

(No. 1.)



1892.

PARLIAMENT OF TASMANIA.

BANK OF VAN DIEMEN'S LAND, LIMITED :

ROYAL COMMISSION.

Presented to both Houses of Parliament by His Excellency's Command.

ROYAL COMMISSION

APPOINTED TO ENQUIRE INTO THE AFFAIRS OF THE

BANK OF VAN DIEMEN'S LAND, LIMITED.

REPORT

OF

THE COMMISSIONERS,

WITH

MINUTES TAKEN, AND OTHER DOCUMENTS.



Tasmania:

WILLIAM THOMAS STRUTT, GOVERNMENT PRINTER, HOBART.

1892.

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Attorney-General's Office, Hobart, 13th February, 1892.

SIR,

I HAVE the honor to forward to you herewith a Commission appointing yourself, David Barclay, Esq., C. M. Tenison, Esq., and A. Thomson, Esq., to be Commissioners for the purposes therein named ; also appointing you to be President, and Mr. Thomas Cook Just to be the Secretary to the Commission.

I have the honor to be,

Sir,

Your obedient Servant,

B. STAFFORD BIRD,
for Attorney-General, absent.

C. J. BARCLAY, *Esq., Managing Director*
Commercial Bank, Hobart.

(L.S.)

VICTORIA, *by the Grace of GOD of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.*

To Our Trusty and Well-beloved CHARLES JAMES BARCLAY, Esquire, DAVID BARCLAY, Esquire,
CHARLES M'CARTHY TENISON, Esquire, and ALEXANDER THOMSON.

GREETING :

WHEREAS We have thought it expedient to inquire into and investigate the Affairs and Books of the Bank of Van Diemen's Land, Limited : Know ye that We, reposing great trust and confidence in your fidelity, discretion, and integrity, have authorised and appointed, and by these presents do authorise and appoint you, the said CHARLES JAMES BARCLAY, DAVID BARCLAY, CHARLES M'CARTHY TENISON, and ALEXANDER THOMSON, or any three of you, to make such diligent inquiry into the Affairs of the Bank of Van Diemen's Land, Limited, now being wound up under the provisions of the Act of the Parliament of Tasmania 55 Victoria, No. 17, and to carefully investigate all such Books, Documents, and Papers of or belonging to the said Bank as may be necessary to ascertain whether the Reports, Balance-sheets, and Profit and Loss Accounts issued by the Directors of the said Bank to the Shareholders in the month of July, One thousand eight hundred and ninety, and in the months of January and July, One thousand eight hundred and ninety-one, correctly represented the true financial condition of the said Bank of Van Diemen's Land, Limited, on the dates to which such Reports, Balance-sheets, and Profit and Loss Accounts refer respectively : And for the better discovery of the truth in the premises, We do by these presents give and grant unto you, or any three or more of you, full power and authority to call before you all such persons as you shall judge necessary by whom you may obtain information in the premises : And Our further will and pleasure is that you, or any three or more of you, shall reduce into writing under your hands what you shall discover in the premises, and do and shall, on or before the Fifteenth day of March next, certify unto Us in Our Executive Council, in Tasmania, in writing under your hands, respecting your several proceedings by force of these presents, together with what you shall find touching or concerning the premises upon such inquiry as aforesaid : And We further will and command, and by these presents ordain, that this Our Commission shall continue in full force and virtue, and that you our said Commissioners, or any three or more of you, shall and may from time to time proceed in the execution hereof, and of every matter or thing herein contained, although the same be not continued from time to time by adjournment : And we do hereby command all and singular Our loving subjects whomsoever within Our said Colony of Tasmania that they be assistant to you and each of you in the execution of these presents : And we appoint that you the said CHARLES JAMES BARCLAY shall be President of Our Commissioners : And we further direct and appoint that THOMAS COOK JUST, Esquire, shall be Secretary to Our said Commissioners, and we command that he be assistant in the execution of these presents.

In testimony whereof we have caused these Our Letters to be made Patent and the Seal of Our Colony of Tasmania and its Dependencies to be hereunto affixed.

Witness Our trusty and Well-beloved SIR ROBERT GEORGE CROOKSHANK HAMILTON, Knight Commander of the Most Honorable Order of the Bath, Governor and Commander-in-Chief in and over Our said Colony of Tasmania and its Dependencies, at Hobart, in the said Colony, the twelfth day of February, one thousand eight hundred and ninety-two, and in the fifty-fifth year of Our Reign.

R. G. C. HAMILTON.

By His Excellency's Command,

B. STAFFORD BIRD, *for the Attorney-General, absent.*

R E P O R T.

*To His Excellency SIR ROBERT GEORGE CROOKSHANK HAMILTON,
Knight Commander of the Most Honorable Order of the Bath,
Governor and Commander-in-Chief in and over the Colony of Tas-
mania and its Dependencies.*

MAY IT PLEASE YOUR EXCELLENCY.

1. WE, the Commissioners appointed by the Royal Commission under date the 12th day of February, 1892, "to make such diligent enquiry into the affairs of the Bank of Van Diemen's Land, Limited, now being wound up under the provisions of the Act of Parliament of Tasmania, 55 Vict. No. 17, and to carefully investigate all such books, documents, and papers of or belonging to the said Bank as may be necessary to ascertain whether the Reports, Balance-sheets, and Profit and Loss Accounts issued by the Directors of the said Bank to the Shareholders in the month of July, 1890, and in the months of January and July, 1891, correctly represented the true financial condition of the said Bank of Van Diemen's Land, Limited, on the dates to which such Reports, Balance-sheets, and Profit and Loss Accounts refer respectively," have the honor to submit to Your Excellency the following Report.

2. In commencing their duties the Commissioners were met by impediments, arising through an action pending in the Supreme Court of Tasmania, which led to an application to His Honor the Chief Justice for an Injunction to restrain them from proceeding with the enquiry. Subsequently the action was withdrawn, and the Commissioners proceeded with their duties.

3. Your Commissioners have to report that, under instructions from the Honorable the Attorney-General, they confined their enquiry to an investigation of the items "Coin and Bullion, £70,431 12s. 11d.," and "Balances due by other Banks, £124,417 0s. 10d.," in the Balance-sheet of 30th June, 1891, and to the two final paragraphs of the Trustees' Report to the Shareholders, dated 27th January, 1892.

4. The Commissioners have held six meetings, and have examined the late Manager and the late Accountant of the Bank of Van Diemen's Land thereon.

5. The first item appearing in the Balance-sheet is "Coin and Bullion, £70,431 12s. 11d.," regarding which we examined Mr. William George Browne, the late Manager, and Mr. Alfred Thomas Bell, the late Accountant of the Bank, and elicited the fact that on the date of the Balance-sheet (viz., 30th June, 1891) there was not in the Bank's possession in Coin and Bullion the sum represented by these figures. We ascertained that the Manager of the Bank had included in this amount a sum of £5000 for which he had sold his draft on Melbourne to the Union Bank on the following day (1st July); but while so including it, and adding it to his Coin, he did not deduct it from his "Balances due by other Banks," which should have been done had the draft been sold on the 30th June. The effect of the entries as made by the Bank was that the "Coin and Bullion" was augmented by £5000, but the "Balances due by other Banks" not diminished, thereby representing the Bank to have an asset of £5000 which it did not possess.

6. Your Commissioners also find that a sum of £30,000 was included in the item "Balances due by other Banks." There was no such balance in existence. The Bank of Van Diemen's Land had an authority from its London Agents (the London and Westminster Bank) to overdraw its account to the extent of £30,000; but the permission to incur a debt was converted by the Manager of the Bank of Van Diemen's Land, Limited, into an absolute asset, and was made so to appear in the Balance-sheet, thereby swelling the item "Balances due by other Banks" by £30,000. Moreover, the permission to overdraw the account at the London and Westminster Bank by this £30,000 expired on the 30th June.

7. We also find that the entries relating to the aforesaid two sums of £5000 and £30,000 were balanced by additions of like amounts having been made to the figures of the Deposits in the Bank.

8. With reference to the sum of £35,000 borrowed from the Union Bank, as mentioned in the last paragraph of the Report of the Trustees, we are of opinion that the entries in connection therewith are irregular, but it appeared that Mr. Browne, in making them in the manner he did followed the practice of his predecessor in analogous cases.

9. Your Commissioners find that the Balance-sheet of 30th June, 1891, did not represent the true financial condition of the said Bank on that day.

10. The Reports, Balance-sheets, Minutes of Meetings, Report of Evidence, Correspondence and Documents exhibited to the Commissioners will be found attached hereto.

We have the honor to be,
Your Excellency's most obedient Servants,

C. J. BARCLAY.
DAVID BARCLAY.
C. M. TENISON.
ALEX. THOMSON.

Hobart, 19th May, 1892.



MINUTES OF PROCEEDINGS.

SATURDAY, FEBRUARY 13, 1892.

The Commissioners met at 8:30 P.M.

Present.—C. J. Barclay, Esq. (President), Messrs. D. Barclay, C. McC. Tenison, and A. Thomson, with the Secretary.

Resolved, "That the Secretary inform the Liquidators as to the purpose of the Commission, and request them to afford the Commissioners the following facilities :—

- 1st. The use of the Board-room in the V.D.L. Bank premises on each week-day evening from 7:30 o'clock.
- 2nd. Access to all Books and Vouchers of the Bank up to the date of the failure.
- 3rd. The services of Messrs. A. T. Bell and Thomas Lyons (Officers of the Bank) during the sittings of the Commission."

Moved by Mr. Thomson, seconded by Mr. Tenison, That Mr. C. J. Maxwell be appointed Accountant to the Commissioners. (Carried.)

The Meeting adjourned until 7:30 P.M. on Monday, 15th instant.

Confirmed,

C. J. BARCLAY, *President.*
15-2-92.

THOS. C. JUST, *Secretary.*

MONDAY, FEBRUARY 15, 1892.

The Commissioners met at 7:30 P.M.

Present.—All the Commissioners, the Accountant, and Secretary.

The President (Mr. C. J. Barclay) stated that the purpose of the Meeting was to commence the investigation of the Books and Vouchers, which the Liquidators would produce at the V.D. Land banking premises.

The Commissioners then adjourned to the premises of the V.D. Land Bank, where they were received by Mr. George Parker Fitzgerald, one of the Liquidators.

The President informed Mr. Fitzgerald that they attended under the Royal Commission in pursuance of a notice given during the day, and of an arrangement arrived at between Mr. Fitzgerald and himself, to commence an inspection of the Books and Vouchers, &c. of the Bank.

Mr. Fitzgerald requested that the matter should be postponed until the following day, as his Co-Trustee (Mr. William Hart) was then absent from town. He had agreed with Mr. Barclay that the inspection might commence that evening, and the Books and Vouchers had been prepared, but he had within half an hour previously to the visit of the Commissioners been advised by Mr. John Mitchell, as Solicitor for the Trustees, that he would be doing wrong in permitting the investigation to proceed without consulting his Co-Trustee. Messrs. Walker and Wolfhagen had also written him a letter protesting against any proceedings of the Commission whilst the case of *Williams v. Pearce* was before the Supreme Court.

Discussion ensued, the Members of the Commission pointing out to Mr. Fitzgerald their powers under the Commission, and under the Act 52 Vict. No. 26, a copy of which was presented by Mr. C. J. Barclay.

At the request of Mr. Fitzgerald, Mr. Barclay produced the Royal Commission; having perused which, Mr. Fitzgerald apologised for any inconvenience to which the Commissioners had been put through his action, but said he was acting under legal advice obtained since the arrangement for inspection of the Books was made by him, and he could do nothing further until Mr. Hart returned.

The President (Mr. C. J. Barclay) then made a formal demand to be allowed to see the Books and Vouchers of the Bank of Van Diemen's Land.

Mr. Fitzgerald said he would take the risk of refusing to comply with the request, at least until the return of his Co-Trustee, Mr. Hart. He would promise to accept no other advice until Mr. Hart's return, and then he would do his best to obtain for the Commissioners an inspection of the Books.

The Commissioners then retired, returning to the Commercial Bank, where the Meeting was reconstituted.

The Minutes of the preceding Meeting were read and confirmed.

The Secretary reported that, in accordance with Resolution of last Meeting, he had written the Liquidators requesting them to accord certain facilities to enable the Commissioners to pursue their investigations. (Letter read.)

A letter from Mr. Fitzgerald was read in reply, stating that he would consult his Co-Trustee (Mr. Hart) on his return to town, and asking to be furnished with a copy of the Royal Commission, and asking under what authority it was issued.

The President formally reported the interview with Mr. Fitzgerald detailed in these Minutes.

Moved by Mr. D. Barclay, seconded by Mr. Tenison, That summonses be prepared under Section 1 of 52 Vict. No. 26, calling upon the Liquidators of the Bank of Van Diemen's Land, Limited, now being wound up under the provisions of the Act of Parliament of Tasmania 55 Vict. No. 17, to attend before the Commissioners at the Commercial Bank, Macquarie-street, Hobart, on Tuesday, 16th February, at 7:30 P.M., and there to produce all Books and Vouchers of the said Bank of Van Diemen's Land showing transactions from January, 1890, to the date of the failure, and to continue in attendance with such Books and Documents from day to day until discharged from such attendance by the Commissions. (Carried.)

Moved by Mr. D. Barclay, seconded by Mr. Tenison, That Messrs. William George Browne, Alfred Thomas Bell, and Thomas Lyons be summoned to attend as witnesses before the Commission. (Carried.)

The Meeting adjourned until the following evening at 7:30 P.M.

Confirmed,

C. J. BARCLAY, *President.*

THOS. C. JUST, *Secretary.*

WEDNESDAY, FEBRUARY 17, 1892.

Present.—All the Commissioners, the Accountant, and Secretary.

Hon. G. P. Fitzgerald and Messrs. Lyons and Bell were present as witnesses in obedience to summons.

The President said it was the desire of the Commissioners to commence their investigation of the Books of the V.D.L. Bank. They had no desire to compel the Liquidators to bring them to that place, but would meet their convenience if possible. Mr. Fitzgerald then invited the Commissioners to use the premises of the V.D.L. Bank, and with his Officers retired to prepare the Books.

The President reported receipt of a notice from Messrs. Walker & Wolfhagen on behalf of John Pearce, defendant in an action in the Supreme Court *Williams v. Pearce*, to the effect that application had been made to His Honor the Chief Justice to restrain the Commissioners from proceeding with their investigation, and that His Honor had adjourned the hearing until the following day in order that the Commissioners might appear and show cause why such Order to restrain should not be granted.

After discussion, Mr. Thomson moved, Mr. D. Barclay seconded, That, having regard to the notice of Messrs. Walker and Wolfhagen, the Commission adjourn until Thursday, 18th instant, at 7:30 o'clock. (Carried.)

The Commission adjourned accordingly.

Confirmed,

C. J. BARCLAY, *President*.THOS. C. JUST, *Secretary*.

MONDAY, MARCH 28, 1892.

Present.—All the Commissioners and the Secretary.Discussion ensued as to the proceedings before the Chief Justice in Chambers on the case *Williams v. Pearce*.

Mr. Tenison moved, and Mr. D. Barclay seconded, That since it was declared in open Court in *Williams v. Pearce* by the Solicitor-General, representing the Government and the Commissioners, that the object of the Commission was to obtain evidence whereupon to institute criminal proceedings, the Commissioners are of opinion that an inquiry with such an avowed object is one that it would be derogatory to them to undertake. (Carried.)

Resolved, That the President be requested to communicate this Resolution to the Hon. Attorney-General.

Resolved, That the Commission adjourn until again called together by the President on receipt of the Hon. Attorney-General's reply.

Adjourned accordingly.

Confirmed,

C. J. BARCLAY, *President*.THOS. C. JUST, *Secretary*.

FRIDAY, APRIL 8, 1892.

The Commissioners met at 7:30 P.M.

Present.—All the Commissioners, the Accountant, and the Secretary, also Mr. A. Marsden, Shorthand Writer. The Hon. G. P. Fitzgerald was also present during the proceedings.

Mr. William George Browne, late Manager of the Bank of V.D.L., was called and examined. *See Evidence*, page 19.

Mr. Alfred Thomas Bell, Accountant of the Bank of V.D.L., was also examined. *See Evidence*, page 33.

At the close of the examination Mr. Browne applied for a Certificate under Section 5 of the Act.

The President said it would be prepared afterwards.

Commission adjourned at 11:10 P.M.

Confirmed,

C. J. BARCLAY, *President*.THOS. C. JUST, *Secretary*.

MONDAY, MAY 16, 1892.

The Commissioners met at 7:30 P.M.

Present.—All the Commissioners and the Secretary.

The Secretary brought up a draft of the Report to His Excellency on the enquiry, which, with a few amendments, was adopted, and ordered to be printed for signature by the Members.

The Secretary was instructed to submit the Accounts connected with the Commission to the President for signature, and the President was requested to report thereon to the Hon. Attorney-General.

The Commission adjourned *sine die*.

Confirmed,

C. J. BARCLAY, *President*.THOS. C. JUST, *Secretary*.

CORRESPONDENCE.

15th February, 1892.

GENTLEMEN,

I HAVE the honor to inform you that a Royal Commission has been issued by His Excellency the Governor to Messieurs Charles James Barclay, David Barclay, Charles M'Carthy Tenison, and Alexander Thomson, to whom I am commanded to act as Secretary, directing the Commissioners "to make such diligent enquiry into the affairs of the Bank of Van Diemen's Land, Limited, . . . and to carefully investigate all such books, documents, and papers of or belonging to the said Bank as may be necessary to ascertain whether the Reports, Balance-sheets, and Profit and Loss Accounts issued by the Directors of the said Bank to the shareholders in the month of July, 1890, and in the months of January and July, 1891, correctly represented the true financial condition of the said Bank of Van Diemen's Land, Limited, on the dates to which such Reports, Balance-sheets, and Profit and Loss Accounts refer respectively."

The Commissioners desire to commence their duties without delay, and I am instructed to request that you will be pleased to accord them the following facilities :—

- 1st. The use of the Board-room in your Banking premises on each week-day evening from 7.30 o'clock.
- 2nd. Access to all books and vouchers of the Bank up to the date of the failure.
- 3rd. The services of your officers (Messrs. A. T. Bell and Thomas Lyons) during the sittings of the Commission.

Requesting the favour of an early reply,

I have, &c.

THOS. C. JUST, *Secretary Royal Commission.*

*The Liquidators of the Bank of Van Diemen's
Land, Limited, Hobart.*

*Bank of Van Diemen's Land, Limited, (in liquidation),
Hobart, 15th February, 1892.*

DEAR SIR,

I HAVE the honor to acknowledge receipt of your letter of even date, intimating the appointment of a "Royal Commission" to enquire into certain Balance-sheets issued by the late Directors and Manager of the Bank of Van Diemen's Land (now in liquidation) previous to its recent failure, and making certain requests in connection therewith.

In reply thereto permit me to say I shall have much pleasure in consulting my co-trustee (Mr. William Hart), who is at present absent from Hobart, immediately on his return to the city, as to the advisability of acceding to the requests therein contained.

