

(No. 90.)



1894.

PARLIAMENT OF TASMANIA.

MR. J. BURT'S CASE :

REPORT OF SELECT COMMITTEE, WITH MINUTES OF
PROCEEDINGS AND EVIDENCE.

Brought up by Mr. Gilmore, August 8, 1894, and ordered by the House of
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SELECT COMMITTEE appointed, on the 27th July, 1894, to enquire into the case of Mr. John Burt, of Fingal, in connection with an alleged wrongful record of a Verdict given at the Court of General Sessions, Fingal: with power to send for Persons and Papers.

MEMBERS OF THE COMMITTEE.

MR. REIBBY.
MR. ARCHER.
MR. URQUHART.
MR. GILL.

MR. MURRAY.
MR. HARTNOLL.
MR. GILMORE. (*Mover.*)

DAYS OF MEETING.

Wednesday, 1st August; Thursday, 2nd August; Friday, 3rd August; Wednesday, 8th August.

EXPENSES OF WITNESSES.

Henry Lyne, £4 2s. 6d.

R E P O R T.

YOUR Committee having thoroughly perused the voluminous documentary evidence taken in this case, and carefully examined witnesses, beg to report to your Honorable House the result of their deliberations:—

1. That the verdict of the Court at Fingal, on the 7th November, 1888, in the case of *Burt v. Cramp*, was that plaintiff be nonsuited.
2. That the Registrar erroneously entered such verdict up as being for the defendant.
3. That such erroneous entry was made through carelessness, and not with malice.
4. That this wrongful entry was not directly the cause of Burt losing the action for damages for assault which he brought against Cramp in the Supreme Court, Launceston, on the 2nd day of April, 1889.

The case of J. W. Burt having created considerable public interest, and being the subject of much comment in the daily press, your Committee deem it desirable to lay fully before your Honorable House the reasons which have guided them in coming to their conclusions.

In reference to the verdict in the Fingal Court on the 7th November, 1888, your Committee find that in favour of a nonsuit they have the positive evidence of Mr. John Stanfield, Chairman of the Bench, who also states in his affidavit that the Registrar had not his record-book in Court on the day of the trial; the evidence of John Duncan or Duneene, who was present in Court at the hearing of the case; of Burt himself; and Mr. S. H. Grueber, who states in his affidavit that the Registrar admitted to him that he had not his record-book in Court on day of trial.

Then there is the fact that the verdict was without costs, not unusual where plaintiff is nonsuited on a pure technicality, and also the fact that Burt was advised to bring a fresh action *in detinue*, which advice would have been absurd had verdict been for defendant; and in the Supreme Court on 2nd April, 1889, in the case of assault *Burt v. Cramp*, Cramp in his examination in chief stated that he had made use of the expression to Burt, "You know you were nonsuited."

Your Committee also have the opinions of the Solicitor-General, the Honorable Alfred Dobson, and of the late Acting Solicitor-General, Mr. C. S. Cansdell.

In favour of a verdict for defendant they have the positive evidence of Mr. Thomas Ransom, of Mr. Lyne, and the undecided evidence of Mr. Fred. Ransom, who states in a letter that he did not take any notes, that as it is so long ago the case has almost passed out of sight, and, as far as he understood, the verdict was for defendant.

Corroborative evidence of the verdict being a nonsuit is found in the fact that Mr. Stanfield states the Registrar took notes on a slip of paper and had not his record-book in Court, and this statement about the record-book is supported by Mr. Grueber's evidence of his conversation with Mr. Lyne.

It is true Mr. Lyne denies having had any such conversation, but he admits being in the habit of entering his verdicts on slips of paper when given, and subsequently copying them into his record-book, and further states that he would not swear that he had his record-book in Court on 7th November, 1888. Moreover, the reason he gives for denying Mr. Grueber's statement, namely, to use his own words, "I will put it to you, is it likely that I would be such a fool as to admit to Mr. Grueber that I did not enter it till next day?" is so extraordinary as most materially to discount his contradiction.

In reference to Mr. Burt's statement that the verdict in the Supreme Court, Launceston, in the case of *Burt v. Cramp*, on the 2nd April, 1889, resulting in a verdict for defendant mainly on account of the production of a certificate showing that the verdict of the Court at Fingal on the 7th November, 1888, was for defendant, and thus contradicting his sworn testimony that he was nonsuited, your Committee are of opinion that Mr. Burt's memory is at fault. The certificate stated by Mr. Burt to have been produced is not to be found amongst any of the papers submitted to your Committee, nor is there any record of it having been produced in the Supreme Court office, the Judges' Associate, Mr. George Browne, being very clear on this point. Moreover, the Hon. R. Byron Miller, who was counsel for Burt in the Supreme Court case before mentioned, distinctly states (he having been interviewed by the Chairman of your Committee) that the entering up of the wrongful verdict in the Court at Fingal was not directly the cause of Burt losing his action for damages for assault. Furthermore, Mr. Miller has no recollection of having such conversation with Burt about the certificate or its production as Burt states he had. And again, in Mr. Miller's notes in his own handwriting of Cramp's examination in chief at the Supreme Court, these words occur—"Plaintiff came in at door, came up to counter where I was writing, said 'Here is your watch, I demand my English lever watch.' I said, 'You have no claim on me for any English lever watch. You know very well you were nonsuited at Fingal in this matter.'"

It is hard to believe that Cramp would have mentioned a nonsuit if he had intended putting in a certificate to show the verdict at Fingal was one for the defendant.

There is also Mr. Waldron's letter, in which he distinctly denies that any such certificate was used on behalf of defendant, and Mr. Lyne's positive statement that he never gave him such certificate.

In Mr. Cansdell's report he refers four times to this certificate, but apparently must have relied upon Burt's statement, for no such document is forthcoming, neither is it mentioned in the newspaper reports of the trial.

The following extract from a letter of Mr. Byron Miller's to Mr. Burt, dated the 15th March, 1889, shows that Mr. Miller considered the case a doubtful one. The extract is as follows:—"You will see from a copy of the defendant's plea that he is going to set up a case utterly contradictory of yours, and as you seem to think that the persons in the store who ought to be your witnesses were prejudiced in his favour, will they tell the truth? If not, your case will be hazardous to take into Court."

