ques. 711. 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. 712. 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 713. 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. 714. 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. 715. 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. 716. 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 Hennessy 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. 717. 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. 718. 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. 719. Mr. Smith, in reply to question 251 quoted a passage from the evidence of Hugh Manual, 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 Manual, 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. 720.—[*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. 721. 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.

Ques. 722. (*By Mr. Brown*)—Are you Clerk Assistant of the House of Assembly?—Ans. I am.

Ques. 723. 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.

Ans. 724. 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. 752. 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 Can-*
"*ada, Nova Scotia, New Brunswick, and the Island of Prince Edward, &c.,*
"*&c., &c., &c.*

"THE PETITION OF THE UNDERSIGNED.

"HUMBLY SHEWETH:

"That at the Criminal Term held at the City of Montreal, in the year eigh-
"teen 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 charac-
"ter; 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 in-
"toxication, he committed, and that Your Petitioners have been led to understand
"that the Commissioners appointed to examine into the conduct of the Peniten-
"tiary 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 commis-
"mission of the act which has led to the incarceration of the said Hugh Came-
"ron, he bore a most excellent 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. 726. 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 discharge of Hugh Cameron was given by the Honorable Mr. Secretary Morin to the Warden of the Provincial Penitentiary on the 24th February, 1852.

Ques. 727. 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. 728 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. 729. 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 pénitenciaire provincial, sur convic- " tion du crime de faux.

" Que la durée de l'incarcération de l'époux surnommé de votre exposante, " au dit pênitenciaire, est de quatorze ans, dont trois sont expirés.

" Que les sentiments de repentir et de regret manifestés 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 besoins de ses petits en- " fants, 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 " lui, 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, 19me 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. MONTINING, 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. ROY, Ptre."

Ans. They are.

Ques. 730. 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 Henesey, 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. 731. Did the Governor General 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. 732. Are the contents of the document so sent down by the Governor General as *the* application on which Henesey was pardoned as follows :—

"To His Excellency The Right Honorable James, Earl of Elgin and Kincar-
"dine, Governor General of British North America, &c., &c., &c.

"The Petition of the undersigned children of James Henesey, now a prisoner
"in the Provincial Penitentiary at Kingston,

"HUMBLY SHEWETH:

"That James Henesey 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, 1st February, 1849.

"(Signed,) "JAMES ROYAL HENESEY,
" "TIMOTHY HENESEY,
" "SARAH HENESEY,
" "HANAH HENESEY,
" "MARY ANNE HENESEY,
" "ELIZABETH HENESEY,
" "CATHERINE HENESEY,
" "MARY JANE HENESEY,
" "OLINE HENESEY,

"We do certify that we are acquainted with the family of James Henesey
"named in the within petition, and recommend the prayer of the within petition
"to the favorable consideration 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.

Thursday, 15*th May*, 1856.

Committee met,—

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,
(*Chairman*,)

Mr. Stevenson, Mr. Felton,—4.
Mr. Wilson,

The Hon. Mr. Macdonald and Mr. Brown were present.

THE Hon. *Adam Fergusson* called in and examined by Mr. Brown.

Ques. 733. 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. 734. 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. 735. 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?—I was, and to the best of recollection my period of absence was that stated.

Ques. 736. 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 alterations of any deposition, either was made, or could have been made, without my knowledge, and that of the other Commissioners.

Ques. 737. 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. 738. Have you any knowledge that Mr. Brown "suborned convicts "to commit perjury?"—Ans. I have none.

Ques. 739. 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. 740. 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. 741. Was the course thus adopted, strictly followed by the Commissioners?—Ans. It was.

Ques. 742. 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. 743. 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. 744. 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. 745. 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 discre-

tion?—Ans. They were regularly considered and approved by all the Commissioners.

Ques. 746. 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. 747. 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. 748. Was this practice strictly followed throughout the investigation? —Ans. Certainly it was.

Ques. 749. 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. 750. Did Mr. Smith or his clerk, keep a record of the whole evidencet 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 canno, recollect.

Ques. 751. 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. 752. Was there ever any unwillingness shown by Mr. Brown to correct the evidence of any witness, or any disposition shown by him, to give the testimony other than its true colouring?—Ans. Never.