Meanwhile may I request that you will be pleased to furnish me with a copy of the document constituting the "Royal Commission," and also inform me under what authority such document is issued?

I have, &c.

G. P. FITZGERALD.

T. C. JUST, *Esq., Chief Secretary's Office.*

15th February, 1892.

SIR,

I HAVE the honor to inform you that, at a meeting of the Commissioners appointed to enquire into and investigate the affairs and books of the Bank of Van Diemen's Land, Limited, you were unanimously appointed to act as Accountant to the Commissioners, the rate of remuneration to be hereafter decided.

I have, &c.

THOS. C. JUST, *Secretary.*

C. J. MAXWELL, *Esq., Commercial Bank.*

*The Commercial Bank of Tasmania, Limited,
Hobart, Tasmania, 15th February, 1892.*

SIR,

I HAVE the honor to acknowledge the receipt of your favor of this day's date, informing me that, at a Meeting of the Commissioners appointed to inquire into the affairs and books of the Bank of Van Diemen's Land, Limited, I was unanimously appointed to act as Accountant to the Commissioners, and I have now the honour to accept such appointment.

I am, &c.

C. J. MAXWELL.

T. C. JUST, *Esq.*, Secretary to the Commissioners.

In the Matter of the Royal Commission dated the twelfth day of February, one thousand eight hundred and ninety-two, to investigate the Affairs and Books of the Bank of Van Diemen's Land, Limited.

TO GEORGE PARKER FITZGERALD and WILLIAM HART.

You and every of you are hereby required that, all other things set aside and ceasing every excuse, you and every of you be and appear in your proper persons before the Commissioners appointed under the said Commission at the Commercial Bank, Macquarie-street, Hobart, in Tasmania, on Tuesday, the sixteenth day of February instant, by half-past seven of the clock of the afternoon of the same day, to testify the truth according to your knowledge in respect of the matters as to which this Commission has been appointed to investigate, and so on from day to day at such time as shall be from time to time appointed by the Commissioners: And that you and each of you then and there bring with you and produce at the same time and place as aforesaid all Cash Books, Ledgers, Journals, and other books and vouchers of the Bank of Van Diemen's Land, Limited, and all papers and writings showing any particulars of transactions of the said Bank from the first day of January, 1890, up to the time of the closing of the said Bank, together with all letters, writings, papers, memoranda, matters, and things in your or either of your custody, possession, power, or control in anywise relating to the matters to be investigated.

And this you or any of you shall in no wise omit under the penalty of every one of you of Twenty Pounds.

Dated this 16th day of February, 1892.

C. J. BARCLAY, *President of the Commission.*

ABOVE summons served on Mr. Fitzgerald personally by me, 12.45, Tuesday, 16th February.

THOS. C. JUST.

THE like served on Hon. Wm. Hart by Messenger Myles, by leaving it with Mr. W. G. Browne, at the Bank, 2.35 on 16th February.

In the Matter of the Royal Commission dated the 12th day of February, 1892, to investigate the Affairs and Books of the Bank of Van Diemen's Land, Limited.

TO WILLIAM GEORGE BROWNE.

You are hereby required to attend at the Commercial Bank, Macquarie-street, Hobart, on Tuesday, the 16th day of February, 1892, at the hour of half-past seven in the afternoon, to give evidence in the investigation under the said Commission.

In default of your attendance, you will be liable to a penalty of Twenty Pounds, under the Act 52 Vict. No. 26.

Dated this 16th day of February, 1892.

C. J. BARCLAY, *President of the said Commission.*

Above served on W. G. Browne personally by Messenger Myles, at 2.35, 16th February, and on A. T. Bell, by delivery to Mr. W. G. Browne, at same time.

IN THE SUPREME COURT }
OF TASMANIA.

*In the Matter of an Action between JOHN CHARLES WILLIAMS,
Plaintiff, and JOHN PEARCE, Defendant.*

TAKE notice, that an Application was this day made to His Honor Sir William Lambert Dobson, the Chief Justice of this Honorable Court, on behalf of the Defendant John Pearce, for an Order to restrain you, Charles James Barclay, David Barclay, Charles M'Carthy Tenison, and Alexander Thomson, (Commissioners appointed to investigate the books and documents of the Bank of Van Diemen's Land, Limited, in order to ascertain whether certain Reports, Balance-sheets, and Accounts issued by the Directors of the said Bank correctly represented the true financial condition of the said Bank, and for other purposes) from compelling witnesses to appear before you, or proceeding with the inquiry as to the affairs of the said Bank, or from inspecting the books and accounts of the said Bank, or from publishing any report thereon pending the trial of the above action; and that, after hearing Mr. James Backhouse Walker of Counsel in support of the application, His Honor adjourned the further hearing of the said application till Wednesday, the seventeenth day of February instant, at ten o'clock in the forenoon, and ordered that notice of such adjournment be served upon you in order that you might appear and show cause why such Order to restrain you should not be granted.

Dated this sixteenth day of February, 1892.

J. B. WALKER & WOLFHAGAN, *Attorneys for the said John Pearce.*

To Messrs. CHARLES JAMES BARCLAY, DAVID BARCLAY, CHARLES
M'CARTHY TENISON, and ALEXANDER THOMSON.

Attorney-General's Office, Hobart, 10th March, 1892.

SIR,

IN accordance with the request you made at our interview on Tuesday last, I now write to inform you that the object for which the Royal Commission has been appointed to examine the books of the Bank of Van Diemen's Land is to ascertain what foundation there is for the statements made in the last two paragraphs of the Report presented by the Liquidators to the meeting of shareholders held on the 27th day of January of the present year, and for the verbal statement made by Mr. Fitzgerald at the same meeting that the balance-sheet published by the Directors of the Bank to the meeting of shareholders held on the 9th of July of last year was "a false balance-sheet."

The scope of the Commission does not include any inquiry into the causes of the failure of the Bank, or into the value of any of the assets of the Bank, and the Government have no wish that the Commissioners should make any investigation that will reveal the past or present financial position of any customer or debtor of the Bank, and the Commissioners have been so instructed.

I have the honor to be,

Sir,

Yours obediently,

A. INGLIS CLARK.

JOHN MITCHELL, *Esquire, Solicitor for the Liquidators
of the Van Diemen's Land Bank, Hobart.*

ROYAL COMMISSION V.D.L. BANK.

Commercial Bank, Hobart, 29th March, 1892.

SIR,

I HAVE the honor to inform you that, at a meeting of the Commissioners held yesterday, the following resolution was unanimously agreed to:—

"That, since it was declared in open Court, in *Williams v. Pearce*, by the Solicitor-General, representing the Government and the Commissioners, that the object of the Commission was to obtain evidence whereon to institute criminal proceedings, the Commissioners are of opinion that an enquiry with such an avowed object is one that it would be derogatory to them to undertake."

The Commission adjourned, pending the receipt of any further communication you may desire to make to them.

I have the honor to be,

Sir,

Your obedient Servant,

C. J. BARCLAY, *President.*

The Hon. Attorney-General, Hobart.

Attorney-General's Office, Hobart, 29th March, 1892.

SIR,

I HAVE the honor to acknowledge the receipt of your communication to me of this day's date, in which you transmit to me a copy of the Resolution agreed to by the Commissioners at a Meeting held by them yesterday.

You are aware that I was absent from Hobart when the application was made to the Chief Justice to restrain the Commissioners from proceeding in the enquiry which they were appointed to make, and that I knew nothing about the proceedings attendant upon that application until they had taken place. I had, therefore, no opportunity of informing the Solicitor-General of the purpose for which the Commissioners had been appointed, and I do not understand how he came to be instructed that the Commissioners had been appointed to collect evidence for a criminal prosecution.

As the Minister particularly responsible for advising the appointment of the Commissioners, and the Minister also particularly charged with the supervision of the administration of the Criminal Law, I desire to state that when I advised the Governor to appoint the Commissioners I did not contemplate, and I do not now contemplate, any criminal prosecution in relation to the affairs of the Bank of Van Diemen's Land.

The statements made by the Liquidators of the Bank in the Report submitted by them to the meetings of shareholders and creditors held in January last, together with the verbal statements made by Mr. Fitzgerald at the same meetings, and the contradictory statements made by Mr. Browne, the late Manager of the Bank, appeared to myself and to the other responsible Advisers of the Governor to call for an authoritative investigation in order to ascertain whether the statements made by the Liquidators or the contradictory statements made by Mr. Browne were correct; and until Ministers are in possession of that information they are not in a position to conclude, and in its absence they do not assume, that any executive action will be required from them in reference to the affairs of the Bank.

I have, &c.

A. INGLIS CLARK.

C. J. BARCLAY, *Esq.*, *President of the Commission appointed to enquire into the Affairs of the Bank of Van Diemen's Land, Limited.*

In the Matter of the Royal Commission dated the 12th day of February, 1892, to investigate the Affairs and Books of the Bank of Van Diemen's Land, Limited.

TO GEORGE PARKER FITZGERALD and WILLIAM HART.

REFERRING to summons issued on the 16th February, 1892, to appear before the Commissioners, when in consequence of certain proceedings the enquiry was adjourned *sine die*, the Commissioners propose to renew the enquiry at the premises of the Bank of Van Diemen's Land, Elizabeth-street, Hobart, as by you proposed, on the evening of this the eighth day of April, 1892, at 7.30 o'clock, when you are requested to appear in compliance with the said summons.

C. J. BARCLAY, *President of the Commission.*

REPORT OF SUPREME COURT PROCEEDINGS.

In the Matter of a Royal Commission to enquire into the Affairs and Books of the Bank of Van Diemen's Land, Limited.

In Chambers.

WEDNESDAY, 17TH FEBRUARY, 1892.

Before His Honor SIR LAMBERT DOBSON, Knt., Chief Justice.

THIS was an application for an Injunction to restrain the Commissioners from proceeding with an investigation of the Affairs and Books of the Bank of Van Diemen's Land, pending the hearing of a Civil Action Williams *versus* Pearce, which it was alleged might be prejudiced by the results of such enquiry.

MR. J. B. WALKER appeared on behalf of the Applicants, and the SOLICITOR-GENERAL for the Commissioners and the Government.

There were present in Chambers the Hon. the Premier and the Members of the Commission with their Secretary.

HIS HONOR said he had adjourned the hearing of this case from the previous day in order that the other side might receive notice.

MR. J. B. WALKER applied for a further adjournment of the hearing. He had explained to His Honor the circumstances under which it was that the Solicitor-General could not appear to argue the matter, as he was instructed by the other side; but he had communicated with Counsel in Launceston, and His Honor had remarked that it was probable the matter would require further and serious argument, and for this they wished the opportunity. He was not prepared to go on that morning under the circumstances.

HIS HONOR: What do you say, Mr. Solicitor?

THE SOLICITOR-GENERAL: I shall be happy to meet my learned friend's convenience, and I may say now that I appear on behalf of the Commissioners, who have been served with a copy of the Order made by your Honor. I may say the Commissioners are only too willing to come to the Court, not only out of respect and courtesy to the Court, but to get the opinion of the Court respecting the Commission issued to them, as a doubt arose as to whether they should go on. They therefore wished to come into Chambers and to get an instruction from the Court in so far as the Court had power to instruct them. I only received my instructions last night, and the Attorney-General is absent from town. If your Honor wishes I can now go into the reasons why the Commission was issued. We have nothing to hide.

HIS HONOR: Has there ever been a precedent in the history of the British Constitution of such a Commission having been issued?

THE SOLICITOR-GENERAL: I cannot say.

HIS HONOR: Never so far as I am aware, and I don't think you will find one if you go ever so far back. We have tribunals here which are entrusted with the trial and disposal of all Civil cases whether between the Crown and the subject or between subject and subject. We have also jurisdiction here to enter into and decide on all criminal matters, and any other tribunal attempting to interfere with or take part in such proceedings would be prohibited, unless they were authorised by the power of Parliament. The Queen herself cannot give jurisdiction to any one, or interfere with or take away from the jurisdiction of these Courts,—the Parliament alone can do these things. Whether it is right to interfere in the matter now under consideration is a nice and a large question, and I think it will require very material consideration and argument. If any opinion is to be expressed at all I should like the argument to be in public and before the full Court. That would be the right course to take. It was contended that in the proceedings of this Commission there would be nothing to prejudice any one. Well, no one can put a report in a newspaper referring to a case before the Court without being guilty of contempt of Court. It is clear that nothing can be done that would be likely to prejudice the trial of any action coming on in the Courts. The question is, would the proceedings of this Commission do so? If so, then you have no right to say that A, B, or C have examined the books and condemned certain persons for issuing false balance sheets. Where they refer to actions before the Court the press is not allowed to publish even matters of ordinary comment. I express no opinion now: the questions involved want the most careful consideration and argument, and I think the adjournment will be the best course.

THE SOLICITOR-GENERAL: Yes, I think so. I may state that nothing was further from the idea of the Government in issuing the Commission than prejudicing any proceeding before the Courts. It was in order to collect evidence for another purpose which the Attorney-General contemplated.

HIS HONOR: A criminal prosecution?

THE SOLICITOR-GENERAL: Yes, it was with a view to obtain certain evidence.

HIS HONOR: It was an innovation of the Criminal Law. He was aware that similar Commissions were issued and held in Ireland under peculiar circumstances and under the authority of Parliament, but in England even the Sovereign would not dare to attempt to interfere in any way with the jurisdiction of the Courts.

MR. WALKER: There would be no idea of that kind at the time, as there was no action brought.

HIS HONOR: No, no! that is quite understood; there was no action brought at the time the Commission was issued.

The SOLICITOR-GENERAL said one reason for the Commission was that the Law Authorities could not get access to the books of the Bank in any other way. They wanted expert evidence; and it could not be obtained in any other way, and without it they could not prepare a case for trial. Whether the course taken would commend itself to the Court was another matter; but—

HIS HONOR: It is not a question as to whether it commends itself to anyone, but whether it is the right course to take under the Constitution of England.

The SOLICITOR-GENERAL: Yes, but there is a difference between the law here and the law in England.

HIS HONOR: In England even the Queen herself cannot appoint a commission to enquire into anything she likes, and especially if it interferes with any existing tribunal or prejudices any matter at present under enquiry before such tribunal.

The SOLICITOR-GENERAL: I understand that; but in Section 1 of the Act 52 Vict. No. 26 the words are very wide: "Whenever by any letters patent issued or to be issued under the seal of the Colony any persons shall have been or shall be appointed by the Governor or the Governor in Council a Commission to make any inquiry, it shall be lawful for the President, &c." Although it may be said by some who took exception to the enquiry that it might prejudice private rights, still, if there was the power to do it, the Attorney-General might have felt that he had the right and that he would do it.

HIS HONOR: Any legal enquiry could be made in the ordinary way. No doubt there was no desire to prejudice anyone, but is this to be made an exceptional mode of proceeding? Not even in the days of the Stuarts is there a case where a Royal Commission has been issued to aid a prosecution, or to get evidence to carry on a prosecution. I feel sure no one would desire to do that which is not constitutionally right, and I am sure the last to do it would be those who advise His Excellency. The case is one bearing many legal and constitutional aspects which will require to be carefully considered and argued.

THE SOLICITOR-GENERAL: The Premier has a great respect for the opinion of the Attorney-General, and would like him to be present when the case is argued. I will therefore consent to the application for adjournment,—in fact on my own part I would ask for an adjournment until the Attorney-General returns. In deference to the Court the Commissioners will hold their hands until the matter has been further decided and the Attorney-General has an opportunity of considering the case, and of giving His Honor the reasons why the Commission should be proceeded with. I am not now in possession of the reasons why he issued the Commission.

MR. WALKER: My only object is to ask the protection of the Court for my clients, who may be prejudiced. The contention will be argued out, and I should desire to have the opportunity of obtaining Counsel to argue it.

THE SOLICITOR-GENERAL asked that His Honor's attention should be called to the words of the Commission.

HIS HONOR: It is not in evidence at present.

THE SOLICITOR-GENERAL: The scope of the enquiry is such that it might prove the innocence of the persons concerned.

HIS HONOR: And that would be an interference with the functions of the Court.

THE SOLICITOR-GENERAL: But it does not follow that the Report of the Commission would be published.

HIS HONOR: The mere sending of the Report to the Governor is a publication.

THE SOLICITOR-GENERAL: At present we do not know how far the enquiry may implicate anyone. It is all hypothetical. They might be all quite innocent.

HIS HONOR: I think the delivery of the Report would be a publication. The Governor is not bound to secrecy, and he might give it to a clerk to copy, or its contents might get out in many ways. The matter had better stand over. I think all the difficulty may be removed by argument. When the Attorney-General returns we will give you an appointment that will suit the convenience of all parties at any time it is desired. Of course in the meantime nothing further will be done.

The Court adjourned.

EVIDENCE.

Present: The President (Mr. C. J. Barclay), and Messrs. David Barclay, C. M. Tenison, Alexander Thomson, and T. C. Just, Secretary. Mr. G. P. Fitzgerald, one of the Liquidators of the Bank of Van Diemen's Land, was also present by the permission of the Commissioners.

MR. W. G. BROWNE, the late Manager of the Bank of Van Diemen's Land, was called in.

THE PRESIDENT: As you are aware, Mr. Browne, we have met here to-night in obedience to the command of the Government of the Colony, and in accordance with a Royal Commission issued by the Governor in Council, to examine witnesses in regard to the issue by your Bank of what has been stated to be a false balance-sheet. I may tell you, although perhaps it is unnecessary, that we are not meeting in a spirit of hostility to you or anybody else, but simply to enquire, as I have said, into the items of that balance-sheet. I think it just as well to explain this to you, because you will be one of the principal witnesses whom we will examine. I will now ask you, Mr. Browne, to take the oath.

MR. BROWNE: Would you allow me to get my books and some notes I have, which I think will be of considerable assistance to me in answering any questions that you might ask.

THE PRESIDENT: Yes, certainly.

[Mr. Browne then proceeded to get his books.]

MR. BROWNE: Before giving my evidence I am advised, as a formality, to take objection to the legality of these proceedings on constitutional grounds. It is simply as a formality that I am objecting. I am only too anxious to give my evidence, and to produce to you all the information in my power, but I have been advised to make a formal protest at once, but I prefer not to do that. I do, though, object to the legality of these proceedings on constitutional grounds. Of course I have no other objection whatever.

MR. TENISON: It is an objection we cannot deal with. It is outside our province altogether to discuss the question you raise. We are sent here to do a certain work, and that work we propose to carry out.

MR. BROWNE: I must look to the effect my evidence here will have upon me in the first place. Another thing I wish to do is to ask the Chairman, with your permission, to be represented by Counsel. (CHAIRMAN: Certainly). Then, of course, I could not do that to-night, but if you will allow me I am quite willing to leave that to you. If you think it advisable I should be represented by Counsel I should like that opportunity be given me to employ him, but if in your opinion I am just as well as I am, I am quite willing to go on. Of course you see that in all probability I will be asked some question that my Counsel would not permit me to answer, and without his advice probably I would incriminate myself. If, however, you think I am as well as I am I shall willingly give my evidence.