G. C. GILMORE, *Chairman.*

Committee Room, 8th August, 1894.

MINUTES OF PROCEEDINGS.

WEDNESDAY, AUGUST 1, 1894.

The Committee met at 11.15 A.M.

Present.—Mr. Archer, Mr. Gill, Mr. Hartnoll, Mr. Gilmore.

Mr. Gilmore was voted to the Chair.

The Committee deliberated.

The Chairman tabled the correspondence, &c. in connection with the case.

Ordered, That Mr. C. S. Cansdell be summoned for 10.15 A.M., August 2, and Messrs. H. Lyne and J. Stanfield, both of Fingal, for August 3, at 11 A.M.

The Committee adjourned at 12.10 P.M. until 10.15 A.M., Thursday, August 2.

THURSDAY, AUGUST 2, 1894.

The Committee met at 10.45 A.M.

Present.—Mr. Gill, Mr. Archer, Mr. Murray, Mr. Hartnoll, and Mr. Gilmore, (Chairman).

The Minutes of the last Meeting were read and confirmed.

The Clerk tabled documents and correspondence received from the Hon. the Attorney-General bearing on the case.

The Clerk reported that Mr. Cansdell was absent from the colony, and that Messrs. Stanfield and Lyne had been duly summoned for 11 A.M. on Friday, 3rd August.

Mr. J. Burt was called in and examined.

The Hon. Alfred Dobson, Solicitor-General, was called in and examined.

Mr. Dobson withdrew.

Mr. Burt's examination was continued.

The Committee adjourned at 12.50 P.M. until 11 A.M. on Friday, 3rd August.

FRIDAY, AUGUST 3, 1894.

The Committee met at 11 A.M.

Present.—Mr. Reibey, Mr. Archer, Mr. Murray, Mr. Hartnoll.

The Minutes of the last Meeting were read and confirmed.

The Chairman read a letter from Mr. J. Stanfield, dated 2nd August, apologising for non-attendance on the plea of ill health.

Mr. H. Lyne, Registrar Court of General Sessions, Fingal, was called in and examined.

Account passed for payment—H. Lyne, rail fare, £2 6s. 6d.; three days' expenses, 36s. = £4 2s. 6d.

The Committee adjourned at 12.55 P.M. until 3 P.M.

AFTERNOON SITTING.

The Committee reassembled at ten minutes past 3 o'clock.

Present.—Mr. Archer, Mr. Gilmore, Mr. Murray.

The Committee deliberated.

The Committee adjourned at 3.45 P.M. until 11 A.M. on Wednesday, the 8th of August.

WEDNESDAY, AUGUST 8, 1894.

The Committee met at 11 A.M.

Present.—Mr. Reibey, Mr. Hartnoll, Mr. Archer, Mr. Murray, and Mr. Gilmore, (Chairman).

The Minutes of the last Meeting were read and confirmed.

The Draft Report was tabled, read, and agreed to.

The Committee adjourned *sine die*.

EVIDENCE.

THURSDAY, 2ND AUGUST, 1894.

JOHN WILLIAM BURT, *called and examined.*

1. *By the Chairman.*—Your name is? John William Burt.
3. And you were a road contractor at Fingal? Yes.
3. You know the object of this enquiry? Yes.
4. To enquire into the fact of whether or not on, the 29th March, 1886, a verdict was rightly or wrongly entered up in the Court of Requests, at Fingal, in a case in which you were connected? Yes, but that was not the date, Sir, it was the 7th November, 1888.
5. We want you just to give us your own statement of facts in your own language? If I understand you rightly you mean me to tell you of the non-suit.
6. Yes. Tell us shortly the facts of the case and the result of it? I brought my action against Mr. John Thomas Cramp, of Fingal, for £6 17s. 6d. for the value of a watch.
7. On what date? On the 7th of November, 1888.
8. Before whom was the case heard? Messrs. Thomas Ransom, Frederick Ransom, and John Stanfield.
9. Well, and what was the result of the case? I placed upon the table Mr. Cramp's "loaned" watch to me with his name upon it, together with the receipt for a watch, and in that receipt was mentioned that the watch was guaranteed for six months to be kept in good going order barring accident. A cheque was paid for the watch, and the memorandum of the receipt for the watch is somewhere in the House of Assembly now; it was never returned to me. Mr. Cramp was not there, and in his absence Mrs. Cramp had exchanged the watch with me. Mr. Ransom asked Mr. Cramp when the case was proceeding in the Fingal Court, what difference there was, if any, in the value between the old watch and the new one, Mr. Cramp replied "None, Mr. Stanfield." Mr. Stanfield then said there cannot be any exchange, if so, then it must be a false one, and he stood up in his chair and said, "Mr. Burt you have done wrong in bringing your action in the form you have done. You should have brought your action for a watch and the value and not for the value alone, and for not knowing how to bring your action in the proper form you are nonsuited."
10. You were nonsuited? Yes. Mr. Ransom further said to me that I must return to Mr. Cramp his "loaned" watch, which was on the table, before I brought any further action.
11. You are positively certain without a shadow of a doubt, now, that you were nonsuited? I am positively certain. There is no question about it.
12. And Mr. Ransom, or the Bench, did not give a verdict for the defendant? No, certainly not, Sir.
13. Just tell us, shortly—this will be taking you back again—go back to a little time preceding the action, and tell us your transactions entirely. How did you come to buy the watch? That is what I should like to have done. I had an accident, and broke the spring of my own watch, a little watch that I was carrying, and I went to Mr. Cramp to get him to send it to Launceston for repairs for me, and I asked him to lend me one in the mean time. He did so.
14. He lent you one? Yes. He promised to send to Launceston for me and get me one there. I kept his "loaned" watch for about a fortnight, or near upon three weeks, at the end of which time I believe I overwound the watch, for it stopped then, and I took it back to Mr. Cramp, and asked him had he got my watch,—meaning the watch he promised to send to town for. He said no, he had not yet received it, but he would send again for me. Well, I left it entirely to him to do as he pleased,—that was to send for the watch to Launceston, get it for me, and fix his price upon it. He did so, and he picked me out a silver English lever watch, Thomas Porthouse maker, number 3420. That is shown in the paper sent here last session. I took the watch home, and the same night it stopped; and in the morning of the 29th of November I paid for the watch. Mr. Cramp told me, you understand, that he would lend me a watch; and he said, "But, at the same time, when your watch comes back from town, if you choose to take it you can have it, if not, you need not take it." He then took my watch to send it to Launceston for repairs. He said to me then, "I will lend you this one while your own watch is under repair," and I took it.
15. You have the watch with you? Yes, I have got the same watch with me. I had been to Cramp's stores several times and asked him if this watch was returned. He said "No, it had not." On the 7th of November, 1887, my work being done, I took back to Cramp his own watch. He told me that he did not see himself called upon to take back his watch or to return me mine, seeing I had kept his watch for ten weeks, nor would he do so.
16. Well, it was in consequence of that that you brought the action, with the result you have already stated? Yes; the fact is this, I wish we had those papers, because they show the case so clearly.
17. It was after the fact you just mentioned you brought the action you have told us of, and with the result that you told us? Yes, Mr. Cramp first brought the action, and perhaps it would be well for me to explain that to you. When Mr. Cramp refused to return me my watch or take back his, I asked him for my account. He took his books and made it out. It was £6 2s. 3d. When he sent me the bill without the items it was for £7 19s. 9d. I think you will see it clearly directly. Mr. Cramp was the first then to summon me to the Court at Fingal for £2 some odd shillings. I paid into the Court the sum of £1 17s. 6d. as a set-off against the claim, as it were. This 6s. that I paid for repairs to the watch Mr.

