

1893.  
NEW ZEALAND.

**CHARGES MADE BY MR. G. W. ELL**  
AGAINST MR. BLOXAM, REGISTRAR OF THE SUPREME COURT,  
CHRISTCHURCH, AND MR. E. C. LATTER, LATELY  
OFFICIAL ASSIGNEE, CHRISTCHURCH

(REPORT OF THE ROYAL COMMISSIONERS APPOINTED TO INQUIRE INTO THE, TOGETHER WITH  
MINUTES OF EVIDENCE).

*Presented to both Houses of the General Assembly by Command of His Excellency.*

REPORT OF COMMISSIONERS UPON CHARGES MADE BY MR. G. W. ELL

REPORT of the COMMISSIONERS appointed to inquire into complaints and charges made by George Waldoek Ell against the late Official Assignee in Bankruptcy for the District of Canterbury and the Registrar at Christchurch of the Supreme Court of New Zealand.

To His Excellency the Right Honourable David, Earl of Glasgow, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Governor and Commander-in-Chief in and over Her Majesty's Colony of New Zealand and its Dependencies, and Vice-Admiral of the same.

MAY IT PLEASE YOUR EXCELLENCY,—

Under the Commission issued by Your Excellency, dated the 10th May, 1893, we were appointed Commissioners for the purpose of inquiring into the truth or otherwise of the complaints and charges made by George Waldoek Ell, of Christchurch, against Edward Circuit Latter, lately Official Assignee in Bankruptcy for the District of Canterbury, and Andrew Roby Bloxam, Registrar at Christchurch of the Supreme Court of New Zealand, and generally into the conduct of the said Edward Circuit Latter and Andrew Roby Bloxam respectively in dealing with the estate, affairs, and accounts of the said George Waldoek Ell, referred to in a letter dated the 25th February, 1893, from the said George Waldoek Ell to the Minister of Justice.

We have the honour to report that we opened the said inquiry at Christchurch on the 17th May, 1893, and continued it there on the 18th, 19th, 20th, 22nd, 23rd, 25th, 26th, 27th, 29th, 30th, and 31st May, and 1st and 2nd June.

There are twenty-two charges against the Registrar, and twelve against the late Official Assignee, referred to in the said letter. The charges against the Registrar are,—

1. "That accounts were ordered to be taken by the Registrar and an accountant, Mr. William Henry Hargreaves, in *Ell v. Harper* and another, No. 30, and *Ell v. Harper*, No. 353." This is not disputed. Orders for taking accounts are dated 27th June, 1884, and were produced at the inquiry (exhibits Nos. 3 and 6).

2. "On the 11th day of July, 1884, the first meeting took place, and from time to time until the 1st December, 1884, when the Registrar declared the case closed." This is merely a statement of fact which is not disputed.

3. "On the 5th December, 1884, an account was rendered to the Registrar, based upon the evidence contained in the Registrar's notes by the plaintiff, G. W. Ell, showing a credit balance of £3,177 5s. 4d." This is also a statement of fact which is not disputed.

4. "On the 5th December, 1884, an account or statement of items was rendered by Mr. J. C. Martin for the defendants, but not based upon the evidence contained in the Registrar's notes." The account here referred to was rendered as stated, but the evidence adduced does not bear out the latter part of the charge.

5. "The certified accounts were promised by the Registrar by the 23rd December upon payment of fees to the Registrar, £11 5s., for forty-five hours at 5s. an hour. These fees I handed to Mr. H. S. Austin on the 22nd December, 1884." From the evidence placed before us we are of opinion that this charge has not been proved.

6. "Time after time I was promised the certificates by the Registrar and by my then solicitor, Mr. H. S. Austin, and not until nearly the end of February, 1885, did I get any information. I was then told I must pay £88 4s. further fees before I could see them." The same remark applies to this charge as to charge No. 5, there being only the evidence of Mr. Ell on the one side and of Mr. Bloxam on the other. The Registrar, of course, could not issue the certificates until all fees thereon were paid.

7. "On the 11th March, 1885, I called upon the Registrar and paid fees, £88 4s. After I had done so I demanded the certificates. He refused to give them to me, and said he would hand them to Mr. H. S. Austin, although he knew I had, on the 4th February, 1885, withdrawn Mr. H. S. Austin's retainer, and had given him, the Registrar, written notice of same." It appears the Registrar only followed the usual practice in such cases in handing the certificates to Mr. Austin, for, although an order was made substituting Mr. Lynch for Mr. Austin as solicitor on the record, it had been made subject to Mr. Austin's costs being paid. Mr. Bloxam's evidence also shows that he gave Mr. Hoban, Mr. Lynch's agent at Christchurch, notice that he would hand the certificate to Mr. Austin, and no action was taken by Mr. Hoban or Lynch to prevent this.

8. "I then applied to the Registrar for office copies of certificates, and obtained them on the 13th March, 1885, when I at once saw that the Registrar had ignored order of Court, suppressed evidence contained in his own notes of evidence, and had also adopted the figures in statement rendered to him by defendants on the 5th December, 1884, and by that means had wronged me in a sum of over £3,000." The order referred to in this charge is the order of 29th October, 1884, which states that if the Registrar and Accountant are satisfied that there was a settled account, or what was so intended, between Mr. Ell on the one part and Mr. Leonard Harper and Mr. Philip Hanmer or either of them of the other part, covering all transactions between 1870 and 1873, such settled account was not to be disturbed. Both the Registrar and the Accountant admit there was a settled account up to June, 1873, but state that in their opinion it was incorrect. We have come to the conclusion from the evidence and documents placed before us that the Registrar and Accountant were in error in so going behind that settled account. At the same time there is no actual proof that they acted otherwise than *bona fide* in the matter. The allegations in this charge as to suppression of evidence and the adoption of the figures in the defendant's statement of account of 5th December, 1884, are denied by the Registrar and Accountant, who state that in making up the accounts they entirely ignored the accounts rendered by both parties. We therefore consider these latter allegations as not proved.

9. "On the 10th day of June, 1885, the defendant by consent paid into Court to the credit of cause, £2,404 6s. 9d." This is not disputed.

10. "In August and September, 1885, the Registrar did sign and issue incorrect order or orders that were used to my detriment by the defendants." In reference to this charge we have had placed before us four orders, Exhibits 25, 26, 28, and 29, all dated 2nd September, 1885, being two different orders in each action. Those taken out by defendants were orders for dismissing motions to vary the orders of 5th August, 1885; and those taken out by the plaintiff were orders dismissing motions on 2nd September, 1885, to set aside the certificate on the ground of mistake. Mr. Ell alleges the former orders to be the incorrect ones, and the latter the correct ones. In support of Ell's contention, we find from the Registrar's minute-book that there was no motion before the Court on the 2nd September, 1885, to vary the order of the 5th August, 1885, that having been disposed of on the 26th August, 1885; but that there was a motion in each action to vary the certificate on the ground of mistake, both of which were dismissed. We are, therefore, of opinion that the orders taken out by the defendants were incorrect, and that the plaintiff Ell in consequence was delayed in his appeal for six months.

11. "In May, 1866, the Registrar sent a telegram to the Court of Appeal in Wellington which is untrue and tended to mislead their Honours presiding." While it is admitted by Mr. Bloxam that the telegram was incorrectly worded it was not shown by the evidence that it was intended to mislead or did mislead the Court of Appeal. As regards the question of the payment of £250 for Minchin's land, it appears that the Registrar in the first instance desired to give Mr. Ell credit for this amount, but was overruled by the Accountant, Mr. Hargreaves, on the ground that there was no evidence of the payment having been made by Mr. Ell. Seeing, however, that the receipt for the £250 was indorsed on the mortgage, and that there was no other evidence before them beyond a mere statement by Mr. Martin, we are of opinion that the receipt should have been taken as *prima facie* evidence that the money had been paid, and that the amount should have been credited to Mr. Ell.

12. "But on the 5th June, 1886, Sir James Prendergast, Chief Justice of New Zealand, ordered the accounts to be taken in accordance with the Supreme Court rules." This is merely a statement of fact. The Chief Justice's order referred to by Mr. Ell as evidence in support is the certificate of the Court of Appeal (Exhibit 31), remitting the certificate of the Registrar to the Registrar and Accountant for review.

13. "From the 9th July, 1886, until the 4th August, 1886, the Registrar on several occasions adjourned the meetings for the reason, he said, that the documents had not returned from Wellington. That is false." The evidence does not show very clearly that the meetings were adjourned because certain documents had not returned from Wellington, or that delay had been caused by their non-arrival. It seems, however, to be somewhat doubtful whether Mr. Harper's solicitor was desirous of hastening matters, seeing that he did not appear on the first appointment taken out by him for the reopening of the accounts; and it was not until 28th July, 1886, that the first meeting was held.

We would point out in reference to this charge that Mr. Ell had assigned his interest in the actions against Messrs. Harper to his son on 10th June, 1886, and this was not notified to the Registrar until 10th August, 1886, four days after his (Mr. Ell's) bankruptcy. Mr. Ell having,

therefore, no beneficial interest in the action at this time, it would appear he had practically no *locus standi* in the matter.

14. "By these delays I was again made a bankrupt before I could get these wrongs adjusted, under the Chief Justice's order of the 5th June, 1886, for on the 6th August, 1886, on Mr. T. S. Weston's petition, I was adjudicated bankrupt. On the hearing of the said petition the Registrar said, in answer to his Honour Mr. Justice Johnston, that there was no money of mine in Court on the 8th July, 1886. This was untrue, and the Registrar knew it to be so; and his Honour Mr. Justice Johnston was deceived." Our opinion as to cause of delay has been already expressed in our remarks on previous charge. The money referred to was in the Court to the credit of the cause, and, being subject to the order of the Court, could not be considered as Mr. Ell's. As there had also been several motions before his Honour about this time in reference to this money, we fail to see how his Honour could have been deceived.

15. "On the 28th July, 1886, the Registrar became possessed of £35 belonging to me, but failed to give me any notice of same; and after I was adjudicated bankrupt, on the 6th August, 1886, on Weston's petition, I was unable at that time to find £20 demanded by the Registrar of me for security on the appeal I had given notice of to Mr. T. S. Weston; and not until my time had expired for appealing—that ensuing November, 1886—did I know that the Registrar had £35 of my money lying in his hands at that time." This £35 was part of £100 paid into Court on the 8th January, 1886, as security for costs in action No. 683, tried at Wellington, and was not available till the 28th August, 1886, instead of the 28th July, as alleged; so it would be vested in the Official Assignee. Ell being a bankrupt.

16. "A false action was brought against me for over £1,300 by Acland and Barns, as agents for T. W. Delamain, through Harper and Co., in October, 1884, and was not discontinued until the 25th February, 1885. Mr. Bloxam has kept this out of his report, although he knew Austin was paid costs on same." While it appears, and is, in fact, admitted by Mr. Bloxham, that it is true that he kept this out of his report to the A. to L. Committee, it has not been shown how it affected Mr. Ell injuriously.

17. "The records forwarded by the Registrar on the 8th December are incorrect and misleading to the Committee A. to L." No evidence was adduced in support of this charge.

18. "In April, 1886, the Registrar did, as I am advised, unfairly use his position to reduce a bill of costs, myself against H. S. Austin, from nearly £80 to £15 15s. There is no record of this in the Registrar's report A. to L." The evidence before us does not show that the Registrar acted unfairly in this matter. Mr. Ell applied to Mr. Justice Johnston on the 19th March, 1886, to have the taxation reviewed; but his application was dismissed with costs, £2 2s. He made a further similar application in June, 1886, but did not appear on the motion, and it was struck out.

19. "In April, 1886, the Registrar did refuse to make a note of a false order purporting to have been made in Wellington by Mr. Justice Johnston. Such order was not made, though served upon me at the instance of H. S. Austin." While it appears that notice of such an order was served on Mr. Ell by Mr. Austin's solicitor, the Registrar took no notice of it, as he had received a telegram from the Judge giving the correct terms of the order made. And as he acted on the telegram and proceeded with the taxation, we cannot see how Mr. Ell was injured.

20. "Referring to letters from the Registrar to the Under-Secretary for Justice—the letter of 24th June, 1887—the money by judgment was then, and is now, standing to the credit of the cause of Ell v. Harper and another." No evidence was offered in support of this charge. As already explained, any money in Court stood to the credit of the cause.

21. "The letter of 28th September, 1887, is untrue and misleading in his reference to paragraphs 33 and 35. It was the Registrar who told the falsehood in the wrongs he did in the accounts." It would appear that the reference made in this letter to paragraphs 33 and 35 of the statement of claim in Action 1397 was simply to inform the Under-Secretary for Justice what he (the Registrar) was doing in the matter. And, as Mr. Martin explained, the denial of the statements made in these paragraphs was simply for the purpose of putting Mr. Ell on his proof, the rules of pleading so requiring it.

22. "The letter of 10th November, 1887, is false and misleading. Mr. Bloxam says he deemed it would be more agreeable to Her Majesty's Government if he met the case on its merits. Mr. Bloxam had his choice to stand his trial on the merits, or, at the request of his counsel, and by the consent of Mr. Rees, to withdraw the case without costs. The Registrar chose the latter as more agreeable to himself." The evidence of Mr. Martin as to this charge contradicts Mr. Ell. And Mr. Justice Ward's order on the matter, as well as his letter to the Justice Department on the 6th June, 1888, will show that costs were granted.

The question of the issue of the false orders referred to after paragraph 12 of the charges against Mr. Latter have already been dealt with.

#### CHARGES AGAINST THE OFFICIAL ASSIGNEE.

1. "Notwithstanding that I petitioned to have my bankruptcy annulled, Mr. Latter proceeded to deal with my estate. He employed a solicitor, and incurred costs which Mr. Justice Johnston informed him ought not to have been incurred and refused to allow." Whatever costs were awarded the Official Assignee's solicitor were awarded as against the petitioning creditors, and not against Mr. Ell. We, therefore, consider there is nothing in this charge.

2. "After the adjudication was annulled on the 3rd June, 1885, on the ground that it was brought for the sole purpose of stifling my action against the Harpers, not from the 3rd June, 1885, until after September, 1885, did I get him to relinquish his hold on my estate." It appears from the Registrar's minute-book that the Official Assignee was removed from the record and Mr. Ell substituted as plaintiff in both actions on 5th August, 1885, and there is no evidence that the Official Assignee exceeded his duty in dealing with the estate previous to his removal.

3. "I have many times applied to Mr. Latter for information, but he has refused same." It was admitted Mr. Ell was refused information on one occasion, but this was in reference to the first bankruptcy and after its annulment.

4. "After I was adjudicated a bankrupt on the 6th August, 1886, by Mr. T. S. Weston, I made many applications to the Official Assignee for information as to matters in the first bankruptcy. This information I could not obtain. He told me as his reason that he had no records of the business; and it was only through the courtesy of Mr. Eyes, his chief clerk, that I eventually got access to the papers. By withholding this information the Official Assignee gave Mr. H. S. Austin the opportunity of extorting from me upwards of £150."

As to the first three paragraphs of this charge, we have already dealt with them in connection with charge 3. As to the last paragraph, the evidence is that any moneys paid to Mr. Austin were paid under orders of Court, and not by the Official Assignee.

5. "The Official Assignee admitted a claim for £5,138 of Mr. T. S. Weston, sole executor of Hyam Nathan, which was bad on the face of it, and not provable in bankruptcy." We are of opinion that the Official Assignee should not have admitted the proof of debt, considering the nature of the claim, and the basis on which it was calculated, but he should have rejected it, and put the creditor on his proof.

6. "He permitted one Haskins to alter his proof of debt nearly four months after adjudication, showing that his claim was £20 odd, instead of £121 1s. 9d. as originally proved for." This is admitted, but it has not been shown that Mr. Ell suffered any damage therefrom.

7. "He allowed Mr. T. S. Weston as trustee in Nathan's estate to withhold my business books, although I have repeatedly applied for them, and have asked to be allowed to inspect them." The evidence goes to show that the books were assigned by Mr. Ell to Mr. Nathan, as collateral security for advances made; but it does not appear that the Official Assignee took any steps to ascertain what value, if any, was in them; and here we think he acted erroneously.

8. "Mr. Latter, on oath on the 21st or 29th March, 1887, denied having received from me a second statement of assets and liabilities in October, 1886. Mr. Fisher, his clerk, was sent to the office at the suggestion of Mr. Holmes to copy the document, and returned, saying that it was not there. The following morning I called and copied the document, which had been there all the time." After the evidence closed, Mr. Ell's solicitor stated that there was evidently some misunderstanding on Mr. Ell's part with regard to the so-called second statement of assets and liabilities; and this charge was withdrawn.

9. "On the same day—21st or 29th March—the Official Assignee stated in Court, in answer to Mr. Holmes, that there was no value in the estate, and that he had formed that estimate from a private conversation he had had with Mr. Leonard Harper. That statement would naturally mislead his Honour Mr. Justice Johnston. In face of this, Mr. Latter was aware of the fact that, under a judgment by consent, £2,404 was paid into Court on the 10th June, 1885, which with costs and accrued interest had by that time amounted to upwards of £2,600. This sum was, irrespective of the amount shown on my statement of assets and liabilities, filed by me on the 15th September, 1886. That judgment was then, and still is, to the credit of the cause." We have no evidence to support the charge, beyond the assertion of Mr. Ell; and the Official Assignee positively denies that he formed his estimate of the estate from a private conversation with Mr. Leonard Harper. Furthermore, no evidence was produced to show that any moneys were at this time standing in Court to the credit of the cause.

10. "That it was mooted in April, 1885, between the defendant's solicitor (Mr. J. C. Martin) and the Official Assignee to sell my actions at law against Harper and others, which would have prevented me from obtaining common justice." No evidence was offered in support of this charge.

11. "That between the 6th August and the 13th November, 1886, the Official Assignee did, in spite of my protests to the contrary, wrongfully accept proofs of debt amounting in the whole to £7,372 5s. 7d., whereas the correct total of indebtedness was £1,401 12s. 1d., against about £3,000 of assets immediately recoverable and £3,800 contingent assets, the former being more than sufficient to satisfy my debts in full." This virtually seems a repetition of charge 5, with which we have already dealt.

12. "Mr. Latter's affidavit forwarded to Mr. Haselden, and the Bankruptcy Act, will prove that Mr. Latter has used his position as Official Assignee to deliberately prevent me from obtaining justice, and I trust you will pardon me for drawing your attention to the following clauses of the Bankruptcy Act which have been violated by the said Official Assignee: Clause 61, subsection (1), (3), and (4); clauses 108, 112, 147, 148 and 165." The affidavit here referred to in support of this charge is one made by Mr. Latter, in Action 1397, which was dismissed by Mr. Justice Ward. As the allegations made by Mr. Ell are not supported by other evidence we do not consider this charge proved.

13. "That a judgment now stands to my credit in Action 30, amounting to upwards of £4,000. That, by evidence written by the Registrar at Christchurch, in Action 353, there now stands to my credit a further sum, with interest, amounting to upwards of £25,000. That other sums amounting to more than £250 also stand to my credit, as shown by the records of the Supreme Court."

"That I also found on file two false orders signed and sealed by the Registrar."

"That Mr. J. C. Martin was forced to admit that the said false orders came from his office."

"That the Registrar swore before Mr. Justice Connolly that the said false orders were correct."

"That in Minute-book No. 555, no entry whatever is made of the assets mentioned above by Mr. Latter, late Official Assignee."