THE PRESIDENT: I take it, Mr. Browne, it is open to you and competent for you to refuse to answer any question if you wish. Whether you had better be represented by Counsel or not is simply a matter for your own decision. Personally I shall not object to your being so represented.

MR. BROWNE: Of course, don't you see this, Sir, there may be questions put to me that I cannot know the importance of, and a reply might, as I said before, incriminate me; but, as I have said, I am quite in your hands; if you think that I am as well off unrepresented by Counsel then I will go on. Of course, you know the questions that you are about to ask me, and I do not.

THE PRESIDENT: I am quite certain, Mr. Browne, that so far as the Commission is concerned, what I said to you at the outset fully expresses what is in the minds of the Commissioners. We have simply got to ascertain if possible the facts, and enquire into the statement that you issued a false balance-sheet; but beyond that we do not wish to go. There is not one of us wishes to take any advantage of you, or to put a question that you ought not to answer. The Commission has, I will repeat, not met here in any spirit of hostility to you, but simply to enquire into the issue of what has been said to be a false balance-sheet.

MR. BROWNE: I take it that you are all on one side, and I am without the advice of anybody. I think you are all Counsel on one side.

THE PRESIDENT: You make a mistake. We are to question you on that balance-sheet, and you are at liberty to refuse to answer any question that you object to. We are not Counsel on one side.

MR. DAVID BARCLAY: Certainly we are not.

THE PRESIDENT: We have no desire whatever to take any advantage of you, Mr. Browne. We have not come to any foregone conclusion in regard to the matter, and we are not in the position of Counsel at all, but simply as experts to enquire into the matters connected with the balance-sheet.

MR. BROWNE: It was stated before the Judges that you were to make this enquiry with a view to getting evidence for a criminal prosecution.

THE PRESIDENT: That is simply an error, and has been denied by the Attorney-General. We are not making this enquiry with a view to a criminal prosecution.

MR. BROWNE: I object to the Commission altogether on constitutional grounds.

MR. TENISON: If Mr. Browne has an objection to the Commission on constitutional grounds, his

proper course is to apply to the Court to restrain us. We cannot discuss that matter now, it is out of our province.

THE PRESIDENT: I take it he hardly expects us to discuss that question—do you, Mr. Browne?

MR. BROWNE: No, certainly not. I was told I could not possibly apply to the Court for an injunction.

THE PRESIDENT: I may say to you, Mr. Browne, (and I am sorry that I have not the letter of the Attorney-General's here), that we distinctly refused to go on with this Commission if the object was to obtain evidence for a criminal prosecution. We absolutely refused, and I regret that I have not the letter from the Attorney-General,—I must have left it amongst my papers; but I will tell you that in that letter he distinctly states that the object is not to collect evidence for a criminal prosecution. I will read to you a resolution we passed at a previous meeting, which led to the receipt by us of a letter from the Attorney-General, in which he stated that the object was not to obtain information for a criminal prosecution. The resolution is as follows:—"That since it was declared in open Court in *Williams v. Pearce*, by the Solicitor-General, representing the Government and the Commissioners, that the object of the Commission was to obtain evidence whereupon to institute criminal proceedings, the Commissioners are of opinion that an enquiry with such an avowed object is one that it would be derogatory to them to undertake." That is the resolution, Mr. Browne, so I think we can now proceed.

MR. TENISON: I think the request made by Mr. Browne to be represented by Counsel is a very judicious one, and I hope he will be so represented. He may be asked questions, his answers to which may, as he says, lead to results which he does not contemplate. I think it is very proper that he should be represented by Counsel.

THE PRESIDENT: That was our own idea throughout.

MR. BROWNE: All I want is this, that my Counsel should be with me, and he would simply stop me saying what I ought not to say. I am perfectly willing to go on, but I think it is only proper that I should have Counsel to represent me. If I had received your summons yesterday for the enquiry to be held to-night, then I should have applied to you personally and got some one to represent me. Of course, I could not now, at the last moment, get anybody. I do not want you to think that I am hesitating in any way; on the contrary, I am willing and anxious that I should give you all the information in my power. I only received the summons to-day, and consequently I have not had time to instruct my Counsel.

THE PRESIDENT: I think the position you take up is a fair one. I am quite willing to let you object to answer any questions which you think may lead to the results you speak of, and then take the advice of your Counsel on them. I think, however, it is a very simple matter that we have to enquire into.

MR. DAVID BARCLAY: I do not think there will be any question that Mr. Browne need not answer. Of course, if he objects, a note of his objection will be taken.

MR. BROWNE: Very well, then, I am prepared to stand on that; but I would like a note taken of my objection to the validity of this Commission on constitutional grounds.

THE PRESIDENT: A note has been taken of that objection, Mr. Browne.

[The Oath was then administered by the Chairman.]

Examined by Mr. DAVID BARCLAY.

MR. DAVID BARCLAY: Your name is William George Browne?

MR. BROWNE: Yes, Sir, William George Browne.

MR. D. BARCLAY: And you were Manager of the Bank of Van Diemen's Land prior to its closing its doors?

MR. BROWNE: Yes.

MR. D. BARCLAY: For what period?

MR. BROWNE: It was in June, 1887, that I was appointed Manager.

MR. D. BARCLAY: And you remained Manager up to the date the Bank closed?

MR. BROWNE: Yes.

MR. D. BARCLAY: Will you produce a copy of the balance-sheet issued to the Shareholders of the Bank of Van Diemen's Land on the thirtieth of June last?

MR. BROWNE: Yes. Do you mean a printed copy?

MR. D. BARCLAY: Yes, a printed copy.

[Mr. Browne here produced a printed copy of the balance-sheet, date June 30, 1891.]

MR. D. BARCLAY: You can also, I suppose, produce the original of that?

MR. BROWNE: Yes. [Mr. Browne here produced the original copy of the balance-sheet, signed by John Pearce, Chairman; W. H. Burgess, Director; and W. G. Browne, Manager, and dated Hobart, 13th July, 1891.]

MR. D. BARCLAY: Will you produce also the Minutes of the meeting of your directors at which this Report was adopted?

MR. BROWNE: At the meeting of the shareholders?

MR. D. BARCLAY: No, at the meeting of Directors. I mean the Minute of the Board at which this balance-sheet was adopted. Do you understand, the meeting at which it was resolved to issue this balance-sheet.

MR. BROWNE: Oh, yes.

[The Minute Book was sent for.]

MR. D. BARCLAY: We will now take the first item on the credit side of this balance-sheet. "By coin and bullion, £70,431 12s. 11d." Had you that coin in your coffers on the night of the 30th June?

MR. BROWNE: I, of course, to-night expected that we were only going into the question of the last two paragraphs of the Report of the liquidators, namely, "It appears there was an arrangement with the London and Westminster Bank for an open credit with that institution amounting to £30,000. This amount has irregularly been included in the item deposits, £687,746 15s. 6d., and on the credit side of the balance-sheet credit has been taken for the same sum, thus incorrectly swelling the balance due by other banks to the sum of £124,417 0s. 10d. The second inaccuracy appears in the sum of £35,000 borrowed from the Union Bank previous to the closure being altogether eliminated from the balance-sheet by reducing the item 'bills discounted and foreign bills receivable, and all other debts due to the bank' by that amount." Those are the two paragraphs that I understood you were going into to-night, and I do not think you have any authority to question me about other items in the balance-sheet than those referred to. I was specially told before I came into this room that I was only to answer questions in connection with the two last paragraphs in that Report. It is in connection with those two paragraphs that this Commission has been appointed, and I do not think I ought to be questioned on other matters. I have here a letter from the Attorney-General to the solicitor for the liquidators, and it says plainly what the scope of the Commission is, and what you are to enquire about. The letter says:—"In accordance with the request you made at our interview on Tuesday last, I now write to inform you that the object for which the Royal Commission has been appointed to examine the books of the Bank of Van Diemen's Land is to ascertain what foundation there is for the statements made in the last two paragraphs of the Report presented by the liquidators to the meeting of shareholders held on the 27th day of January of the present year, and for the verbal statement made by Mr. Fitzgerald at the same meeting, that the balance-sheet published by the Directors of the Bank to the meeting of shareholders, held on the 9th of July of last year, was a false balance-sheet. The scope of the Commission does not include any inquiry into the causes of the failure of the Bank or into the value of any assets of the Bank, and the Government have no wish that the Commissioners should make any investigation that will reveal the past or present financial position of any customer or debtor of the Bank, and the Commissioners have been so instructed." I think that very plainly puts what your duties are, and I do not think in the face of it that you should question me on each item in the balance-sheet.

THE PRESIDENT: The Commission is issued "to make such diligent enquiries into the Bank of Van Diemen's Land; and to carefully investigate all such books, papers, &c." We do not wish to examine all the books of the Bank, nor do we want to know what concerned its customers.

MR. BROWNE: Yes, I am quite aware of that.

MR. DAVID BARCLAY: I may say that, in the first place, Mr. Maxwell has been appointed Accountant to this Commission, and in order to save him the trouble of going into all these accounts and making up a balance-sheet for the purposes of the Commission, we propose to do away with the necessity for a balance-sheet, and by questioning you on certain items contained in your own balance-sheet, get out the facts required. This is the only reason we have now for asking the question.

MR. BROWNE: This is the position I am in. One of the liquidators left Hobart yesterday, and one of them told me yesterday that personally he would object to an enquiry involving anything outside the two last paragraphs in the Report. Of course, I am only the servant of the liquidators at the present moment, and must do as they bid me. Again, I might point out to you that I have only to-day consulted my solicitors with a view to these two particular items.

THE PRESIDENT: Recollect, Mr. Browne, that this is a Court constituted under the seal and the law of the colony.

MR. BROWNE: I am quite aware of that; but I have been informed that the statements I make to-night can be produced against me, and I have been told to say nothing but what concerns those two particular paragraphs in the report of the liquidators. I saw a telegram to-day from Mr. Hart in which he said that he would object to this Commission unless it was understood that you were only going to enquire into those two paragraphs, and I only got my summons at one o'clock to-day, and I have been ever since hunting for a particular letter that I wanted to put before you, because you simply asked me to produce the letters. But if you are going right through the balance-sheet I think I must avail myself of the permission of the President, and be represented by Counsel.

THE PRESIDENT: It seems a very simple question the one that has been asked.

MR. BROWNE: I have not heard the whole of the question yet.

MR. DAVID BARCLAY: The question is this—Did you have in the bank £70,431 12s. 11d. in coin on the night of the 30th of June?—Had you that money in the bank on the night of the day on which this balance sheet was made up?

MR. BROWNE: Well, as I said before, really I must decline to answer that question. I can give you full particulars of that entry, but really I must decline to answer the question.

MR. D. BARCLAY: The question is a very simple one, and requires an answer—yes or no. Of course, if you decline to answer it, the matter rests with the President and not with me. This is the question—Had you on the night of the 30th of June £70,431 12s. 11d. in coin in the Bank of Van Diemen's Land?

MR. BROWNE: I do not think I should be asked the question. I understood distinctly that this enquiry was to be limited to the last two paragraphs in the Report, and I was instructed to give no evidence except in connection with those two paragraphs. I must point out to you that if you are going through the balance-sheet item by item all our ledgers must be gone through; but I was going to explain that I came here to-night under the distinct impression that your enquiry was going to be limited to those two paragraphs.

MR. D. BARCLAY : I ask you a very simple question.

MR. BROWNE : And I say if you are going to question me in this manner all the ledgers will have to be gone through. I say it will involve that if you take each item in the balance-sheet.

MR. TENISON : I do not understand the objection to answer the question,—it does not involve an examination of the ledgers.

THE PRESIDENT : The objection to answer the question is that Mr. Browne states he was under the impression when he came here to-night that he was only going to be questioned on the last two paragraphs in the Liquidators' Report.

MR. BROWNE : I assure you I am quite willing to answer any questions, but I have taken advice on the matter, and have been instructed not to answer anything but that which concerns the last two paragraphs.

THE PRESIDENT : It is not perhaps for me to say anything by way of suggestion, but I would like to remind you of what the probable inference will be from your refusal to answer the question.

MR. BROWNE : I do not think you are altogether right in drawing an inference.

THE PRESIDENT : I am not drawing an inference. You can easily understand the inference that will be drawn from your not answering the question. I assume that the evidence will have to go to the Attorney-General, and of course it will contain your refusal to answer the question.

MR. BROWNE : Will you allow me to lodge an objection on the ground that I am only the servant of the liquidators, and I was told distinctly that the enquiry was to apply only to those last two paragraphs of the report. I had a written protest prepared, and had I thought the enquiry was going into all these matters contained in the balance-sheets I would have produced it. I think, if I might be allowed to state, that Mr. Hart went to Launceston yesterday, and his telegram to-day distinctly said, so far as he was concerned, he would refuse to give evidence before the Commission unless it was confined to those two particular paragraphs.

THE PRESIDENT : I may make this explanation in reference to the matter, and in regard to a conversation I had with the Attorney-General, who did not wish the Commissioners to go through the individual accounts of the customers of the Bank and inspect them, because it may harass the liquidators in their realisation of the assets of the institution. We have no intention of going into the books in that form, and all we want to know is in regard to the issue of the balance-sheet.

MR. FITZGERALD (who was present by permission) : I might explain a little further, that Mr. Hart in his telegram to-day stated that we were only to furnish you with letters in regard to items mentioned in the balance-sheet—the last two items ; but Mr. Hart has reminded me on previous occasions that I have no authority to allow any investigation without his consent, and that is the position I was advised by Counsel that I stood in. I think, therefore, under the circumstances, that Mr. Browne is right in the way he has put the case before you. He was instructed this investigation was to concern those two items, and those alone.

MR. BROWNE : Yes, most certainly.

MR. TENISON : The position he assumes is that he is only to be asked certain questions, and he refuses to answer any questions outside of the category he has fixed for himself. The question that has been asked in reference to the coin and bullion is at the root of the enquiry, and I do not see why he should not answer it.

MR. BROWNE : No. I came into this room to-night under a distinct impression. I was told by one of the liquidators of the Bank most distinctly and emphatically that the only enquiry to-night would be into those two particular paragraphs mentioned in the Report, and I told him I was perfectly willing to give my evidence.

MR. THOMSON : This, I take it, limits the powers of the Commission altogether.

MR. TENISON : Certainly not ; nothing can limit the powers of the Commission except a mandate of equal authority and power.

THE PRESIDENT : I take it the witness can object to answer the question if he thinks the effect of his answering it will be detrimental to his interests.

MR. THOMSON : I think we should say he objects to answer the question, and go on with the next one.

THE PRESIDENT : If this is his final decision.

MR. BROWNE : The letter from the Attorney-General to the solicitor for the liquidators distinctly says "the scope of the Commission does not include any inquiry into the causes of the failure of the Bank or into the value of any of the assets of the Bank, and the Government have no wish that the Commissioners should make any investigation that will reveal the past or present financial position of any customer or debtor of the Bank, and the Commissioners have been so instructed."

THE PRESIDENT : We have no wish to go into any of the causes of the failure, or to see the customers' accounts in any way.

MR. BROWNE : That is all right. It is a matter of indifference to me who sees them.

MR. TENISON : That paragraph in the letter you have just read does not affect the answer to the question you have been asked.

THE PRESIDENT : I take it it is simply this, a certain question has been asked,—it is a simple one, and if Mr. Browne objects to answer it his objection must be recorded.

MR. BROWNE : No, but it goes further than that. If you are going beyond these paragraphs then I must decline to give any further evidence at all.

THE PRESIDENT: Don't you think you had better see whether we are going beyond them before you make that statement? We have taken your balance-sheet of the 30th June, and taken the first line of it, and we have your certificate appended to it, and we ask you whether that money was there or not, and you decline to answer the question.

MR. BROWNE: I think that if you are going through in this way, Mr. President, it is very unfair to put me in this position without Counsel to represent me, because I assure you I to-day was told, not once but half-a-dozen times, by people who ought to know, that the only enquiry you were going to make to-night was in reference to these last two paragraphs, and if that was not the case then I should have taken further steps to try and get an Injunction from the Supreme Court. I put in a formal objection to the constitution of this Commission, simply as a formality, but I am still of opinion it is a most unprecedented and unconstitutional procedure.

MR. DAVID BARCLAY: We must, then, pass the first question I have asked you?

THE PRESIDENT: No, we must have a refusal.

MR. FITZGERALD: I have stated that, so far as the Trustees are concerned, they do not object to the investigation.

THE PRESIDENT: If I may explain, I understood distinctly from you, Mr. Fitzgerald, and also from Mr. Hart, that your objections were confined to our going through the Bank's books, as the matter might be open to misconstruction, and might prejudice the liquidators in their endeavours to collect the assets of the bank, and that you were anxious to avoid anything like that. We gave you our assurance that we did not want to see a single account, and that any figures submitted to us we would take them at their face value, and not enquire into them.

MR. FITZGERALD: I am quite aware of that.

MR. BROWNE: Just so.

THE PRESIDENT: This did not touch the question at all whether you had that amount of coin and bullion in the bank on the 30th June.

MR. FITZGERALD (to Mr. Browne): I should certainly answer the question. I think it is a question that Mr. Hart would agree to being answered if he were here.

THE PRESIDENT: Why he does not answer it surprises me.

MR. DAVID BARCLAY: I think, Mr. Fitzgerald, if I did not misunderstand you, I made it clear that we were going to examine Mr. Browne, and you said there was no objection. I made it my business to see you, and in the presence of Mr. Mitchell I understood you to say if we confined ourselves to the balance-sheet you had no objection.

MR. BROWNE: I think the question particularly alludes to Mr. Fitzgerald's co-trustee, Mr. Hart, and he raises an objection to my answering any question apart from the last two paragraphs in the Report. He objected not only on the ground that was mentioned just now, but for several reasons which I am not at liberty to mention. I think if you intend to go into anything beyond this that I will ask the President to adjourn in order that I might consult with Mr. Hart and with my solicitors.

THE PRESIDENT: This is the only question we shall at present touch. We take it because it is the first. It specifies an available liquid asset of the bank. We will come to the next item presently.

MR. FITZGERALD (to Mr. Browne): If you take my advice, Mr. Browne, you will answer it.

MR. TENISON: If it was a matter of cross-examination I should say Mr. Browne was right in exercising his discretion in answering or not answering it, but it is simply a question asking confirmation of a fact he has already certified to, and I cannot see his reason for objecting to answer it.

MR. BROWNE: I did not object to answer the question. What I object to is this: I came into this room almost instructed by Mr. Hart to answer questions only in connection with these two paragraphs.

MR. TENISON: Well, do you object because some one whom the Commissioners cannot recognise told you you were not to answer it?

MR. BROWNE: It will give people such a false impression, as the President has pointed out. I object to answer the question, because I foresee it means going through the whole balance-sheet. I was, I repeat again, instructed by Mr. Hart not to go into these matters, and I must obey his instructions.

MR. TENISON: I am afraid you are rather straining Mr. Hart's views.