Cramp again claimed. Mr. Cramp's book was examined, and it was found that this £6 2s. 3d. was my account entered in his book, and that the £1 17s. 6d. that he had summoned me for as representing £2 odd was my son's account, and not mine at all.

18. You say it was your son's account? Yes; I had paid the £1 17s. 6d. into Court. Mr. Cramp of course got a verdict for this £1 17s. 6d., and I was told by Mr. Cramp that it was my own fault for not having deducted the 6s. as he authorised me to do in the memorandum; I trust this memorandum will be found, because it distinctly mentions the 6s., and says that I can deduct it.

19. You say Cramp got a verdict for £1 17s. 6d., 6s. more than he ought to have done? Yes; he told me in the memorandum I could deduct it, and he also told Mr. Lyne to pay the 6s. out of the £1 17s. 6d. Mr. Lyne refused to do so. My second case was then called upon, the £6 17s. case, and they were both disposed of on the same day.

20. After this conversation an action was brought for £6 17s. you have previously stated, and on this you were nonsuited? Yes.

21. Did you take any action for the recovery of the 6s.? Yes.

22. When? Some two years afterwards.

23. What was the result of that action? Mr. Stieglitz, the Chairman of the Court, ruled against me, and the verdict was given against me. Mr. Stieglitz said Mr. Cramp had written on the memorandum to stop 6s. if I paid the account on demand, and not otherwise. The verdict, as I before said, was then given against me.

24. The action you brought for the 6s., was that a verdict for the defendant? Yes, for the defendant, Sir.

25. And you say you had paid the 6s. previously? Yes.

26. Now, Mr. Lyne suggests in his correspondence that there has been some mistake or misunderstanding in this matter—that the two cases have been confused,—are you positively certain that in the first action that was brought for £6 17s. you were nonsuited, and in the second case, that for the 6s., there was a verdict given against you? Yes; there is no mistake whatever about it.

27. No mistake whatever? No. I have a large number of notes in connection with the case which I could have brought and given to you, but I decided not to do so, I preferred to rely upon my memory and not incriminate anybody, either Mr. Lyne or myself.

28. I believe you were assaulted by Mr. Cramp, were you not; if so, please tell the Committee the circumstances of that assault and your proceedings afterwards? The Court, of course, ordered me to return to Mr. Cramp his "loaned" watch before I brought any further action. The Warden, Mr. Stephen Grueber, that is the old gentleman, was Warden at the time. As I came out of the Court he asked me to allow him to be the peacemaker betwixt myself and Mr. Cramp. He wrote to Mr. Cramp and got no reply up to the 17th of December of the same year, 1888. He now went to Constable Dodge into the Police Clerk's office and told him to take the watch and wind it up, and it would be received by Mr. Cramp in good going order. Constable Dodge did give the watch two or three turns just to see if it would go. Mr. Grueber then handed the watch into my hands, told me to go by the orders of the Court and take it back to Mr. Cramp. He refused to take it from me. I left the watch, and called a man who was in the shop at the time to witness me leave the watch with Mr. Cramp. Mr. Cramp told me to take it away, and I said "No, that is my only business here." He put his hand upon the counter, like a person jumping over a fence, and he went for me. It was not the work of a second. If I had had any idea that he was going to assault me I might have been able to defend myself.

29. He jumped over the counter? Yes, and stopped me at the door. He told me to go back and take the watch off his table. I told him by the order of the Court I was leaving it, and that I declined to take it away again. He asked me a second time to go and take the watch away. I told him not to make a prisoner of me, as I was standing near the door, and he would not let me out. He said he would let me go if I would take the watch. I again refused, and the next thing I found was that he had assaulted me. I would not be sure whether it was a blow or a push that he gave me, but I fell amongst a number of boxes. The next thing I found was that Mr. Cramp had thrown me over an apple-box, and he afterwards bumped me up and down.

30. How long were you laid up in consequence of that assault? The doctor attended on me for six weeks every day in my bed, and for nine months I was not able to do anything but walk about on a crutch and with a stick.

31. *By Mr. Gill.*—How did you get home from Cramp's store? By train. I was helped home by the man who was in the shop at the time.

32. *By the Chairman.*—Did you take any proceedings in consequence of that assault? Yes; I went down to the Court at Fingal, and Mr. Stanfield told me that it would be better for me to go to town than to attempt to bring an action there.

33. Did you bring an action in the Supreme Court in Launceston? Yes, for assault and damages.

34. You took action against Mr. Cramp? Yes.

35. What was the result of that action? A verdict for the defendant.

36. What was instrumental in getting that verdict? Mr. Cramp's defence was justification. He said I was a trespasser, and he only used sufficient force to turn me off.