"That I also found that in face of Mr. Latter's oath before Mr. Justice Connolly, he swore, 'I did not accept proof of debt from Mr. H. S. Austin for £361 0s. 9d.' I received from Christchurch on the 4th May, 1892, office-copy of the said declaration, and written on the declaration two sums amounting to £370 paid to Austin; yet he swore before Mr. Connolly that he did not pay Austin any money."

In reference to the remaining charges against the Official Assignee—namely : (1) As to moneys standing to Mr. Ell's credit ; (2) as to no entry of assets in minute-book in bankruptcy No. 555, and (3) as to the admission of Mr. Austin's proof of debt, we beg to state as follows :—

1. No evidence was produced in support of this statement. If there were any such moneys they would be standing to the credit of the cause, and not available for Mr. Ell.

2. The Official Assignee appears to have considered that there was no value in these assets, as they had been assigned to Mr. Ell's son on 10th June, 1886 ; and, after the assignment was set aside on 26th July, 1887, the creditors took no steps to assist the Assignee in prosecuting the actions, and he had no funds available for such purpose.

3. We have already referred to this matter in connection with charge No. 4, to which we would add that, even if it were as stated by Mr. Ell, it was a proof of debt in the annulled bankruptcy, and no damage accrued to him.

We have the honour to report that, in our opinion, the result of this inquiry may be stated as follows :—

As regards the charges made against Mr. Bloxham :—

1. That the Registrar and Accountant made a mistake as to the terms of the order of the Supreme Court of the 29th October, 1884, and should not have gone behind the settled account of June, 1873 ;

2. That the Registrar and Accountant were in error in not accepting the receipt indorsed on the deed of mortgage, as evidence that the £250 had been paid by Mr. Ell.

3. That the Registrar did issue the incorrect orders alluded to in Charge 10, and that, in consequence, Mr. Ell's appeal in November, 1885, was struck out, thereby causing him a delay of six months.

All the other charges have not been proved to our satisfaction or have been withdrawn.

As regards the charges made against Mr. Latter :—

1. That the proof of debt by Mr. Weston for so large a sum, and made up in the manner in which this claim was, should not have been admitted by him.

2. That it is a matter for regret that Mr. Latter did not take steps to ascertain what value there was, if any, in Mr. Ell's books assigned to Mr. Nathan. The same may be said with regard to the remainder of the charges against Mr. Latter as in the case of Mr. Bloxam—viz., that they were either withdrawn or not proved. We would wish to say further that it does not appear that either Mr. Bloxam or Mr. Latter acted otherwise than *bona fide* in these matters, although in our opinion, they were in error on the few points alluded to.

As to the question of damage to Mr. Ell, we find it impossible to arrive at any conclusion as to what damage he sustained, seeing that these matters have been standing over for so many years, and have become so complicated. The evidence as to damage was vague in the extreme ; and no witnesses were called by Mr. Ell in support of his statement, although every facility was afforded to him to do so.

Under all the circumstances, and with a view to finality in this matter, we recommend that such steps be taken by the Government during the next session of Parliament as may be necessary to enable Mr. Ell to be appointed trustee in his own estate ; and that the sum of £200 be paid to him in full satisfaction of all alleged claims.

All this is respectfully presented to Your Excellency.

Signed and sealed this eighth day of June, one thousand eight hundred and ninety three.

(L.S.)  
(L.S.)

THOMAS THOMPSON.  
ANDREW TURNBULL.

## MINUTES OF EVIDENCE.

ROYAL COMMISSION OF INQUIRY held at Christchurch, commencing on the 17th May, 1893, before Thomas Thompson, Esq., Member of the House of Representatives, and Andrew Turnbull, Esq., Resident Magistrate, Napier, duly appointed Commissioners by His Excellency the Governor, to inquire into and report upon certain complaints and charges preferred by George Waldoek Ell against Edward Circuit Latter, late Official Assignee of the District of Canterbury, and Andrew Roby Bloxam, Registrar of the Supreme Court, Christchurch.

WEDNESDAY, 17TH MAY.

In opening the proceedings, the Chairman read the Commission, after which Mr. A. G. Ashby, shorthand-writer and secretary, was duly sworn in. Mr. Lusk, solicitor, represented Mr. G. W. Ell, Mr. Beswick, solicitor; represented Mr. E. C. Latter; and Mr. A. R. Bloxam appeared in person.

GEORGE WALDOEK ELL was duly sworn and examined.

1. *Mr. Lusk.*] Did you ever have business transactions with Messrs. Hanmer and Harper, and Mr. Harper, solicitors, of Christchurch? Yes; for many years I had business relations with that firm and Mr. Harper.

2: Were any steps taken in the year 1877 to get a settlement of accounts between the firm of Messrs. Hanmer and Harper and yourself?—From June, 1877, to February or March, 1878, I did on many occasions ask Messrs. Hanmer and Harper to render me their accounts, as at that time I had sold my last property through them as my agents; that sale is dated on the 4th June, 1877.

3. Did you ever employ an agent to assist you in the matter?—Yes; I employed a Mr. McHaffie, an accountant, from 1878, and he, from that date up to August 1880 or 1881, was trying to get accounts from the firm mentioned, but did not succeed until 1881 in getting an account of any description rendered.

4. Did you ever enter into an arbitration-bond?—Yes; in April, 1883, I entered into an arbitration-bond with Messrs. Hanmer and Harper. Action No. 30 was to be commenced against the firm. It was then arranged by Mr. John Holmes for Mr. Ell, and Mr. J. C. Martin, counsel for Messrs. Hanmer and Harper, that the writ should be held over and that our differences should be settled by arbitration.

5. Did you commence actions?—Yes; in 1884 there were two actions commenced—Ell *v.* Harper and another, No. 30, and Ell *v.* Harper, No. 353.

6. Did you obtain an order in the Supreme Court in reference to these accounts?—Yes; an order of the Supreme Court was made referring the accounts in the action to the Registrar, Supreme Court, at Christchurch, and an accountant.

At 12.30 p.m. proceedings adjourned until following morning, so that the Registrar of the Supreme Court and Mr. Lusk might arrange the documents required to be put in as exhibits.

THURSDAY, 18TH MAY.

GEORGE WALDOEK ELL further examined.

Order referring accounts to Registrar. Accounts marked "Exhibits 1 and 2." In the action Ell *v.* Harper, No. 353, order of the 12th January, 1884, "Exhibit 1," and order of the 7th March in the same action, marked "Exhibit 2," order to bring in accounts by the 14th March. Another order in the same action (order of the 27th June, 1884), that accounts be taken by the Registrar and accountant, marked "Exhibit 3." Another action, No. 30, Ell *v.* Harper and Hanmer (order of the 14th January, 1884), marked "Exhibit 4." Also an order of the 7th March, 1884, marked "Exhibit 5," and order of the 27th June, 1884, marked "Exhibit 6."

7. *Mr. Lusk.*] In pursuance of these orders, did you commence to take accounts between yourself and Mr. Harper and Messrs. Hanmer and Harper?—Yes.

8. Was there any agreement made in connection with the taking of evidence in the matter of accounts?—I only know that actions Nos. 30 and 353 were taken as one, and evidence commenced on the 11th July, which was the first sitting before the Registrar and accountant.

9. Did you go on taking evidence?—Yes; from the 11th July, 1884, until the 1st December, 1884.

10. During the taking of accounts was there any reference made to the Supreme Court?—Yes.

[Mr. Lusk here read the summons of the 17th October, 1884, in action No. 30, marked "Exhibit 7." Also order of that summons, dated the 29th October, 1884, marked "Exhibit 8."]

11. When that order was made by the Supreme Court you continued to take accounts?—Yes.

12. What date were they finally completed?—On the 1st December, 1884.

[Mr. Lusk here read the Registrar's notes, page 70, to the end, dated the 1st December, 1884, marked "Exhibit 9."]

13. Did you send in an account in accordance with the minute of the Registrar's?—Yes; on the 5th December, 1884.

14. Can you say whether an account was sent in to the Registrar from the other side?—Yes.

[Statement of accounts filed on the 14th March, 1884, in action No. 30, marked "Exhibit 10." Accounts in action No. 353, marked "Exhibit 11." Also accounts furnished at the request of the Registrar on the 5th December, 1884, in action No. 30, marked "Exhibit 12." Accounts in action No. 353, dated the 5th December, 1884, marked "Exhibit 13."]

15. Was there any promise made as to when the certificate was to be delivered?—There was no promise made on the 5th to my remembrance, but about the 20th December, 1884, I was advised that the Registrar stated that he would not issue the certificate until his Court-fees were paid. His fees were £11 5s.

16. Had you, previously to the 20th, made application for the certificates?—No; I cannot say I had, but up to that time I had been represented by counsel.

17. Did you pay the fees?—Yes, the fees were paid; that is, £11 5s. on the 23rd December, 1884.

18. Was application then made for the certificates?—Not on that exact day. I cannot remember the exact dates; but they were promised by the Registrar by the 5th January, 1885, or, at any rate, not later than the 12th January, 1885.

19. In January, did you make demand for the certificates?—Yes.

20. More than once?—Yes.

21. What reason was given for the withholding of the certificates?—That the Registrar had not quite agreed between himself and Mr. Hargreaves, the accountant, on one or two points.

22. Was there any objection made by the Registrar that there were other fees to pay?—None whatever.

23. Were the certificates delivered in January?—No.

24. Were they delivered to you in February?—No.

25. Did you make applications for them in February?—Yes.

26. Up to the beginning of February were you represented by a solicitor?—Yes, by Henry Selwood Austin.

27. Up to what date was he your solicitor?—Up to the 4th February, 1885.

28. When did you determine his retainer?—On that date.

29. Verbally or in writing?—In writing.

30. Was any notice of that determination of retainer given to the Registrar?—Yes.

31. Verbally or in writing?—In writing.

32. Did you see him and tell him of the withdrawal of retainer verbally as well?—I did.

33. Towards the end of February did you hear anything further in regard to these certificates?—Yes.

34. What was that?—There was a message sent to Mr. McHaffie, accountant, through Mr. Austin, solicitor, that these certificates were ready—I believe a verbal message—that the certificates were ready, but that there would be fees to pay. I am not quite sure as to whether he mentioned the amount of fees.

35. Did you see the Registrar about it?—Yes, I saw the Registrar.

36. Did he tell you the amount of fees payable?—Yes. £88 4s.

37. Did he say what they were for?—He said they were for the accountant's fees.

38. Did he make any promise as to the giving of certificates?—I had not seen the Registrar prior to the 11th of March, 1885. There was no distinct promise made to me, only that the certificates would be ready by the 11th, but the fees would have to be paid. I paid the £88 4s., and got a receipt. I naturally expected to receive the certificates.

39. Did you get the certificates?—No; just as I was speaking to the Registrar, Mr. Austin, solicitor, came in, and when he came the Registrar said, "I will not hand you the certificates; I will give them to Mr. Austin, as he is the solicitor on the record." I then said to the Registrar, "You know quite well that Mr. Austin has nothing further to do with my business, nor has not had since the 4th February, 1885." He replied, "In any case I shall give the certificates to Mr. Austin."

40. Not being able to get the certificates, did you make any application then?—I asked the Registrar then to give me the amount in each account or certificate. He did so. I saw at once by the amounts as shown that in some way there had been a great wrong done in the accounts.

41. Did you make any application for copies of certificates?—Yes, within a day or two; either same day or following day.

42. Did you get the copies?—Yes, I got office copies from the Registrar, sealed with the Registrar's seal.

43. On the 1st December were the accounts closed?—Yes.

44. Do you know whether those accounts were reopened?—Yes; I know now they were.

45. On what date?—Subsequently I got copies of Registrar's notes, I believe on the 17th March, 1885. They contained the meetings up to the 1st December, 1884. Within two or three days, I cannot say which, the Deputy-Registrar called me as I was passing, and gave me subsequent notes containing the minutes of further meetings.

46. When were those further meetings held?—On the 10th February, 13th February, and 19th February, 1885.

47. Did you have any notice of those meetings?—No notice whatever.

48. When did you first know that those meetings had been held?—I do not know the exact date? I do not think I knew anything about these meetings until I had obtained a subsequent copy of the Registrar's notes.

49. When you obtained the certificates, did you take any step in relation to them?—Yes; on the 25th March, 1885, I took steps to have these certificates set aside.

50. During this time, prior to delivery of certificates, had any proceedings been taken in bank-

ruptcy against you?—Yes, the petition of Harper and Co. against me on the 24th March, 1885.

51. That bankruptcy continued until what date?—Adjudication was on the 1st April, 1885, and continued until the 3rd June, 1885.

52. What happened on that date?—The bankruptcy was annulled

53. When you received the certificate from the Registrar on the 13th March, 1885, what did you notice about the certificates?—I saw at once that the summons of the 17th, and the order of the 29th October, 1884, had been ignored altogether by the Registrar and accountant: that is the order as to settled accounts. I mean it was not shown in the certificate of Registrar, either in actions Nos. 30 and 353; only three of the orders were mentioned and not the fourth.

54. What did the accounts show as regards settled accounts?—The accounts showed in action No. 353 that all items had been charged to me previous to June, 1873, just as though such an order had never been made.

55. Did you notice anything else about the accounts?—Yes, I was charged with the sum of £250 and interest combined, making about £600, for which absolute proof of payment had been placed before the Registrar.

56. Did you notice any other item particularly?—Yes; there was a bill of £150 charged to me with interest amounting to, I believe, over £300. That bill never had an existence.

57. Was it produced before the Registrar, or any evidence of its existence?—No.

The following certificates were here put in: Certificate of Registrar in action No. 30, marked "Exhibit 14"; Certificate of Registrar in action No. 353, marked "Exhibit 15"; item dated the 31st August, 1870, referred to in "Exhibit 15," of £250, and interest £356 4s. 8d.; other item is, "February 29th, 1872: To paid Ell acceptance, principal £150, interest £191 5s. 2d."

Mr. Lusk here asked the Commissioners to call for mortgage Ell *v.* Harper, with discharged mortgage indorsed, also the subsequent transfer from Ell to Hanmer of same land with another piece, £1,200; mortgage deed, 21st of March, 1873, with discharge indorsed on it; and subsequent memorandum of the mortgage from Ell to Acland and Harper, £800; and also transfer from Ell to Leonard Harper of £1,200 under the Land Transfer Act.

FRIDAY, 19TH MAY, 1893.

GEORGE WALDOCK ELL further examined:

58. *Mr. Lusk.*] Tell us what was the general nature of your transactions with Mr. Leonard Harper?—My transactions began when I first commenced business with Mr. Leonard Harper in 1869 or 1870, when the firm of Hanmer and Harper would allow me to draw upon the firm. The reason I say him is because my communications were nearly all with Mr. Harper personally. They would advance me money from time to time upon order or otherwise, for the purpose of dealing either with stock or anything I saw worth purchasing, with the understanding that all moneys received from anything I purchased should pass through their hands.

59. How were advances to be repaid?—As I realised upon anything I might purchase. That arrangement was always adhered to as near as I could.

60. Did you obtain receipts for money paid in?—No; I think I only obtained one receipt from Mr. Harper's office.

61. Was that from Mr. Harper himself?—No, from a Mr. F. C. Hall, a clerk in that office.

62. Why did you not obtain receipts?—On nearly every occasion I would go to Mr. Harper with my money, and he would say, "All right, Mr. Ell, I will make a note of this."

63. Do you remember in 1870 a transaction in relation to Mrs. Minchin's land?—Yes.

64. Tell us what occurred in 1870; was the land purchased in 1870?—Yes.

65. Who purchased it?—Mr. Harper, from a lady named Minchin.

66. Did he buy it for himself?—He bought it for me; he sent his clerk up to value it with me.

67. What sum did he pay for it?—£250.

68. What was the next step? Did Mr. Harper convey it to you?—Yes; I was to pay him a bonus of £50 for the use of the money.

69. Then following that, did you give Mr. Harper a mortgage of that property for £250?—Yes. [Mortgage certificate copy put in, marked "Exhibit 16."]

70. At the time that mortgage was signed, was any arrangement made as to paying Mr. Harper the amount of mortgage and his commission?—I do not know the exact date; the arrangement was made when the property was bought; about that time it was understood that I was to pay £300, as I could, back again to Mr. Harper; no particular dates or specified time.

71. Was that understanding arrived at between you and Mr. Harper?—Yes; it was always understood so.

72. Did you pay back the amount?—Yes.

73. Did you pay any specific sums?—No, I cannot remember any particular sum; when I paid in moneys to that account I paid in distinctly on account of that mortgage.

74. Did you also pay any sums of specified commission?—I did.

75. Can you say whether in August, 1875, you had paid off the mortgage debt of £250?—Most decidedly.

76. And also the commission?—Yes.

77. Then in August, 1875, were you entitled to have release of that mortgage?—Most certainly. [Receipt for money, marked "Exhibit 17;" same document discharged, "Exhibit 16."]

78. Do you remember giving a mortgage to Mr. Acland and the Venerable Archdeacon Harper?—Yes, I remember.



79. That mortgage was over this property of Minchin's and part of Allotment Section 393?—Yes.
80. The amount of that mortgage was £800?—Yes. That mortgage was given to John Barton Arundel Acland and the Venerable Henry William Harper. [Mortgage put in, marked "Exhibit 18."]
81. In the month of June, 1886, did you sell the land included in the last mortgage?—Yes, I sold it to Messrs Hanmer and Harper.
82. For what sum?—£1,200.
83. At the time of the sale the outstanding mortgage for £800 was discharged?—Yes. [Mortgage put in, marked "Exhibit 19."]
84. Both the £800 and £1,200 were simply paid into the account in Harper's books to Ell's credit?—Yes.
85. In the month of July, 1885, were you taking steps to have the Registrar's and the Accountant's certificate varied?—I had done so from March, 1885.
86. Was there also a motion by the other side for judgment on the Registrar's certificate, No. 30?—Yes.
87. On the 5th day of August, 1885, did your motion come before the Court to vary the certificate?—Yes.
88. Was there an order made?—Yes, on the 5th August, 1885. [Minute-book of Registrar, dated 5th August, 1885, put in, marked "Exhibit 20," in reference to action No. 353. Notice of motion for enlargement of time put in as "Exhibit 21" in action No. 353.]
89. Was that order made on the 5th August, 1885?—Yes.
90. On the 14th of that same month did you take any steps to vary that order?—Yes, I brought a motion before the Court to vary the order of the 5th August, 1885.
91. In what way?—Asking that a portion of the order might be struck out as to finding security, or pay the money into Court, as I was quite unable to do so.
92. Did that motion come before the Court on the 19th?—Yes.
93. Was it adjourned to the 26th August, 1885?—Yes, from the 19th it was adjourned to the 26th August, 1885. [Motion of 14th August, in action No. 353 put in, and marked as "Exhibit 22."]
94. Was that motion dismissed on 26th August?—Yes, it was dismissed on that date. [Order put in and marked as "Exhibit 23."]
95. On the 26th August was that motion of yours, to vary the order of the 5th August, finally disposed of?—Yes.
96. On the 28th August, 1885, did you set down another motion?—On the 28th August I set down notice of motion to set aside the certificate in No. 30 and No. 353 on the ground of mistake.
97. What date did that come before the Court?—It came before the Court on the 2nd September, 1885. [Motion-paper filed on the 28th August, 1885, put in, and marked as "Exhibit 24."]
98. On the 29th August did you file an affidavit in that matter?—Yes, I filed an affidavit on that date. On the 1st September Mr. Martin filed an affidavit. [Order dismissing order in action No. 353 put in, and marked "Exhibit 25"; also order in Action No. 30 put in, and marked "Exhibit 26."]
99. The orders just put in purport to dismiss the motion heard on the 2nd September, 1885, to vary the order of the 5th August, 1885, on the affidavits filed by you on the 29th August, and by Mr. Martin on the 1st September, on the motion to set aside the certificate. Can you say whether on the 2nd September there was any such motion before the Court?—Certainly not.
100. On the 2nd September, 1885, what was before the Court?—A motion in each action before the Court on the 2nd September, in actions Nos. 30 and 353, to vary certificates of Registrar and Accountant on the ground of mistake.
101. Was there another motion on that day before the Court?—For judgment on certificate in action No. 353; a motion on the other side.
102. Your motions to vary the certificates were dismissed, were they not?—Yes, with leave to appeal, if appeal lay. The same in both actions.
103. On the 2nd September, when your motion to vary the certificates was dismissed, what happened to their motion for judgment?—They got an order for judgment as prayed on 2nd September, 1885.
104. Orders put in. Were you first served with them?—Yes; I am not quite sure of the date; I believe it was the 5th or 6th September. [Order put in and marked as "Exhibit 27."]
105. Is there anything peculiar about that judgment?—Yes.
106. What is it?—The judgment was actually given on the 2nd September, 1885, whereas this document is dated the 22nd September, 1885.
107. At the time these orders were taken out were you represented by solicitor?—No, I was not.
108. Did you notice that there was any error in the order?—No, I did not.
109. After you had received these orders purporting to dismiss motions to set aside the certificates and also the judgment, what did you do with them?—I took them to a gentleman named Gibbons who had just come from England. I asked him to prepare my appeal papers from them.
110. Had he previously had anything at all to do with your matters?—No, he was quite strange here.
111. Did he prepare the appeal papers for you?—Yes, on these erroneous orders.
112. Was the appeal set down?—The appeal papers were sent up to Wellington to be heard in November, 1885.
113. Before that appeal came on, were the mistakes in these orders discovered?—Yes, they were discovered.