MR. DAVID BARCLAY: We can say at once that we are not going right through the balance-sheet.

MR. FITZGERALD (to Mr. Browne): I do not think this question would be objected to by Mr. Hart.

MR. BROWNE: But you will go on to other matters in the balance-sheet.

THE PRESIDENT: Why not wait and see what we are going on with?

MR. BROWNE: I think Mr. Hart would object to the whole affair.

THE PRESIDENT: But he has given his consent.

MR. TENISON: We cannot consider Mr. Hart's views and opinions now. We are here to do a duty commanded of us by the Crown.

MR. BROWNE: No, I know you don't consider Mr. Hart, but I do. I can decline to answer any question if I like.

THE PRESIDENT: I want you to say whether you decline or not; only I think it is right for me to point out to you that if you decline a certain construction might be placed on your refusal.

MR. BROWNE: It is an awkward position I am placed in.

THE PRESIDENT: Your refusal to answer may be open to misconstruction (I say that in a friendly way), and probably may lead to results that you do not expect.

MR. BROWNE : That is the difficulty that I am placed in. I might here state that I consulted my solicitors this afternoon, not only one but three of them, in regard to the last two paragraphs in the Liquidators' Report, and I distinctly understood that the enquiry was to be limited to those paragraphs.

THE PRESIDENT : I don't think we need waste any more time on this subject. One of the liquidators has advised you to answer the question, and you won't do it. You have sworn to tell the truth, and surely your evidence would not be affected by private communications.

MR. BROWNE : No; but I want to give you the truthful reason for objecting to the examination of the whole balance-sheet. I do not so much object to answer the question about the coin and bullion, but it may lead to going through the ledgers, and that I was distinctly told not to do.

THE PRESIDENT : We do not want to go through the current account ledgers.

MR. DAVID BARCLAY : I will repeat the question. On the night of the 30th of June, 1891, had you coin and bullion in the coffers of the Bank to the extent of £70,431 12s. 11d.?

MR. BROWNE : We had not in coin and bullion the full amount in the Bank on the night of the 30th of June, 1891. I think there was a draft for £5000 sold on that day, and we did not get the coin certificates till the following morning. We took credit for that £5000—that is to say, we knew we would get the certificates on the following morning from Mr. Tenison, and therefore we included them. We were too late to settle it that night with Mr. Tenison.

MR. DAVID BARCLAY : Then you did not have the £5000 which you have included in the coin and bullion on the 30th June, 1891, in the coffers of the bank.

MR. BROWNE : No; we were too late to settle it with Mr. Tenison.

THE PRESIDENT : And was that draft reckoned as coin and bullion?

MR. BROWNE : Yes. The certificates were got the next morning from Mr. Tenison and were included in that.

THE PRESIDENT : You had credited your agents for it?

MR. BROWNE : Yes; it was coin and bullion on the following morning.

THE PRESIDENT : The draft did not appear as a balance due by other banks in your balance-sheet, but as coin and bullion?

MR. BROWNE : Quite so,—as coin and bullion, and not as balances due by other banks. It was coin on the following morning.

MR. DAVID BARCLAY : Balances due by other banks, £124,417. Will you show us how that item is made up?

MR. BROWNE : Yes.

[The Abstract of Balances was here produced and inspected.]

MR. DAVID BARCLAY : Your accountant will be able to produce to our accountant the books and returns that are necessary to verify this?

MR. BROWNE : Yes, certainly.

MR. DAVID BARCLAY : Will you produce the letter from the London and Westminster Bank authorising you to overdraw the sum of £30,000 over and above any securities they might hold?

MR. BROWNE : Of course I might explain to you at once that (referring to the statement of balances due by other banks) includes the £30,000.

MR. DAVID BARCLAY : I know.

MR. BROWNE : The letter of November 29, 1889, deals with the £30,000, and says : "With regard to the facility of uncovered overdraft to the extent of £25,000 to £30,000 accorded to your bank by my letter of the 15th February last, my Directors are willing to accede to your request that the facility be extended to 31st December, 1890, and further to permit the limit of £30,000 to be occasionally increased to £50,000 as a maximum, it being understood that the excess overdraft is to be temporary only, and to be covered up within a reasonable time."

MR. DAVID BARCLAY : Will you show me the ledger with the Colonial Bank Account?

MR. BROWNE : Yes.

[The ledger was here produced and examined.]

MR. DAVID BARCLAY : This entry (indicating the entry of £5000 above referred to), was made, not on the 30th June, but on the 1st July.

MR. BROWNE : Of course the accountant can explain why that was passed.

MR. DAVID BARCLAY : We will keep on the "amounts due by other banks," and come on to that entry presently. Was that £5000 draft drawn on the Colonial Bank included in the item "Balances due by other banks."

MR. BROWNE : No, I don't suppose it is.

MR. DAVID BARCLAY : There is no such entry in the account of that bank in your books on 30th June. We will go on with the London and Westminster Bank. You debited that Bank with the £30,000 you were permitted to overdraw; will you explain why you made that entry—your reasons for making it?

MR. BROWNE : We were in the habit of taking credit for the coin we were allowed to draw. We had from time to time open credits on the London and Westminster Bank from £20,000 up to £50,000. We would debit the London and Westminster Bank with the amount of the open credit, and credit the coin in our current account ledgers. My object in doing it was this—

MR. DAVID BARCLAY : Were you always in the habit of doing that?

MR. BROWNE : Yes, always.

MR. DAVID BARCLAY : Can you read me the letter from the London and Westminster Bank authorising you to have £30,000 over and above the securities in their hands?

MR. BROWNE : Yes; but I will have to explain here that one of the letters is missing, and I have been all the afternoon trying to find it, without success. This is a letter dated the 29th of November, 1889:—"With regard to the facility of uncovered overdraft to the extent of £25,000 to £30,000 accorded to your bank by my letter of the 15th of February last, my Directors are willing to accede to your request that this facility be extended to 31st of December, 1890, and further to permit the limit of £30,000 to be occasionally increased to £50,000 ———."

MR. DAVID BARCLAY : Oh? that is the letter you read a little while ago; but have you one of a later date?

MR. BROWNE : Yes. Here is one from the London and Westminster Bank dated the 24th of March, 1891:—"With regard to the facility of overdraft accorded to your Bank, the time having already been extended at your request to the 30th of June next, as advised by my letter of the 23rd of January, further questions as to renewal had better be left till about that period, when, if you have any definite proposals to make, I shall be happy to place them before my Directors; in the meantime they would prefer that the arrangements already agreed to be carried out." Unfortunately, I have hunted for the letter of the 23rd January, but have not found it. The letter of the 24th of March I think should be sufficient evidence to show you that the open credit was afforded us on the 30th of June, 1891.

MR. DAVID BARCLAY : When was the entry regarding this particular £30,000 first made?

MR. BROWNE : As a matter of fact, of course I would not always pass the entries unless they were, so to speak, necessary. If I had not occasion to avail myself of that I would not pass the entry; but if my "bills payable" seemed to warrant it I used to pass the entry. You see I did not avail myself of the credit unless it was necessary, but I never took credit for what I had not got. There is constant reference to this. We constantly had £25,000 to £30,000, and occasionally up to £50,000, and on one occasion £80,000. I never took credit for anything that I was not authorised to use.

MR. DAVID BARCLAY : The letter of the 23rd of January would reach you about the end of February, I suppose: will you read your acknowledgment of this missing letter?

MR. BROWNE : That is the letter I cannot find; I have not apparently acknowledged that particular letter.

MR. DAVID BARCLAY : It would reach you about the end of February.

MR. BROWNE : I can find no acknowledgment of that in my letter-book. The letter of the 24th of March I should think would be sufficient.

MR. FITZGERALD : That letter has been exhibited at some board meetings that were held previously to the liquidators being appointed.

THE PRESIDENT : You see by this letter of the 24th of March, 1891, your open credit on the London and Westminster Bank in London was practically limited to the 30th of June, 1891.

MR. BROWNE : No, it was not: it was from the 1st of April, 1891.

THE PRESIDENT : The letter says: "The time having already been extended, at your request, to the 30th of June, as advised by my letter of the 23rd of January."

MR. BROWNE : You would consider I had authority to draw that on the 30th of June, 1891, would you not? Of course we could easily have made it the 1st of July of the same year.

MR. DAVID BARCLAY : Was that £30,000 an addition, or was it the extreme limit secured or unsecured?

MR. BROWNE : Unsecured.

MR. DAVID BARCLAY : To what limit were you authorised to draw?

MR. BROWNE : On the 30th of June, 1891, £30,000.

MR. DAVID BARCLAY : What had you in their hands, then, further than bills of exchange?

MR. BROWNE : We had some £24,000 worth of Tasmanian Debentures.

MR. DAVID BARCLAY : Did they belong to you or to the London and Westminster Bank?

MR. BROWNE : To us, and we took credit for them.

MR. DAVID BARCLAY : You debited them in the full value of them?

MR. BROWNE : Yes, we treated it as a remittance; they were at liberty to sell them whenever they thought proper.

MR. DAVID BARCLAY : If you debited the bank with them, how did they belong to you?—did you send copies of your account with the London and Westminster Bank periodically to that Bank?

MR. BROWNE : No; of course they got copies of our balance-sheets regularly. We told them we treated the Treasury Bills as a remittance.

MR. DAVID BARCLAY : You made that entry, then, (let us understand the thing properly) to show your shareholders that you had moneys in London to meet those engagements, that is, your drafts on them—your "balances due to banks?"

MR. BROWNE : Yes, in this way, that we were authorised by the London and Westminster Bank to take credit for every remittance we sent home to them.

MR. DAVID BARCLAY : Now, do not let us get away from the subject,—let us confine ourselves to the £24,000 worth of Debentures and the £30,000 unsecured credit. You included this £30,000 in your

“balances due by banks,” for the special reason that you wanted to show to the public that you had got funds at home to meet your London engagements?

MR. BROWNE: No, that I had got an equivalent to funds to meet my balances.

MR. DAVID BARCLAY: That is your explanation?

MR. BROWNE: It is one of my reasons. Perhaps I am wandering from the subject, but I know in my old service you would debit your London office for the bills sent home.

MR. DAVID BARCLAY: Will you tell me if you included in that amount the £30,000 authorised and the Debentures?

MR. BROWNE: The Debentures might be sold at any moment. The entries were passed for Debentures and we debited the London Bank with the amount when we sent it home; and we debited it with the £30,000 we were authorised to overdraw.

MR. DAVID BARCLAY: Will you tell me what was your object in debiting your London agents with unsold Treasury Bills, and debiting them with the amount of overdraft they consented to allow you?

MR. BROWNE: So far as Debentures were concerned it was simply an ordinary transaction. I don't know your system of Treasury Bills.

MR. DAVID BARCLAY: I am not here to be examined; but I may inform you that we never take credit for them in that way. We never do, or did.

MR. BROWNE: If they are ordered to be sold at once, don't you?

MR. DAVID BARCLAY: No; we don't take credit for them: but we will pass that now. Can you tell us why the £30,000 is included?

MR. BROWNE: Because, as I explained at the meeting, I think I must show what I had to draw my “Bills payable” on.

MR. DAVID BARCLAY: You included the £30,000 in order to show the shareholders that you had funds at home to meet those bills.

MR. BROWNE: That I had credit balance.

MR. DAVID BARCLAY: When did those bills in circulation mature?

MR. BROWNE: Some of them were not matured. We did not credit the London and Westminster Bank till they matured.

MR. DAVID BARCLAY: When, in the ordinary course, would these bills in circulation mature?

MR. BROWNE: They were principally drawn at 60 days' sight.

MR. DAVID BARCLAY: Seeing this credit of £30,000 expired on the 30th June, was there on that very date money at your London bankers to meet them?

MR. BROWNE: It was so on the 30th June.

MR. DAVID BARCLAY: But the credit expired on that date.

MR. BROWNE: It was there on the 30th June.

MR. DAVID BARCLAY: How could it be so?

MR. BROWNE: Of course you are throwing a new light on the whole thing now.

MR. DAVID BARCLAY: If the credit expired on the 30th day of June, how can you say the money was there on that date?

MR. BROWNE: This is an entirely new light to throw on the thing.

THE PRESIDENT: Was this open credit renewed after the 30th June, 1891.

MR. BROWNE: Yes, to the extent of £20,000. Our balance-sheet was made out on the 30th of June.

THE PRESIDENT: How were you going to meet the drafts?

MR. BROWNE: At that time we had a credit for that.

MR. DAVID BARCLAY: It is not a question of how you were going to meet them,—it is a question of how you stood with your agents?

MR. BROWNE: That is just what I am stating. I am placed at a disadvantage. You have gone into the balance-sheet and prepared your questions ready for me, and I have been getting together facts concerning the two last paragraphs of the Liquidators' Report.

MR. DAVID BARCLAY: I understand the position you take up, but I want to know how it is that the open credit expired on the 30th of June, and in the face of that credit having expired, you in your balance-sheet take credit for £30,000.

MR. BROWNE: But it did not expire until the 1st of July. We had it on the 30th of June.

MR. DAVID BARCLAY: No, it expired on the 30th of June. It was cancelled on that date.

MR. BROWNE: I do not agree with you there at all. I consider that on the 30th of June we had open credit for £30,000 from the London and Westminster Bank, and that that open credit expired on the 1st day of July.

MR. DAVID BARCLAY: It was cancelled on the 30th of June.

MR. BROWNE: I am placed at a great disadvantage. What would your opinion be, Mr. Tenison?

MR. TENISON: That it expired on the 30th of June, of course.

MR. THOMSON: If you gave a customer a limit for an overdraft and it expired on the 30th of June, would you not send in an application for it on that day?

THE PRESIDENT : If you held a bill from a customer and it was due on the 30th of June, would you present it on that day or the following?

MR. BROWNE : I would not present it until the 30th of June, because it would be only due on that day.

MR. TENISON : The credit expired on the 30th day of June.

MR. BROWNE : I maintain we were justified in including the £30,000 in our balance.

MR. THOMSON : Yes, if you make it appear as balances due to other banks.

MR. DAVID BARCLAY : Your explanation is, that you included it to show everybody that you had available funds in London to meet those drafts?

MR. BROWNE : Yes.

MR. DAVID BARCLAY : How can you reconcile that statement with the fact that on that day your credit had expired?—or on the next day—taking your view as the correct one;—how can you reconcile the statement?

MR. BROWNE : Well, to tell you the honest truth, it never occurred to me before, that because the letter stated that the open credit expired on the 30th of June it was not available on that date.

MR. DAVID BARCLAY : Well, supposing it expired on the 1st of July, you could not get your letters asking for an extension of it home until long after?

MR. BROWNE : Yes, but there may be other reasons,—I did not say that was the only reason. I think that is where I am at a great disadvantage. You have carefully studied all these questions, and I have not had the opportunity.

MR. DAVID BARCLAY : I only studied it last night, and then jotted down a few questions to ask you.

MR. BROWNE : This was supposed to be a simple enquiry into those two paragraphs, and I feel now all the more necessity for being represented by Counsel.

THE PRESIDENT : I do not see that we are going beyond the limits laid down by Mr. Hart. The liquidators assert that you wrongfully included this £30,000 in your balance-sheet.

MR. BROWNE : No, excuse me, they did not. Mr. Fitzgerald asserted it.

[It was pointed out the Report of the Liquidators bore the signature of both Mr. Hart and Mr. Fitzgerald.]

THE PRESIDENT : In asking you questions concerning the balance-sheet in regard to the £30,000 I do not see that we are placing you at a disadvantage in the slightest way.

MR. BROWNE : I maintain that if credit was allowed up to the 30th of June I had a right to take credit for the £30,000 on that date, and I showed that it was to meet the drafts I had drawn.

THE PRESIDENT : Will you show us the letter in which the credit was extended?

MR. TENISON : The point is an extremely simple one. The £30,000 credit existed up to the 30th June and then melted away, and Mr. Browne put it in his balance-sheet as cash at his bankers to represent to the shareholders that there were actually those funds existing in London to meet the drafts, but he did not show that the right to the £30,000 had melted away with the 30th of June.

MR. BROWNE : It was equivalent to cash so far as I was concerned. Do you see what I mean?

MR. TENISON : You take a wrong view of it. May I ask you, had you anything to authorise you to have a credit with the bank after the 30th June?

MR. BROWNE : No, I don't think I had.

MR. TENISON : This balance-sheet was got out on the 30th June, 1891, and on that date the open credit had expired.

MR. BROWNE : They wrote to us stating that the open credit had been extended to the 30th of June, and on that day they trusted we would make some other arrangements. They renewed it for £20,000.

MR. TENISON : It was not renewed by telegram?

MR. BROWNE : No.

THE PRESIDENT : When did you receive the letter renewing it for £20,000?

MR. BROWNE : About the first week in August. At this time we were overdrawn £40,000, and that is why they reduced it to £20,000.

THE PRESIDENT : You had an uncovered overdraft?

MR. BROWNE : Yes, in addition, and it was sometimes as high as £30,000 to £50,000.

THE PRESIDENT : You were authorised to draw against the Treasury Bills sent them?

MR. BROWNE : Yes, we were, and a great deal more over and over again. We never had less than £30,000. We were authorised at one time to draw £100,000 against Treasury Bills, but that was a special thing apart from anything else.

MR. TENISON : Were you actually overdrawn on the 30th of June?

MR. BROWNE : We were unlimited. Those figures include all we sent home in the shape of bills. They simply held the bills, but we took credit for everything we sent home. We used to pass our drafts to their credit when they matured regularly.

MR. TENISON : You did not credit them until the bills you drew had matured.

MR. BROWNE : We had authority from them to treat everything we sent home to them as cash, and in addition to that we had the £30,000 to our credit. That is to say, we had credit for the £30,000 and everything we sent home.

MR. TENISON : What I asked was, did the London and Westminster Bank not credit you with your remittances to them until the bills you remitted had matured ?

MR. BROWNE : No, they did not discount them. They used to charge us so much per cent. on the overdraft until they matured. They did not debit us with bills payable till they matured. We took credit for everything we sent home.

MR. D. BARCLAY : There were bills afloat which would be unprovided for on the expiration of the authorised overdraft ?

MR. BROWNE : Yes, but I expected to remit home a considerable amount of coin to meet the overdrafts.

MR. DAVID BARCLAY : Where did you expect to get the coin from ?

MR. BROWNE : I expected to obtain it from various sources.

MR. DAVID BARCLAY : As to this entry of £30,000, Mr. Browne, can you point to any authority for making it in the way you have done—can you show us any precedent for it ?

MR. BROWNE : I may tell you this, that we have submitted it to the accountants in Melbourne, and they see no objection to that course.

MR. DAVID BARCLAY : Bankers ?

MR. BROWNE : No, but I have had the opinion of two or three bankers.

THE PRESIDENT : These opinions were got after the entries were made ?

MR. BROWNE : Yes, after the bank closed.

MR. DAVID BARCLAY : Have you got the opinions ?

MR. BROWNE : No, I have not.

MR. TENISON : Who were the persons ?