Ques. 753. 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. 754. 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. 755. 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. 756. Did the Secretary then read aloud these words, and was the deposition in every case, then signed by the witness?—Ans. Yes.

Ques. 757. 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 758. 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. 759. Did any witness refuse to sign his deposition?—Ans. None.

Ques. 760. 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. 761. 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. 762. 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. 763. 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.

"Before proceeding to the more immediate subjects of our inquiry, we deem it right, as the evidence of Mr. Hopkirk has been, and will be hereafter, referred to very fully, to show how far he is personally concerned in the matters at issue; and in doing so, we shall quote his own evidence solely. James Hopkirk, Esq. —(*By Mr. Smith*)—"Recollects of an overcharge by Keeper 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, gooseberries, and currants—all cuttings; witness had given the Warden two cart loads of shrubs in 1844, which were planted in his garden; never got any fruit trees.

"Witness got, last spring, under two dozen of boxes, containing green-house plants from the Warden's house; they were a present from Mr. and Mrs. Smith; Mrs. Smith told witness afterwards that she (Mrs. S.) had got some of these boxes and plants from Mrs. Pollard; witness purchased in December, 1847, from Mr. Baker, several dozens of green-house plants, in pots, which Mrs. Smith agreed to keep for witness in her house during the winter; they were returned in

the spring, and the boxes above-named were sent to witness with them at the same time.

"Witness had a cow killed in the Penitentiary early in 1848; has not got his account yet sent in for 1848.

"Witness hired a cart from the Penitentiary this year; has not paid for it yet, because it has not been returned yet; and the length of time to be charged is not yet ascertained.

"Witness never got any garden tools, the property of the Penitentiary; had once a garden roller, the property of the Penitentiary; never had aay 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 tosettle 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 Peniteutiary, on his indebtedness from the first, up toMarch, 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 pressed the whole time, Thomas Smith did bring one load of baggage or furniture, either from the wardens house or wharf to witnesse'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 Peitentiary; 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 conriderable time ago, cannot say how long; cannot say if he is to pay hire for it; would think it sharp if he had to do so; got stove-pipe from the Penitentiary; never got any that was not charged to his account; never got any stove-pipe from the Warden.

"Has a garden roller, the property of the Penitentiary, in his possession now; has had it some months; cannot tell whether he is to pay hire for it or not; would think it sharp if he had to do so.

"Had no vegetables from the Penitentiary or Warden Smith in 1846; had vegetables occasionally from the Warden in 1847, and very seldom in 1848. Cannot tell how much the original cost of the Penitentiary gardens was, as he was not an Inspector at the time; does not know the annual expense to the public for maintaining the gardens; believes the Warden is not charged for the labour put on his garden; it is kept by convicts; understood the Board sanctioned his so employing convicts; alludes to the order passed by the late Board which has been in force ever since.

"Expects to be charged for the time employed by the officers in killing the cow, the property of witness, which was sent into the Penitentiary to be killed; knew nothing personally about the transaction.

"Has a cart, the property of the Penitentiary, now in his possession; has had it several months, since March or April, 1848; sent a note to Warden Smith for the cart; asked him to send any cart not in use; nothing was said to the Warden about paying for the use of the cart, but witness expected to pay for the use of the cart, as of course it will be deteriorated; never spoke to the Warden on the subject of the hire of the cart; it has never been asked back from witness; it was a good second-hand cart; is not aware that another cart has been made in the Penitentiary, in the room of the one in witness's possession; does not know if it is a usual practice for Penitentiaries to hire out carts or other articles, but thinks they might as well have something for idle property; is not aware whether the cart in question has been wanted while witness has had it; presumes that if it had, it would have been sent for; is not aware whether any memorandum of the transaction has been handed to the clerk, to charge witness with it, as it was not witness's business to inquire.

"Never had any garden tools, but the roller, from the Penitentiary; never borrowed, hired, or received any garden tools from the Warden: has sent garden tools into the Penitentiary to be repaired, on several occasions; some of them was repaired by Keeper 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, 1846; witness's account for 1847 was settled by note and cash, on 1st July, 1848; that account was not sent into witness for payment, he applied for it; had to ask for it several times before he got it.