37. Did you swear in Launceston that at the action in Fingal you were nonsuited? Yes.

38. Was evidence given to the contrary by Mr. Cramp? Yes. He wrote to Messrs. Douglas and Collins, in Launceston, and said that Mr. John Stanfield had tried the case in Fingal, and that it had resulted in a verdict for the defendant.

39. Can you remember, Mr. Burt, whether any certificate of that verdict in the Fingal Court was put in evidence in the Supreme Court, Launceston? Yes, it was.

40. It was? Yes. And if you will permit me to say—

41. Who was your solicitor? Mr. Byron Miller. Mr. Waldron was Cramp's solicitor.

42. Are you positive, Mr. Burt, that the certificate of the verdict at Fingal showing it was for the defendant, was put in as evidence at the hearing of the case in Launceston? Yes, I am positive.

43. Was it put in, and were you cross-examined on it? Yes.

44. Was it put in when you were under cross-examination? Yes.
45. Who was counsel for Mr. Cramp? Mr. Waldron.
46. Did he conduct the case himself? Yes.
47. When Mr. Waldron was cross-examining you, did he show you the certificate of the Court of Fingal showing the verdict in your case for the value of the watch was for the defendant? He showed me a letter that Mr. Greuber had written to Mr. Cramp.
48. I want to make this clear. You have told us, I think, that the certificate showing the verdict for the defendant was put in in evidence? Yes, that is absolutely correct.
49. Well, you say that was put in; was it put in when you were being cross-examined? Yes; and, when it was put in, my counsel, Mr. Miller, told me that that would lose me the case.
50. Oh, your counsel told you that certificate would lose you the case? Yes.
51. I would ask you, Mr. Burt, did you see that document yourself? Yes.
52. You saw it? Yes.
53. Would you know it again if you saw it? That I could not say,—you see it is a long while ago.
54. Can you remember at all what was on it? You see, when Mr. Cramp made the remark in the witness box that the record book in the Court at Fingal showed a verdict for the defendant, my solicitor turned round and told me that that certificate had lost me the case.
55. He told you that in Court? Yes, in Court. I said to him then the verdict was not given in favour of the defendant. I said "No matter I am perfectly right and confident that I was nonsuited; ask his Honor to adjourn the case, and I will get Mr. John Stanfield to be present." Mr. Miller did apply for an adjournment, and the Judge said he could not do so; that the Court at Fingal was of so high authority that its records were conclusive evidence of everything contained in them that the certificate from the Registrar of the Court was proof of itself against which there was no appeal. He said that the only thing I could do was to appeal to the Chairman, Mr. John Stanfield, whose sworn affidavit or himself in person, would be ample satisfaction for the Court in which the action was tried under the Act provided for that purpose to set aside the wrong entry of the verdict, if such it be. Through the years that have passed since that time I have constantly had those words of the Judge before me. I was so sure that I was nonsuited.
56. Have you a copy of the letter the Hon. the Premier referred to in the House the other evening. I mean the letter sent by you? I have accidentally torn it up, but I told the Premier this, that I had been taken from Fingal by one of my sons, and rather than return or be forced to go back again I considered death preferable. I referred to my own death, not to that of the Premier at all. I said I preferred death to going back to either the Hobart Invalid Depot or Fingal again. I have been in the Launceston Invalid Depot for some time.
57. *By Mr. Hartnoll.*—After the Judge had spoken as you have stated, did you have any consultation with Mr. Byron Miller—I mean after the trial? Yes, Sir. He told me that the wrong verdict entered in the records of the Court in Fingal was entirely against me. He said "I think you must be wrong, but the best thing you can do is to go down to my office and send a letter to the Attorney-General." I did so, asking for my costs to be remitted on account of my having been nonsuited. Mr. Miller asked me if he should write to Mr. Stanfield for satisfaction sake, and I replied to him to do so willingly. He wrote to Mr. Stanfield, and Mr. Stanfield replied unquestionably there was no doubt that I had been nonsuited. He replied to Mr. Miller that unquestionably in the case tried in the Fingal Court, *Burt v. Cramp*, the plaintiff was nonsuited, and there was not a verdict for the defendant.
58. In consultation with Mr. Byron Miller, did he advise you whether it was worth while to take any further action? Yes; and six other solicitors in Hobart and Launceston advised me the same way.
59. What did you do? I applied for a new trial.
60. *By the Chairman.*—Mr Hartnoll means did you apply for a new trial in the Supreme Court? Oh no, Sir.
61. *By Mr. Hartnoll.*—I suppose you had several chats with Mr. Byron Miller after he got Mr. Stanfield's reply? Yes.
62. Did you ever ask him, seeing that you had got Mr. Stanfield's reply, whether you should apply for a new trial? Yes; he advised me to do so. He said there was no doubt, seeing Mr. Stanfield's reply, that Cramp had got the verdict in Launceston on the ground of the wrong entry. Mr. Miller told me that, and advised me not to touch Cramp, and said he would do all the writing for me in the matter.
63. Did Mr. Miller ever tell you it was worth the while to go for a new trial or not? Indeed he did. He advised me to go for a new trial in the Fingal Court first.
64. You say you brought an action for damages for assault against Cramp. What were your damages laid at? £500.
65. I suppose it was no use to advise you to go for a new trial in the Fingal Court in the hope of getting recompense? No; the Attorney-General, Mr. Clark, told me then that until the entry in the record book was corrected everything was closed against me. My object has been, from first to last, to get that entry correct.
66. Did Mr. Miller ever tell you to take another action in the Supreme Court to test the incorrectness of the entry? No.
67. Why did you not go on with the second action? I was too poor, the other action had ruined me.
68. Supposing you had had £500 to speculate in another action, under these circumstances would you have suggested to Mr. Miller that you should go for a new trial? Yes; he told me the Court was closed against me so long as that entry remained wrong in the book, and I had no money to go on with the case.
69. And then he told you what next to do, I suppose? He told me to appeal.
70. You did everything possible? Yes.
71. With the best advice? Yes.
72. *By the Chairman.*—You did appeal at Fingal? Yes, I did give Mr. Cramp notice of my intention to appeal. I wrote several times to get the verdict properly recorded, but I could not do so. I wrote as many as eleven times, and then got no satisfaction.