MR. BROWNE : I do not know that I am at liberty to say that. I did not get them myself, but I believe they have been got.

MR. DAVID BARCLAY : What would be the effect on the mind of anybody who might read that item "Balances due by other banks" in the balance-sheet ?

MR. BROWNE : Well, of course, I dare say many people would think that there was an actual credit balance. I do not want to say they did, but what I wanted to say was this—

MR. DAVID BARCLAY : Yes, but let me ask you in another way : would it not mean that all your shareholders thought you were £30,000 better off than you actually were ?

MR. BROWNE : No, I do not think so, because the London and Westminster Bank said to me you can draw £30,000 in addition.

MR. DAVID BARCLAY : We understand the transaction ; but I wanted you to put yourself in the position of an outsider, and consider whether on reading that balance-sheet you would not think you were richer by £30,000 than you were ?

MR. BROWNE : No, we make ourselves liable for it. It does not increase our balance of assets.

MR. DAVID BARCLAY : It does by £30,000.

MR. BROWNE : Not the balance.

MR. DAVID BARCLAY : Surely it does. Take it in another way : how do you judge the strength of a bank ?

MR. BROWNE : By the coin.

MR. DAVID BARCLAY : What would you, as a practical banker, consider the proper amount to hold in coin and cash balances in proportion to your liabilities ?

MR. BROWNE : Five shillings in the pound would be a fair thing.

MR. DAVID BARCLAY : Don't you show by this entry that you are entitled on this basis to have about £120,000 more deposits in your bank. Holding £30,000 in coin or cash balances would entitle you to this ?

MR. BROWNE : Of course I maintain that £30,000 was equal to coin.

MR. DAVID BARCLAY : But it was not : in fact it was non-existent.

MR. BROWNE : It never struck me before that the balance there expired on the 30th of June.

MR. DAVID BARCLAY : It does ?

MR. BROWNE : It does not, because after I gave a man credit up to the 30th of June I would not return his cheque till the following day. The credit, I maintain, was there when the balance-sheet was issued.

MR. DAVID BARCLAY : In this statement of balances due by other banks there is an item £8210 7s. 6d.

MR. BROWNE : Mr. Bell must explain that. It is in his balance-sheet.

MR. DAVID BARCLAY : We have not yet got the minute adopting the Report and Balance-sheet.

MR. BROWNE : It was confirmed by the Board after the meeting of shareholders.

MR. DAVID BARCLAY : That was at the meeting of the 20th of July. I want to know when it was submitted to and adopted by your Directors ?

MR. BROWNE : I do not know.

MR. DAVID BARCLAY: This £30,000 put in "balances due by other banks" was put on the other side as deposits?

MR. BROWNE: Yes; that was the right way to treat it.

MR. DAVID BARCLAY: Well, if you ask me, I think it was exceedingly wrong.

MR. BROWNE: If I had done it any other way it would have made it worse.

MR. DAVID BARCLAY: What do you mean by making it worse?

MR. BROWNE: Some people have said that I have deceived the public, and I hold that if we had made the entries in the way some people wanted us to, it may have mislead them a great deal more than what they say they have been misled.

MR. DAVID BARCLAY: Was it a deposit?

MR. BROWNE: Not in the ordinary sense of the word.

MR. DAVID BARCLAY: Why, then, did you put it as a "deposit" and not as a "balance due to other banks?"

MR. BROWNE: I really could not say.

MR. DAVID BARCLAY: It was a balance due to other banks. We will now leave that and go to the matter of the Union Bank. What was the amount due to the Union Bank?

MR. BROWNE: The amount due to the Union Bank was £35,000.

MR. DAVID BARCLAY: What was the security held by the Union Bank at the same time?

MR. BROWNE: I am speaking from memory now, and probably Mr. Tenison will correct me if I am wrong. £35,000 was owing on a promissory note which had been discounted, and which did not mature until the 28th of August. We took up that promissory note and substituted other bills for it. I think that is right.

MR. DAVID BARCLAY: That was the only security they had?

MR. BROWNE: I think that was the first transaction.

MR. DAVID BARCLAY: Well?

MR. BROWNE: I am not quite sure about the others.

MR. DAVID BARCLAY: When that promissory note matured did your bank pay it off?

MR. BROWNE: No. The £35,000 promissory note was taken up. It would not have matured till the 28th of August, but we had to retire it, and we lodged other bills instead of it?

MR. DAVID BARCLAY: You substituted other bills?

MR. BROWNE: Yes.

MR. DAVID BARCLAY: What was the amount?

MR. BROWNE: It would be considerably over the £35,000.

MR. DAVID BARCLAY: It was really, then, a loan of a certain amount on a very much larger security in the shape of bills?

MR. BROWNE: It was to take the place of the promissory note which had been discounted.

MR. DAVID BARCLAY: Did you discount the bills?

MR. BROWNE: No. We lodged them with the Union Bank in lieu of the promissory note. We substituted other bills to the amount of £45,000 to £50,000? Those were given as security. The bills were not discounted, but as the original promissory note had been discounted I should call it a discount transaction.

THE PRESIDENT: Do I understand that the Union Bank actually discounted the bill for £35,000?

MR. BROWNE: I think so, speaking from memory, but Mr. Tenison will correct me. Did we actually discount that bill?

MR. TENISON: That bill was discounted.

MR. DAVID BARCLAY: We cannot go right back to that.

MR. BROWNE: I think you are really trying to put the worst complexion on it that you can. The £35,000 promissory note was discounted with the Union Bank.

MR. DAVID BARCLAY: Let us understand each other. What did you owe the Union Bank on the 30th of June?

MR. BROWNE: £35,000.

MR. DAVID BARCLAY: What security had they?

MR. BROWNE: Certain bills.

MR. DAVID BARCLAY: Was that a discount or a loan?

MR. BROWNE: It was a discount. It is a matter of indifference how you put it.

MR. DAVID BARCLAY: Can you call it a discount?

MR. BROWNE: I think you could—a re-discount of bills.

MR. DAVID BARCLAY: And the amount?

MR. BROWNE: £35,000.

MR. DAVID BARCLAY: Were they discounted?

MR. BROWNE: The bill was discounted.

MR. DAVID BARCLAY : Were the bills which you deposited in place of the promissory note discounted?

MR. BROWNE : They gave us back the promissory note we discounted, but then we had to deposit those bills—do you see? The advance was made originally on the promissory note, and we had to redeem it by substituting bills in lieu thereof.

MR. THOMSON : Then, the bills were not re-discounted?

MR. BROWNE : We handed them securities in the shape of bills for between £45,000 and £50,000, and we had to redeem these bills, so practically it was a re-discount. In the entries in the books of the Bank the transaction was allowed to stand till the date of the maturity of the promissory note, and the bills to the amounts that I have stated were deposited until the due date of the promissory note.

MR. THOMSON : This amount was to secure the second advance?

MR. BROWNE : Yes.

MR. DAVID BARCLAY : There was no promissory note the second time?

MR. BROWNE : There was no promissory note the second time; we substituted bills. The promissory note for £35,000 was retired. We had to take the note up before maturity.

MR. DAVID BARCLAY : You want to pin us to these two particular items, and directly we try—

MR. BROWNE : I maintain it was a re-discount in every sense of the transaction.

MR. DAVID BARCLAY : We only want to get at the facts. On the 30th of June, 1891, you owed the Union Bank £35,000, secured by deposit of about £50,000 worth of bills?

MR. BROWNE : Yes, that is it, between £40,000 and £50,000, and the entries in the books stood unaltered.

MR. DAVID BARCLAY : How in the balance-sheet?

MR. BROWNE : The same way.

MR. DAVID BARCLAY : Will you show us the books from which you made the entry?

MR. BROWNE : Of course the entry shows it a discounted promissory note.

THE PRESIDENT : The moment you borrowed this money from the Union Bank you deducted it from both sides of your balance-sheets in your general weekly averages?

MR. BROWNE : No, we did not.

THE PRESIDENT : Did you do that in your weekly averages,—was it taken off every week?

MR. BROWNE : No; that was taken off the bills discounted the moment I discounted it, of course. I may say that had been the universal practice here long before I came into the place, and I, of course, looked upon it as correct. We melted a bill for £35,000 and turned it into cash.

MR. DAVID BARCLAY : Let us put it in this way: what was originally a discount you turned into a loan, on which you paid interest.

MR. BROWNE : No, no, we had no interest.

MR. DAVID BARCLAY : The Union Bank allowed you to take up this promissory note and you simply put in £40,000 or £50,000 worth of bills as security for the redemption of that £35,000 on the 28th of August.

MR. BROWNE : No, we actually discounted the bill.

MR. DAVID BARCLAY : Was the promissory note paid by your customer before the 28th of August? You say you did not pay the Union Bank. Did you give them security to be held till the 28th of August?

MR. BROWNE : Yes. I wish it to be distinctly understood that in passing that entry I was only carrying out what had been done for years before.

THE PRESIDENT : Yes.

MR. BROWNE : We had had a previous loan from the Union Bank. We substituted bills for the promissory note maturing on the 28th of August.

MR. TENISON : With Mr. Browne's permission I will tell you the facts of the case. Mr. Browne re-discounted the promissory note of a customer of his for £35,000: that was to mature some time in August.

MR. BROWNE : That is exactly what I said.

MR. TENISON : Some time before the 30th of June Mr. Browne's customer paid him the amount of that bill, but Mr. Browne represented to us that he had made such arrangements that it would be more convenient for him if we did not call on him to pay us over the amount that had been paid by his customer. He said if we allowed him to take up the bill he would do so by creating an overdraft, and as security for that overdraft we were to take £40,000 or £50,000 in bills. We took his cheque for that amount, and the bill was given up to him to surrender to his customer. No interest was to be charged until the date of the maturity of the bill, as discount for the full term had been paid. Some discussion arose between us as to the question of the rebate, and the debt was practically allowed to stand till the date of maturity of the promissory note re-discounted. I could not call it a re-discount—it simply became an overdrawn account.

THE PRESIDENT : You took additional security because you gave up the promissory note.

MR. BROWNE : That is the way we treated such transactions when we were in the habit of re-discounting. I could not see any other possible way of passing the entries than the way in which I did; and it was the custom of the Bank.

MR. DAVID BARCLAY : Was that £35,000 advance a re-discount or a loan?

MR. BROWNE : A re-discount. I think you are trying to put the worst face on the matter.

MR. DAVID BARCLAY : We are only anxious to get at the true state of the matter. I am not anxious to put the worst face on it, and you are quite under a misapprehension when you make such a statement. I observe you say you sought advice as to the way in which this entry should have been made—can you tell me whose advice you sought?

MR. BROWNE : No, I could not. I asked several people what they thought of the manner in which I had passed this, and they thought I could not possibly have done otherwise. They asked me what entries I had passed, and I told them.

MR. DAVID BARCLAY : Before the 30th of June?

MR. BROWNE : Yes.

MR. DAVID BARCLAY : Would it be fair to ask you who it was you consulted?

MR. BROWNE : Well, I am not altogether sure ; I know I mentioned it to Mr. Tenison.

MR. DAVID BARCLAY : Did he agree with it?

MR. BROWNE : I could not say that, but he had no objection to it.

MR. TENISON : What was it you mentioned to me?

MR. BROWNE : The way I should make the entry.

MR. TENISON : If you say I told you I had no objection to it, I must accept your statement, but I have no recollection of it ; in fact, I did not know exactly what the entry was until this moment.

MR. BROWNE : I certainly told people on the other side at the time about that £35,000, and they saw no objection to me passing the entry in the way I passed it.

MR. TENISON : If you say you did mention it to me, I suppose you did ; but I never understood you to mention it as seeking my opinion.

MR. DAVID BARCLAY : If you can say you had any good authority for passing such an entry there the matter ends.

MR. BROWNE : I may say this, that I could not have better authorities than the men I have consulted since.

MR. DAVID BARCLAY : Who are they?

MR. BROWNE : I cannot say.

MR. TENISON : You did not show the same compunction or reticence regarding me.

MR. DAVID BARCLAY : Is it not the invariable practice to show every asset and liability in the balance-sheet of a bank?

MR. BROWNE : Certainly it is, but I do not exactly understand your reason for asking the question. It is so self-evident I do not see it. This is all very irregular. Before my time in this bank I was never accustomed to re-discount, and the first time I did it here I turned back to the books, and you must have been aware at the time of the way it was done. There was a special occasion, when Mr. P. O. Fysh was Chairman of the Board of Directors of this bank, where these bills were discounted or borrowed against. These books are in the bank now. I think it was on the 30th of June, 1884, when a similar transaction involving £22,664 was converted into coin. I believe it was on the 30th of June, and that coin was got from you.

MR. DAVID BARCLAY : Very likely.

MR. BROWNE : It must have been self-evident to anyone, then, that the bills had been converted into cash on the balance-sheet. I thought my predecessor would have surely consulted some one. What I want to make understood is this—that when Mr. Fysh was Chairman the Manager was authorised to carry out a similar transaction, and I followed what was an invariable practice.

MR. DAVID BARCLAY : Don't you admit that every liability and every asset should appear on the balance-sheet?

MR. BROWNE : No, I do not altogether, if you are talking of re-discounts.

MR. DAVID BARCLAY : Can you point to the balance-sheet of any bank which does not purport to show the whole of its assets and the whole of its liabilities?

MR. BROWNE : Well, I don't know that I can possibly answer such a question. I say that I am morally certain that there are plenty of banks with re-discounts who do not show them as re-discounts.

MR. DAVID BARCLAY : Will you tell us whose?

MR. BROWNE : I am morally certain they do it.

THE PRESIDENT : Don't you think that the entry in question was calculated to deceive the shareholders? If you can give us an authoritative precedent for making it as you did there the matter ends?

MR. BROWNE : How can I give you a precedent?

THE PRESIDENT : I understood from your statement that you could.

MR. BROWNE : I consulted other bankers in regard to these entries, and they were satisfied that I could do nothing else.

MR. TENISON : I wish it to be distinctly understood that I was unaware of the matter. To my knowledge I never heard of it before to-day.

MR. BROWNE : I told bankers on the other side about the matter.

MR. TENISON : Who were they?

MR. BROWNE : It was a personal friend of mine.

MR. TENISON : Why don't you give the name ?

MR. BROWNE : He might not like to be brought into the matter. There was another gentleman in this colony, and he was asked specially about it.

MR. TENISON : I certainly cannot understand why you do not tell us on whose authority you made the entries.

THE PRESIDENT : I hope Mr. Browne will not misunderstand the object of the question, because if he can give us a precedent there is an end to the examination on this item.

MR. BROWNE : Don't you see there are others who have passed entries similar to that, but you could not expect them to acknowledge that unless they were made to do so.

THE PRESIDENT : If I write to-day to Melbourne and borrow £100,000, with which I swell my balance-sheet for a while and for a purpose, don't you think I am doing what is wrong, and calculated to mislead ?

MR. BROWNE : No, I do not share your opinion in that at all.

THE PRESIDENT : Was not your balance-sheet framed so as to mislead ? Your drafts were out and not presented, and you must have known that unless you could arrange for a renewal of your London credit those drafts would be dishonored, because your credit expired on that or the following day.

MR. BROWNE : I would like to show Mr. Barclay that was not a certainty by any means.

THE PRESIDENT : I shall be glad if you will.

MR. BROWNE : They over and over again allowed us to exceed our maximum credit when asked. You can see from this letter.

MR. TENISON : But this letter takes strong exception to your proposal for increased overdrafts. They say :—"With regard to the facility of overdraft accorded to your bank, the time having already been extended, at your request, to the 30th of June next, as advised by my letter of the 23rd January, further questions as to renewal had better be left till about that period, when if you have any definite proposals to make I shall be happy to place them before my Directors ; in the meantime they would prefer that the arrangements already agreed to be carried out."

MR. BROWNE : We have had £80,000 overdrawn at a time, so that you will see they did not keep us to the limit.

THE PRESIDENT : It is very evident that if the credit was not renewed on the 30th June, 1891, or special coin sent to meet the drafts, they must have been dishonored.

MR. BROWNE : I don't think you have any right to go into that question. As a matter of fact I had reason to expect a considerable extension of my credit ; I had applied for it, and I was making arrangements for it. I also expected to get funds in time to remit by cable, if necessary, to meet the drafts.

MR. TENISON : You say you expected to cable home sufficient to meet your drafts.

MR. BROWNE : To increase our balance between the 30th of June and middle of August, when certain of those bills came due.

MR. TENISON : From what source did you expect to get these funds ?

MR. BROWNE : I decline to say.

MR. DAVID BARCLAY : There is only one other question I will ask you, Mr. Browne. Whom do you recognise as the best authority on banking practice ?

MR. BROWNE : Well, I suppose, "Hutchison."

MR. DAVID BARCLAY : Did you consult him on these points ?

MR. BROWNE : No, I did not.

["Hutchison" on Banking Practice was here handed to the witness.]

MR. DAVID BARCLAY : Do you see in that balance-sheet of "Hutchison's" any reference to bills re-discounted ?

MR. BROWNE : I do not think this is altogether a fair balance-sheet.

MR. DAVID BARCLAY : I have seen balance-sheets of English bankers just as full.

MR. BROWNE : I know for a fact that Mr. Tenison's institution does not show any re-discounts.

MR. DAVID BARCLAY : Don't they show any re-discounts ?

MR. BROWNE : No, certainly not.

MR. DAVID BARCLAY : Don't they show it in any form at all ?

MR. BROWNE : No.

MR. TENISON : Does my institution re-discount ?

MR. BROWNE : It does.

MR. TENISON : How do you know that ? it is a peculiar statement to make.

MR. BROWNE : I know when I held my appointment in your bank re-discounts were not shown.

MR. DAVID BARCLAY : We understand, then, that you passed this entry in accordance with the actions of your predecessor ?

MR. BROWNE : I did this in accordance with the practice followed before I took up the management.

MR. DAVID BARCLAY : Which had been done for years past ?

MR. BROWNE: Yes.

MR. DAVID BARCLAY: How far back is it when the £22,664 you referred to was lent, when Mr. Fysh was present as Chairman?

MR. BROWNE: That is only one of many transactions. That particular bill was the last half-year that Mr. Fysh was here.

MR. DAVID BARCLAY: What was the date of that?

MR. BROWNE: I could turn up the minute-book.

MR. DAVID BARCLAY: Would it take long to turn up the bill-book in which these entries are made?

MR. BROWNE: It has been done.

MR. DAVID BARCLAY: And you consulted the books, and followed the entry as you there found it?

MR. BROWNE: Yes, it was on the 31st of December, 1884.

THE PRESIDENT: I think, Mr. Browne, that is all we shall require to ask you at present.

MR. BROWNE: There is one thing, I have been told to ask for the certificate of indemnity to witnesses provided for in Sect. 5 of 52 Vict. No. 26.

THE PRESIDENT: All right, we will see about that.

[Mr. Browne then withdrew.]

ALFRED THOMAS BELL *called in and examined.*

BY MR. DAVID BARCLAY: Your name is—

MR. BELL: Alfred Thomas Bell.