Ques. 764. 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. 765. 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. 766. Was the extracting, collating, and arranging the evidence, quoted in the report, either legally, or in fact, the individual act of Mr. Brown, of were the whole Commissioners, equally with him, responsible for it?—Ans. All equally responsible.

Ques. 767. 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. 768. It having been alleged by Mr. Smith, that he was condemned by the Commisioners 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 wit- "nesses, and even then, to so small an extent, that had it been expunged alto- "gether, 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. 769. 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. 770. 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 Henesey 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. 771. 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. 772. 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. 773. 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. 774. Mr. Smith, in reply to question 251, quoted a passage from the evidence of Hugh Manual, 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 Manual and a good many others who "would be in the Warden's favour, would be dismissed; Skynner said the Com- "missioners 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. 775. You state in your answer to question 736, that you had "particu- "larly good means of judging how Mr. Brown discharged his duties as Commis- "missioner 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. 776. Can you speak of the manner in which the examination was conducted in your absence?—Ans. Of course not.

Ques. 777. 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. 778. 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. 779. 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. 780. 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 at- "tempted 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. 781. You have stated that the course which the Commissioners 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. 782. You have stated that you held preliminary conversations with a number of gentlemen residing in Kingston in regard to alleged abuses of the In

stitution; 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. 783. 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. 784. 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. 785. 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. 786. 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 738, 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. 787. 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. 788. 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. 789. 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. 790. 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. 791. 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. 792. Did you make extracts yourself and with your own hand from the Book of Evidence?—Ans. No.

Ques. 793. You say in answer to question 767, that the conclusions of the Report were "all strictly in accordance with the depositions made." Had you carefully yourself compared the original depositions made, or only the extracts used at drawing up the Report?—Ans. I did not myself individually, but the Commissioners were perfectly satisfied.

Ques. 794. You have stated in answer to Mr. Brown's question, 762, "that "convict's 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. 795. 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. 796. With reference to your answer to Mr. Brown's question, 774, were you present when Manual 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. 797. Do you remember whether you were in Kingston or not when Manual 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. 798. 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. 799. 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 ihs mode of examining his witnesses?—Ans. Yes, certainly he was.

Ques. 800. 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.

Friday, 16th *May*, 1856.

Committee met,—

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,
(*Chairman.*)

Mr. Stevenson,
Mr. Masson,
Mr. Sanborn,—4.

The Hon. Mr. Macdonald and Mr. Brown were present.

Robert Bell, Esquire, a Member of the House, examined by Mr. Brown:

Ques. 800. 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. 801. 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. 802. Did you, on both of these occasions, vote against the motion of Mr. Macdonald?—Ans. Yes, I think I did.

Ques. 803. 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. 804. 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. 805. 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. 806. 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. 807. 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.

Saturday, 17*th May*, 1856.

Committee met,—

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,
(*Chairman.*)

Mr. Felton,
Mr. Masson,
Mr. 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.

Monday, 19*th May*, 1856.

Committee met,—

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,
(*Chairman.*)

Mr. Felton,
Mr. Masson,
Mr. Stevenson,
Mr. 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. 808. 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. 809. 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. 810. 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. 811. 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. 812. 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. 813. 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. 814. 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. 815. 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. 816. 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. 817. 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. 818. 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. 819. 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 Council on that day:

PRINTED REPORT, PAGE 218.

Evidence of Convict McNair, alias *McKeener*.

"Witness, when under punishment, "has had full rations, notwithstanding "very often witness is on the punish- "ment list now, and had only bread and "water at dinner to-day, but he has no "doubt, a full dinner ration is waiting "for him, if the Commissioners will allow "him to go for it, he has no doubt he can "bring it and show 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."

MS. MINUTES OF EVIDENCE, PAGE 528.

Evidence of Convict McNair, alias *McKeener*.

"Witness, when under punishment, "has had full rations, notwithstanding "very often witness is on the punish- "ment list now, and had only bread and "water at dinner to-day, but he has, no "doubt, a full dinner ration is waiting "for him, if the Commissioners will allow "him to go for it, he has no doubt he can "bring it and show 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 confiued to his cell."