114. What became then of the appeal?—We went to the appeal, and the matter was explained by Mr. Jellicoe on my behalf. Their Honours at the Appeal could not let the appeal proceed. They dismissed the appeal.

115. When you discovered the mistake in these orders what did you do?—I got out the correct orders of 2nd September by application to the Registrar on the 19th October, 1885. [Order sealed on the 19th October, 1885, put in and marked “Exhibit 28.”]

116. Is that the order you took out on the 19th October, 1885?—Yes. [Order in action No. 30 sealed on the 19th October, 1885, put in, marked as “Exhibit 29.”]

117. Were you put to expense and loss of time in preparing and going to the Court of Appeal on these erroneous orders?—Yes; I went up to Wellington to attend the Court of Appeal and employed counsel.

118. When you had taken out these correct orders what did you do with them?—I then prepared fresh appeal papers according to the correct orders. That appeal was set down for May, 1886.

119. Was an appeal also set down at the same time to set aside judgment and certificates of the Registrar and Mr. Hargreaves, and refer the accounts back to the Registrar?—Yes.

120. *The Chairman.*] Did the wrong dating of the judgment referred to in “Exhibit 27” in any way prejudice Mr. Ell’s claim?—

*Mr. Lusk:* As a matter of fact it did not.

121. *Mr. Lusk.*] Is the motion produced on the motion paper of the Court of Appeal referred to?—Yes. [Court of Appeal motion put in and marked “Exhibit 30.”]

122. Did the Court of Appeal set aside judgment and refer the accounts back to the Registrar and Accountant?—Yes. [Certificate of Court of Appeal put in and marked “Exhibit 31,” dated the 5th June, 1886.]

123. In this letter of yours containing charges, you say in May, 1886, the Registrar sent a telegram to the Court of Appeal in Wellington, which is untrue, and tending to mislead their Honours presiding?—Yes, that is so.

124. Do you still say that is so?—Yes. [Telegram of Registrar to the Chief Justice to Court of Appeal, dated the 19th May, 1886, put in and marked as “Exhibit 32,” folio in letter-book 276.]

125. What do you say is false in that telegram?—It states that further evidence was brought forward for Harper to prove that the £250 of Minchin’s was not paid. There was no evidence whatever that the money was not paid.

126. You say there is no entry in the Registrar’s notes of such evidence?—None whatever.

127. This was sent at the time the Court of Appeal was sitting, and while the question of the £250 was before the Court of Appeal?—Yes.

128. When the certificate of the Court of Appeal was returned, was there any application made to go into accounts again?—Yes.

129. Who made it?—I caused an application to be made on my account, I think so.

130. Did you see the Registrar about an application to continue the accounts?—Yes, on one occasion I did.

131. Can you remember the date the first appointment was made for?—For the 14th July, 1886.

132. Did you attend on that day according to appointment?—I did.

133. Did any one else attend with you?—I took Mr. McHaffie with me.

134. Did you see Mr. Martin there that day?—I saw him at the table in the Court.

135. Were the accounts gone into that day?—No.

136. Why?—I waited until half-past 10 that day in Court. I followed Mr. Registrar into his chambers, waited there for some time, until the Registrar declared the meeting lapsed on account of non-appearance of the defendants. I asked the Registrar to make a note of the non-appearance of the defendants, so that I might in some way be paid for my time and also for the time of those that I had with me.

137. Did he say he would make a note of it?—He refused to do so.

138. When was the next appointment made for?—For the 28th July, 1886.

139. Did you attend on that day?—I did.

140. Who was with you?—Mr. McHaffie.

141. Who else was present that day?—Mr. Hargreaves, Mr. Martin, and the Registrar of the Supreme Court.

142. What was done?—We found we could not get on until I lent Mr. Bloxam the document which enabled us to take objection to some of the items.

143. Did Mr. Bloxam that day have any papers before himself?—None that I saw.

144. Did you take objection to some of the items?—Yes.

145. What occurred then?—We went on as far as we could; we found the papers had not been returned from Wellington.

146. How did you discover that the papers were not returned?—Because we were asking for papers we ourselves had not got, especially the Registrar’s notes.

147. What did the Registrar say?—The Registrar said they had not been returned from Wellington, and the case was adjourned then until the 4th August, 1886.

148. Did you attend again on that day?—Yes, for the purpose of going on with the accounts.

149. Had the Registrar any papers before him that day?—No.

150. Did you call for any papers?—I did; notably the Registrar’s notes and exhibits that had been used in taking the accounts. The Registrar said the papers had not been returned from Wellington, and he would place the onus on me to get them returned. Then the case stood adjourned until 11th August, 1886.

151. Do you know as a matter of fact of your own knowledge whether the papers had been returned from Wellington prior to this?—I know now that they were returned.

152. What date were they returned?—On 28th June, 1886.

153. Were they in the Registrar's possession on both the 14th and 28th July and 4th August, 1886?—Yes.

154. During the time of these delays, on the ground that these papers were not returned from Wellington, were any steps being taken against you?—Yes.

155. *The Chairman.*] How do you know the papers were returned?—By a copy of a letter sent to Christchurch on 25th June, 1886, from the Deputy-Registrar at Wellington to Mr. Bloxam, Registrar of the Supreme Court at Christchurch, noted as received by Mr. Bloxam on 28th June, 1886, as receiving all papers in *Ell v. Harper* and another in case No. 30, and *Ell v. Harper* in case No. 353, together with the certificates of the Chief Justice of the Court of Appeal in appeal No. 413.

156. *Mr. Lusk.*] Were any steps being taken in the Court, and by whom?—By Mr. T. S. Weston, to get me adjudicated a bankrupt.

157. What was the date of Mr. Weston's application to have you adjudicated a bankrupt?—I was adjudicated a bankrupt on 6th August, 1886, two days after the last adjournment of accounts. [Bankruptcy order of adjudication, dated 6th August, 1886, put in and marked as "Exhibit 33."]

158. Did Mr. Weston apply to have you adjudicated a bankrupt on a debt of £215 2s. 6d.?—Yes, that is so. [Petition put in and marked as "Exhibit 34."]

159. Were you adjudicated bankrupt on that claim of the 6th August, 1886?—Yes.

160. On the 11th August, 1886, did another meeting take place to take these accounts?—Yes, five days after the adjudication.

161. What was done that day?—It was stated by the Registrar that I having been adjudicated a bankrupt, the matter must stand over *sine die*.

162. During the time these were being taken again, were Mr. Weston's proceedings going on?—Yes; Mr. Weston's proceedings on the 13th July against me. The first meeting before the Registrar took place on the 14th, the next before the Registrar on the 28th; again, on the 4th August, and on the 6th I was crushed by the adjudication.

163. Do you say that the action of the Registrar, in taking these accounts, injured you in the matter?—Certainly so.

164. You say that if the Registrar had continued taking accounts all this trouble would have been prevented?—If the Registrar had finished the accounts, which would not have taken him above a few hours, all this trouble since 1886 would have been prevented.

165. You mean if the Registrar had taken accounts, and given you his certificate, this adjudication could not have taken place?—Yes.

166. Why?—Because there was a judgment standing to my credit, "by consent," in action No. 30; Hammer and Harper's amount, even at that time, with interest and costs, amounted to between £3,000 and £4,000. Had the certificate 353 been reviewed and put right in accordance with the evidence, a further sum of over £1,500, and costs and interest, would have been the result of the retaking of that account.

167. You say, owing to the action of the Registrar, and the retaking of this account was one of the main causes of all the trouble and expense you have been put to since the year 1886?—Yes, that is so.

168. Does that bankruptcy still stand against you?—Yes. I am an undischarged bankrupt against that bankruptcy.

169. You say, on the hearing of that petition in bankruptcy, the Registrar said there was no money of yours in Court on the 8th July, 1886?—I still say that the statement of the Registrar's was untrue.

170. On what day was the money paid to the credit of case No. 30?—On the 2nd July, 1886. In action *Ell v. Hammer and Harper*, £2,223 4s. 11d. was paid in by the sheriff, by virtue of a writ of sale.

171. Prior to that, on the 18th March, 1886, was there an order made that the one judgment should be a set-off as against the judgment in the other?—Yes, on the 18th March, 1886, judgment in action No. 353 was to be a set-off against judgment in action in No. 30.

172. Was the judgment in action No. 353 granted on the 2nd September, 1885?—Yes.

173. When was your judgment entered by consent?—On the 1st May, 1885.

174. At the sitting of the Court of Appeal in May, 1886, was that judgment in action No. 353 set aside by that Court?—Yes.

175. Was there any judgment in July, 1886, in action No. 353?—Certainly not.

176. Was there a sum of £2,223 4s. 11d. to your credit lying in the Court on the 8th July, 1886?—Yes.

177. Were you, on the 6th August, 1886, appearing in the Court in opposition to a petition of Mr. Weston to have you adjudicated a bankrupt?—Yes.

178. What grounds did you take in opposition?—I appeared myself personally, and endeavoured to point out to His Honour Mr. Justice Johnston that, the judgment in action No. 353 having been set on one side by the Court of Appeal in June, 1886, and the money being paid in on the 2nd July, 1886, in action No. 30, that the money in Court under the writ of sale was mine on the 8th July, 1886.

179. Did you urge anything in regard to the writ of sale being returned *nulla bona*?—I said that the writ should not have been returned *nulla bona* on the 8th July, 1886.

180. What did the Judge do?—The Judge asked the Registrar "If there was any money in the Court on the 8th July, 1886, belonging to G. W. Ell?" or words to that effect. The Registrar said "No."

181. More than once?—Yes, I believe two or three times he said it.

182. Did the Judge overrule your objection?—The Judge overruled all that I had said, and

made the adjudication. There was much more said, but I cannot remember all that was said. I endeavoured as plainly as I could to point out to Mr. Justice Johnston the inequity I was suffering. I had no counsel.

183. *Re* clause 15 of letter containing the charges?—On the 8th January, 1886, I paid into Court, by order of the Registrar, £100, as security for change of venue in action No. 683; another action between myself and Hanmer and Harper for the trial of the action in Wellington instead of in Christchurch. The action was tried in Wellington in 1886. By the absence of documents, which I have since found, the case went against me. Costs were taxed, and in July, 1886, were forwarded from Wellington to the Registrar of the Supreme Court at Christchurch. Hanmer and Harper on their bill of costs, proved in the present bankruptcy for £172 3s. The taxed bill of costs, allowing altogether for change of venue, amounted to £199. I find that there was £64 14s. 4d. paid out of this £100 on the 7th September, 1886, to J. C. Martin, solicitor for defendants, leaving balance in Court of £35 5s. 8d; and all I have to say is that, whether this £64 14s. 4d. was paid rightly or wrongly, that this £35 5s. 8d. should have been at my disposal to have enabled me to have found security to the extent of £20, to have appealed against the adjudication of Mr. T. S. Weston. That is what I thought when I wrote this letter. That was my reason for making that charge.

184. In reference to charge No. 16, contained in the letter, what have you to say?—I say that Mr. Bloxam kept out of his report to the House of Representatives the fact that the false action was brought against me by Messrs. Acland and Barns in October, 1884, and not discontinued until the 25th February, 1885. The name of that action was *Delamain v. Ell*, No. 624.

185. What report was this that you speak of?—On the 5th December, 1887, before Parliament, Mr. Bloxam was communicated with, and was asked to give the Committee information in reference to Ell's (or petitioner's) business. He did send the report, and in that report action No. 624 had not been mentioned, and I say it should have been mentioned. The reason I say the action No. 624 ought to have been sent is this—because of the first bankruptcy No. 263, Harper and Co. *v.* Ell, action had been taken by Harper and Co. *v.* Ell upon the very same debt that *Delamain v. Ell* represented; and although Harper and Co. commenced these matters against me so early as the 12th or 13th February, 1885, the discontinuance in *Delamain v. Ell* had not been notified in the Court; and I say that that ought to have been before the House of Representatives, and would have shown that both actions were against me at the same time for similar debt.

186. Have you any explanation to make in reference to charge 17?—In reference to charge No. 17 contained in the letter of charges, I say the records should have been forwarded to the Committee of the House of Representatives, but they were not. I pointed this matter out to the Chairman (Mr. Seymour) that these moneys I had paid were not in any way recorded by the information sent by Mr. Bloxam to the Public Petitions Committee.

187. Have you any explanation to make in reference to charge 18, contained in letter of charges? In reference to charge 18 in letter of charges, at the time I wrote this I considered that Mr. Bloxam had unfairly used his position in reducing the bill of costs. I applied for a review of the taxation of the bill of costs. It was arranged in some way by Mr. Jellicoe. I do not think it ever came before the Court, but I am not quite sure on that point. The bill of costs was drawn by Mr. Jellicoe, of Wellington, and amounted to £80 9s. 6d.

188. Will you give your explanation in reference to paragraph 19?—In reference to paragraph 19 in letter of charges, I still say that the order referred to is false, and that the Registrar refused to make a note of it.

189. Did you request him to do so?—Yes, I did.

190. What was the business before the Registrar at that time?—To tax that bill of costs in *Austin v. Ell* in libel action.

191. On the 26th April, 1886, were you served with an order, purporting to be an order of the Supreme Court?—I was served with the document produced [marked "Exhibit 35"].

192. What did the Registrar say when you requested him to make a note of this alleged order?—He said he would not make a note of it; it was no business of his, for he had received a telegram from Mr. Justice Johnston directing that the taxation should proceed.

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SATURDAY, 20TH MAY, 1893.

GEORGE WALDOCK ELL further examined.

193. *Mr. Lusk.*] On what day were you adjudicated a bankrupt?—On the 1st April, 1885. I was adjudicated a bankrupt on the petition of Harper and Co., solicitors and agents, Christchurch.

194. Who was then Official Assignee in the Christchurch district?—Mr. Edward Circuit Latter.

195. When you were adjudicated bankrupt did you take any steps in regard to the matter?—I did.

196. What did you do?—I petitioned His Honour Mr. Justice Johnston to annul the bankruptcy.

197. Did you give any one any notice of that?—Yes; I gave notice to the then Official Assignee, Mr. Latter.

198. What was the nature of the notice?—I gave him notice to say I was petitioning the Court to annul the adjudication in bankruptcy. That was given to Mr. Latter on the 7th April, 1885.

199. When did that application of yours come before the Court to annul the bankruptcy?—The application was filed on the 11th April, 1885; the argument on the petition took place on the 5th May, 1885. His Honour Mr. Justice Johnston deferred giving his judgment until his return from Timaru. He delivered judgment on the 3rd June, 1885.

200. What was the judgment?—The bankruptcy was annulled.

201. What was the reason for the bankruptcy being annulled?—It was annulled on the ground that Harper and Co. had taken the proceedings against me for the sole purpose of stopping my proceedings against them for the settlement of this matter. [Order put in and marked "Exhibit 36."]

202. After the annulment of your first bankruptcy was anything done by the Official Assignee?—Yes.

203. Was any one acting for the Official Assignee at this time?—Yes.

204. Who was he?—Henry Selwood Austin.

205. Was he acting at that time in any way for you?—I had withdrawn my retainer on the 4th February, 1885, but he persisted from that time up to the time that I was adjudicated a bankrupt, and after.

206. Who was he acting for?—For the Official Assignee from the time I was adjudicated.

207. Did the Official Assignee instruct him?—Yes.

208. Did he appear before the Supreme Court with the Official Assignee?—On nearly every instance he was before the Supreme Court for Official Assignee.

209. Do you know whether costs were incurred by the Official Assignee?—Costs were incurred by the Official Assignee.

210. To whom were they owing?—The only order that the Court made in reference to costs in bankruptcy was for Mr. Latter appearing on the 5th May, when the argument to annul was upheld; that amount had to be settled by Mr. Bloxham.

211. Who appeared for Mr. Latter that day?—Mr. Austin was present.

212. Did the Official Assignee incur costs to Mr. Austin in this case?—Mr. Austin made a claim on behalf of the Official Assignee for costs. His Honour Mr. Justice Johnston stated that the Official Assignee had no right to incur costs.

213. Did you say that the Official Assignee applied for costs, and that costs were granted to him?—I stated that when Mr. Latter applied for costs, the only costs His Honour would allow was for Mr. Latter appearing on the 5th May, 1885, when the argument before the Court to annul the adjudication upon the petition was heard.

214. Was any order made relative to your costs?—Yes.

215. What was that order?—That the petitioning creditors had to pay my costs as though the adjudication had never been made. [Order for payments of costs by petitioning creditors put in and marked as "Exhibit 37"; also draft order sealed on the 19th February, 1886, and marked as "Exhibit 38."]

216. Were you in Court at the time of this application for the Official Assignee's costs?—Yes.

217. Was your adjudication annulled on the 3rd June, 1885?—Yes.

218. After your adjudication of bankruptcy was annulled, did Mr. Latter still interfere with your estate?—Yes.

219. For what length of time?—I did not get rid of Mr. Latter from the 3rd June, 1885, until the 23rd September, 1885.

220. Was he taking active steps in regard to your estate?—Yes, from the 3rd June, 1885, to at any rate the 5th August, 1885.

221. In what way?—On the 11th May, 1885, a motion set down by Mr. Austin for the Official Assignee to vary the certificate of the Registrar and Accountant. [Motion-paper put in, and marked as "Exhibit 39."]