MR. DAVID BARCLAY: And you were the Accountant in the Bank of Van Diemen's Land?

MR. BELL: Yes.

MR. DAVID BARCLAY: And you were so on the 30th June, 1891?

MR. BELL: Yes, on that date I was.

MR. DAVID BARCLAY: Would you turn up the Colonial Bank of Australia Account in the ledger on the 30th of June, 1891?

MR. BELL: Yes.

MR. DAVID BARCLAY: What was the balance on that date?

MR. BELL: It was £1801 9s. 1d. debit.

MR. DAVID BARCLAY: In the balance-sheet did you put that balance down?

MR. BELL: I made it appear so.

MR. DAVID BARCLAY: Look further down, where you have a credit entry of £5000.

MR. BELL: Yes, we debited ourselves with £5000 on 1st July.

MR. DAVID BARCLAY: What entry did you make in the books of the bank on the 30th of June for that £5000?

MR. BELL: Credited coin *in transitu* for the £5000 drawn on the Colonial Bank.

MR. DAVID BARCLAY: How did you show that entry in your balance-sheet?

MR. BELL: Credit was taken for it as a deposit.

MR. DAVID BARCLAY: What effect would that have upon the shareholders of the bank?

MR. BELL: The coin was not in the bank on that day.

MR. DAVID BARCLAY: Have you any authority for making the entries in the form you have made them?

MR. BELL: No, not that I am aware of. I did not know whether we had it or not.

THE PRESIDENT: Do I understand that £5000 was also entered as a deposit among the ordinary deposits of the bank?

MR. BELL: Yes.

THE PRESIDENT: You did not include it in balances due to banks?

MR. BELL: No.

MR. DAVID BARCLAY: Then, the result was that the coin in the balance-sheet was swelled by £5000, and the deposits were swollen by another £5000.

MR. BELL: I believe the coin was there the next morning.

MR. DAVID BARCLAY: The entries were made on the 30th June. On that day you took credit for a draft which you drew on Melbourne for coin which you got from the Union Bank later on, but you did not have it on the 30th June?

MR. BELL: Yes.

MR. DAVID BARCLAY: There was an error at all events in the balance-sheet of £5000?

MR. BELL: Well, the coin was *in transitu*.

MR. DAVID BARCLAY: No, it was not. You did not get the coin until the 1st July.

MR. BELL: Yes.

MR. DAVID BARCLAY: To balance that, that £5000 was put in your ordinary deposits; therefore, on the one side your deposits were swollen by a bogus entry of £5000, and, on the other side, the coin was swollen by £5000.

MR. BELL: We had not got it on the night of the 30th of June.

MR. DAVID BARCLAY: Did you make these entries yourself or by instructions?

MR. BELL: By instructions.

MR. TENISON: By whose instructions?

MR. BELL: Mr. Browne's.

MR. DAVID BARCLAY: When was the draft drawn?

MR. BELL: I am not quite sure as to the date.

MR. DAVID BARCLAY: As a matter of fact, you had not the funds in the Colonial Bank to meet that draft.

MR. BELL: No.

MR. DAVID BARCLAY: You did not have the funds?

MR. BELL: No.

MR. DAVID BARCLAY: Had the entry been properly made, then, on the 30th of June, the "balances due to other banks" would have been increased by £5000?

MR. BELL: Yes, of course.

MR. DAVID BARCLAY: To that extent, then, the balance-sheet was incorrect?

MR. BELL: I suppose it was. That draft for £5000 is dated June 30, 1891.

MR. DAVID BARCLAY: Can you tell us why it is not credited to the Colonial Bank instead of being passed to a suspense account. There is a proper entry for these things?

MR. BELL: No. I followed my instructions.

MR. DAVID BARCLAY: If the proper entries had been made in respect of that draft on the 30th of June, "balances due by other banks" would have been decreased by £5000?

MR. BELL: Yes.

MR. DAVID BARCLAY: Then the balance-sheet was incorrect in that particular?

MR. BELL: Yes.

MR. DAVID BARCLAY: To the extent of £5000?

MR. BELL: I do not know if the draft had been passed.

MR. DAVID BARCLAY: An improper entry was made.

THE PRESIDENT: By dealing with this draft in the way you did, the coin was swollen by a sum of £5000 which did not exist?

MR. BELL: I do not know that it did not exist.

THE PRESIDENT: Was it in your coffers?

MR. BELL: No; but we got it from the Union Bank in the morning.

THE PRESIDENT: You did not credit it, then, till the 1st of July?

MR. BELL: It was down in the suspense account.

THE PRESIDENT: Can you show us the current account ledgers in which it appears?

MR. BELL: Yes, Sir.

[The current account ledgers were here produced showing the entry of £5000.]

MR. DAVID BARCLAY: What is the date in the draft register?

MR. BELL: The date has been altered in the draft register apparently from the 1st of July to the 30th of June, but I do not know how that has happened.

THE PRESIDENT: What was the draft dated?

MR. BELL: I cannot say whether the draft was dated the 30th of June or the 1st of July.

MR. W. G. BROWNE *recalled and examined.*

MR. DAVID BARCLAY: There is one other matter in connection with the £5000 transaction. The entry, it appears, was made in the ledger on the 1st of July, and in the draft-book the entry appears to have been dated the 30th of June: when was the draft drawn—on the 1st of July or the 30th of June?

MR. BROWNE: The draft was drawn on the 30th of June. If Mr. Tenison recollects, he did not receive his telegram until after business hours.

MR. TENISON: I have no recollection of the matter.

MR. DAVID BARCLAY: "Balance from Colonial Bank on the 30th of June, £1801." That would be untrue if the proper entry had been made—what entry did you make?

MR. BROWNE: I told them to post it to bills payable. I was under the impression it would be treated as a bill payable.

MR. DAVID BARCLAY : The entry, as I understand it, was made under your instructions—Mr. Bell says so.

MR. BROWNE : That is so ; we did not get the actual coin until the following day.

MR. DAVID BARCLAY : Is that any reason why you should make the entry ?

MR. BROWNE : We had no right to credit the Colonial Bank until the coin was actually received.

MR. DAVID BARCLAY : Notwithstanding your having taken credit for the coin ?

MR. BROWNE : I cannot see that it makes very much difference.

MR. DAVID BARCLAY : You credit that draft on the 30th of June ?

MR. BROWNE : Yes.

MR. DAVID BARCLAY : What was your reason for not crediting the Colonial Bank at the very minute you took credit for the £5000 coin ?

MR. BROWNE : Well, I suppose we thought it better not to.

MR. DAVID BARCLAY : Is that your answer ? Why did you go out of your usual way ? Did you on any other occasion make an entry like this ?

MR. BROWNE : No.

MR. DAVID BARCLAY : Why did you vary the practice on this particular occasion ?

MR. BROWNE : As a matter of fact we did not want to credit the Colonial Bank. If we had credited them "balances due to other banks" would have been increased by £5000, or the "balances due by other banks" would have been decreased.

MR. DAVID BARCLAY : It would have made a difference of £5000.

MR. BROWNE : Yes, one way or the other, of £5000.

MR. THOMSON : It would have made the position worse by £5000.

MR. BROWNE : No, by £3200.

MR. THOMSON : It increased your deposits by £3200, and your credits by £1800.

MR. BROWNE : It is a special entry, there is no doubt about it.

THE PRESIDENT : This entry was made to represent to the shareholders that you had 5000 sovereigns which you had not got ?

MR. BROWNE : Yes.

THE PRESIDENT : If the thing had gone through in the ordinary proper way the coin and bullion would have been £65,431 12s. 11d., and not £70,431 12s. 11d.

MR. BROWNE : That is so, but as far as we were concerned the transaction was completed on the 30th of June.

THE PRESIDENT : Had you any authority to overdraw at the Colonial Bank in Melbourne ?

MR. BROWNE : Yes, I had an open credit for over £10,000, which I never used.

THE PRESIDENT : It seems to me, that on this 30th of June when you stated you held the coin and bullion for £70,431 12s. 11d., you did not hold it ; you drew a draft, and you did not credit your agents with that draft.

MR. BROWNE : No.

THE PRESIDENT : Both sides of your balance-sheet to that extent must be wrong ?

MR. BROWNE : It is actually wrong, no doubt ; but I maintain that under the circumstances we were justified in passing the entries at the time.

THE PRESIDENT : We want to get at the facts first.

MR. BROWNE : That would be a severe way of looking at the matter, considering Mr. Tenison did not get his telegram until after banking hours. We looked upon the £5000 as ours on the 30th of June.

MR. TENISON : Even if the telegram about the draft had not been delayed, your balance-sheet would have been wrong ?

MR. BROWNE : Yes, to the extent of £3200.

MR. TENISON : No, to the extent of £5000.

THE PRESIDENT : The point arises—why make the entry on the 30th of June ? Was it for the purpose of swelling your cash ?

MR. BROWNE : Of course, every banker does the best he can to make his balances up on that date.

THE PRESIDENT : Do you admit that you did it to make a better show ?

MR. BROWNE : I admit that under the circumstances we were entitled to take all we could get.

THE PRESIDENT : You don't imply that other bankers do this sort of thing ?

MR. BROWNE : No.

THE PRESIDENT : Is it not a fact that on the 30th of June the coin and bullion was actually £65,431 12s. 11d., and not £70,431 12s. 11d. as stated by you in the balance-sheet.

MR. BROWNE : Yes, that is so.

THE PRESIDENT : And included in your deposits was an entry belonging to suspense account which was not a deposit at all ?

MR. BROWNE : Yes.

THE PRESIDENT : So that, as a matter of fact you treated this entry exactly in the same way as the £30,000.

MR. BROWNE : Almost identically. We knew the coin was waiting for us, and we did not pass this entry until we actually got the certificates. In the morning we practically got the cash.

THE PRESIDENT : You had not the coin according to your own ledger.

MR. DAVID BARCLAY : We will say, for the sake of argument, you were right in taking credit for the coin, but why did you not give the Colonial Bank credit for the draft you drew to obtain this coin? Why was the latter entry suppressed?

MR. BROWNE : I did not credit the Colonial Bank.

MR. DAVID BARCLAY : You had the £5000 included in both your "balances due by other banks" and in your coin and bullion?

MR. BROWNE : Yes.

THE PRESIDENT : You had this £5000 twice over?

MR. BROWNE : My object was to take credit for as much coin as I legitimately could.

THE PRESIDENT : You see you had it in both accounts on that day.

MR. BROWNE : Yes, the coin was virtually ours on that date—the 30th of June I refer to.

MR. TENISON : The £5000 was entered twice over to swell the apparent resources?

THE PRESIDENT : Yes.

MR. DAVID BARCLAY : I think so.

THE PRESIDENT : I do not see how you can get away from that.

MR. THOMSON : It is quite clear.

THE PRESIDENT : I think that will conclude our examination to-night.

MR. BROWNE : Will you sign my certificate?

THE PRESIDENT : You shall have it at the conclusion of our sittings, Mr. Browne.

The Commission, at 11.10 P.M., adjourned.

EXHIBITS.

A.

TRUSTEES' REPORT.

TO THE SHAREHOLDERS OF THE BANK OF VAN DIEMEN'S
LAND, LIMITED, IN LIQUIDATION.

LADIES AND GENTLEMEN,

In accordance with clause 19 of 55 Vict. No. 17, the Act under which the liquidation of the Bank is being conducted, we have asked you to meet us to-day so that we may present to you our first report on the affairs of your institution, together with the Balance-sheet we have prepared as at December 31st, 1891.

Since our appointment under the above-named Act we have been daily employed in the liquidation of the Bank's Assets, conducting side by side therewith an investigation as to the position of your institution, and the causes which contributed to its failure on the 4th August in last year. The result of such investigation as to the Bank's position is presented in the following Balance-sheet; the causes which, in our opinion, have occasioned its failure, will be referred to later on.

Before asking your attention to the Balance-sheet of December 31st, we desire to submit for your information that of August 1st, 1891, some three days before the closure.

BANK OF VAN DIEMEN'S LAND, LIMITED, (IN LIQUIDATION.)

BALANCE-SHEET.

<i>Dr.</i>			<i>1st August, 1891.</i>		
	£	s. d.	£	s. d.	
To Capital	250,000	0 0			
Reserve Fund	40,000	0 0			
Profit and Loss Account	5,042	2 10			
Reserve for Bad and Doubtful Debts	25,211	10 9			
			320,253	13 7	
Current Deposits	287,868	13 4			
Fixed Deposits	446,042	15 2			
Notes in Circulation	40,302	0 0			
Drafts on London and Bills Payable	115,705	10 6			
Balances due Banks	67,266	14 2			
Amount due to Public			957,185	13 2	
			£1,277,439	6 9	
<i>Cr.</i>			<i>£ s. d.</i>		
By Coin .....	...	...	15,763	19 11	
Balances due by other Banks .....	...	...	73,763	17 6	
Premises .....	...	...	31,421	8 5	
Bills Discounted, Overdrawn Accounts, and all Debts due to the Bank .....	...	...	1,156,490	0 11	
			£1,277,439	6 9	
E. & O. E.					

BANK OF VAN DIEMEN'S LAND, LIMITED, (IN LIQUIDATION.)

BALANCE-SHEET.

<i>Dr.</i>			<i>31st December, 1891.</i>		
	£	s. d.	£	s. d.	
To Capital	250,000	0 0			
Reserve Fund	40,000	0 0			
Profit and Loss Account	4066	18 10			
Balance of Old Reserve for Bad and Doubtful Debts	11,905	4 8			
			305,972	3 6	
Current Deposits	233,440	18 2			
Fixed Deposits	347,333	14 7			
Notes	1076	0 0			
Drafts on London and Bills Payable	49,256	2 11			
Balances due Banks (after taking Credit for *£24,937 10s. Govern- ment Securities held in London ...	17,624	3 0			
Amount due to Public...			648,730	18 8	
			£954,703	2 2	

* This represents the Actual Cost of the Securities, but it is not expected that the full amount will be realised.

Cr.		£	s.	d.
By Cash .....	...	32,857	18	3
Balances due by other Banks .....	...	4734	8	7
Premises .....	...	33,476	18	5
Bills Discounted, Overdrawn Accounts, and all Debts due to the Bank ..	...	883,633	16	11
Total Assets	£954,703	2	2	
E. & O. E.				

The surplus indicated in the Balance-sheet, which has been arrived at after writing off all losses incurred in every settlement made up to date, amounts, as you will observe, to the sum of £305,972 3s. 6d. Out of this surplus, after a most careful scrutiny of every debt due to the Bank, we have reserved a sum that should be sufficient to cover all losses likely to occur during the course of liquidation, leaving a considerable balance for clerical and other expenses. And we are of opinion that the entire indebtedness of your institution may be discharged without encroaching on the Shareholders' reserve liability, if only patience be exercised and reasonable time allowed.

Progress of the Liquidation.—We are glad to be able to report fairly satisfactory progress in the realisation of the Bank's Assets, the actual cash receipts to date within the Colony exceeding £260,000. After paying the dividend announced for the 3rd February the liabilities will have been reduced by more than one-third of their total at August 4, 1891, an average reduction of quite £13,000 per week since the doors of the Bank were closed.

The Expenses of Liquidation.—At the meeting of Shareholders at which it was decided voluntarily to liquidate the Bank's estate, it was proposed to allow some 3 per cent. commission as expenses, 2 per cent. of which was to be paid to the Union Bank, were an arrangement entered into with that institution, while 1 per cent. was fixed as the Trustees' remuneration. This arrangement would have involved an expenditure of some £28,725. As you are aware, the proposed arrangement with the Union Bank fell through, and it was decided to proceed with the liquidation with the assistance of such of the staff of your institution as it appeared necessary to retain. A probable saving of some £10,000 in clerical assistance will thus be effected, but it is only fair to state that one result of the present arrangement has been to cast a much larger share of work and responsibility on ourselves as Trustees. During the passing of the Act under which we are working our remuneration as Trustees was considerably reduced, owing to the belief that an arrangement would be completed with the Union Bank. The changed circumstances will, we hope, induce the shareholders to consider our case, and increase our commission to the rate originally decided upon.

The Branch Offices.—We have to report the closing of the Branches at Waratah and Burnie during our term of office. We hope to arrange also for the closing of the Launceston Branch at an early date. Some time will necessarily elapse before we shall be able to close the Devonport and Zeehan Branches, but we propose vacating the building now in occupation at Devonport, and engaging an office at a lower rental.

The Bank Premises.—Reference to the Balance-sheet will show that the premises now stand at £33,476. In ordinary times this valuation would doubtless be more than realised, but we regret having to report that the premises at both Hobart and Launceston, when submitted for sale by public auction, were obliged to be passed in, as the reserves were not reached. Negotiations are still pending for the sale of the Launceston property, as well as for each of the Branches, with the exception of that at Zeehan.

The causes of the Bank's failure.—The causes which led to the failure of the Bank may be briefly stated as follows :—

1. Want of discrimination on the part of the Manager.
2. Want of efficient organisation among the staff.
3. The absence of regular and systematic inspection of the customers' indebtedness.
4. Ill-considered advances on overdraft in both large and small amounts.
5. Permitting very large unsecured advances to one of the Directors, and large, although at the time, fairly secured advances to the General Manager.

Had the amounts here alluded to, which were most irregularly permitted to be advanced, been in the coffers of the institution on the 3rd August, the much to be deplored stoppage might have been averted, and had efficient management been exercised from that time forward, the losses to Shareholders would have been very largely reduced.

The Directors' last Balance-sheet.—We have to draw attention to two inaccuracies in the Balance-sheet of the 30th June, which for purposes of explanation we reproduce on next page :—

BANK OF VAN DIEMEN'S LAND, LIMITED.
BALANCE-SHEET, JUNE 30, 1891.

Dr.		£	s.	d.	£	s.	d.
To Capital	250,000	0	0				
Reserve Fund.....	38,000	0	0				
Profit and Loss Account	18,714	0	4				
Due to Shareholders .....	...				306,714	0	4

B.

REPORT of the Bank of Van Diemen's Land, Limited, to be presented to the Shareholders at the Half-yearly General Meeting to be held at the Banking House, angle of Collins and Elizabeth-streets, Hobart, on Thursday, the 16th July, 1891.

THE Directors have pleasure in submitting to the Shareholders the Statement of Accounts for the half-year ending 30th June, 1891, from which it will appear that after making deductions for Interest on Deposit Accounts, current expenses, bad and doubtful debts, and rebate on Bills not yet due, the balance of Profit and Loss Account available for distribution amounts to £18,714 0s. 4d.

The Directors recommend that from this sum £11,671 17s. 6d. be appropriated to the payment of a dividend for the half-year at the rate of 9 per cent. per annum, and dividend tax thereon; that £2000 be added to the Reserve Fund, making it £40,000, and that the balance, £5042 2s. 10d., be carried forward to the credit of next Account.

JOHN PEARCE, *Chairman.*

W. H. BURGESS, *Director.*

W. G. BROWNE, *Manager.*

Hobart, 13th July, 1891.

[Balance Sheet as printed in Exhibit A.]