73. Did I understand you to say that you wrote eleven times? Yes; and each and every time I was told that the verdict could not be reversed.

74. Is there anything more you would like to add? No, Sir, nothing more.

ALFRED DOBSON, *called and examined.*

75. *By the Chairman.*—Your name? Alfred Dobson.

76. And you are Solicitor-General? Yes.

77. Do you know anything of the case of John William Burt—I understand you had something to do with the documents connected with the matter? I only received a summons a few moments ago to attend this Committee, and consequently, without refreshing my memory, I should be speaking in the dark.

78. I think you have enquired into this case, have you not? Yes. There are some technicalities in the matter, and it is a long while ago since I had to deal with it.

79. Would you prefer to attend the Committee at some future date, Mr. Dobson, and give us the benefit of your knowledge on the subject? Yes. I might in the meantime see what opinion I can give you in the matter.

80. We will be very glad if you can get any opinion, or get facts, figures, and evidence? As far as my memory goes, I think it was asserted that, at the time of the trial at Fingal Mr. Burt was nonsuited on the evidence taken, and the Council Clerk entered a verdict up for the defendant Cramp. The effect of a nonsuit in law means that the action is still alive, but if not, if the verdict is given for the plaintiff or defendant there the matter ends; so that in the present case, if Mr. Burt's assertion is correct he undoubtedly had power to go again, by the fact that the verdict had been entered wrongfully. As far as I remember, there was some discrepancy as to the fact,—that the Council Clerk said that it was perfectly correct, and I think one of the Justices said so too; but of that I am not quite sure. The question that I was asked to advise on was, whether the Court had power to alter its verdict, and I was of opinion that it had not. The Acting Solicitor-General (Mr. Cansdell) gave a very long opinion on the whole case; and he was unable to suggest any remedy—no remedy that I thought satisfactory. Of course, it is one of those involved cases where the person interested has not taken steps at the time to bring the matter to finality. Of course, any litigant might be in the same position. An error is made; a wrong judgment is given; if he does not choose to take the steps provided by law for setting that aside, then it is his own concern. If Mr. Burt's account is a true one, and not being a lawyer himself, then the Crown will sympathise with him; but, at the same time, we are not able to suggest any legal steps which should be taken to alter the matter, because the other litigant is to be considered. Have you the date of the judgment or entry of the trial at Fingal?

81. Yes, the 2nd of November, 1888? Well, there is such a long lapse of time that I am afraid nothing can be done to correct the entry, because the other side will have to be heard—Mr. Cramp's side. He was the defendant in the case, and he might object after this long lapse of time to the thing being stirred up now. I should like to assist the Committee in any suggestion or opinion that I might have.

82. You have been through the evidence, Mr. Dobson—can you give us an opinion upon it? No, I regret to say I could not possibly do that. It is so long ago—it must have been 1892. There are so many cases come under my notice that I could not possibly do that.

83. Can you refresh your memory? Yes.

84. I understand you did form some opinion? Yes.

85. *By Mr. Hartnoll.*—Do you know that Burt was ruined by the action, and that he had no money to proceed after his case broke down in Launceston? I thought he ought to have taken steps for reversing the judgment within the space of time prescribed by law.

86. Supposing it could be shown that the Warden, the Chief Magistrate of the District, advised Burt what he was to do—that he would likely be mediator between two litigants—that he had interested himself and tried to get some termination of it, and through Cramp not replying to the Warden the lapse of time occurred, there would be some excuse for Burt not taking action at the time, would there not? If Burt had been led to delay proceedings through what the Warden advised him, then I fear that the incorrect advice given by a layman, or even by a lawyer, would not affect the claim.

87. Leaving out law, the real equity of this case, and the man not in very good circumstances, is there any possible way that he could get over the law so far as the lapse of time is concerned? There is no doubt on a point of law action should have been taken earlier. As to equity, a Court of Equity would have no jurisdiction in this matter at all. The jurisdiction of the Court of Law and Equity are quite different. This would be a Common Law matter.

88. Then, supposing this Committee were of opinion, and generally in favour of the position taken up by Burt, and that this action put him in a position of being able to move *in forma pauperis*, would that apply in this case—would the bar still exist that he had not done so within the prescribed time? I think so.

89. We have all the papers here? Yes, I know Mr. Cansdell wrote a very long opinion, but it does not suggest the technical remedy. I see Mr. Cansdell does not suggest how redress is to be obtained. He says that Mr. Burt involved himself to the extent of £200 in costs. There is absolutely no remedy for that so far as I can see. I do not know whom he could get the £200 from unless from Mr. Lyne, even assuming it could be proved that Mr. Lyne had made a mistake, and the time for bringing the action against Mr. Lyne is past. If Mr. Lyne has purported to enter the verdict in performance of his duty then the Act will protect him. I do not see anything that can be done against Mr. Lyne, Mr. Chairman. The costs in which Mr. Burt subsequently involved himself are not damages, and therefore Mr. Lyne would not pay them. I am not asked to advise whether the verdict was rightly or wrongly entered up, but Mr. Burt spent some hundreds of pounds without getting any satisfaction. That seems to be the point, Mr. Chairman. The loss incurred by Mr. Burt is "too remote" as the law terms it to be recovered from any person, because such loss does not flow naturally from the wrong done.

90. *By the Chairman.*—Supposing that the Committee formed the conclusion that the verdict was wrongly entered up, would it be possible for Mr. Lyne to give compensation. If not, would it be possible for Parliament to give it? It has been said that an Act of Parliament can do anything except change a man into a woman. It would be perfectly legal for Parliament to do it. The Legislature could pass an Act giving Burt compensation, and as soon as that Act received the Royal Assent it would be the law of the land.

91. *By Mr. Gill.*—If the Committee found that the verdict was entered wrongly, could Parliament set it aside? Parliament by a special Act might set it aside, but it seems to me that if Parliament was asked to do so it would be establishing a bad precedent. There would be no finality about a Court of Justice if the case was to be made a special one by Parliament, and such a course of procedure would tend to shake the foundations of justice. Such a course might be legal, but it would be very unconstitutional.