222. On the 11th May was this motion set down by the Official Assignee to vary the certificates?—Yes.

223. Prior to that, on the 28th of April, was there a notice sent by the Official Assignee to the Judge in Bankruptcy?—Yes, notifying the Judge that the matter of my bankruptcy was adjourned from the 16th April, and was now awaiting His Honour's decision. [Motion paper put in and marked as "Exhibit 40."]

224. On the 5th May did the application for annulment of bankruptcy come before the Court, and judgment reserved?—Yes.

225. On the 11th May, before the decision of the Judge on the annulment, motion was set down to vary certificate in action No. 353?—Yes, that is so.

226. Did that come before the Court after the annulment?—Yes.

227. Who appeared on those occasions?—Either Mr. Austin or the Official Assignee—sometimes one and sometimes the other.

228. When was this finally disposed of?—On 5th August, 1885.

229.—Did you set down a motion in June of that year to have the Official Assignee removed from record as plaintiff in actions?—Yes.

230. What became of that motion?—I was prevented from being heard from time to time by the Official Assignee. The motion removing the Official Assignee was set down on the 25th and came before the Court on 26th June, 1885.

231. Do you say on these occasions when this motion came on that you were opposed by the Official Assignee?—Distinctly, by Mr. Austin.

232. Were there several motions down for removal of Official Assignee from record, and apparently one in each action was withdrawn on 4th August?—They were withdrawn by a distinct and faithful promise made that there would not be any more oppositions to the reviewing or varying of the certificate in action No. 353.

233. Was the Official Assignee finally removed from the record?—By the order of the Court he was removed from the record on the 5th August, 1885, and then so late as the 23rd September, 1885, I was compelled to file a precipe and pay 13s. Court fees.

234. You say that you applied many times to Mr. Latter for information regarding your first

bankruptcy, and he refused to give it to you?—Yes, he refused to give me any information. I still say so now.

235. What did you apply for?—I applied for information on several occasions to Mr. Latter in the first bankruptcy. In one instance I took Mr. McHaffie as a witness with me.

236. You say that information was refused?—Yes; I asked to see the records of the business in connection with bankruptcy No. 263, when I was adjudicated on the petition of Harper and Co.

237. Did you ask to see all the papers?—Yes; I wanted to see whether these matters I have been complaining of had been entered in the minute-book at all.

238. On the 6th August, 1886, were you adjudicated a bankrupt on Mr Weston's petition?—Yes.

239. Did you make any application to the Official Assignee after 6th August, 1886, for information regarding your first bankruptcy?—Yes.

240. What did you want to see?—I wanted the Official Assignee to protect my interest by going on with the business of collecting my money, and to see justice done generally.

241. Did you ask to see the proofs of debt filed in the first bankruptcy?—Yes: I never knew of the existence of those proofs of debt for months and months afterwards.

242. Did the Official Assignee refuse to let you see the proofs of debt in the first bankruptcy?—Yes, he did refuse.

243. Did you subsequently get access to minute-book?—Yes, and there I saw the minutes entered, but that would be quite at the end of 1886 before I got access to the information I required in the first bankruptcy No. 263.

244. Do you remember the exact days on which you called?—No, I cannot remember the exact days.

245. Did you suffer any loss in not being able to see these papers?—Yes.

246. In what way?—In one particular instance I found that Mr. H. S. Austin, on the 7th April, had filed his declaration of my debt to him for costs—that is, the proof of debt.

247. To what extent?—Showing a balance due by me to Austin of £361 Os. 9d.

248. Had Austin ever rendered you a bill of costs?—No.

249. Later on, in the civil proceedings, was any money paid out of Court to Austin?—Yes. [Proof of debt by H. S. Austin put in, and marked as "Exhibit 41."]

250. Were moneys paid out of Court to Mr. Austin afterwards?—Yes.

251. On what dates?—On the 27th June, 1885, and again on the 4th August, 1885, two sums of money were paid out to Mr. Austin.

252. What amounts?—One amount of £175 on the 27th June, 1885, and another for £195 2s. 7d. on the 4th August, 1885. [Extract put in from the Law Trust Funds Account, of moneys paid in and paid out *re* G. W. Ell, marked "Exhibit 42." Order for payment of £175 put in and marked as "Exhibit 43."]

253. Do you say these moneys were paid out by order of the Court?—Yes; but at that time I was not aware in any way of the existence of this proof of debt of Austin's, because in March, 1886, I was sued by Austin for a portion of this very debt contained in the proof that had been paid by the Official Assignee to Austin.

254. Had you to pay that sum to Mr. Austin finally?—Yes, I had.

255. You say Mr. Latter admitted Mr. Weston's claim for £5,138, which was bad on the face of it?—Yes, I say so.

256. Were you adjudicated on a petition?—Yes, I was adjudicated on a judgment for a little over £200.

257. Did Mr. Weston put in a proof of debt?—Yes, for the sum of £5,138.

258. On what does Mr. Weston base his claim for £5,138?—Upon the agreement alleged to have been entered into between Mr. Nathan and I as to renewal of bills. Neither the bills themselves nor the renewals ever had an existence.

259. Were no bills filed by Mr. Weston?—No; the actual position that I held with Mr. Weston at the time of the bankruptcy in 1886, was that I had received from Nathan on the 2nd February, 1883, £1 1s. 9d. in cash, and gave an I.O.U. for £2 3s. 6d., double the amount, as arranged at that time. On the 14th February I received £3, and gave an I.O.U. for £8. On the 15th of the same month I received £1 7s. 3d., and gave an I.O.U. for £2 15s. 6d. On the 15th March, 1883, Nathan gave to Austin for me £10 10s. I gave him an I.O.U. for that for £14 4s. On the 2nd April, 1883, I received £2 7s., and gave him an I.O.U. for £4 14s. On the 8th April I received £3 6s., and gave an I.O.U. for £6 12s. On the 20th May I received £1 15s., and gave an I.O.U. for £3 10s. On the 26th May, 1883, I received £2, and gave an I.O.U. for £4. On the 2nd June I received £1 10s., and gave an I.O.U. for £3 10s. On the 27th June, 1883, I received £12 7s., and gave an I.O.U. for £24. On the 9th July, 1883, I received £2 10s., and gave an I.O.U. for £5. On the 13th August I received £2 0s. 6d., and gave an I.O.U. for £4 1s. On the 2nd September, 1883, I received £1 1s. 6d., and gave an I.O.U. for £2 3s. On the 10th September, 1883, I received £4 2s. 4d., and gave an I.O.U. for £8 4s. 8d. On the same date I received 18s., and gave an I.O.U. for £1 16s. On the 16th September, 1883, I received £3, and gave an I.O.U. for £6. On the 19th I received £2 8s., and gave an I.O.U. for £4 16s. On the 2nd October, 1883, I received £2 2s., and gave an I.O.U. for £4 4s. On the 9th October, 1883, I received 8s. 6d., and gave an I.O.U. for 17s.

260. What was your total indebtedness to Nathan at the date of your bankruptcy?—I received from Mr. Nathan in all in actual cash £103 18s. 1d., and I gave him I.O.U.'s for £201 0s. 2d.

261. Was it on that £201 0s. 2d. that he sued you and got judgment?—No, Sir; Mr. Nathan received £87 4s. by collection of my accounts, less commission due to him for collection, £9 6s.; so that he had received £77 18s. out of the £103 18s. 1d. which I had originally borrowed from him; so that the actual cash balance I owed Nathan was about £26.

261A. And how much on I.O.U.'s?—£120.

262. Mr. Weston made that amount up to £5,138. A supposed agreement was entered into between yourself and Mr. Nathan; was that so?—Yes, that is so.

263. Did you ever make that incomplete agreement?—Yes, I signed it. There was to be a specified time within which I was to pay that rate of renewal. They refused to specify that time, and I had no further transactions with Nathan from that day.

264. Did you ever renew any of these items shown there?—No; I gave Nathan an accommodation bill because he asked for it, and I wanted a little further assistance.

265. You say that supposed agreement was no agreement?—I say so.

266. And there was no claim whatever for that sum?—No, not in any way.

267. Did you make any request to the Official Assignee in regard to that claim?—[Proof of debt of Mr. T. S. Weston put in and marked "Exhibit 44."] I never received one shilling from Nathan after that date. Those bills were never in existence, neither was any renewal ever given.

268. In your sworn statement to the Official Assignee did you give him an account of the amount you owed Nathan?—Yes, I did.

269. Had you seen Weston's proof of debt at the time you made your sworn statement?—I had not.

270. Did you know the extent of the proof of debt afterwards?—Yes, some short time afterwards.

271. Did you make any request to the Official Assignee in regard to it?—Yes.

272. What did you ask him to do?—I stated what I had sworn to him on oath.

273. Did you point out the preposterous nature of Mr. Nathan's claim?—I told him if he would send for my business books, which were in the hands of Mr. Weston as collateral security, that I believed he would find little or nothing due to Mr. Weston at all.

274. Did you ask him to take any steps in regard to proof of debt?—I cannot say that I did. That there was little or nothing due to Mr. Weston or Mr. Nathan at all if the accounts had been properly adjusted, because I did not know how much had been collected on my account that was handed to Mr. Nathan as collateral security, giving him authority to collect these moneys, and account that way on the books, and allow 15 per cent. for the collection of these accounts. I have never seen those books from that day to this. I do not know even now the amount that has been collected.

275. Did you ever ask the Official Assignee to have that proof of debt of Mr. Weston's disputed?—Yes; in writing I did not, but on several occasions I asked him to get the books from Mr. Weston to see exactly what I owed Weston and get the £5,138 struck off. I did not know the formal way of applying for these things.

276. Was any one acting for you at this time?—Mr. Jellicoe was supposed to be acting for me in Wellington.

277. What reply did the Official Assignee give you?—He said he would attend to it.

278. When you found it was not being attended to, did you apply again?—Yes, on several occasions.

279. Did the Official Assignee take any steps?—No. As I have already stated I could not get to the Court of Appeal in November in 1886, because of the want of means to find security; but I did appeal in May, 1887, as shown by the Court of Appeal documents of May, 1887. Unfortunately in May, 1887, I was before the Court of Appeal under the wrong rules—under the Supreme Court rules, not knowing, instead of the Bankruptcy rules. Their Honours could not go into the whole matter; but Mr. Stafford, of Wellington, appeared for Mr. Weston, Mr. Levi appeared for myself, and the only business that was done in the Court of Appeal in the matter was that either the Chief Justice or Mr. Justice Williams, I am not quite sure which one of them, asked Mr. Stafford if he claimed this sum of £5,138. The answer Mr. Stafford made was this, "No, your Honour; and how it is made up I do not know. All we claim is judgment of about £200, or what could be proved under the Act." That was about all the business that was done before the Court that day, because I was before the Court under the wrong rules. That information I gave to Mr. Latter when I came back from Wellington. [Court of Appeal papers put in and marked as "Exhibit 45."]

280. What reply did the Official Assignee make?—He said it was no business of mine; he would attend to it.

281. Did he attend to it?—No. He attended to nothing.

282. Is that proof of debt still standing in the bankruptcy?—Yes.

282. When did the Official Assignee get his release from the bankruptcy?—In March, 1889, the Official Assignee received his release from the estate. [Order of release of Official Assignee in bankruptcy put in and marked as "Exhibit 46."]

MONDAY, 22ND MAY, 1893.

GEORGE WALDOCK ELL further examined.

284. *Mr. Lusk.* Up to the time of the Official Assignee's release from bankruptcy, had anything at all been done to collect assets in your estate?—Nothing at all, with the exception of his collecting £35 odd which had been in the Court from January, 1886, the balance of £100 that I had paid in as security for costs of change of venue in action No. 633, which was paid in on the 8th January, 1886. There was the balance of that £100, but I was not aware of it lying in the Court on the 6th August, 1886, the day on which I was adjudicated a bankrupt on the petition of Mr. T. S. Weston; that £35 odd, as I see by Mr. Latter's accounting to the Government Auditor, was disposed of in the manner as shown in Official Assignee's book in Bankruptcy No. 555, marked as "Exhibit 45A."

285. There was a proof of debt put in by Mr. Haskins in that estate?—Yes.

286. For what amount?—For £121 1s 9d.
287. His proof of debt exhibited is not in the same condition now as it was first put in?—No, it is not.
288. When did you first see that proof of debt?—On the 30th November, 1886; it was in the afternoon that I saw that proof of debt.
289. What amount was the proof of debt then put in for?—For £121 1s. 9d., and declaration attached showed £121 1s. 9d., and signed by F. T. Haskins, and made before A. Ayers, J.P.
290. When did you next see that proof of debt?—The next morning.
291. When you discovered the proof of debt on the 30th November did you call any one's attention to it?—I did.
292. Whose?—Mr. Eyes, chief clerk with Mr. Latter at that time.
293. What did you point out to him?—I pointed out to him it was a pity I had not seen this before, as there was not a shilling due to Haskins. "I call your attention, Mr. Eyes, to this matter that my business with Mr. Haskins had been settled in the Resident Magistrate's Court; but at any rate I will come in in the morning." About 9.30 a.m. on the 1st December I went and found alterations made as is now shown in the proof of debt.
294. What alterations do you see?—I see the £100 has been struck out and initialled by F. T. Haskins. On the amount of the declaration I see the words "one hundred and" is struck out and initialled "F. T. H.," leaving a balance of £21 1s. 9d., and figures in the margin £21 1s. 9d. Those figures were put in between the 30th November and 1st December.
295. Is the declaration otherwise the same as you saw it on the 30th November?—Yes. [Proof of debt put in and marked as "Exhibit 47."]
296. Did Mr. Weston, as trustee of Nathan's estate, hold your business books?—Yes; but on certain terms I have already explained to the Commission.
297. Did you ever apply to have those books obtained by the Official Assignee?—Repeatedly. I applied to the Official Assignee himself to get the books, personally.
298. Did he make any promise in regard to it?—He said he would attend to it.
299. Did you tell him the reason you wanted the books?—Yes; that I have already explained, that it would show the position between Nathan and Ell. My indebtedness was on the accommodation bill as I have stated; that when he had me adjudicated a bankrupt he afterwards proved for a larger amount.
300. Did you put in on your bankruptcy a statement of your liabilities and schedule?—So far as I had it in my own hand at that time.
301. Were the printed forms produced the first forms put in by yourself on the 15th September, 1886?—Yes.
302. Did you afterwards put in a further statement in regard to your estate?—I did; in October, 1886.
303. Who did you give it to?—I gave it to Mr. Eyes.
304. Did you tell him what it was?—I said that I had heard from Mr. Jellicoe, who had advised me to put this further document in. The figures on the back of the document are Mr. Eyes' figures. I was not aware at that time that it was necessary for me to swear a fresh declaration. Had I received that information from the office I certainly would have done so, but I was not aware of it. [Paper produced marked "Exhibit 48," also exhibit attached to previous exhibit marked "Exhibit 49."]
305. In the month of March, 1887, were some proceedings in the matter of your bankruptcy before the Supreme Court?—Yes.
306. Was Mr. Latter present that day in the Court?—Yes.
307. Did the question of your assets and liabilities come before the Court?—They did.
308. Was there any question of this further statement you put in?—Yes.
309. What occurred in regard to it?—I stated I had put in a second statement of assets and liabilities.
310. Did you say when you had put them in?—I believe I said about October, 1886; at any rate subsequent to the first one.
311. What was done about it?—His Honour Mr. Justice Johnston directed Mr. Latter to send his clerk to find this said document I referred to. He came back in a short time and said there was no such document there.
312. Had Mr. Latter, previously to the sending of the clerk, denied that there was such a document filed?—Yes; the clerk came back and said there was no such statement filed. I called next morning at the Official Assignee's office and took a copy of that document.
313. Was that document produced in Court at all?—No; it was amongst the papers in the office.
314. In the same day in the Court you state that the Official Assignee made a statement in regard to your estate?—He said there was no value in the estate, particularly in the claim that I had in the judgment I had against F. W. Delamain, and generally that there was no value in my matters.
315. Did he give any reason for this statement?—He said he had diligently made inquiries of one person and another, and had a private inquiry with Mr. Harper, and that there was no value in them.
316. Do you say there were assets in your estate at this time?—Certainly I do; the Official Assignee ought to have known of this at this time.
317. Do you say between the 6th August and the 13th November the Official Assignee admitted proofs of debt which should not have been admitted?—Yes, to the extent of £7,372.
318. How are those made up?—T. S. Weston, £5,138; Holmes and Loughrey, £169 15s. 8d.; Leonard Harper, £12 12s.; Harper and Co., £1,858 13s. 2d.; Hanmer and Harper, £172 3s.; F. T. Haskins, £21 1s. 9d.



319. Did you protest against these proofs being allowed?—I protested thoroughly against Weston's, because I have stated that when the accounts are adjusted under clause 112 of the Act I verily believe it would be shown that Nathan's estate was in my debt and not mine in theirs.

320. Did you object to the Official Assignee about these?—No; I made a private arrangement with Messrs. Holmes and Loughrey in reference to their claim. Leonard Harper's £12 12s., less £9 3s: I have a claim against Delamain which would be a set-off against that claim of Harper and Co.'s, which I mentioned to the Official Assignee, which would bring my indebtedness, I think, fairly to about £1,000 on that account, perhaps less. Hammer and Harper, £172: I have a set-off against that of about £200. I mentioned that also to the Official Assignee. Haskins's item had been paid. I mentioned that to the Official Assignee, but I returned Haskins for a creditor to the extent of £8 or £9, because a judgment had been obtained against me in the Resident Magistrate's Court for that £8 13s. 4d., and costs of judgment, making £10 9s. 4d.; although that judgment stood against me there was the arrangement in the Resident Magistrate's Court that I could apply for a rehearing, because a witness I wished to call was too ill to appear, and that is why that same small judgment stands against me, and still stands in that position to-day. I mentioned that to the Official Assignee.

321. Did the Official Assignee know your position with Harper and Co.?—Yes, he did.

322. When you first made your declaration of assets and liabilities did you return your actions against the Harpers as assets?—No.

323. Why?—Because at that time they were conveyed by me to my son on the 10th June, 1886.

324. On what date was that assignment set aside?—Yes; it was set aside. His Honour did not give judgment in the matter until July, 1887. The assignment was prepared by Mr. Jellicoe, of Wellington.

325. Was this assignment set aside in July?—Yes; the Official Assignee took steps to set it aside. These assets contained in the deed became vested in the Official Assignee. [Assignment put in and marked as "Exhibit 50."]

326. What assets were assigned by that deed?—Judgment in action No. 30, amounting to £2,120 16s. 10d.; also the assets I claimed under the other action, No. 353. By that deed I assigned all claim I had against Harper and Hammer to my son, H. G. Ell.

327. In July, 1887, did they become vested in the Official Assignee?—I believe that to be the correct date.

328. From that time until the time of the Official Assignee's getting his release from the bankruptcy, do you know of any attempt being made by the Official Assignee to get any of these items?—No, not in any way.

329. Did you make application to him to do so?—Yes, once or twice. I found it was of no use going to Mr. Latter at all; not one bit.

TUESDAY, 23RD MAY, 1893.

GEORGE WALDOCK ELL further examined.

330. *Mr. Lusk.*] In reference to Haskins' proof, you said you allowed an amount of about £10 to stand on a judgment; do you dispute the correctness of that claim?—Certainly I do.