C.

ABSTRACT of Balances at Agents of the Bank of Van Diemen's Land, Limited, on 30th June, 1891.

<i>Bills for Collection.</i>	<i>Agencies.</i>	<i>DR.</i>	<i>CR.</i>
	<i>Victoria.</i>		
	English, Scottish, and Australian Chartered Bank	£ s. d. 747 16 11	£ s. d.
	Colonial Bank of Australasia ...	1801 5 1	
	Melbourne .....	...
	Ditto		
	Balance		
		£2549 2 0	
	<i>New South Wales.</i>		
	Commercial Banking Company Sydney	2126 19 5	
	City Bank .....	...	1424 1 3
	Australian Joint Bank .....	...	3857 6 10
	English, Scottish, and Australian Chartered Bank .....	...	2727 5 2
	Ditto .....	...
	Balance .....	...
		£2126 19 5	£8908 13 3
	<i>Queensland.</i>		
	Queensland National Bank, Limited	£534 13 4	
	Brisbane .....	...
	Balance .....	...
	<i>New Zealand.</i>		
	Bank of New Zealand .....	...	257 11 6
	Colonial Bank of New Zealand..	...	213 9 2
	Dunedin .....	...
	Ditto .....	...
	Balance .....	...
		...	£471 0 8
	<i>England.</i>		
	London and Westminster Bank, Limited	£108,341 8 3	
	London .....	...
	Balance .....	...
	Victoria	2549 2 0	
	New South Wales	2126 19 5	8008 13 3
	Queensland	534 13 4	
	New Zealand .....	...	471 0 8
	London	108,341 8 3	
		113,552 3 0	8479 13 11
	Notes	135 0 0	
	Clearing	2519 10 4	5880 15 0
	In transit	8210 7 6	14,360 8 11
		£124,417 0 10	

D. and E

[Entries in Bank Ledgers.]

F.

[Extract from Letter dated 29th November, 1889, from London & Westminster Bank, Limited, Lothbury, London, E.C.]

With regard to the facility of uncovered overdraft to the extent of £25,000 to £30,000 accorded to your Bank by my letter of the 15th February last, my Directors are willing to accede to your request that this facility be extended to 31st December, 1890, and further to permit the limit of £30,000 to be occasionally increased to £50,000 as a maximum, it being understood that the excess overdraft is to be temporary only, and to be covered up within a reasonable time.

I am, dear Sir,

Yours faithfully,

A. F. BILLINGHURST, *Country Manager.*

W. G. BROWNE, *Esq., Manager*
Bank of Van Diemen's Land, Limited, Hobart.

G.

London and Westminster Bank, Limited, Lothbury,
London, E.C., 24th March, 1891.

DEAR SIR,

I AM favoured by receipt of your special letter of the 14th ult., the contents of which are duly noted. With regard to the facility of overdraft accorded to your Bank, the time having already been extended at your request to the 30th June next, as advised by my letter of the 23rd January, further questions as to renewal had better be left till about that period, when, if you have any definite proposals to make, I shall be happy to place them before my Directors. In the meantime they would prefer that the arrangements already agreed to be carried out.

I am, dear Sir,

Yours faithfully,

H. F. BILLINGHURST, *Country Manager.*

W. G. BROWNE, *Bank of Van Diemen's*
Land, Hobart.

H.

BANK OF VAN DIEMEN'S LAND, LIMITED, HOBART.

<i>Hobart—</i>	£	s.	d.	£	s.	d.
Treasury.....	49,105	0	0			
Tellers.....	4148	11	4			
<i>In transitu</i>	5000	0	0			
				58,253	11	4
<i>Launceston—</i>	£	s.	d.			
Treasury.....	3100	0	0			
Tellers.....	1562	11	1			
				4662	11	1
Devonport.....	...			1020	1	11
Zeehan.....	...			1425	14	11
Burnie.....	...			1698	3	8
				67,060	2	11
Bullion advanced on.....				3371	10	0
				£70,431	12	11

Attorney-General's Office, 20th May, 1892.

MEMORANDUM.

Re COMMISSION TO INVESTIGATE THE BOOKS OF THE BANK OF
VAN DIEMEN'S LAND.

THE Commissioners appointed by the Governor to investigate the books of the Bank of Van Diemen's Land having terminated their labours and made a Report to the Governor of the result of their inquiries, I think it proper that I should place on record the following observations on the application that was made to the Chief Justice for an Order restraining the Commissioners from proceeding with the investigation intrusted to them until after the trial of the action *Williams v. Pearce* then pending in the Supreme Court. The published reports of the proceedings which took place in connection with the application for the restraining Order disclose that it was applied for on the ground that the inquiry which the Commissioners had been directed to make was substantially the same as that which would be made on the trial of the action above mentioned, and that any previous investigation made by the Commissioners would be an interference with the ordinary administration of justice, because it would be calculated to prejudice and damage the defendant in that action, and would therefore be a contempt of Court. If the action *Williams v. Pearce* had been continued up to trial the jury would have been required to decide two questions, (1) Were the Report and the Balance-sheet published by the Directors of the Bank to the meeting of shareholders held on the 9th of July, 1891, true or false? (2) If that Report and the Balance-sheet accompanying it were false, did the defendant concur in the making or the publishing of them knowing them to be false? And, so far as the defendant would be affected by the final result of the trial, the second question was the essential and all-important one, and the first would have to be decided only as a necessary preliminary inquiry for the decision of the second. The Report and the Balance-sheet might both be false and fraudulent in every statement and item contained in them; but if the defendant did not have any share in the making or the publishing of them, or if, while concurring or taking part in the publication of them he was totally ignorant of the falsity of them, he would not incur any liability, and would be entitled to a verdict in his favour, notwithstanding that he was the Chairman of Directors at the time the Report and Balance-sheet were prepared and in that capacity had attended the meeting of shareholders at which those documents were published, and had moved the resolution adopting them. (See in re *Denham & Co.*, L. R. 25, Ch. Div., p. 752).

But the Commissioners were not directed to enquire whether the defendant Pearce or anyone else had prepared or published, or had taken any part in the preparation or publication of the report and balance-sheet in question. The entire scope of the investigation committed to them, as set forth in the words of the document by which they were appointed, was "to ascertain whether the reports, balance-sheets, and profit and loss accounts issued by the Directors of the said bank to the shareholders in the month of July, 1890, and in the months of January and July, 1891, correctly represented the true financial condition of the said Bank of Van Diemen's Land, Limited, on the dates to which such reports, balance-sheets, and profit and loss accounts refer respectively." These words do not include any inquiry into the civil or criminal liability of any person, and they conclusively disprove the assertions that have been made regarding the appointment of the Commission, that it was the erection of a new tribunal to perform the functions of the Courts already established by law to declare the guilt or innocence of persons charged with offences. None of those Courts has jurisdiction to investigate any matter unless the determination of the civil or criminal rights or liability of some person is involved in its decision, and therefore the restricted and non-judicial inquiry which the Commissioners were directed to make was one which none of those Courts was competent to execute. The Counsel who appeared before the Chief Justice to apply for the Order restraining the Commissioners from performing the task assigned to them freely admitted that the Supreme Court could not restrain the Crown from appointing a Commission of inquiry under the Royal Prerogative, but supported his application for the restraining Order on the ground that if individuals, although armed with authority from the Crown, did illegal acts which interfered with the proper administration of justice, the Court would restrain and, if necessary, punish them. This pertinent proposition, in which every competent lawyer would readily concur, would at all times constitute an ample and all-sufficient argument for granting such an Order as was applied for on behalf of the defendant Pearce, if the task assigned by the Crown to the persons whom it was sought to restrain from executing it truly included anything illegal and prejudicial to the proper performance of its functions by any judicial tribunal. But I deny that anything of that character was included in the scope of the inquiry which the Commissioners appointed to investigate the books of the Bank of Van Diemen's Land were directed to make, and I believe that the following facts will be found to fully justify this denial.

It is, of course, evident that no question of interference with the due administration of justice could be raised in regard to the appointment of any Commission of Inquiry by the Crown or by any legally constituted authority except in the contingency of a case pending in one of the Courts, and involving an investigation of one or more of the same matters embraced in the scope of the inquiry entrusted to the Commission; and it is only when interference with the ordinary course of justice is a contempt of Court that the Courts can exercise their summary jurisdiction to restrain or

punish it. The disclosure of particular facts in the course of one judicial proceeding may lead to the defeat of the proper administration of justice in another proceeding; and in order to prevent, as far as possible, any such result, the publication in the press of the evidence taken in a series of trials has frequently been prohibited by the Courts until all the trials have been concluded. But the witnesses who give the evidence taken in the first trial are not guilty of any contempt because the attorneys and counsel engaged in it, and who hear that evidence, make use of the knowledge so gained by them for the benefit of their clients in the subsequent trials. Nor can the attorneys and counsel in such cases be restrained from making such use of the knowledge gained by them in such circumstances, or be punished for so using it. In any circumstances contempt of Court must include conduct coming within one of the following descriptions; viz.—(1) direct interference with the proceedings of the Court; (2) interference with a Judge or any Officer of the Court, or with a juror or witness or a party to a suit; (3) disregard or disobedience of any order or summons or other process of the Court; (4) publication of any matter derogatory to the Court or to any Judge or Officer of the Court; (5) publication of any matter calculated or intended to influence the mind of a Judge or of any other Officer of the Court, or the mind of any juror or witness, in reference to any case pending in the Court. I have therefore no hesitation in asserting that the Commissioners appointed to investigate the books of the Bank of Van Diemen's Land could not have been guilty of any contempt of Court in making the enquiry committed to them so long as they did not publish any information obtained by them in the course of their labours, or any opinion or observations upon such information. All the reported cases of contempt of Court not coming within any of the descriptions of conduct that I have numbered (1), (2), and (3) place it beyond dispute that there cannot be any contempt of Court outside of those three descriptions of conduct, unless there is a publication of something likely or intended to interfere with the regular course of justice. It would not be a contempt of Court on the part of any person to make use of all lawful methods available to him for the purpose of obtaining a knowledge of the facts involved in any judicial question upon which the judgment of a Court or the verdict of a jury were to be subsequently given, and to form his own opinion in the meantime on the question to be so decided, so long as he did not publish those facts or the opinion he had formed upon them to other persons. It is therefore very evident that, except upon the ground that the knowledge to be obtained by the Commissioners in making their investigation was to be published by them, it could not be pretended that there was any question of contempt of Court involved in their proceedings upon which the Court would have jurisdiction to interfere with them; and the Chief Justice evidently felt the difficulty in the way of the Court assuming jurisdiction in regard to the application made to him on behalf of the defendant Pearce when he put forward the proposition that the Commissioners, in sending their Report to the Governor, would be publishing it. He is also reported to have said that "clerks would copy it, and that was publishing it." (*Mercury*, 19 February, 1892.) As the Commissioners could not be responsible for anything done with their Report after it had left them, and as the application then before the Chief Justice was confined to the Commissioners, I presume that when he spoke of clerks copying the Report he meant clerks employed by the Commissioners to make a fair copy of their draft Report for perusal by the Governor, and to transcribe the evidence to be attached to the Report. It is only fair to the Chief Justice that I should note that he declined to give a final opinion on the application made to him, and expressed a wish that the matter should be discussed by the Full Court, and I feel persuaded that upon further consideration he would come to the conclusion that neither the employment of clerks by the Commissioners to copy their draft Report and to transcribe the evidence to be attached to it, nor the subsequent transmission of the Report and the evidence to the Governor, would be such a publication of those documents as would give the Court jurisdiction to regard it as a contempt upon the application then before him. One very serious consequence of a contrary decision by the Full Court would be that the work of every Royal Commission hereafter appointed to make any enquiry by which particular persons might be so affected as to make them desirous of baffling it could be delayed for an indefinite period, and ultimately made useless, by a series of collusive actions abandoned before trial. The 5th Section of the Act (52 Vict. No. 26) which regulates the taking of evidence by Commissioners distinctly contemplates the examination of witnesses upon matters which may subsequently become subjects of investigation in either a civil or criminal proceeding in a Court of Law; and the whole purport of that Act, as well as the prerogative right of the Crown to appoint Commissions of Inquiry, might be practically frustrated in the manner I have indicated, if the transcription by clerks of the evidence taken by Commissioners and the transmission of that evidence and the Commissioners' Report to the Governor could be held to be such a publication of them as might become a contempt of Court. A consequence so serious might well make the Supreme Court pause before committing itself to a decision from which the only consistent inference to be drawn as to the ultimate reason for it would be that the Court assumed that the Crown itself intended to obstruct the course of justice by the publication of the evidence taken by the Commissioners and their report upon it. But we know that the Court will not make any assumption derogatory to the honour and dignity of the Crown; and the only other reason that could be given for restraining the Commissioners from proceeding with their investigation would be that they or their secretary or clerks intended or would be induced to improperly and disobediently publish the result of it. Here, again, the conclusive answer to such a supposition is that the Court will not assume a wrongful intention or a culpable weakness on the part of any person. There is also direct judicial authority that the employment of clerks or printers to make written or printed

copies of documents containing statements relating to a pending lawsuit is not such a publication of them as can be regarded as a contempt of Court. Nearly every brief prepared in a solicitor's office for Counsel is of such a character that if it were published as a pamphlet, or as an advertisement in a newspaper, with a view of influencing a Judge or the jury at the trial, the person so publishing it would be held to be guilty of a contempt of Court: and such briefs are daily copied by numerous clerks, and are frequently sent out to typewriters and law stationers for transcription. The proposition that such a practice is punishable as a contempt of Court only requires to be stated to show its untenability. In the case of the printers of *The Champion and St. James's Gazette*, reported in 2 Atkyns, p. 487, Lord Chancellor Hardwicke mentioned a case in which one of the parties, previous to the trial, had printed and published the brief prepared for his Counsel and had been adjudged guilty of contempt of Court for doing it. In referring to that case, Lord Hardwicke clearly recognised the distinction between such a publication to the world at large and the supply of the manuscript to the printer and his workmen for the limited purpose of making printed copies for the use of the Counsel. "The offence," said he, "did not consist in printing, for a man may give a printed brief as well as a written one to Counsel; but the contempt of this Court was *prejudicing the world* with regard to the merits of the cause before it was heard." In the case of *Plating Company v. Farquharson* (reported in the Law Reports, Chancery Division, vol. xvii., p. 49), it was decided that the insertion of an advertisement in a newspaper asking for evidence in a suit then pending in the Court and offering a reward for it was not a contempt of Court. Such an advertisement could not have any result without an exchange of communications on the question involved in the suit, and these communications might be contained in letters or other documents copied by numerous clerks. The publication of these to the world at large would doubtless be a contempt of Court, but so long as they were used only in a private manner no contempt would be committed. The decision in this case, therefore, confirms that of Lord Hardwicke in reference to the printing of a brief for Counsel, and is another judicial authority against the doctrine that the copying by clerks of the evidence taken by the Commissioners would be such a publication of it as might become a contempt of Court.

I now proceed to consider the appointment of the Commission as an exercise of the prerogative right of the Crown, and to examine the provisions of the Act 52 Vict. No. 26, with a view of ascertaining to what extent, if any, it recognises and implies a prerogative right on the part of the Crown to appoint Commissions of Inquiry. That the Crown has a prerogative right to appoint Commissions of Inquiry for any purpose not contrary to positive law or to constitutional principles and practice is beyond dispute. The existence of that right has been recognised and its exercise approved and invoked by Parliament in innumerable instances during the last two centuries. But in every instance in which the Crown has appointed a Commission of Inquiry by which vested interests might be affected, or which was a preliminary step to legislation on a subject in regard to which there was a strong difference of opinion in the country, opponents of the inquiry in Parliament and in the press have denounced the appointment of the Commission as unconstitutional, and as a disguised attempt to accomplish an object not authorised by law. Two notable examples of this line of conduct by opponents occurred in reference to the appointment of the Royal Commission of 1833, to inquire into the working of Municipal Corporations in England, and the appointment of the Royal Commission of 1850 to inquire into the discipline, studies, and revenues of the University and Colleges of Oxford. In both instances adverse opinions on the legality of such Commissions were obtained from eminent lawyers by the opponents of the inquiry, and among the adverse opinions upon the legality of the Corporations Commission of 1833 was one obtained by the Merchant Tailors Company from Sir James Scarlett, and which was published in the *Annual Register* of the same year (p. 158.) A perusal of that opinion shows that the fundamental objection which its author had to urge against the last-mentioned Commission was that it purported to confer on the Commissioners compulsory powers of disclosure which the Crown had not authority to impart to them. He also declared the Commission to be illegal, because it purported to authorise an inquiry outside of the regular course of law into the manner in which private property was held and enjoyed. An adverse opinion on the legality of the University Commission of 1850 was given on behalf of the University of Oxford by Sir G. J. Turner and Messrs. Bethel, Keating, and Bramwell. These eminent lawyers condemned that Commission on the same grounds on which Sir James Scarlett had condemned the Corporations Commission of 1833, but the Law Officers of the Crown, Sir J. Dodson, Sir A. E. Cockburn, and Sir W. P. Wood, defended the legality of the University Commission against the attacks of the advisers of the University of Oxford; and the resolutions of the Judges in the case of a Commission appointed in the year 1608 to inquire into the depopulation of Bedfordshire, and reported under the head of 'Commissions of Inquiry' in Lord Coke's Reports (12 Coke, 31), were quoted by the Counsel on both sides in support of their respective opinions. These appeals to the same authority in support and in condemnation of the University Commission of 1850 led to a critical examination in the *Law Magazine* for August, 1851, of the resolutions to which such contrary interpretations had been given, with the result that one important portion of the Report in which they are contained was proved to be manifestly corrupt, and, in its uncorrected state, nonsensical. The emendations suggested by the reviewer were in favour of the legality of the Commission, but the objections reported by Lord Coke as having been made by the Judges to the particular Commission mentioned in the Report remained intact. The first and second of those objections—viz., (1) that the Commission was in the English language, and (2) that the subjects of the inquiry were not stated in the body of the

Commission, but in an appended schedule—would, of course, be dismissed without consideration at the present day. But the third objection is substantially the same as that which has been urged against many Commissions of Inquiry which have been issued during the present century—viz., that all kinds of false accusations and slanderous statements may be made against innocent persons by the witnesses who give evidence before the Commissioners, and the persons injured will have no remedy, because the witnesses not being examined on oath in a judicial proceeding cannot be prosecuted for perjury, and are protected against civil actions for slander, because the statements made by them to the Commissioners are privileged. This objection, which has always been recognised as a formidable one to many Commissions of Inquiry appointed in England, as also the objection raised by Sir James Scarlett to the Corporations Commission of 1833—viz., that it purported to invest the Commissioners with compulsory powers of disclosure which the Crown had no authority to confer on them—have no validity in Tasmania since the passing of the Act 52 Vict. No. 26, which authorises Commissioners to compel the attendance of witnesses and the production of documents, and to take evidence on oath, and provides that every person examined under a Commission “shall have the same protection and be subject to the same liabilities in any civil or criminal proceedings as any person giving evidence in any case tried in the Supreme Court.” Those objections cannot therefore be made against the Commission appointed to investigate the books of the Bank of Van Diemen’s Land, because it was appointed subsequent to the passing of that Act. Nor is the other objection raised by Sir James Scarlett against the Corporations Commission of 1833—viz., that it purported to authorise an inquiry into the manner in which private property was held and enjoyed—available against the Commission to investigate the books of the Bank, because no assumption to confer such an authority is to be found in it.