"*Mr. Frank Smith never on any oc- "casion knew of witness' getting full rations, "while under punishment.*"

PAGE 532.

"*Wnen on punishment witness gets "more food than the bread and water allow- "ance; convicts fetch it out to witness, odi "food they give him is part of their dnet "rations, none of the officers ever gave witness "any extra food, except Mr. Whatt who wh "so once or twice, was not under punish- "ment those days.*"

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 April 4th 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 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 shown.

Hon. *J. Sandfield Macdonald*, a Member of the House examined.

Ques. 820. [*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. 821. 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. 822. 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. 823. 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. 824. Were your votes in any manner inflenced 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. 825. 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. 826. 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. 827. 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. 828. 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. 839. Did Mr. Brown give evidence at the said trial, and was McCarthy acquitted?—Ans. Yes.

Ques. 830. 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. 832. [*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., to-morrow.

Wednesday, 21st May, 1856.

Committee met,—

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,
(*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.

Friday, 23*rd May*, 1856.

Committee met,—

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,
(*Chairman.*)

Mr. Stevenson,
Mr. Sanborn,
Mr. Wilson,
Mr. Clarke,—5.

Mr. Brown was present.

THE Committee adjourned until 10 o'clock A. M., on Monday next.

Monday, 26*th May*, 1856.

Committee met,—

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,
(*Chairman.*)

Mr. Felton,
Mr. Sanborn,—3.

Mr. Brown was present.

THE Committee adjourned until 10 o'clock A. M., to-morrow, for want of a quorum.

Tuesday, 28*th May*, 1856.

Committee met,—

MENBERS PRESENT:

JAMES MOIR FERRES, Esquire,
(*Chairmau,*)

Mr. Wilson,
Mr. Sanborn,
Mr. Stevenson,
Mr. Felton,—5.

The Hon. Mr. Macdonald and Mr. Brown were present.

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.

Yeas:
Mr. Felton,
Mr. Stevenson,
The Chairman,—3

Nays:
Mr. Sanborn,
Mr. Wilson,—2.

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.

Yeas:	*Nays:*
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:

Yeas:	*Nays:*
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.

Wednesday, 28th May, 1856.

Committee met,—

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,
(*Chairman.*)

Mr. Wilson,	Mr. Stevenson,
Mr. Sanborn,	Mr. 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.

Friday, 30*th May*, 1856.

Committee met,—

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,
(*Chairman.*)

Mr. Wilson
Mr. Stevenson,
Mr. Masson,
Mr. Sanborn,
Mr. Clarke,—6.

The Hon Mr. Macdonald and Mr. Brown were present.

The Committee adjourned until 10 o'clocck A. M., to-morrow.

Saturday, 31*st May*, 1866.

Committee met,—

MEMBERS PRESENT:

JAMES MOIR FERRES, Esquire,
(*Chairman.*)

Mr. Stevenson,
Mr. Wilson,
Mr. Clarke,
Mr. Masson,
Mr. Sanborn,
Mr. Felton,—7.

Hon. Mr. Macdonald and Mr. Brown were present.

MR. BROWN addressed the Committee in support of his defence.

Mr. *Macdonald* afterwards replied, in support of his case; in the course of which, he referred the Committee to the following pages in the original manuscript books of evidence, 108, 109, 116, 152, 169, 178, 192, 208, 252, 253, 410, (Richardson's evidence) 473, (Reveille's testimony) page 867, and to the following testimony respecting De Blois.

W. Martin's evidence, page 387, lines 4, 5, 6:

"De Blois has told witness, that the Commissioners have told him that they "would get him (De Blois) pardoned out; witness would not believe De Blois on his "oath."

Page 488, line 29 to end of evidence.

"De Blois only told witness once, that the Commissioners were to get him pardon-"ed; no one else was present, it was in the afternoon, it was at the place where "he used to bind his books; it was the very day De Blois was before the Commis-"sioners; no one was present but themselves to witness' knowledge, convict "Cameron was not present; convict Henry Smith was not there to his knowledge; "no one could have stood openly in the room without witness knowing of it."