331. Was it a claim for rent under a lease?—I was sued in March, 1886, by Haskins for a sum of something over £70, including rent up to a certain date. I at once went to the Court, consented to the judgment for the rent, which I never disputed, but I defended any other items charged; the Resident Magistrate's Court upheld my contention; judgment was given for £28 odd, which was paid. That finished my transactions with Haskins.

332. Did you leave the place at that time?—I left the place at Haskins' notice and gave him up the key of the house.

333. Did he afterwards sue you for another quarter's rent, some £8 13s.?—That was the reason why I returned Haskins as a creditor to that amount, so that it might be settled under this bankruptcy. The rehearing was never carried out. I explained that to the Official Assignee. On the 9th June a deed was signed between myself and Austin, because Austin and Haskins had taken steps against me combined. The deed was handed to the Registrar by Mr. John Holmes in March, 1887. That deed contained a release from both Austin and Haskins (I qualify that statement by saying that the release from Haskins was attached to the documents, and contained on a sheet of paper) on the 9th June, 1886; that deed I have never been able to obtain from the Registrar.

334. Was there any time limited for the rehearing of the case?—The only witness I could get that Haskins took delivery of the place from me was at that time dangerously ill, and I could not obtain his appearance, therefore I had not actually applied for the rehearing. That is one reason why I returned Haskins as a creditor. The release of Austin and Haskins was signed on the 9th or 10th June, 1886. This deed was handed to Mr. Bloxam by Mr. John Holmes in March, 1887—I think it was the 2nd or 3rd March. [Original consent of dismissal of petition by Haskins and Austin put in and marked "Exhibit 51."] Charge No. 21 in letter of charges was agreed to be altered. Charge now reads as follows: "Mr. Bloxam's statement of defence, in action No. 1397, is untrue and misleading in reference to paragraphs 33 and 35 of the statement of claim." Affidavit produced and put in as "Exhibit 52," is the affidavit I refer to in the charge against Mr. Latter, No. 12. [Affidavit read.]

335. Is clause No. 6 in the affidavit correct or otherwise?—It is not a fact.

336. Clause 14—what about that clause? With regard to paragraph about not giving information, is that true or untrue?—That is not true.

337. By filing this affidavit you say Mr. Latter used his position to prevent you getting justice?—Yes, I do say so. I may say, gentlemen, that the deed between myself and my son, dated on

the 10th June, 1886, had been set on one side by His Honour Mr. Justice Johnston. He gave his judgment upon that in July, 1887, and by that judgment whatever I had conveyed to my son fell at that time under the control of the Official Assignee; and, besides the accounts I had already given him, there were further assets amounting, roughly speaking, to something like £5,000, and they had never even been entered into the Official Assignee's minute-book No. 555, and they are not even till to-day. Had the Official Assignee done nothing more than collected the judgment standing to my credit in action No. 30, amounting even at that time to considerably over £3,000, there was far more than enough to have satisfied justly any claims there were before the Court.

338. Proof of debt marked "Exhibit 41"—does balance due to Austin on the account attached to the proof of debt appear as £361 Os. 9d.?—That is so.

339. On the declaration he claims to have a lien on costs in these two actions?—That is the case.

340. Leaving a balance unsecured due of £68 Os. 8d.?—Yes; that is so.

341. Did you get a copy furnished you from the Official Assignee's office of the bankruptcy in No. 262?—I did. I applied to the Justice Department for a copy of this book, and in No. 555 also.

342. Was a copy of that book supplied to you?—It was forwarded by Mr. Latter to the Under-Secretary for Justice, and handed to me by Mr. Haselden; that is in the fore part of 1888. The book produced is the book supplied to me by this office. [Book put in and marked as "Exhibit 53."]

343. In that book supplied to you in 1888, what appears in that book as amount of debt put in by Mr. Austin?—"No. 263, proof of debt in the estate of G. W. Ell; H. S. Austin, Christchurch, £361 Os. 9d." I received this book in the early part of 1888. [Book put in and marked as "Exhibit 54."]

344. Before you got that copy of book from the Justice Department had you seen that original book of Mr. Latter's?—I had.

345. Had you seen the record of Mr. Austin's proof in the book?—I had, and copied it.

346. What amount did it show then?—£361 Os. 9d.

347. When did you again see that original book?—It would be about a year ago.

348. What did you notice then about it?—I noticed then, and called the attention of a gentleman with me to look through the proofs of debt and to examine the minute-books. I did so, and for the first time saw this £361 struck out and £68 Os. 8d. inserted. I saw the alteration had been made.

[Mr. Lusk here read paragraph 33 in the statement of claim, also clause 35 in reply to that contained in clauses 6 and 8 in statement of defence of Mr. Bloxam denying that any order was made. As regards paragraph 8 in statement of defence Mr. Bloxam denied the allegation set forth in statement of claim. Statement of claim in action No. 1397 put in and marked as "Exhibit 55." Statement of defence in action No. 1397 put in and marked as "Exhibit 56."]

349. In regard to these two paragraphs 6 and 8, that the reference there made to 33 and 35 in the statement of claim are misleading?—Yes.

350. Did they disobey the order of the Court?—Yes.

351. Was there an order of the Court made on the 29th October, 1884?—Yes.

352. Do you say the disobeying of that order was due to the instigation of Leonard Harper?—Yes; in this way, that the paragraphs adopted by in certificate 353 was almost *in globo* the accounts furnished to the Registrar on the 5th day of December, 1884, by the defendants, Leonard Harper and others.

353. Did those figures go behind the settled account of June, 1873?—Yes, that is so. That one wrong done has been to a great extent the cause of all this delay and expense since December, 1884. [Copy of letter contained in the Registrar's minute-book—to the Justice Department—put in and marked as "Exhibit 57," dated 24th June, 1887, folio 682 in letter-book.]

354. You say in reference to the letter of the Registrar's in which he says the money paid in did not belong to you—will you explain what you mean by this clause in the letter?—The reason I made that assertion is that, on the 3rd June, 1885, the first bankruptcy was annulled, and a week after that, on the 10th June, 1885, there was £2,404 6s. 9d. paid into Court by consent of Hanmer and Harper in action No. 30.

355. What you mean is, judgment in that action stands till to-day to the credit of cause Ell v. Harper with accumulated interest and costs in action No. 30?—Yes, that is so.

[Letter from Registrar to the Minister of Justice, dated the 10th November, 1887, asking for costs in the action which Mr. Ell brought against himself and other in action No. 1397, put in and marked as "Exhibit 58."—Letter read.]

356. Is this letter false and misleading?—Yes, it is.

357. What is the true position of that in regard to withdrawal of case?—All the defendants in this said action No. 1397, in October, 1887, pleaded that I was an uncertificated bankrupt, and therefore refused to meet the charges. The Registrar had his choice given him in the case, as the action could not go on—as his name was joined as Registrar with the others—to stand to his trial on its honest merits, or to be withdrawn without costs. I was present at that time. The Registrar chose to have it withdrawn without costs.

358. Who appeared for you in the Court at that time?—Mr. W. L. Rees.

359. Was it by his consent that the case was withdrawn?—Yes.

360. Do you say no costs were allowed to the Registrar?—No costs were allowed.

361. Was an order taken out for costs?—Yes, an order was taken out by the Registrar for costs.

362. Has a Commission previously sat on this case?—Yes.

363. Who was the Commissioner?—Mr. E. T. Conolly.

364. In what year was that?—In 1888.

365. Did you appear before the Commission?—Yes.
366. Were you represented by counsel?—No.
367. Did you attend the Commission right through its sitting?—No.
368. Did you withdraw from the Commission?—I did.
369. On what date did you withdraw?—About three or four days after the Commission sat.
370. Did the Commission have further sittings after you withdrew?—Yes.
371. And Mr. Bloxam, Mr. Hargreaves, Mr. Martin, Mr. Latter, Mr. Harper, and Mr. Eyes were examined?—As far as I know; I was not present after the 6th September, 1888. I was only present up to the 6th September.
372. Did any one appear on your behalf on the reopening of the Commission?—No.
373. Have your charges been heard before a Committee of the House of Representatives as well?—Yes.
374. When?—From time to time since June, 1887.
375. And evidence taken before the Committee?—Yes, and reports made to the House.
376. Was the petition before the Public Petitions Committee A to L, last year?—Yes.
377. Was evidence taken before that Committee on this last occasion?—Yes.
378. And a report was made to the House?—Yes. [Report of Committee put in and marked as "Exhibit 59," Public Petitions Committee A to L.]
379. In regard to Mr. Conolly's report, why did you withdraw from the Commission?—I was quite unable to obtain assistance of counsel or production of witnesses or documents.
380. That was the reason you withdrew on the 6th September, 1888. Were you compelled to withdraw from the Commission?—That is so—yes.
381. What damage do you consider you have suffered, and what costs and expense have you been put to on account of the misconduct, as you allege, of the public officials?—From December, 1884, up to the present time, I think I am speaking well within bounds when I say that it has cost myself and my friends £4,500 to prevent myself from being ruined by the bankruptcy proceedings against me from time to time.
382. Is any portion of that £4,500 for money paid away?—Yes; I am referring to affidavit sworn by me at Wellington on the 18th August, 1892, before Mr. Jackson Palmer, solicitor.
383. Are the amounts shown there the amounts that have been expended?—Yes. I would like it to be understood that I am speaking merely of one account—the account of Stewart, Holmes and Denniston. It might appear here that I had paid the whole of the £78; but I have not done so. They have received from me but £50 of that, and I still owe the balance of it.
384. Do you say these expenses were caused by the misconduct of the public officials?—They were caused by the wrongdoing in these matters of the Registrar and the Official Assignee, Mr. Latter. I still further say, had the Registrar done right in the accounts, that certainly my business would never have come under the control of the Official Assignee; for I have never been a bankrupt but in law; not in equity.
385. During all this time have you been striving to put these matters right?—I have; and used every endeavour.
386. During that time have you been obliged to support your wife and family?—That is so.
387. By reason of these actions, and your attempts to put them right, have you been able to go on with business matters?—No, I have not so been able to go on with them. I say distinctly that I have been absolutely crippled from doing anything since December, 1884, but endeavouring to get these matters fairly adjusted.

THURSDAY, 25TH MAY, 1893.

*Mr. Beswick* here stated that he would appear for Mr. Bloxam during the remaining part of the sitting, as Mr. Bloxam may have occasion to be absent through press of business.

ALEXANDER MILLAR EYES, being duly sworn, was called by Mr. Beswick.

1. *Mr. Beswick.*] For some years you were clerk for the Official Assignee in the Canterbury District?—Yes.
2. How many years?—From 1884 to 1889.
3. Do you remember Mr. Ell being adjudicated a bankrupt in 1885?—Yes.
4. Was that bankruptcy annulled shortly afterwards?—Yes, that was so.
5. Do you recollect whether he filed a statement of assets and liabilities in that bankruptcy?—I do not recollect whether he did in that bankruptcy.
6. Was he adjudicated again on the 6th August, 1886?—Yes.
7. Do you recollect whether he filed his statement of assets and liabilities in that bankruptcy?—He did not file them at the time; there was a lot of bother about getting it, as far as I can recollect.
8. Did Mr. Ell frequently come into the Official Assignee's office for the purpose of getting information regarding his bankruptcy papers?—Lots of times.
9. Did he do so before the second bankruptcy or not? Between the first and second bankruptcy?—I cannot say for certain, but I should think so, if there was any information to get.
10. Did he come to the Official Assignee's office after the second bankruptcy for information?—Yes.
11. Many times?—A great number of times.
12. Was it with regard to papers in both bankruptcies?—With regard to papers in the second bankruptcy, at any rate.
13. Did he get the information he applied for?—He repeatedly got the information he applied for. He always copied the minutes after every meeting; he came in the next day invariably. I am now speaking of the second bankruptcy.

14. Do you ever recollect Mr. Latter refusing him access to any papers?—I think there was one instance; Mr. Latter refused to let him have access to the papers.

15. Do you know what papers they were?—With reference to the bankruptcy that was annulled.

16. Do you recollect whether he had previously access to the same papers; that is, the papers in the first bankruptcy.—Yes.

17. Did he many times see these papers?—I think he must have seen them a good many times.

18. On the occasion you refer to when Mr. Latter refused him access, what was the ground for his doing so?—I think Mr. Latter said that he had seen them a number of times, that the bankruptcy had been annulled, and that there was no further use for them.

19. Do you recollect Mr. Ell complaining that he, Mr. Latter, had not got his books from Nathan?—I cannot recollect anything about that. I thought the books belonged to Nathan's estate, and that Nathan had them secured. I never saw the books; I understood they were held as security for advances.

20. Do you recollect having seen "Exhibit 49" before—alleged statement?—Yes; I recollect seeing it.

21. Do you remember who brought it to the office?—Mr. Ell, I think.

22. Who did he give it to?—I cannot say whether he gave it to me personally. I think I took it from him. Figures on back are mine.

23. Do you know what Mr. Ell called the document when he brought it in?—I do not recollect what he called it. I always took it to be an account of costs in his action against Harper.

24. If it had been put in as a statement of assets and liabilities, would you have accepted it in that form?—No.

25. I believe the date on it is not in your handwriting is it?—No; date is not in my handwriting on the back.

26. Do you know whether Mr. Ell was treated differently to other bankrupts by Mr. Latter?—I do not think so. It was a troublesome matter, with all the litigation going on. Matters seemed a bit strained sometimes between Mr. Ell and the Official Assignee.

27. Was Mr. Ell ever charged for any of his examinations of the papers—that is, search fees?—No; I do not think so. I never charged him for any inspections.

28. Do you see list of proofs of debt in the first bankruptcy, No. 263 ("Exhibit 53")?—Yes.

29. Are those amounts opposite names in your handwriting?—Yes, except the correction of the amount opposite Austin's name.

30. Is that in Mr. Latter's handwriting?—I think so.

31. Is it usual for Mr. Latter to make alterations in the book in the lists of proofs of debt?—Yes, if the figures are wrong. An error might creep in in this way: A proof in the body might show the full amount, and lower down it might show securities which would have to be deducted. This is evidently a case in point.

32. How much should the proper amount be entered opposite Mr. Austin's name?—£68 Os. 8d.

33. Do you consider Mr. Latter was right in making the alteration according to the proof of debt?—Quite right.

34. In any case the alteration would have been in Mr. Ell's favour, would it not?—Yes, as far as the proof of debt against the estate is concerned.

35. *Mr. Lusk.*] You say Mr. Ell came many times for information to the office?—Yes.

36. Do you remember his coming particularly one day in February, 1836?—I do not remember advising him to go to Mr. Martin in connection with the papers in the first bankruptcy. I would not be likely to tell him that at all, not unless Mr. Martin was his solicitor.

37. Do you recollect his coming for information after the second bankruptcy?—Yes.

38. Have you any recollection of his ever copying any of the papers in the first bankruptcy after the second bankruptcy?—If he wanted a book I think it was always open to him.

39. Do you remember Mr. Ell applying for permission to copy proofs of debt in the first bankruptcy?—I think Mr. Ell must have copied the proofs in the first bankruptcy.

40. Can you tell me whether Mr. Ell has ever copied Austin's proof of debt?—I cannot say.

41. If Mr. Ell says he did not see it for months afterwards, you cannot contradict it?—I cannot say as to that particular document.

42. When did you leave the office?—In the beginning of 1839.

43. Can you say that alteration was made opposite Austin's name in the minute-book before you went away?—After the annulment this book was probably put away ("Exhibit 53").

44. Can you remember a copy of that minute-book being made for the Under-Secretary in 1838?—No, I cannot say; there is none of my writing in it.

45. You see the figures opposite Mr. Austin's name are £361 Os. 9d., so that if that were a copy of book, "Exhibit 54," in 1838, that alteration had not been made at that time?—I cannot say; I do not remember this book being copied.

46. Do you remember more clearly the details of the second bankruptcy?—Yes.

47. I suppose you remember the proof of debt put in in the second bankruptcy?—Yes.

48. Do you remember one being put in by Mr. Haskins?—Yes; I think there was one.

49. Can you remember the amount of it?—No, I cannot.

50. Can you recollect the proof now?—It was put in for £121 1s. 9d. The £100 damages was disputed by the Official Assignee.

51. Do you recollect on the 30th November, 1836, Mr. Ell coming in and your handing him this proof of debt, and Mr. Ell stating that he was astonished at Haskins putting in a proof for £121 1s. 9d. when he (Ell) considered that he did not owe him (Haskins) one shilling?—I believe Mr. Ell came about this proof; what conversation took place I cannot remember.

52. Do you remember Mr. Haskins coming in, either in the afternoon of the 30th November or the morning of the 1st December?—No.

53. Did you see the alteration made?—I did not see the alteration made.

54. If Mr. Ell says he came in on the morning of the 1st December, and that the proof of debt was altered as now, can you say whether he was correct or incorrect in the matter before Mr. Latter came down?—I would not allow any one to alter it without consulting Mr. Latter about it.

55. Do you remember Mr. Austin getting moneys out of Court on account of that lien he claims for in the proof of debt?—I know nothing about them. I had nothing to do with them.

56. You say you remember statement, "Exhibit 49," being put in?—Yes.

57. It is a statement is it not?—It is a statement of costs; it is indorsed "Account of Costs."

58. Do you remember what you did with it when you received it?—I put it with the rest of the papers; I think so.

59. Do you remember whether any questions were asked by you in regard to it—when he put it in?—He simply said he wanted to put it in to show the position of matters in regard to these actions.

60. Does this purport to show further assets to Ell of £198 8s.?—Yes, that is so.

61. Do you recollect any one coming and asking for a second statement of assets and liabilities in March, 1887, when some matter was going on in the Supreme Court?—Yes. Mr. Fisher was sent over from the Court to get the second statement of assets and liabilities in connection with his Bankruptcy No. 555. I looked amongst the papers, and was pretty well certain before I looked that no second statement had been filed; and he (Mr. Fisher) took the message back that there had been no second statement filed.

62. Did you see papers produced ("Exhibit 49")?—I must have seen them when I was looking through the papers.

63. You did not think it worth while to send "Exhibit 49" as a second statement filed?—No. I was so used to ordinary bankrupt statements that I would not look upon this as an ordinary statement.

64. It shows liabilities—also credits, bringing out credit balance of £198 8s.?—Yes, that is so.

65. Can you now recollect the first time that Mr. Ell was able to get access to books No. 263, and saw Austin's proof of £361 0s. 9d.?—I cannot say.

66. Do you remember Mr. Ell making this remark, "That if he had seen Austin's proof of debt before, Austin would never have dared to sue him and attempt to make him a bankrupt upon it"?—No, I cannot recollect it. We had numerous conversations together.

67. Do you say you cannot remember whether Mr. Ell complained that Mr. Latter had not got the books from Mr. Nathan?—I do not recollect it.

68. Can you remember whether Mr. Latter took steps to get the books?—I cannot say for certain from what I remember of the matter. I always understood they were secured to Nathan's estate for advances.

69. *Mr. Beswick.*] Would addition in book "Exhibit No. 53," addition of proof of debt, be made before the book was put away?—It was usual to do so.

70. *The Chairman.*] What facilities had you afforded to discover any errors?—The Official Assignee used to check the books personally after I had entered the proofs in the book.

71. With regard to Mr. Ell's business-books, you say you understood Nathan had them secured. How did you arrive at that understanding in the matter?—From the lawyers (Mr. Weston and Mr. Austin) in connection with it. I have no personal knowledge whatever, as far as I can remember, otherwise than from Mr. Weston and Mr. Austin.