92. *By the Chairman.*—I think you have stated that you could not form an opinion as to whether the verdict was rightly or wrongly entered up until you had gone through the evidence? I could not state so. I cannot remember at this moment what evidence was before me.

93. Can you meet the Committee again, Mr. Dobson? Yes.

94. *By Mr. Hartnoll.*—It has been stated by Mr. Stanfield that the verdict was wrongly entered, and there is an affidavit from him to that effect? Yes.

95. In that affidavit Mr. Stanfield says that Burt was nonsuited? I will read the affidavit and some of the other evidence.

96. Mr. Stanfield was Chairman of the Bench? And the other Justices.

97. One other Justice says it was correctly entered as a verdict for the defendant, and the other says it is so long ago he cannot remember, but he thinks it was for a nonsuit? The Council Clerk says it was correct.

98. Yes, he says it is correct? Yes.

99. *By Mr. Archer.*—Thomas Ransom says he does not remember anything about it? And Mr. Lyne is positive.

100. *By the Chairman.*—Mr. Lyne's statement is that it was properly entered up? Yes.

101. After seeing the affidavit and hearing the opinion of those on the Bench, Mr. Dobson, what do you think? After looking into the correspondence and the affidavit I am of opinion that the verdict was wrongly recorded; I think I might fairly say that now—that the verdict was wrongly entered; you see there is the positive affidavit of Mr. Stanfield. However, it is one of those cases not free from doubt, but looking at all the evidence it seems to me that the balance of the evidence is in favour of the Bench having given the nonsuit.

102. *By Mr. Hartnoll.*—Were there any costs in the Fingal case? I do not know, but it is usual for the plaintiff to pay the costs when he is nonsuited unless the Bench orders him not to do so. There seems to me to be a lot of evidence to show that there was a nonsuit. I do not think I can be of any further assistance, but if I can supplement what I have stated in any way I shall be happy to do so.

103. *By the Chairman.*—Do you now think, Mr. Dobson, it will be necessary to give a written opinion in the matter? No, I do not think so. I have had the advantage of refreshing my memory here. I think what I have heard leads me to the opinion that a nonsuit was ordered. As I have said the evidence is conflicting, and different minds may form different conclusions about it without in the least imputing wilful misstatements to any one. One reason for inducing me to think that a nonsuit was ordered to be entered is this, namely—that the case is one in which a nonsuit *ought* to have been entered because it was not decided upon the merits but upon technical grounds. The chairman of the Court (having regard to his declaration taken in this matter) seems to have had this fact in his mind, and it does not seem probable that the Court would have ordered a verdict for the defendant, as such a course would have prevented the case from ever being heard again. Moreover, the chairman says that the nonsuit was to be entered *without* costs. This unusual course shows that it was improbable that a verdict was entered.

FRIDAY, 3RD AUGUST, 1894.

HENRY LYNE, *called and examined.*

104. *By the Chairman.*—Your name is? Henry Lyne.

105. And you are the Registrar of the Court at Fingal? Yes.

106. You know the object of this Committee, do you not? Yes, I believe so.

107. Will you state to the Committee anything you have to say in connection with the case? Well, there are so many points that I scarcely know.

108. You know some time last year a Select Committee was appointed to enquire into the case of John William Burt, and you wrote a lengthy letter to the Committee containing the facts of which you were possessed: you can read that letter if you like, and I would like to know from you if there is anything further you would add? If I could be made aware on what points the Committee wish to get information I would be glad to give it.

109. *By Mr. Hartnoll.*—The only point the Committee wish to clear up definitely is whether a record was properly entered up in the Fingal Court by yourself the day following the judgment or a day or two subsequently to it. You know, of course, that Mr. Stanfield, he being Chairman of the Court, has said definitely that the judgment of the Court was a nonsuit, and that you, as Registrar of the Court, entered that up erroneously at a subsequent period? Yes, I am aware of that.

110. That is specially what we want to know. I think if you will answer that it is the first of the whole thing? If I might be permitted to read Mr. Stanfield's letter, I would perhaps be able to answer the question more clearly.

111. *By the Chairman.*—Does that letter of your own embody all you have to say? I think so. Dealing with Mr. Stanfield's statement, I think what he has said is wrong. I have not seen his affidavit, but I presume it is of the same purport.

112. It is here, and I will read it to you? Thank you.

113. Then in addition to that there is a letter which was received by me from Mr. Stanfield this morning. I will also read that to you? Thank you.

114. After having been made acquainted with the contents of those letters what have you to add? Well, Sir, I can only repeat what is contained in my statement, that to the best of my belief I entered that record in the Court. I say to the best of my belief. I am not prepared to swear it, although I am positive I entered it in the Court. I am pretty positive that I did so, and I feel that I could swear it, that I never went into the Court without my record-book. Perhaps you may not be aware of the position of my office and the court-room. To go from my office into the court-room I have to go through the constables' office. It is not 50 feet under the same roof. It is not 50 feet from my office into the court-room, and I do not believe that I ever went into Court without my record-book. I have the record-book and the papers in connection with the defended cases on the table, and the Justices assemble in my office; and they walk into the Court and I follow them; and feel so thoroughly convinced as to be able to swear it, although I said I would not like to swear it. I, however, feel convinced that I have never on any occasion gone into the court-room without having the record-book with me.

115. You are aware how positive Mr. Stanfield is? Yes, I am.

116. *By Mr. Hartnoll.*—Have you got the record-book with you now, Mr. Lyne? Yes; I can produce it now.

117. *By the Chairman.*—You are aware too, Mr. Lyne, that Mr. Grueber has made an affidavit in which he is of opinion a nonsuit was entered. What date is that?

118. On 30th April, 1892? Well, I think in my statement I said that there was not one atom of truth in Mr. Grueber's statement. In fact I am pretty sure I said there was not an atom of truth in it. Of course, my own is merely a fair statement of what I conscientiously believe to be true.

119. I do not think, speaking from memory, that you said in your letter to the Committee appointed last year that Mr. Grueber's statement was utterly untrue? Well, it is utterly untrue, I will say that now.