The only other objection that remains for consideration is, that the substantial purpose of the Commission was to ascertain whether a crime had been committed, and that the appointment of a Commission for such a purpose is unconstitutional and unsupported by any precedent since the Revolution of 1688. The assertion of the absence of precedents will be found to be erroneous. I shall hereafter refer to a number of Commissions appointed in England during the present century to inquire whether supposed crimes had been committed. It is, however, alleged that the last-stated objection, like those I have already considered, is supported by the venerable authority of Lord Coke, who, after stating the resolutions of the Judges containing the other objections to Commissions of Inquiry, adds, “and no such Commission ever was seen to inquire only (*i.e.* of crimes).” It is around these words, particularly the last two, viz., “of crimes,” that the controversy regarding the legality of a large number of the Commissions appointed in England has revolved. The disputants on one side have always maintained that the words of Lord Coke condemn every Commission of Inquiry the object of which is to ascertain whether a crime has been committed, notwithstanding that there may be no direction in it to inquire as to the person by whom the crime was committed. The disputants on the other side argue that the Commissions condemned by Lord Coke were such as were directed to the discovery of the persons who had perpetrated particular crimes, and that such Commissions are illegal, because they purported to authorise the performance by an irregular tribunal of one of the fundamental functions of the regular Courts of law, viz., to determine the question of the guilt or innocence of accused persons. It is evident that Lord Coke could not have intended to make the unqualified statement that an inquiry into the circumstances attending a supposed crime, without a previous or simultaneous accusation of any person, and a concurrent investigation of the accused person’s guilt or innocence, was unknown to the law of England, because the office of Coroner had existed in England for at least five centuries before Lord Coke wrote, and had substantially the same duties attached to it that belong to it at the present day; and the origin of the office in many parts of the kingdom was a Charter from the Crown, granted by virtue of its prerogative right to create franchises and corporations. But whatever may be the correct interpretation of Lord Coke’s language, and notwithstanding repeated appeals to it in the British Parliament as an authority condemnatory of Commissions to inquire into alleged offences, we find that during the present century a succession of Commissions to inquire into the circumstances attending alleged or supposed crimes have been issued in England under the immediate advice and approval of some of the most eminent Lord Chancellors and Judges that have sat upon the Bench in that country. It therefore appears that, if Lord Coke’s dictum includes such Commissions, his words have not been regarded by some of the highest exponents of the law of England in recent times as containing a correct statement of that law on this subject.

In the year 1806 a Royal Commission, consisting of Lord Chancellor Erskine, Lord Ellenborough (Chief Justice), Lord Grenville and Earl Spencer, was appointed to investigate charges of adultery and infanticide which had been made against the Princess of Wales. The Solicitor-General (Sir Samuel Romilly), was appointed Secretary to the Commission, and in that capacity took down the evidence. The Commissioners examined a number of witnesses and reported to the King that they were of opinion that the Princess was innocent of the charges which had been made against her. Seven years afterwards the proceedings of the Commission were made the subject of debate in both Houses of Parliament, but the legality of the Commission was not challenged in either House (*See Hansard, Vol. 25, pp. 142-224*). Half a century later Lord Campbell referred at some length to the matter in his *Life of Lord Ellenborough (Lives of the Chief Justices, Vol. IV., pp. 267-272)*, and challenged an assertion made by Lord Ellenborough of his right to put leading questions to witnesses on such an enquiry; but he gives no indication

that the legality of the Commission was ever questioned; and it would be something very remarkable if a Lord Chancellor and a Chief Justice of England in the present century had consented to be members of an illegal Commission, and a lawyer of the attainments of Sir Samuel Romilly, and holding the responsible position of Solicitor-General, had allowed himself to act as Secretary to it; and that another Lord Chancellor, referring pointedly to the matter fifty years afterwards in a critical biography of that Chief Justice written shortly after the long controversy in Parliament and the press on the legality of the University Commission of 1850, should omit to notice the illegality of the earlier Commission to which he was referring.

The unhappy condition of Ireland has necessitated the appointment of many Commissions to investigate the circumstances attending the perpetration of outrages and crimes in that country during the last fifty years, and several of them have been made the subjects of lengthy debates in the British Parliament, in which their legality has been fully discussed. One of those debates took place in the House of Lords in the year 1850 upon the appointment of a Commission in the preceding year to investigate an affray that occurred at a place called Dolly's Brae (*Hansard*, vol. 108, pp. 886-968). The inquiry made in that instance led to the dismissal of the Earl of Roden from the magistracy of Ireland, and Lord Stanley brought the matter under the notice of the House of Lords, and quoted the opinion of Mr. Whiteside, who then occupied a prominent position at the Bar in Ireland, that the Commission was illegal. The opinion of Mr. Whiteside was based on the resolutions of the Judges contained in Lord Coke's Reports, and on the dictum of Lord Coke himself, which I have already quoted; and the arguments used by Mr. Whiteside in support of his opinion were substantially a repetition of those contained in the third of those resolutions, viz., that witnesses sworn and examined before the Commissioner could not be prosecuted for perjury, and that such an inquiry permitted the defamation of individuals, who would be without remedy for the wrong done to them. The latter argument derived the most of its force from the fact that the investigation in that instance had been conducted in open Court and had been reported and published in the Press. This fact also enabled Lord Stanley to argue that the proceedings of the Commissioner were prejudicial to the administration of justice, and he stated that if the investigation had been conducted privately he would have had less objection to it.

In the year 1864 a Royal Commission was appointed to inquire into the riots that occurred in that year in Belfast; and in the following year a lengthy and animated debate took place upon the subject in the House of Commons. The legality of the Commission was attacked by Sir Hugh Cairns and by Mr. Whiteside, whose opinion on the illegality of the Commission to investigate the affray at Dolly's Brae in 1849 had been quoted by Lord Stanley in the House of Lords, and who since then had become a Member of the House of Commons. Both these learned gentlemen quoted Lord Coke's Reports in support of their impeachment of the Commission, and their arguments against it were—(1) That the Commissioners had no power to administer an oath, and that they examined witnesses in open Court without that safeguard; (2) That the unreliable evidence so obtained was published in the press while a number of persons implicated in the riots were awaiting trial, and was therefore an obstruction to the course of justice by the influence it would exert on the minds of witnesses and jurors. (*Hansard*, vol. 177, pp. 328-409.)

It is manifest that the objections urged by Lord Stanley and Sir Hugh Cairns and Mr. Whiteside against the legality of the two last-mentioned Commissions cannot apply to the proceedings of the Commissioners appointed to investigate the books of the Bank of Van Diemen's Land, because those proceedings were strictly private, and were conducted under the provisions of the Act 52 Vict. No. 26. It is therefore scarcely necessary for me to refer to the able reply made by the Home Secretary, Sir George Grey, to the speeches of Sir Hugh Cairns and Mr. Whiteside; but I desire to call attention to the two instances mentioned by him in which similar Commissions to that impugned by his opponents were appointed to enquire into disturbances that took place in England. One of the instances was that in which a Commission was appointed to inquire into the conduct of magistrates at Birmingham. The other instance was that in which a Commission was appointed to inquire into the complaints made of the use of unnecessary violence by the Police in suppressing disturbances in Hyde Park, and which led to the prosecution of several constables. These two instances of the appointment of Commissions to inquire into the alleged offences in England prove that the use of such Commissions is no part of an exceptional and arbitrary system of Government adopted for the peculiar condition of Ireland, but has always been regarded by Ministers of the Crown in England as a lawful exercise of the Crown's prerogative whenever circumstances arose that made it desirable.

In the year 1865 the notable Royal Commission of Inquiry was appointed to investigate the circumstances attending the disturbances which had lately occurred in the Island of Jamaica, and the measures adopted for their suppression. The Legislature of Jamaica passed a special Act empowering the Commissioners to compel the attendance of witnesses and the production of documents, and to take evidence on oath; and the Report of the Commissioners shows that they inquired into the circumstances attending the perpetration of a large number of crimes, including several murders. The Earl of Derby, as leader of the opposition in the House of Lords, questioned the legality of the Commission on the old ground that the evidence taken by the Commissioners would not have the sanction of an oath, and would therefore not be reliable, and would prejudice the public mind in England against Governor Eyre, whose conduct had already been challenged and might be made the subject of a judicial investigation. But this objection was totally removed by the above-mentioned Act of the Legislature of Jamaica, and no further challenge of the legality

of the Commission was heard in either House of the British Parliament. The provisions of that Act were substantially the same as those of our Act 52 Vict. No. 26.

The last precedent of an appointment of a Royal Commission to investigate alleged crimes in England to which I desire to refer is the appointment of the Commission in the year 1867 to investigate the alleged outrages which were said to have been committed in Sheffield and other places under the direction of the Trades Unions. A special Act of Parliament (30 Vict. chap. 8) was passed to enable the members of that Commission to compel the attendance of witnesses and the production of documents, and to take evidence on oath, and this fact has created the erroneous impression on the minds of some persons that the Commission was appointed by virtue of that Act, and was not a Royal Commission appointed by the Crown by virtue of its prerogative. A reference to the Act itself and to the debates in the British Parliament will immediately dissipate any such notion. The Preamble of the Act recites that "A Commission has been issued by Her Majesty to inquire into and report on the Organisation and Rules of Trades Unions, * * * with power to investigate any recent acts of intimidation, outrage, or wrong alleged to have been promoted, encouraged, or connived at by such Trades Unions, &c.," and it then proceeds to recite "that a case of outrage within the scope of the said Commission of Inquiry had been committed at Sheffield," and that representations had been made on behalf of the workmen as well as the employers of labour in that town "that a searching inquiry on oath should be made into the circumstances of such outrage," and that "the powers for the effectual conducting of such inquiry could not be conferred without the authority of Parliament." The Act then proceeds to limit the extent of the inquiry, and confers on the Commissioners the necessary compulsory powers of disclosure, and empowers them to administer oaths and to punish for contempt; and it provides that every person examined by the Commissioners, and who shall make a full disclosure in regard to all matters respecting which he is examined, shall be entitled to a certificate of indemnity against any liability in any subsequent civil or criminal proceedings founded upon the same matters. The prerogative right of the Crown to appoint the Commission was distinctly recognised and acknowledged in both Houses of Parliament. In the House of Commons an amendment was proposed that the names of the Commissioners should be inserted in the Bill, whereupon Mr. Roebuck reminded the mover of the amendment that the Bill did not purport to appoint a Commission by the authority of Parliament, but only to give special powers to a Commission which had already been appointed by the Crown, and the mover of the amendment withdrew it. (*Hansard*, vol. 185, pp. 994-5). In the House of Lords the Lord Chancellor (Lord Chelmsford) "reminded their Lordships that the question before them was not whether a Commission should issue," because "the Commission had already issued, and the question was whether Parliament should give the Commissioners certain powers to enable them to discharge the duty entrusted to them." (*Hansard*, vol. 185, p. 1440.) The enactment of that statute was therefore a distinct recognition and confirmation by Parliament of the prerogative right of the Crown to appoint the Commission recited in its preamble, and must be held to have conclusively removed the question from any dependence on such authorities as the case reported by Lord Coke and his observations on it. The powers conferred by that statute on the members of that Commission are exactly the powers conferred on Commissioners generally by our Act 52 Vict. No. 26. It is therefore manifest that if there had been an Act similar to ours on the Statute Book in England at that date the British Parliament would never have been asked to pass any Act relating to that Commission in particular. The special Act passed on that occasion expired when the Commission completed its task, and no general Act conferring the same or similar powers upon other Commissions has yet been passed in England.

In the year 1886 an Act was passed by the Parliament of the Dominion of Canada declaring that "whenever the Governor in Council deems it expedient to cause an enquiry to be made into and concerning any matter connected with the good government of Canada, or the conduct of any part of the public business thereof, and such inquiry is not regulated by any special law, the Governor in Council may by the Commission in the case confer upon the Commissioners or other persons by whom such inquiry is to be conducted the power of summoning before them any witnesses, and of requiring them to give evidence on oath, orally or in writing, or on solemn affirmation, &c. * * * and to produce such documents and things as such Commissioners deem requisite to the full investigation of the matters into which they are appointed to examine." Here is a distinct recognition of an inherent power of inquiry in the Crown concurrent with the legislative power vested in the Parliament of the Dominion. The language used in the British North America Act (30 Vict. Chap. 3) in defining the legislative powers of the Dominion Parliament is "to make laws for the peace, order, and good government of Canada." It cannot be contended that the words "peace" and "order" confer any substantial powers of legislation which are not included in the phrase "good government," and therefore the power "to cause inquiry to be made into and concerning any matter connected with the good government of Canada" must extend to every matter and to every interest not exempted from its operation by positive law. The language used in our own Act (52 Vict. No. 26) is "any enquiry," without the addition of any descriptive or qualifying words whatever, and I confidently advance the proposition that the use of such unqualified language imposes upon those who would restrict the Crown's right of enquiry in respect of any matter, the task of producing clear and positive law in support of such restriction. It would be contrary to law if the Crown were to direct an inquiry to be made into any matter of a purely private character, such as the contents of a deed

of settlement of private property, or the nature of any secret process used in the manufacture of any goods made and sold by any private person in his ordinary business. But there are many matters that have both a public and a private aspect, and in regard to which the prerogative right of the Crown to make an enquiry has been repeatedly admitted by the highest authorities on constitutional principles and practice, and in regard to which that right has in some cases been exercised. With respect to such matters it must be remembered that a Select Committee of either House of Parliament does not possess any greater authority than the Crown to make inquiries, and the power of either House to make inquiries by the medium of Select Committees is dealt with by Todd in his *Parliamentary Government in England* as being subject to the same constitutional rules that govern the exercise of the prerogative right of inquiry by the Crown. In this connection Todd quotes the statement of Sir Robert Peel that "where Parliament has given peculiar privileges to any body of men, as, for example, banks or railway companies, it has a right to ask that body for information upon points which it deems necessary for the public advantage to have generally understood." (Vol. I., p. 452.) On a subsequent occasion Mr. Gladstone said that a motion of Sir Morton Peto for the appointment of a Select Committee "to enquire into the means adopted by the London, Chatham, and Dover Railway Company for raising the share capital and exercising their borrowing powers under the various Acts of Parliament authorising the construction of the main line and its extensions and branches," although not a motion that it was desirable to agree to for the purpose the mover of it had in view, might nevertheless be justified "on the ground that railway companies solicit special parliamentary powers." The Bank of Van Diemen's Land was one of a class of institutions which are invested with special privileges by the Legislature with a view of creating facilities for trade that will be advantageous to the whole community as well as to the shareholders of those institutions. The operations of those institutions are also made subject by the Legislature to special regulations for the protection of the public and the shareholders. The circumstances attending the failure of one of those institutions to meet its obligations might therefore very properly be made the subject of a Royal Commission of Inquiry. The prerogative right of the Crown to make an inquiry in such a case was distinctly claimed without challenge in the House of Commons in regard to the Bank of Bombay in the year 1868. Upon the failure of that bank the Secretary of State for India directed the Governor-General of India to appoint a Commission of Inquiry to investigate the circumstances attending the failure of the Bank, but it was found that the Commissioners would not have power without special legislation to compel the attendance of witnesses and the production of documents and to administer oaths. An Act was therefore passed by the Governor-General of India authorising the appointment of Commissioners with the necessary compulsory powers of disclosure (*Hansard*, Vol. 191, p. 1223.) It must also be remembered that the Bank of Van Diemen's Land at the time of its collapse was a direct debtor of the Crown to the amount of £76,000, and was also a debtor of the Marine Board of Hobart for moneys deposited in the Bank by the Board, and for the expenditure of which the Board is accountable to the Crown, and the Crown might therefore legally claim a right on that ground alone to inquire into the financial condition of the Bank and the correctness of any balance-sheet issued by its Directors so long as the Bank remained indebted to the Crown.

It is a fundamental principle of the British Constitution that all the prerogative rights of the Crown are held in trust for the benefit of the people, and that they can be exercised only upon the advice of Ministers who are responsible to Parliament. (See Todd's *Parliamentary Government in England*, 2nd ed., Vol. 1, p. 384.) Hence we find that the exercise of any of those rights upon the occurrence of any unusual eventuality is always closely examined by Parliament, and that the legality of its exercise in such a contingency is frequently challenged by the opponents of the Ministers who have advised it. Protests of that character from the Opposition benches are an inevitable result of the existence of political parties in the legislature and in the country, and every Minister who does not wish to shrink from the responsibility imposed upon him in an unusual conjuncture must be prepared to meet them. On such occasions he will probably be charged by his antagonists with following discredited precedents and attempting to restore the arbitrary government of past centuries; and convenient quotations from the writings of legists and publicists of high repute will be used in support of the accusation. But the definition of the prerogative given by so strong an opponent of unlimited political power as Locke, and approved by so firm a friend of the personal rights of Englishmen as Blackstone—viz., "the discretionary power of acting for the public good when the positive laws are silent," (Kerr's Blackstone, Vol. 1, p. 245)—will always supply the test by which the legality of the Minister's advice may be determined. Was the course of action recommended by the Minister prohibited by Law? If not, was it for the public good? In the case now under consideration an event had occurred which had disturbed the public mind with suspicions that were calculated to shake public confidence in every financial institution in the Colony, and statements were contained in the first Statutory Report made to the shareholders and creditors of the Bank by the Trustees appointed by Parliament to wind up its affairs that pointed to fraud in connection with the management of the institution previous to its collapse. Those statements were followed by a public verbal announcement by one of the Trustees that so far as they were concerned they intended to leave the question of fraud for further investigation by the Law Officers of the Crown. Then occurred a combination of circumstances, which in such a small community as ours made it practically impossible for an investigation to be made by any other method than that which was adopted, unless, indeed, the Crown had resorted to a fishing

criminal prosecution of the Directors and Manager of the Bank at the risk of inflicting upon innocent men the pain and indignity of standing charged as criminals at an investigation under "The Magistrates Criminal Procedure Act." I do not believe that such a thing has ever been done in this Colony, and I trust that it never will be. Ministers were therefore called upon to choose between a policy of inaction that would have allowed the disturbing suspicions then afloat in the community to increase and deepen, and to engender a disbelief in the efficiency of the law to overtake offences committed under cover of that implied integrity and that supposed good faith which place the authors of such offences in the positions in which it becomes possible to commit them, or to adopt a course that would check the further growth of such suspicions and dissipate such disbelief from the public mind. In the presence of such an issue Ministers considered that they would have failed in their duty to the Crown and to the people if they had not advised the Governor as they did.

A. INGLIS CLARK.

His Excellency the Governor.