JAMES CROSBY MARTIN, being duly sworn, called on behalf of Mr. Bloxam.

72. *Mr. Beswick.*] Are you Resident Magistrate at Wellington?—Yes, I am.

73. Did you act as solicitor for Mr. Leonard Harper and Hanmer and Harper in the actions Nos. 30 and 353?—I was solicitor on record.

74. Did you act for Messrs. Hanmer and Harper on a arbitration matter previously?—Yes. I think the arbitration was only in the action of Ell *v.* Hanmer and Harper, No. 30. There was only one action referred to in the first instance, but whether action No. 30 or 353 I cannot say.

75. Were Holmes and Loughrey acting for Ell?—Mr. Holmes was acting for Mr. Ell.

76. Do you recollect whether Mr. Holmes ever offered to accept £120 in full satisfaction of Ell's claim?—I had a conversation with Mr. Holmes which was "without prejudice."

The Commissioners here stated that the question might be answered if Mr. Martin had no objection.

*Mr. Martin:* When the writ was handed to me on behalf of defendants by one of the defendants, or some person in their employ, I suggested the advisability of settling the matter. Mr. George Harper authorised me to see Mr. Holmes with the view of seeing if anything could be done. I saw Mr. Holmes. I cannot say a formal offer was made. At any rate, the result of our conversation was, if the defendant would pay £100 or £150, and a certain sum for costs—either £20 or £25—he would advise his client to accept it. I reported the result of my interview with Mr. Holmes to Mr. George Harper. He was willing to settle on these terms, but Mr. Leonard Harper refused to allow me to make the formal offer.

77. *Mr. Beswick.*] Was this before you went into the accounts to know if anything was due to Ell or not?—That was immediately I got the writ, and before we had gone into the accounts.

78. Were the accounts ultimately taken in the usual form before the Registrar and Accountant?—Yes.

79. After the evidence had been closed on either side, was it arranged between you that either side should prepare an account and send it in to the Registrar and Accountant?—I believe Mr. Austin suggested that the most expeditious way of putting the results of the evidence before the

Registrar and Accountant would be for each of us to draw up a statement showing the accounts as we considered they were proved by the evidence. I believe Mr. Austin suggested that, but I will not be certain. I think he did, and that was done.

80. Did you prepare an account on your side as you considered based on the evidence as given before the Registrar?—My clerk prepared an account and I went through it afterwards and it was submitted to Mr. Parkerson—managing clerk in Harper and Co. of that department—and I find on looking on the draft there are certain suggested alterations in some of the figures, in his handwriting. It was then engrossed and put in at the next sitting.

81. Did Mr. Austin do the same—that is, put in an account?—Yes.

82. The evidence and accounts were used for both cases, were they not?—Yes; the accounts I think were different in the two actions, but I think “by consent” the accounts in the two actions were taken together so that one set of evidence would do for both.

83. Subsequently to this the Registrar and Accountant made their reports and certificates?—Yes.

84. Was there any undue delay in getting out the reports?—I do not remember what dates the reports were got out, but I do not recollect the fact of there being any undue delay.

85. Was the result in the two actions slightly in Mr. Harper's favour?—There was a balance in Mr. Ell's favour on the one action and a slightly larger balance in Mr. Harper's favour in the other action.

86. Did Mr. Austin move for judgment in the action where the certificate was in Mr. Ell's favour?—Yes.

87. Did you consent to the judgment?—Yes, I believe I did.

88. Do you recollect why you did not get judgment at the same time on the other certificate?—I have no recollection about it at all. I do not recollect whether the judgments were given at the same time, or on the same dates.

89. Do you recollect the payment made to the accountant in connection with these certificates?—I recollect the amount was paid, but I do not recollect any particular circumstances.

90. Do you remember whether you had got a certificate or not at that time?—I remember now there was some difficulty. I applied to the Court; I could not get the certificate from Mr. Ell's solicitor. There was an application made to the Court to compel Mr. Austin to give up the certificate, and an order was made.

91. Do you recollect whether you ultimately paid half of the fees?—I cannot recollect it.

92. Were steps taken on Mr. Ell's behalf to vary the certificate in action in which the certificate was against Mr. Ell?—Several applications were made at different times by or on behalf of Mr. Ell.

93. Were all the applications disposed of?—Yes, they were all disposed of.

94. Were they in Mr. Harper's favour?—Yes, they were all disposed of in Mr. Harper's favour.

95. Have you any recollection of any incorrect orders having been issued out of your office in the matter?—Of course I have heard rumours, and heard Mr. Ell's statement, that false orders had been issued, and have not been able to understand what he refers to; the orders were not drawn by myself, but they were drawn by my common-law clerk.

96. Were any orders ever used to Mr. Ell's detriment?—I know of no improper practice on the part of the Registrar with regard to any orders. Every order that was against Mr. Ell was, I presume, to his detriment.

97. Do you recollect an action brought by Mr. Ell against several people, and Mr. Latter and Mr. Bloxam were amongst them?—Yes.

98. Did you act for Mr. Latter and Mr. Bloxam in that matter?—Those were the only defendants I appeared for in that action.

99. Did you prepare Mr. Bloxam's statement of defence?—Yes, I drew the statement of defence for Mr. Bloxam.

100. Do you remember order produced being made?—Yes.

101. Do you recollect what took place in Court on the day that order was made?—As nearly as I can recollect the circumstances were these: applications had been made by all the defendants, excepting Mr. Bloxam, to set aside the proceedings to stop the action without their filing any defence at all, upon the grounds that the proceedings were vexatious, and an abuse of the process of the Court. Those applications came on for hearing before Mr. Justice Ward, and orders were made in the defendants' favour. After the matters were disposed of, I spoke to Mr. Rees, who appeared for Mr. Ell, as to what was going to be done with Mr. Bloxam, who was then the only remaining defendant, and I forget quite how the matter came up, but I remember the Judge saying that it was absurd—or words to that effect—it was absurd that the case should go on because he would not let the case go to a jury, and he, with the consent of Mr. Rees, dismissed the action as against the Registrar. That is the effect, but I cannot remember the actual words used.

102. Did he award costs to the Registrar?—I have no recollection in the matter. I know this is Mr. Justice Ward's signature on the order; I see there he has awarded costs. I have no recollection one way or the other about it. [Order put in and marked “Exhibit 60.”]

103. Do you remember the time when the judgment in Mr. Harper's favour was set aside by the Court of Appeal?—I remember the circumstances, and the fact that it was so.

104. Were the accounts gone into again?—Yes, the accounts were gone into again.

105. Who applied for them to be gone on with?—I could not tell you now.

106. Can you say whether Mr. Bloxam thwarted Mr. Ell at all in the taking of the accounts?—As far as I am aware he did not do so.

107. Are you aware of any undue delay having taken place in regard to the reopening of the accounts?—I do not recollect the fact of there being any undue delay.

108. There are certain denials of fact in Mr. Bloxam's statement of defence. I presume that

is simply a matter of pleading, to put the other side on the proof?—Yes, that is so. Of course we could not plead the general denial; we had to deny specifically. All statements not denied are taken to be admitted.

FRIDAY, 26TH MAY, 1893.

JAMES CROSBY MARTIN further examined.

109. *Mr. Beswick.*] Previous to order being made (“Exhibit 8”), do you recollect whether Mr. Ell wanted to go into the accounts from the beginning?—My recollection of the matter is that Mr. Ell complained that he could get no accounts from the Harpers; that he had never been able to get a statement of accounts at all. That was, I think, one of his causes of complaint. Then the defendants said that at a certain date they had agreed to take a certain sum—I think about £170—from Ell in satisfaction of what was then owing them. Ell denied this, and subsequently the Harpers found some missing document or books, and were prepared to go right back and open up all their transactions with Ell. Then Ell, or Mr. Austin for Mr. Ell, changed front, as it were, and wished to say that there had been a settlement of accounts between the parties, and that this particular sum of about £170 was the balance found then to be owing. Then Mr. Austin applied for this order, apparently on a summons, dated 17th October (“Exhibit 7”). The summons is to show cause why in the taking of the accounts he should not be bound by a statement of accounts made in June, 1873, whereby it was agreed that £150 should be paid by the plaintiff in settlement of all stock accounts to that date. The order, on the other hand, is that if the Registrar and Accountant are satisfied that there was a separate account, or what was so intended, between the plaintiff on the one part, and the defendant, Leonard Harper, and the late Philip Hanmer, deceased, or either of them, on the other part, concerning all transactions between 1870 and 1873, such settled accounts are not to be disturbed. That is the gist of it.

110. Do you recollect admitting a copy of an exhibit, said to be in the Court of Appeal?—The original exhibit was missing, and Mr. Ell (it may have been his solicitor) had a copy of this missing document, which had been in evidence before, and I admitted that as evidence without the original. That was to facilitate the proceedings. There was no doubt this was a true copy, and it was no use delaying the proceedings, as this was a true copy.

111. *Mr. Lusk.*] You spoke of an offer said to have been made for settlement in the early stage of these cases?—No such offer was actually made. Mr. Leonard Harper refused to allow me to make any such settlement.

112. I believe Mr. Holmes told you, if the offer were made he would see his client, and see if he would agree to accept it?—I know the offer was not made to Mr. Ell.

113. It is quite possible Mr. Ell never heard anything about this offer of £100?—Yes, it is quite possible.

114. There is nothing to show Mr. Ell valued his claims against Mr. Harper for £100?—No.

115. You were speaking of accounts put in at the conclusion of taking of accounts on the 1st December: who was present at the taking of accounts on your behalf? Were you present yourself?—I would not be certain whether I was present at every meeting. If I was not present, Mr. Dinwiddie, my common-law clerk at that time, would probably be present.

116. Was Mr. Parkerson at the taking of the accounts?—He was constantly present, for he was the person from whom I took my original instructions.

117. On the 1st of December, when the evidence was concluded, did you have a copy of the Registrar’s notes?—I got a copy of the Registrar’s notes, but I cannot be sure as to the date; I may have used my own notes that I made at the time. Mr. Dinwiddie may have prepared the accounts from my notes.

118. Do you consider that the accounts were made out in accordance with the evidence?—Yes.

119. The accounts you put in on 5th December, were they very much the same as the accounts put in prior to the taking of the accounts?—I suppose they would be.

120. Can you tell me whether, on the 1st December, 1884, you considered that the question of there being a settled account in 1873 was decided?—I really could not tell you.

121. Do you remember whether the Registrar and Accountant said that there was a settlement of accounts between plaintiff and defendant in June, 1873, but that such account was an incorrect one? Do you consider that there was a settled account?—My recollection of the matter was that the Registrar and Accountant considered that there was a settlement of account, but it was not a settlement of account within the terms of the order (“Exhibit 8”). It did not cover all transactions between certain dates, and I think there was some other ground, but I do not remember what it was.

122. Do you remember asking for the ruling in the certificate as to whether or not the defendant was induced in that settlement to accept as a balance due to him a less sum than was really due?—I remember making that application perfectly well, because the Harpers had maintained that this settlement in June, 1873, was not a settlement at all, but that they believed that Mr. Ell was in a position to pay no more than the sum arrived at then, and they were willing to take that sum because they thought they could not get any more. That was Harper’s version. That was why I made that application that Mr. Lusk read from the Registrar’s notes.

123. By that application of yours you considered there was a settled account?—There was the Registrar’s ruling, so I had to do the best I could.

124. In your account furnished on the 5th December, 1884, you take no notice of that settlement?—I do not think I should have done so; I have no recollection of the matter.

125. Can you remember whether the Registrar or Accountant took any notice of settled account with regard to stock transactions or any other?—No, I do not think they did.

126. Do you remember this account being reopened again in February, 1885?—I have no recollection at the present time.

127. You say you have no knowledge at all of any incorrect orders having been issued?—No.

128. Did you prepare the orders yourself that came out of your office, or did Mr. Dinwiddie prepare them?—In the ordinary course of business Mr. Dinwiddie would do it. I would simply hand the brief or papers when I came in from the Court and went into the office, and I had no more to do with it.

129. It is quite possible incorrect orders were issued from your office without you knowing anything at all about it?—Yes, it is quite possible; I do not see every paper that leaves my office.

130. Do you remember Mr. Ell going to the Court of Appeal on certain orders in 1885?—I was at the Court of Appeal on several occasions.

131. Do you remember the Court of Appeal dismissing one of Ell's applications on the ground that the orders on which he appealed had no existence?—No. I have no recollection of the Court of Appeal dismissing Mr. Ell's appeal on the ground that he had appealed against an order which had no existence. I do not recollect that ever being the case. I think I was only in the Court of Appeal once in connection with Mr. Ell's affairs.

132. You remember the reopening of accounts after the Court of Appeal?—Yes, I remember they were reopened.

133. And you remember Mr. Ell lending the Registrar a copy of accounts for the purpose of going on with the taking of the accounts?—Yes; the original was not forthcoming, so this copy was put in.

134. The document had not been returned from Wellington?—I think it was supposed that they were in Wellington, and the document had not come back.

135. Do you remember Mr. Ell coming for a copy of the Registrar's notes to bring forward some evidence which the Registrar had called upon him to bring forward?—I have no recollection of that.

136. Can you recollect why these meetings adjourned without anything being done?—I think some meetings were adjourned because the papers were not come back from Wellington. I think that was the reason.

137. You were this morning mentioning in regard to these accounts that were first put in—the settled account—after the finding of this settlement of account—you both put in copies of accounts?—Yes.

138. Do you recollect in Mr. Ell's account there was any stock item in prior to 1873?—I cannot say.

139. I suppose you looked upon putting in this 5th December account as a matter of form?—No; I have got to fight my client's case as best I could. If there was any evidence to support the item I would put it in.

140. Mr. Eyes was yesterday asked whether he recollected having referred Mr. Ell to you for information which he could not get from Mr. Latter. Can you recollect whether you received a letter from Mr. Ell, stating that he could not get the information from Mr. Latter, and asking you (Mr. Martin) to furnish him with some information?—I recollect having a communication with Mr. Ell, but I have no recollection of a letter; it may have been a letter, but I think it was a personal interview with Mr. Ell, and I think I told him that the only thing he could do was to apply to the Justice Department. I told him, as Crown Prosecutor, it had nothing to do with me; he had better go to the Justice Department.

141. You always opposed the reopening of this account on behalf of Messrs. Hanmer and Harper, have you not?—Yes.

142. You remember offers being made, at the time Mr. Ell was appealing, to arbitrate the matter again?—I have no recollection of any specific offer being made. I have no recollection of any formal offer being made.

143. Do you remember Mr. Downie Stewart asking Harpers to stop the bankruptcy proceedings, and refer the whole matter to arbitration?—I do not think I ever appeared on the other side when Mr. Downie Stewart acted. Mr. Stringer appeared. I was not in the Court at the time. I was unable to take the work, and Mr. Stringer was instructed.

144. Of course you remember Mr. Ell's second bankruptcy?—Yes.

145. Do you remember a deed of assignment being set aside in 1887?—I remember such was the case.

146. After the assignment was set aside have you any recollection of an application made to go into the accounts again by the Official Assignee?—I have no recollection of it.

147. Do you remember whether you appealed against that order of the 29th October of the settled accounts?—I do not think so.

148. Did you take any steps to have it set aside or altered?—I think there was something done, but I do not think it went to appeal. I have no recollection of it going to the Court of Appeal.

149. *Mr. Beswick.*] You said you thought the adjournments were made because the papers were not back from Wellington. After seeing the Registrar's notes do they alter your opinion about the matter?—After reading the Registrar's notes I still think there was something about the papers not having come back from Wellington; there was some hitch about papers not having been returned from Wellington. It may have been that there was a delay in the reopening of accounts because of papers not having been returned from Wellington.

JAMES CROSBY MARTIN recalled.

150. *Mr. Beswick.*] Do you recollect whether you have heard of the summons marked as "Exhibit 63"?—I cannot recollect that particular summons. I know Mr. Ell applied to the Court to remove the Official Assignee. I cannot say whether it was on this summons or not. Apparently the summons is withdrawn.



151. Can you tell us why it was withdrawn?—No; I cannot say why it was withdrawn.

152. Did you ever make a promise to Mr. Hamersley, on behalf of Mr. Ell, if he would withdraw that summons, you would raise no objection as to setting aside certificate?—No, I did not: I am quite positive about that. It is quite possible I may have told Mr. Hamersley I would have consented to some formal application, but not to the setting-aside of the certificates.

153. You never had any objection at all to Mr. Ell being reinstated on the record?—It would go as a matter of course.

154. Do you remember the setting-aside of that writ of sale?—I remember the fact of it being set aside.

155. Why was it set aside?—On the same grounds as contained in affidavit marked as "Exhibit 66."

GEORGE WALDOCK ELL cross-examined.

156. *Mr. Beswick.*] When did you first become bankrupt?—In 1879.

157. You got your discharge from that bankruptcy, did you?—I did, because my debts were paid.

158. Did you pay Mr. Wilkin?—Yes.

159. Who first acted for you in your proceedings in the matters?—Henry Slater was the first. He acted for Mr. McHaffie as my agent, and at one time assignee for a short time.

160. Had Mr. Slater never acted as your own solicitor?—I think he did on one or two occasions. When I produced to him the different documents showing my position with Mr. Harper, he said he had been to school with the Harpers and did not care to go against them.

161. Did you ever tell Mr. Slater that there might be £50 between you and the Harpers, but you did not know which?—Certainly not.

162. Or anything to a similar effect?—I could not have mentioned any amount with certainty whatever, because I had no accounts rendered by the Harpers at that time.

163. What date was this?—About the latter part of 1879 or 1880; it would be about that time.

164. When did you first get accounts from the Harpers?—In 1880 or 1881.

165. You told us in your evidence that you had written a letter to Mr. Bloxam stating that you had withdrawn Mr. Austin's retainer. Is letter produced the one you refer to?—Yes. [Put in, and marked as "Exhibit 61."]

166. When did you first take steps to have Mr. Austin removed from the solicitor on the record?—I think the first time I put down the motion was 21st March, 1885.

167. At the time Mr. Bloxam handed those certificates to Mr. Austin he was still the solicitor on the record, was he not?—Yes, he was still the solicitor on the record.

168. Had you not previously applied to have Mr. Lynch put on the record as solicitor?—Yes; that would be in the latter part of February, or March, 1885.

169. The first time you set down a motion was in February: is that not so?—Possibly I may have done so.

170. You did not proceed with the motion to have Mr. Austin removed?—No.

171. Did you ever apply to the Supreme Court to review the decision of the Registrar and the Accountant on the question of settled account—that is, as to their decision?—No, because I was made a bankrupt.

172. You applied to the Supreme Court, I believe, to review the decision of the Registrar and Accountant on the ground of mistake?—Yes.

173. The decision of the Supreme Court was against you?—The motions were dismissed.

174. You also applied to review their decision on the ground of fraud?—I did. That motion was dismissed also.

175. If you had an opportunity of applying to the Court to review the decision of the Registrar and Accountant, on the ground of mistake and on the ground of fraud, why could you not also have applied to the Court to review their decision with regard to the settled account?—My answer is that the motions on the ground of fraud and on the ground of mistake happened in 1885, after the first bankruptcy (No. 263) was annulled, on the 3rd of June, 1885; but from the 6th August, 1886, I have been, and am now, suffering under the Bankruptcy Act, which prevented me from making application. The bankruptcy has precluded me from doing so.