120. I beg your pardon, Mr. Lyne: on referring to your letter I find that you did say it was untrue? I have not seen Mr. Grueber's statement, but I based my words on what I had heard, and I say his remarks are untrue.

121. In reply to Mr. Grueber's statement, which you have now heard read, you say there is not one atom of truth in it? Yes.

122. So that we may take it then, that you distinctly contradict Mr. Grueber's statement? Distinctly. I will put it to you, is it likely that I would be such a fool as to admit to Mr. Grueber that I did not enter it till the next day?

123. That may be; any man will make a mistake,—none of us are infallible? No, but I did not say so.

124. *By Mr. Hartnoll.*—You might not have entered the verdict on that day? Well, perhaps I was wrong in making that statement, but it appears to me that a person would not be expected to be so short-sighted as to commit himself by making an acknowledgment of that sort.

125. *By the Chairman.*—You see, Mr. Lyne, the point is this: any man might make a mistake; surely it is not a crime to err. Supposing you had not your record-book there. If you had made a mistake it is not an unreasonable thing that you should acknowledge it? You see, Mr. Gilmore, this case occurred eighteen months after that entry was made, and Mr. Stanfield is speaking from memory eighteen months afterwards. I never knew until the 3rd of April, that is about eighteen months afterwards, anything about the case, it so little concerned me then. In fact, Sir, when I was asked by Mr. Burt what the entry was I did not know until I looked at the record-book; I did not know what the entry was. Is it likely, I should remember having made the entry when I did not remember what it was eighteen months afterwards?

126. *By Mr. Hartnoll.*—Were all those cases in the record-book dealt with on the one day by Mr. Stanfield?—might not some of them have been settled out of Court? Those that were defended. Where there was no defence entered, judgment was entered up in default. There were seven defended cases on that day.

127. Are you quite certain, Mr. Lyne, that the case *Burt v. Cramp* was nearly last on the list—on the cause list that day? Yes.

128. *By the Chairman.*—There is one point, Mr. Lyne; Mr. Stanfield says distinctly that following on the nonsuit no costs were awarded. I see in this case you have entered up costs three shillings? Yes.

129. How is that? Those are Court costs.

130. That would be one shilling for the plaintiff, one shilling for hearing; and one shilling defence? Yes.

131. There being no solicitors engaged, and the plaintiff being nonsuited, would not the costs be remitted? No, Sir; the Court costs must be paid.

132. The other costs? The Registrar's costs, three shillings—they must be paid.

133. They are not entered here in the record-book, Mr. Lyne? No, the Registrar is allowed to charge a shilling for every form in connection with these cases. This cost is borne by the plaintiff in the first instance.

134. They must be shown somewhere, must they not? The costs are included in the judgment. They are not carried out in the column "amount of costs." May I ask you, Mr. Chairman, if the Messrs. Ransom, who were on the bench that day, have been communicated with?

135. Both Messrs. Ransom wrote to the last Committee, and their letters have been perused by each member of the Committee. You are at liberty to hear them if you so wish? I should like to hear them, because I have letters from both those gentlemen.

136. Mr. F. D. Ransom states in his letter to the Committee that to the best of his belief there was a verdict for the defendant, but it was so long ago he would not like to say positively? Yes; I have one from Mr. Thomas Ransom, dated November, 12, 1892, in which he distinctly says the verdict was for the defendant.

137. *By Mr. Hartnoll.*—Is yours supposed to be a copy of the letter sent to the Committee? No, not exactly, but it is no doubt exactly similar.

138. We know the letter from Mr. Thomas Ransom says distinctly that it was a verdict for the defendant? I simply wanted to draw the attention of the Committee to the letter of Mr. Thomas Ransom.

139. Were the Messrs. Ransom on the bench on the occasion of the six shilling case? No; neither of them.

140. You are quite sure of that, Mr. Lyne? Quite sure, the records show it.

141. You are aware that Constable Duneen said it was a nonsuit? I am not aware of that, but I am not at all surprised. Am I to understand that these written statements of Messrs. Ransom are not as good evidence as Mr. Stanfield's affidavit?

142. *By the Chairman.*—Certainly not. We have given equal weight to all the letters. We are very anxious that thorough justice might be done, Mr. Lyne, if that is what you mean? I would like to point out that this case *Burt v Cramp* was heard on the 7th of November, 1888. Now on the 6th of November, 1889, there was a case heard in Fingal, *Burt v. The St. Helen's Road Trust*, work and labour done, £14 odd, and in that case the plaintiff was nonsuited.

143. *By Mr. Hartnoll.*—If there had been a verdict in that particular case for the defendant, Mr. Lyne, is it hardly likely that costs would not have been charged. What I mean is, that according to Mr. Stanfield's statement, Burt was nonsuited on a technicality, and he seemed to think it was unfair that he should pay the costs. Does that not give additional weight to the belief that it was a nonsuit? I think you are labouring under a misapprehension as to the term costs. It really means in that case the costs of the Court and the Registrar's costs must necessarily be paid by the party who takes the action. For instance, Cramp paid 5s. which would mean 3s. Registrar's costs, 1s. defence, and 1s. plaintiff. What must have been meant by Mr. Stanfield was witnesses' expenses; and not those costs which are mentioned in the book; I cannot explain why he should make any reference to costs at all. I do not contradict his statement with regard to costs, because I have no recollection of the matter now.

144. No recollection of anything being said about costs at all? No, I have no recollection of the case excepting that I know such a case came before the Fingal Court. I did not remember the particulars of the case even until it was gone through again; that was when Burt sued Cramp for 6s. I did not remember the case distinctly until then.

145. Are you in the habit of taking notes of verdicts on scraps of paper? I don't quite follow you.

146. Have you at any time when acting as Registrar of the Fingal Court taken notes of the verdicts given on scraps of paper? Yes, I always do for the Chairman.

147. That is notes of the evidence, I refer to the verdict. Has it ever been your practice to take notes of the verdict on scraps of paper, and enter up your verdict subsequently? Yes.