By Mr. Smith.]—"The christian name of witness' child, is Henry Smith; it "was named after the Warden, witness' wife was a servant in the warden's house "for some years; Mrs. Martin said to Warden as he left the house 'This is law "Sir.' Convict Henry Smith cleans his lamps and does other jobs in the little room "at the end of Mr. Horsey's office; if he had been in that room when De Blois "spoke to witness, he could have heard what passed, and witness not seen him."

Henry Smith's evidence, page 427, 6th to 8th line.

"De Blois told witness that the Commissioners were to get him out of the "prison by pardon, on the 15th of this month."

Same page, 33rd line to line 30 of page 428.

By Commissioners]—"When De Blois told witness that the the Commissioners "were to get him pardoned, it was 5 or 6 days after De Blois had been before the "Commissioners; Mr. Martin was present at the time; De Blois spoke in English, "all that De Blois said was, that they (meaning the officers,) had not long to punish "him as he was going out on the 15th of this month; he made no mention of the "Commissioners, it was just after breakfast, it was where De Blois used to work, "witness explains that this latter conversation with De Blois, was the second con-"versation he had with De Blois, as to his pardon.

"On a previous occasion, about a fortnight before the one he has named, De "Blois told witness, that the Commissioners were to get him out on the 15th of this "month; was at his usual work place; no one else was present but themselves; "this was a few days after he had given testimony before the Commissioners; De "Blois said, the Commissioners had told him, that if he would tell all he knew, they "would get him out.

"De Blois often told witness, that he (witness) knew such and such things, and "that he should go and tell them to the Commissioners; witness told him he knew "no such things; the first person witness told this affair to, was the Warden, told "him so this morning for the first time, told Mr. Martin that De Blois has said he "was to get out; told Martin so about a fortnight ago; told the Warden nothing else "this morning about De Blois, or any other person or thing, except that De Blois "was a bad person before he came, did not tell Warden that he had had two con-"versations with De Blois; witness did tell the Warden what De Blois said when "he left the Commission room yesterday."

Page 429, line 23 to line 31.

"About ten days or a fortnight elapsed, between the two conversations witness "held with DeBlois about his pardon. The first conversation was, the same at which "Mr. Martin was not present, the second conversation was the very day DeBlois "was punished, and Martin was present. The first conversation witness had with "DeBlois, when he said the Commissioners were to get him pardoned, was about "eight or ten days, or a fortnight after DeBlois had been before the Commissioners."

De Blois' evidence, page 784, line 33 to foot of page.

"The stamp was made at the commencement of July last, and witness is sure "the Warden never entered the articles at that time. There was also a stamp made "for Ballantyne.

"The foregoing evidence was read aloud, the Warden declared it to be taken "down correctly, the witness did the same, and signed it."

(Signed) A. B. DEBLOIS.

The Committee adjourned until 10 o'clock, a. m. on Tuesday next.

Tuesday, 3rd June, 1856.

Committee met,—

MEMBERS PRESENT:

JAMES MOIR FERRES ESQ.,
(Chairman.)

Mr. Stevenson,
Mr. Sanborn,
Mr. Masson,
Mr. Wilson,
Mr. Felton,
Mr. 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.

Thursday, 5th June, 1856.

Committee met,—

MEMBERS PRESENT.

JAMES MOIR FERRES, ESQ.,
(Chairman.)

Mr. Stevenson,
Mr. Sanborn,
Mr. Clarke,
Mr. Wilson,
Mr. Masson,
Mr. 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 Commissioners 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 testimoy 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 seperately 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 determine 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 *exparte* 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 witnessess.

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:

Yeas:	*Nays:*
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:

Yea:	*Nays:*
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:

Yeas:	*Nays:*
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.

Friday, June 6th, 1856.

Committee met—

MEMBERS PRESENT:

JAMES MOIR FERRES, ESQUIRE,
(*Chairman,*)

Mr. Wilson,	Mr. Clarke,
Mr. Stevenson,	Mr. Sanborn,—6.
Mr. Masson,	

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.