176. I believe you appealed to the Court of Appeal in May, 1886?—Yes.

177. What did you appeal against?—I appealed against the orders on the ground of mistake, and also against the judgment that stood against me, obtained on the 2nd September, 1885, in action No. 353; I appealed against that judgment also. My appeals on the ground of mistake were not upheld by the Court of Appeal, but the judgment on action No. 353 was set aside.

178. I believe you did not give security to appeal against the judgment?—I did not; but their Honours overruled the objection which was taken that I had not lodged a separate security. Their Honours accepted the security I had lodged for the three appeals. Objection was taken by the other side, Chapman and Fitzgerald.

179. On what ground was the judgment set aside?—As far as I can remember, because the accounts had not been taken in accordance with the rules.

180. Did you not tell us that the judgment was set aside on the ground that the Registrar and Accountant had gone beside the settled account?—The ground will be set forward in the motion and affidavit which were set forward before their Honours. The only ground I remember thoroughly was that the accounts had not been taken in accordance with the rules.

[Mr. Beswick here read printed judgment of Court of Appeal.]

181. There is nothing in that judgment that deals with the question of settled accounts, is there?—No, not as you have read it in the Law Reports.

182. The Chief Justice says it is quite clear that when accounts have to be paid each party brings in his own account; and the Registrar takes evidence on the account. Was that done in this case?—Yes, as far as I know.

183. After the judgment of the Court of Appeal you came back to Christchurch, I believe, and wanted to go into the accounts again?—Yes.

184. I believe several appointments were taken out to go on with the accounts?—Yes, the first time I got before the Registrar, on the 14th July, 1886.

185. Did you take out that appointment?—I would not be quite sure. I cannot say who took out the appointment. Mr. Jellicoe was acting for me at that time.

186. Did he not come down to Christchurch about that time?—About that time he was in Christchurch, but not at the time of taking accounts.

187. I believe on some adjournment from the 14th July?—It was adjourned from the 14th July because the defendants did not turn up. By Mr. Bloxam; it was adjourned from the 14th to the 28th.

188. Did you go into the accounts on the 28th?—Partly so.

189. Do you recollect what happened on the 28th?—I remember that on the 28th I, through my accountant, Mr. McHaffie, lent the Registrar documents; on which Mr. Martin agreed to accept one of the documents I lent to him as evidence, because the other papers had not been returned from Wellington.

190. Was that sitting adjourned?—That appointment was adjourned until the 4th August at any rate.

191. What happened then?—The Registrar called upon me to bring further evidence in regard to one particular item, and I asked him for the Registrar's notes and any other exhibits that were used for the taking of the accounts. The Registrar stated that the papers had not been returned from Wellington, and he would put the onus on me to get them returned.

192. Was that only in regard to this one particular item?—That was in regard to all the items. There were a great many items that had been noted on the 28th; and other items that were spoken of required the production of the documents, notably the Registrar's notes, that had been used in taking the accounts before the Registrar and Accountant in 1884.

193. Was anything else done on that day?—The Registrar adjourned the matter then until the 11th of August.

194. When were you first adjudicated a bankrupt on the petition of Mr. Harper?—On the 1st of April, 1885.

195. Was that annulled on the 3rd June, 1885?—Yes; that was so.

196. When was any money first paid into the Court?—On the 10th June, 1885; a week after the annulment.

197. Was the balance of that paid out on the 30th April, 1886?—Yes.

198. So that during your first adjudication or bankruptcy there was no money in Court at all, was there?—No; there was no money paid into the Court until about a week after the bankruptcy had been annulled.

199. Why was your first bankruptcy annulled?—On the ground that one of the members of Harper and Co. had taken proceedings against me for the sole purpose of stopping me going on with those same actions, No. 353, and No. 30, and No. 683.

200. You have stated you could not get rid of the Official Assignee. When did you first take steps to get the Official Assignee's name removed from the record?—On the 25th of June, 1885, I believe it was.

201. After the annulment, did the Official Assignee in any way interfere with your estate?—As I take it, Yes; all the time from the time that the Official Assignee had notified His Honour that Ell's matter stood adjourned until His Honour's decision as to my petition to annul the bankruptcy—up to the 5th August, 1885.

202. In what way did he interfere after the annulment?—He applied through H. S. Austin for costs in reference to the said bankruptcy.

203. Costs against whom?—Costs against the petitioning creditors, I believe. I think so.

204. Were those costs of the Official Assignee's for the appearance on the annulment?—His application was for far more; but that was all that was granted. No, I do not think at this particular time. I believe the order as far as was made by His Honour in reference to the appearance on the 5th May, 1885, was not made by His Honour until the 21st July, 1885; but I see by a bill of costs I got months and months afterwards that there was a bill of costs made out by H. S. Austin to the Official Assignee to the extent of £26 or £27; but I knew nothing of this for months after.

205. I want to know what costs these were that Mr. Austin applied for?—The items are shown in the bill of costs.

206. Did you appear on Austin's application for costs?—I appeared once or twice on Austin's application.

207. Did Austin get an order for the Official Assignee's costs against the petitioning creditors?—Yes, as far as I know, for one day's costs.

208. How did that affect your estate?—It would not hurt me, his applying for costs against the petitioning creditors.

209. In what way did the Official Assignee interfere in your estate from the date of the annulment to the date when name was removed from record?—I can repeat that answer, that I believe that all that was done by the Official Assignee from the day that my bankruptcy was annulled was perfectly illegal. When I went to the Court with those summonses to remove both the Official Assignee and Mr. Austin from the record of my business; and I believe that on nearly every occasion the records of Court will show that in the question of costs applied for from time to time, which prevented me from going on with my business at all, I was opposed by either Mr. Austin or Mr. Latter. [Motion-paper to change plaintiff on record put in and marked as "Exhibit 62."]

210. After seeing "Exhibit 62," do you still say that it was the 25th June when you first moved to have the Official Assignee taken off the record?—Yes, I still think so.

211. If you did move, was anything done on the motion?—Nothing was done on the motion because, as I say, I was prevented for the reason I have stated. [Summons of 25th June put in and marked as “Exhibit 63.”]

212. Is summons, “Exhibit 63,” your summons?—Yes, that is so.

213. What became of that, do you know?—Yes, I do. It was withdrawn on the 4th or 5th August, I will be not quite certain which; and it was withdrawn because there was a distinct promise made to Mr. Hamersley, who was then acting for me, that there would be no further opposition to the varying of the certificates. The motion had been before the Court since the 24th March, 1885.

214. Who was this promise made by?—It was made distinctly by Mr. George Harper and Mr. Martin.

215. In charge No. 1, what costs do you allude to, when he employed solicitor and incurred costs?—Costs between himself (Mr. Latter) and Austin.

216. Supposing he did incur costs, how did that affect your estate?—It would not affect me, as I know of. It is at the present time materially affecting me.

217. In what way?—For the reason that I find that, instead of costs by petitioning creditors being paid to myself, when I wanted it so badly, they were received by Mr H. S. Austin. There had been £16 or £17 paid to Austin by the petitioning creditor's solicitor.

218. How did that affect you, supposing they were paid?—I have been kept out of my own money.

219. I am now alluding to paragraph 4, in the charges against Mr. Latter. What information did you want when you applied to Mr. Latter as referred to in paragraph 4?—I wanted to find my position, as far as I stood with the business being done from the annulment of my bankruptcy, during the time that the matters had apparently been in the hands of Mr. Latter, up to the 5th August, 1885, such as the payment out of Court, and information in reference to the accounts.

220. What accounts do you refer to?—Take Austin's, for instance, as one. In fact, I may say that is about the only account that I had an interest in. I wanted to see fully what had been done with Austin's account.

221. You referred before to the collecting of accounts. What do you refer to?—I am referring particularly to Austin's account. I had applied on several occasions for information in reference to the past bankruptcy, annulled on the 3rd June, 1885, and Mr. Latter point blank refused to give me the information.

222. Are you speaking now of after the second bankruptcy?—I am speaking now of some instances after the second bankruptcy, and some before the second bankruptcy.

223. You said you wanted to get information about the payment out of Court from the Official Assignee. What did you expect to find in the Official Assignee's office of payments out of Court?—I expected to find a list of moneys paid through or by the Official Assignee to my late solicitor, Mr. Austin, because I had been summoned by H. S. Austin in the latter part of February or March, 1886, and I felt perfectly certain that H. S. Austin had been paid all that was owing to him by or through the Official Assignee.

224. Were you right in your assumption?—Yes, so far as I see by his declaration. I found, when I did get access to his books, that Mr. Austin got paid about £10 more than he claimed by his declaration of the 7th April, 1885.

225. Can you find anything in the Official Assignee's records to show that the Official Assignee ever paid Mr. Austin a single penny?—There is nothing in the records.

226. How do you know the Official Assignee did pay Mr. Austin anything?—I was in the Court in June when Mr. Austin obtained an order against the Official Assignee, on the 26th June, 1885, under order of the 1st May, 1885, for £175 against the Official Assignee, in *Austin v. the Official Assignee*.

227. I want to know what moneys were paid to Mr. Austin by the Official Assignee?—What I believed to be right was that the £175 had been paid by or through the Official Assignee to Henry Selwyn Austin; that is as I understood it. I now find that it was paid out of the moneys in Court.

228. As a matter of fact, no estate of yours came into the Official Assignee's hands on the first bankruptcy?—No, not that I am aware of. I knew these two sums of £175 and £195 had been received by Austin.

229. Did you ever file a statement of liabilities and assets in your first bankruptcy, No. 263?—No, I did not.

230. In paragraph No. 4 of charges: In the light of after events, was there any useful information that you could have got from the Official Assignee in the first bankruptcy?—Yes; when I got access to book No. 263 I found H. S. Austin had put in a proof of debt for £412 12s. 7d., giving me credits, reducing it to a balance due to H. S. Austin by me for £361 0s. 9d. I, knowing he had received £175 and £195, saw at once he had received more money than was due to him in the account attached to the declaration; and I saw that in March, 1886, he had sued me for the same moneys—a portion of the same amounts as shown in his declaration of the 7th April, 1885. I knew he could have no other accounts against me, because I never dealt with Austin from the 4th February, 1885.

231. I fail to see how you are affected in any way, seeing that the proof of debt lapsed by the annulment of your first bankruptcy?—I can only say that Austin received more than enough to cover his declaration, and then sued me nearly one year afterwards for some of the same amounts shown in that declaration of 1885.

232. Was Mr. Austin paid on the proof of debt?—I only know of one proof of debt.

233. Was the amount of this proof of debt ever paid to Mr. Austin by the Official Assignee?—I thought the pencil memorandum on Austin's proof of debt showed that it was a proof of

debt that was satisfied by the moneys paid out of Court. I therefore thought it had been paid through the Official Assignee, as the writing is the Official Assignee's.

234. Your second adjudication took place on the 6th August, 1886, did it not?—Yes.

235. Previously to that a sum of money had been paid into Court on the 2nd July, 1886, and paid out again on the 12th July, 1886?—Yes, that is so.

236. There was no money in Court at the date of your second bankruptcy, was there?—Not on the day I was adjudicated.

237. What is known as the consolidating order—was that made on the 18th March, 1886?—That is so.

238. Has that order been set aside until this day?—No; that order has not been set aside yet.

239. The money was paid into Court on the 2nd July, 1886, by the Sheriff, was it not?—Yes.

240. Was it paid out in pursuance of an order setting aside the writ of sale?—Yes. [Order produced, and marked as "Exhibit 64," setting aside execution.]

241. Do you know the reason the writ of sale was set aside?—I believe on the ground that the writ was drawn informally.

242. Who issued the writ of sale?—I issued the writ of sale personally, by Mr. Jellicoe's instructions.

243. Was that the reason?—I believe that is the reason. The writ was informal in some way. [Summons praying that execution be set aside put in and marked "Exhibit 65." Also Mr. J. C. Martin's affidavit in support of summons, and marked "Exhibit 66;" also Mr. G. W. Ell's affidavit put in, and marked as "Exhibit 67."]

244. At all events the execution was set aside?—Yes?

245. Prior to that, had you moved the Court to set aside the consolidating order?—On the same day, I believe.

246. Was that motion dismissed with costs?—Yes; that is so. [Motion-paper put in and marked as "Exhibit 68."]

247. After your second bankruptcy, did you keep away from Mr. Latter for some time?—Yes—for the simple reason that it was no use me going to him—not a bit.

248. I suppose it was no use you filing a statement of your assets and liabilities either?—I filed a statement as soon as I could.

249. Had Mr. Latter to take you before the Court before he could compel you to file a statement of assets and liabilities?—Yes, I believe he had.

250. I believe the Judge told you you would have to go to gaol unless you filed the statement?—I believe he did.

251. After that, I believe you filed the statement?—Yes; I did file the statement.

252. You complain that the Official Assignee allowed Mr. Haskins to alter a proof of debt. Was that alteration in your favour?—Apparently so. It had been there about four months.

253. With regard to these books—were they your business-books?—Yes.

254. What period did they extend over?—I was in business up to 1882.

255. They contained the book-debts, I suppose?—Yes.

256. What business were you in?—I was a butcher, storekeeper, and general dealer. Not having means, I was obliged to stop my business.

257. These books had been in Mr. Nathan's hands for some time previously to your adjudication on the 6th August?—Yes; they were in Nathan's hands from 1883, for security for money borrowed during the time the arbitration was going on. Mr. Nathan was to collect the book-debts, and charge 15 per cent. for doing so.

258. Was Nathan a money-lender?—Yes.

259. I presume Nathan has got in your book-debts by this time?—Up to the last information I got, there were about £78 collected by Nathan.

260. You say you gave Mr. Nathan an accommodation-bill for £200?—Yes; I did.

261. You mean to say you did not owe Nathan this amount?—When the accommodation-bill fell due, we were to make up our accounts and deduct from the £200 the amount I owed him—that is, any sums he had received or might receive.

262. As regards the agreement referred to, attached to Mr. Weston's declaration—unfinished so-called agreement—was it on the strength of that agreement that you received money from Nathan?—No; certainly not.

263. Had you been previously going on with him on that principle of borrowing £10 and giving him £20, and so on?—For every £1 I got from him, I had to give him an I.O.U. for double the amount received.

264. Just prior to your second bankruptcy had you made an assignment to your son?—I made an assignment to my son on the 10th June, 1886.

265. What was your object in making that assignment to your son?—To prevent my matters falling into the hands of Mr. Latter. That was at Mr. Jellicoe's advice.

266. Did you contemplate bankruptcy in June?—I contemplated that, if there was any possibility of making me a bankrupt, it would be done—that is what I was suffering from—from March, 1885, until the date that I conveyed to my son; that is, the deed was drawn in the presence of my friends to prevent such a matter happening—that Mr. Latter would not have control of what belonged to me.

267. What were you worth then—roughly speaking?—I suppose about £4,000 or £5,000.

268. Did you assign, then, all to your son for £100?—I did, with the distinct understanding that my son would pay my debts. That was advertised.

269. Did you previously assign these causes of action to any one?—Yes; I had made some kind of arrangement with a man named White, but it was never carried out at all.

270. Was that an arrangement by which you were to assign one of these actions to him?—I wanted to raise a little money through him; that was the reason.

271. What did you do with the £100 you got from your son?—The £100 went nearly all to Austin.

272. When was this £100 paid to Austin?—On the 9th June, 1836; £70 or £75 of that £100 was paid by a gentleman named McNichol to Mr. Jellicoe, for the purpose of settling Austin's and Haskins's claim; that is the deed I am alluding to that was handed to Mr. Bloxam by Mr. Holmes.

273. Subsequently to this deed, Mr. Haskins obtained a judgment against you in the Resident Magistrate's Court?—Yes, for £8 or £9.

274. As regards statements in charge No. 8, what have you to say? How were you affected by the non-production of that document?—I understood Mr. Latter would not recognise it in any way as an asset. I cannot say how the statement has injured me.

275. Did you appeal from Mr. Weston's adjudication?—Yes.

276. What became of your appeal?—It was not gone into, only as far as Weston's claim of £5,000 was concerned.

277. How has it affected you, Mr. Latter admitting this proof for a large sum?—The claim still stands for the huge amount, when I really owe nothing.

278. Did you ever offer to provide funds to Mr. Latter if he would prosecute your alleged claims?—Mr. Latter had some funds in the first instance.

279. Did you ever offer to provide him with any?—I did not do so.

280. Had Mr. Latter funds?—He had £35 5s. 8d. in October, 1836.

281. After paying petitioning creditors' costs the balance was used in paying costs and recovering back the costs of recovering back assigned assets?—Yes.

282. What have you to say in reference to paragraph No. 9. Had not you done all in your power to recover that money previously to your bankruptcy?—I did all I could; if the Registrar had done his duty I should never have been touched with bankruptcy.

283. You have never applied for your discharge under the present bankruptcy, have you?—No.

284. You applied to be appointed assignee in your own estate, I believe?—Yes, I did.

285. Why do not you apply for your discharge?—I have been advised not to do so.

286. Your application to be appointed assignee in your own estate was refused; and you appealed against that, and the appeal was dismissed?—Yes.

287. Did any of the Judges intimate that your position would not be affected by accepting the discharge?—Yes, one of them did so. Mr. Justice Denniston said he thought that the bankrupt's position would not be affected by giving him his discharge.

288. Where was the money obtained to make the payment referred to in affidavit No. 13, annexed to the report of the Public Petitions Committee?—From my friends and from my family. All their money has gone into one pocket, so to speak. I believe my eldest son has found between £300 and £400 since 1833.

SATURDAY, 27TH MAY, 1893.

Re-examination of Mr. G. W. ELL.

289. *Mr. Lusk.*] You were asked yesterday by Mr. Beswick whether you had sent a notice of the withdrawal of Austin's retainer to Mr. Bloxam, and the letter written was put in in evidence. On the same day you sent a notice to Mr. Austin?—Yes, I sent a notice the same day.

290. Mr. Austin is not in the colony now?—No. [Copy of letter of withdrawal of Mr. Austin's retainer delivered to Mr. Austin: copy put in and marked as "Exhibit 69."]

291. You were asked questions yesterday in reference to the interference of the Official Assignee in your matters after the 3rd June, 1835. Do you recollect on one occasion, in the early part of July in that year, your motion coming before the Supreme Court for the removal of the Official Assignee from the record?—Yes, either in the latter part of June or beginning of July, 1835.

292. Did Mr. Austin appear for the Official Assignee?—Yes.

293. And asked for the adjournment of the matter, and on his application the matter was adjourned?—That is so.

294. When you made application to the Official Assignee to see papers in the first bankruptcy, can you tell me what paper particularly you required to see?—One important paper I wished to see was if there had been any claim made by Austin.

295. What reason had you for wishing to see that?—Because in the latter part of February or March, 1836, I had been sued by Austin for a sum of money. I wished to see the papers to see if he had been paid for any claim he may have made under the first bankruptcy.

296. Did you go to the Official Assignee and ask for this information?—Yes; I could get no information whatever from the Assignee; I took a piece of paper and put down, while in the Official Assignee's office, a note of what took place.

297. When you could not get the information did you go to anybody for information?—Yes, I wrote to Mr. Martin, and went to him as well.

298. You were yesterday asked whether it was not a fact that you delayed putting in your statement of liabilities and assets in the second bankruptcy?—Yes.