148. *By Mr. Murray.*—I should like to ask how it is that in this case *Burt v. St. Helen's Road Trust*, costs are charged at 11s. 6d., although a nonsuit was entered? 11s. 6d., that would be 5s. filing plaintiff, 5s. hearing fee, and 1s. 6d. evidence.

149. *By Mr. Hartnoll.*—Do you remember the case *Burt v. Cramp* tried at the Launceston Supreme Court sittings? Yes.

150. Was there a certificate handed up to His Honor the Chief Justice in that case showing a verdict for the defendant? No.

151. *By the Chairman.*—Mr. Burt stated yesterday in his evidence, Mr. Lyne, that the Chief Justice said when the certificate was handed him, that the records of the Court at Fingal were of so high authority that they were conclusive evidence of everything contained in them; that the certificate of the Registrar of the Court was proof in itself against which there was no appeal. You say, Mr. Lyne, that the Chief Justice did not see a certified copy of the record? I was not present.

152. You were not present at that trial? No, that case was tried in Launceston.

153. Did you give any certificate in connection with that case? No. You will see gentlemen, that in the letter I have from Mr. Waldron, he has no doubt whatever about there being no certificate.

154. *By the Chairman.*—The Acting Solicitor-General, Mr. Cansdell, went thoroughly into this case, and he refers most positively to a certificate. Amongst the papers there is to all intents and purposes a certificate, inasmuch as it is a copy of the page of the record-book bearing your signature? That was sent by me to either the Attorney-General or the Clerk of the House. It was, I believe, sent to the Clerk of the House. The other was given by me to Mr. Burt, I think, on the 3rd of April, 1894, at his request. That is when I looked and saw what the entry was. He asked me for a certificate. This is the only certificate I ever furnished, until I sent a copy of the whole page of the record-book to Mr. Maning.

155. *By Mr. Hartnoll.*—Could any one else have supplied His Honor the Chief Justice with a copy of that record of the Court excepting yourself? No.

156. *By the Chairman.*—Did you supply one to the Chief Justice? No. A copy of the record might have been taken without my knowledge. Of course my books are not locked up, although the office is.

157. Were you away at all? No.

158. Who would act in your place if you were away? The Superintendent of Police.

159. I presume he would have all your powers. He would be able to give any certificate? Yes; he could give a certificate, but he would not sign my name to it.

160. Burt's evidence yesterday was to the effect that directly the Chief Justice saw the record of the Fingal Court he said he (*Burt*) had lost his case? I think I can show you, gentlemen, that Burt never suspected there was anything wrong with the record; the idea never occurred to him until after he had been told by me what was in the record-book. Some time in May, 1890, Burt wrote to the Attorney-General, in which he said he had then no doubt that the paper which was handed up to His Honor was a copy of the record-book. To my mind Burt never had any suspicion of a certificate having been used. It was not until April, 1890, or about that time. Burt certainly never knew what verdict was entered. He has said that I had refused before this to issue a second summons in the case. The fact is I never was asked to. He has stated this in some of his writings.

161. That was not stated yesterday? He has done so in some of his writings.

162. *By Mr. Archer.*—Mr. Lyne says that certificate was never given him or anybody else, but he says now it could have been given? Well, I am positive Sir, because I have a letter here from Mr.

Cramp distinctly denying the statement, and stating that he never even applied to me for a certificate; and I have here what I consider a very decided reply from Mr. Waldron that he never was supplied with a certificate. Now, if neither Mr. Waldron or Mr. Cramp were supplied I am positive nobody else would have sought one.

163. This Constable Duneen, could he have got one? I don't think so. He never was office constable. With reference to the certificate Mr. Burt says was used in the Supreme Court in Launceston, this letter of his was written to the Attorney-General about May, 1890.

164. That was the Supreme Court action? The case was heard at Fingal on the 7th of November, 1888. On the 2nd April, 1889, a Supreme Court action was held in Launceston. It was subsequent to the last date that Burt complained of the verdict having been wrongly entered; that is clearly shown by his correspondence with the Attorney-General.

165. You are certain of that? Yes, I feel very positive in the matter, because I have already told you I did not know myself what that verdict was. I never had occasion to look from the time I entered it there until, I think, March, 1890, eighteen months afterwards. This was the first time on which I had occasion to look.

166. Mr. Stanfield, the Chairman of the bench on that day, distinctly says that he did not see the record-book on the table on that day, and that the plaintiff was nonsuited. I suppose Mr. Stanfield would not state what was incorrect? He might have been mistaken.

167. *By Mr. Murray.*—Are the whole of the entries in this record-book in the same handwriting? Yes.

168. Did anybody else ever enter any of them up? Not about that time; I had a severe illness which lasted several months on one occasion, some three or four years after that, and at that time the Superintendent of Police made several entries in the book.

169. My reason for asking is that the writing seems so very different? No, Sir, it is all my writing.

170. *By the Chairman.*—Is it not a custom for the Chairman of the Court to sign the record after the case is finished? No.

171. *By Mr. Hartnoll.*—You say in your letter that Mr. Stanfield took no notes in writing at all? Because all notes that were taken by myself I attached to the plaint and the summons. The whole evidence in that case was taken by Mr. Stanfield himself.

172. Mr. Stanfield took the notes of that trial? Yes. At this time he always took his own notes of the evidence.

173. And when he takes these notes does he not put a record of the verdict on the notes? No. I do not know whether he did in this case or not.

174. *By the Chairman.*—You see, Mr. Stanfield's statement of taking notes on slips of paper is corroborated by your own statement that you were in the habit of taking notes of verdicts on slips of paper? Yes, I know I have done that, although I do not invariably do it.

175. *By Mr. Murray.*—After a case has been disposed of is not the verdict of the Court entered up and signed by the Magistrates or Justices adjudicating on that case? No; there are no instructions laid down in the Act to that effect.

176. *By the Chairman.*—That is the legal course, Mr. Lyne? The Act does not say so.

177. *By Mr. Archer.*—Who was this constable Duneen? Was he dismissed from the Fingal police? No, not exactly. He was retrenched.

178. *By the Chairman.*—We want to get thoroughly to the bottom of this matter, Mr. Lyne—is there anything more you would like to add? No, Sir, but I will answer any further questions you put.