299. Will you tell us the reason you did not do so at once?—Mr. Jellicoe had drawn the deed between myself and my son on the 10th June, 1836. I did not know hardly how to put the accounts in to Mr. Latter until I had been to Wellington to see Mr. Jellicoe that he might put me right. I went to Wellington to see Mr. Jellicoe.

300. Was that the reason of the delay?—Yes; His Honour Mr. Justice Johnston accepted that as an explanation on my return.

301. You were asked some questions about Mr. Nathan's so-called agreement. Mr. Beswick asked whether it was not a fact, that, on the strength of that agreement you got advances from Nathan. I wish to ask you, did you get a single advance from Nathan after the signing of that so-called agreement?—Certainly not.

302. Is it not a fact that, on account of non-agreement as to the terms of that agreement, Mr. Ell had no more dealings with Mr. Nathan?—Yes.

303. I believe you wanted a fixed time put in that agreement?—Yes.

304. What time was that?—It happened in September, and the understanding between me and Nathan was that this arrangement would only extend to November, 1883.

305. Mr. Nathan would not agree to that, would he?—No.

306. After that you had no further dealings with him at all?—After that I had no further transactions at all. [Resident Magistrate's Court paper in case *Austin v. Ell*, dated March 1886, put in and marked as "Exhibit 70."]

307. *The Chairman.*] You say the unfinished agreement was made for further advances? Did you take any steps to have the agreement cancelled in any way?—No, I did not. I never went to Nathan's office afterwards. I looked upon the matter as of no value whatever.

308. Yesterday some questions were asked Mr. Ell, relative to the withdrawal of some summonses on the 4th August, in accordance with the supposed arrangement between Mr. Hamersley and Mr. Martin. From whom did you get your information in regard to that?—From Mr. Hamersley, my counsel at that time.

309. Did Mr. Hamersley withdraw the motions?—He withdrew them himself.

310. The Commissioners asked you a question just now as to when that agreement was to become operative; from what date?—From September 1884; the moneys I had borrowed. I had borrowed money from 1883 at the rate I have already stated—namely, if I wanted £1 I gave an I.O.U. for double that amount. The agreement of Nathan's was to apply to the I.O.U.s already given for the double amounts to Nathan, because that matter was settled. I paid, or agreed to do so, 100 per cent. on all small sums I had received during 1883 and part of 1884, and this was a fresh matter proposed by Mr. Nathan. [Extract from newspapers put in and marked as "Exhibit 71."]

JAMES MCHAFFIE sworn and examined:

1. *Mr. Lusk.*] You know of these actions between Ell and Harper and Co.?—Yes, I know of them.

2. Do you remember accounts being taken in these actions?—I do; I was present at all meetings up to the 1st December, 1884.

3. I believe you were acting as accountant for Mr. Ell, and assisted him in preparing accounts?—I did so.

4. In your capacity as accountant did you have an opportunity of seeing the method of book-keeping followed by Mr. Harper?—I did.

5. Can you say whether it was complete, or whether it was very bad, or what it was?—The accounts that came under my notice from Mr. Harper's office were the most disgraceful accounts that a merchant could give to a client.

6. Can you state whether there was any sum of money paid by Mr. Ell to Mr. Harper, and not accounted for in any way in Mr. Harper's books? What amount?—There were two notable amounts.

7. What was the extent of them?—Before the arbitration held under the surveillance of Mr. Martin and Mr. Holmes there were some ten or eleven sums, amounting in all to £1,200, which did not appear in Harper's first account that he rendered to me personally.

8. Did you prove that those had been paid to Mr. Harper?—Yes, I proved it; and they were subsequently added to the second account rendered to me. The second notable instance was on the taking of the accounts, when I further proved items amounting to over £1,000, which were admitted by the Registrar and Accountant, and appeared in the certificate to the accounts.

9. Were those amounts in Mr. Harper's books?—They did not give credit for them in their accounts.

10. Can you tell me between what years those moneys were received by Harper and Co. from Mr. Ell?—The first £1,200 that I mentioned was received between November, 1870, and the month of March, 1873; and the other part of them during the same period, £300 and a moiety of that between then and 1875. In their accounts they gave credit for over £2,000 in their accounts to Ell, which made the gross amount that they received from Ell during the five years from 1870 to 1875 within a few pounds of £5,000.

11. You remember in the taking of those accounts, that the item of £250 in Minchin's land came up?—I do remember it.

12. Was payment of that amount proved by you on the taking of the accounts?—It was proved during the taking of the accounts.

13. Was an entry made in the Registrar's notes allowing that amount to Mr. Ell?—That is so.

14. Was there any evidence whatever called after that on Mr. Harper's behalf to show that it was not paid?—There was not.

15. You say from the year 1870, when this sale of Minchin's land was made, up to the year 1875, when the discharge was put on the mortgage, Harper and Co. had received a very large sum of money which they had not accounted for?—Yes.

16. Do you remember another item of £150, an acceptance, allowed to Harper on the taking of the accounts?—Yes, I remember.

17. Was that acceptance produced?—No, it was not.

18. Was there any evidence brought before the Registrar and Accountant of its existence?—No, none to satisfy me.

19. You remember the accounts furnished by Mr. Harper's party on 5th December, after the conclusion of the taking of the accounts?—I do.

20. Were they almost the same as the accounts put in previously at the taking of the accounts?—Yes; they were almost identical.

21. Do you remember the certificates of the Registrar and Accountant?—Yes; I remember the two certificates.

22. Do they follow the accounts put in by Messrs. Harper and Co.?—They do follow the accounts put in on a later occasion, on the 5th December, 1884.

23. Do you remember in the month of July, 1886, after the judgment had been set aside by the Court of Appeal, these accounts being gone into again by the Registrar and Accountant?—Yes, I do remember.

24. On the 14th July there was a meeting, but there was no appearance of defendants, and it was adjourned?—I was in the Court waiting, in anticipation of there being a meeting.

25. There was a meeting on the 28th July?—Yes, there was, at which I was present.

26. On that occasion did you notice whether the Registrar had any papers before him at all?—I did notice that he had a paper before him after I got in. I passed that paper to Mr. Ell, and he gave it to Mr. Bloxam.

27. What was that paper?—It was a copy of the certificate supplied by Mr. Bloxam to Leonard Harper, in action No. 353. It was a copy of the Registrar's certificate with the accounts in No. 353.

28. Did Mr. Ell call for any papers on that occasion?—Yes, especially for the Registrar's notes.

29. Did the Registrar produce his notes?—The Registrar said his notes and papers were all up in Wellington.

30. Can you tell me why that meeting was adjourned?—The adjournment was after Mr. Bloxam had made use of the accounts that had been furnished to him.

31. Had the non-production of the document by Mr. Bloxam anything to do with the adjournment? Was that the reason the adjournment was made?—That was not the special reason the adjournment was made on that occasion. When Mr. Bloxam got the account in his hands he numbered each item on the debit side of the account, and he called upon Mr. Ell to tell him what items in the account he objected to. Mr. Ell told him the items he objected to, and, after he had finished telling him, Mr. Martin, who was present, addressing the Registrar, said, "I will now take a note of these objections, and prepare a statement to bring before the next meeting;" and it was upon that ground that the adjournment was given on the 28th July.

32. Do you remember another meeting on the 4th August?—I do.

33. Do you remember Mr. Ell calling for any papers that day?—I do.

34. What were they?—Mr. Ell again asked Mr. Bloxam indirectly to produce his records and accounts—having been called upon to produce his evidence by Mr. Bloxam.

35. Were the papers forthcoming?—Mr. Bloxam retorted on Mr. Ell that he ought to have got the papers himself, and been ready to-day to explain his objections to the items which he objected to; and he further said "that I put the burden or onus upon you to obtain the papers from Wellington."

36. The business could not be gone on with that day?—It was to a certain extent.

37. Was it because of the non-return of the papers that the business could not be gone on with that day?—It was so. Each item that Mr. Bloxam asked for an explanation to—every item objected to—Mr. Ell stated that he could not bring the evidence, because of the notes and papers being in Wellington, and, finally, the Registrar said he would make a note to refer these objections to the Supreme Court.

38. I want to take you to a matter in Mr. Ell's bankruptcy. Do you remember on any occasion going with Mr. Ell to Mr. Latter's office and asking for information?—I do. I do not remember the date. I remember going; it was after the second bankruptcy.

39. What did you ask to see?—Mr. Ell asked Mr. Eyes, who was then present, to show him the minute-book in the first bankruptcy.

40. Did Mr. Latter refuse to let him see it?—Yes; Mr. Latter refused to let Mr. Ell see it.

41. *Mr. Beswick.*] Do you recollect Mr. Ell's bankruptcy in 1879?—Yes, I do.

42. Were you appointed trustee in Mr. Ell's estate?—Yes, I was.

43. You have probably seen his statement of assets and liabilities?—Yes, I have seen it before. [Statement put in, and marked as "Exhibit 72."]

44. Did you ever pay a dividend in that estate?—I believe I did.

45. How much? Do you know?—In almost all cases I got a receipt in full. There was no actual dividend paid.

46. Did any funds ever come into your hands for distribution?—No.

47. Did Mr. Ell subsequently get his discharge?—Yes. I cannot remember the date. I know he did get his discharge. I have a record in my own minute-book, which is not here. [Minute of meeting put in, and marked as "Exhibit 73."]

48. As trustee in Mr. Ell's estate you subsequently assigned the whole of Mr. Ell's estate back to him, did you not?—I subsequently assigned the whole of his estate back to him.

49. Did you ever file any accounts of dealings or records?—No, I did not.

50. What consideration was there for the assignment to Mr. Ell of all his estate?—I got £5 from Mr. Delamain in consideration that I assigned the estate to him.

51. These actions were commenced after that, and you have been working for Mr. Ell ever since?—I have.

52. You told us about large sums of money Harper and Co. did not account for. Were those sums of money brought into account when the accounts were taken?—These large sums were all brought into account before the Registrar.

53. So that Mr. Ell got credit for those large sums you spoke of?—Certainly.

54. Do you know whether Mr. Ell was pressing on to get the accounts gone on with again, after the judgment of the Court of Appeal?—Yes, he was; immediately after the Court of Appeal.

55. Do you know whether he took any steps to have the matter brought before the Registrar?—I know it was being pressed on.

56. Did you ever take out any appointments to proceed with the accounts?—I did not, but I believe Mr. Ell did.

57. What was the information you wanted from the Official Assignee's office?—To see the minute-book. I do not know exactly what Ell wanted to get from the book; but he wished me to testify what I saw in it. I cannot say what date that was.

58. Were you ever there when Ell copied the accounts?—No, that was the only time when I went to see the minute-book.

59. Do you know the document produced?—Yes; that is my own handwriting, all except one line. I believe I copied it from manuscript sent from Mr. Jellicoe. I am positive about it. [Bill of costs, *Austin v. Ell*, put in and marked as "Exhibit 74."]

60. Was the manuscript Mr. Jellicoe's manuscript; that is, in Mr. Jellicoe's handwriting? I cannot recall to mind whether it was in Mr. Jellicoe's handwriting or not.

61. If Mr. Jellicoe denied that it ever came out of his office would it be untrue?—It might come from his office although he denied it. If Mr. Jellicoe said that the manuscript did not come from his office I think he would be saying what was not true.

62. *Mr. Lusk.*] Was this first bankruptcy in 1879?—Yes.

63. At that time had any accounts been rendered by Messrs. Harper to Ell?—There is a note put against the name of Hanmer and Harper's amount in the statement of property, the words "account to be adjusted"?—Yes.

MONDAY, 29TH MAY, 1893.

EDWARD CIRCUIT LATTE sworn and examined.

1. *Mr. Beswick.*] You were for some years Official Assignee for the district of Canterbury?—Yes.

2. From what years?—From the commencement of 1884 to the end of 1889.

3. You have seen these charges made by Mr. Ell against you attached to the Commission?—I have.

4. Do you admit any of them?—I do not.

5. Why?—Because the greater part of them are untrue, and the remainder are so misleading as to give a false impression.

6. Do you remember Mr. Ell's first bankruptcy?—I do.

7. In what year?—In April, 1885.

8. Did you incur any costs in connection with that bankruptcy to anybody?—No.

9. Did any estate of Mr. Ell's ever come into your hands in connection with that bankruptcy?—None whatever.

10. Did Mr. Ell ever file a statement of assets and liabilities in that bankruptcy?—He did not.

11. Was there any money in Court to Mr. Ell's credit at the time of the bankruptcy, or during that bankruptcy?—No.

12. Did Mr. Ell ever give you any information in regard to that estate?—None whatever.

13. I believe at the time of the bankruptcy Mr. H. S. Austin was Mr. Ell's solicitor?—He was.

14. Did you authorise him to take any steps in the actions then pending against Harper, or Hanmer and Harper?—Yes.

15. Just explain what steps?—Mr. Austin, at the first meeting of creditors, was appointed supervisor in the estate, and also asked for authority to continue the action. That authority was given to him on the understanding that no charges were to be made against the Official Assignee, but that he would receive what costs the Court allowed him in the cause. That arrangement was carried out, and Austin never made any charge against Mr. Ell's estate.

16. Did Mr. Ell, pending that bankruptcy, ask for any information regarding the estate?—Mr. Ell did not.

17. I believe he ignored the bankruptcy altogether, did he not?—I believe so. I may say that I tried to induce Mr. Ell to give me a statement of the accounts. He gave me notice that he had applied for annulment; but I pointed out to him that under the Act, that could be no stay to the bankruptcy proceedings.

18. This bankruptcy was eventually annulled?—It was eventually annulled on the 3rd June, 1885.

19. Did you ever do anything, or instruct Mr. Austin to do anything, whereby Mr. Ell would be prevented from having his name put on the records, in the action against Harpers, in place of the Official Assignee?—I did not.

20. You have told us Mr. Ell had no estate; he alleges you interfered with his estate after the bankruptcy was annulled. Did you do so?—Not in any way.

21. Mr. Ell alleges he had many times applied to you for information, but you refused the same?—I have told Mr. Ell several times I had no information to give; I never refused him access to the papers and books but on one occasion.

22. When was that, do you recollect?—At this long distance of time it is impossible for me to fix the date. To the best of my belief, it was not until late in 1887.



23. What did you refuse then?—I refused access to the whole papers on the ground that he had seen and copied them so many times, and his constant attendance became a stoppage to the business of the office. I would remind the Commissioners in his evidence he has stated that he was in the office on the 30th November, 1886, and the 1st December, and it was not unusual for him to be in the office day after day. My refusal only extended to papers in the first bankruptcy, which had been annulled.

24. Did you ever withhold any information with regard to the second bankruptcy?—No.

25. I believe the second bankruptcy took place on the 6th August, 1886?—That is so.

26. Was there any money in Court at that time to Mr. Ell's credit?—No.

27. Did Mr. Ell file a statement of his assets and liabilities within the time prescribed by the Act?—No, not within the time. The first meeting of creditors was held on the 13th August, 1886, but had to be adjourned because the statement had not been filed.

28. Please give us the history, shortly, of this bankruptcy?—I found that the funds which had been paid into Court had been withdrawn, by order of Mr. Justice Johnston, on the 12th July, 1886. Later on, I think the 2nd November, 1886, I received the sum of £35 5s. 8d. by order of the Judge. It was lying in the Supreme Court, and those were the only funds that I received during the bankruptcy.

29. You might please tell us the proceedings?—The statement of assets and liabilities was filed on the 15th September.

30. Did you find it necessary to take any steps to compel Mr. Ell to file this?—Yes; on the 17th August, 1886, I had to apply to the Court to compel Mr. Ell to file a statement of the assets and liabilities. The order was that he must file a statement within three days, or punishment would ensue. On the 14th September, 1886, a further bankruptcy sitting was held. Mr. Ell was called, as he had not complied with the order. His Honour ruled that Mr. Ell was in contempt, and that he must appear in order to purge himself of that contempt. The statement was filed the following day. On the 17th September, I examined Mr. Ell, as it appears in the minute-book, "Exhibit 45A." Mr. Ell then informed me that he had assigned to his son, Henry George Ell, all benefits to arise from any actions then carried on by him at the Supreme Court.

31. I believe the creditors requested you to take the necessary steps to upset that assignment?—I called meetings of the creditors on the 20th and 22nd September to consider the matter; but, as a sufficient number did not attend on either occasion, no resolution could be passed. I again called a meeting for the 1st December, 1886, when three attended, and a resolution was passed authorising the Assignee to take steps to upset the assignment of Mr. Ell to his son.

32. Ultimately the assignment was set aside. Was that so?—Ultimately the assignment was set aside; but not until 26th July, 1887. Then the deed of assignment could not be obtained for some months, as it was said to be held under lien. On the 4th November, 1887, a meeting of creditors was held, at which I reported that the deed of assignment had not then been surrendered. A resolution was passed that the Assignee be asked to enforce surrender, and an indemnity was given for costs. On the 9th March, 1888, a special meeting was held, at which I reported that the deed had been received by the solicitor. A resolution was passed that the Official Assignee should ascertain whether Messrs. Harper and Co. would purchase the alleged causes of action. On the 15th March another meeting was held, and a resolution was passed that the Assignee allow matters to remain in abeyance, as the Messrs. Harper and Co. declined to entertain the offer.

33. Mr. T. S. Weston, Mr. Nathan's executor, claimed to be a very large creditor?—Yes, he did, for £5,138.

34. As far as you could ascertain, was he anxious to get any money out of Ell's estate, if there was any there?—Yes. Mr. Weston always took an active part in the proceedings.

35. Do you know whether he had previously obtained a charging-order for the purpose of charging this money that was in Court?—I understood he had.

36. Did Mr. Nathan prove in the first bankruptcy?—Mr. Nathan proved for £676 11s. 9d.

37. I believe you examined Mr. Nathan as to the nature of his claim?—I did.

38. How was this claim of Mr. Nathan's in the first bankruptcy made up? [The question here arose as to whether Mr. Nathan should refer to a statement that was verbally made in reference to Mr. Nathan's proof of debt.]—Mr. Nathan stated that he had known Mr. Ell for a number of years (this was in the end of May, 1885), and that he did not wish to lend him any money, as he knew there was very little prospect of his being repaid. (I would inform the Commissioners that I am stating this as nearly as possible); and Nathan said to Ell, if he lent him the money it will be with the chance of receiving a large sum in return. This conversation with Nathan took place at the end of May.

39. What did Nathan say?—I do not think anything more than that passed, except that he referred to the agreement, in showing the terms on which money was lent.

40. I believe the proof in the second bankruptcy was made up in the same way as in the first?—Yes.

41. I suppose Mr. Ell in no way took any steps to have this proof set aside?—No, not in any way. I should have afforded him every facility to bring it before the notice of the Judge.

42. Did Mr. Nathan say anything about Mr. Ell's books?—Mr. Nathan never mentioned them.

43. Did you ever apply to Mr. Weston for them?—Yes; Mr. Weston produced an agreement showing that they had been assigned to Mr. Nathan.

44. What books were they?—He stated that they were the book-debts of the butcher's business, and of only nominal value; and the total amount collected was a little over £24, for which credit is given in the proof.

45. In reference to charge No. 6?—Technically that is not correct. I altered the proof of debt. I refused to accept it for the £100 claimed for damages.

46. Was the alteration made by you and initialled by Mr. Haskins?—It was.

47. Was the balance of proof partly for the judgment in the Resident Magistrate's Court, and part for rent since accrued due?—That is so. The lease was in existence at the date of the bankruptcy.

48. You know document put in, which Mr. Ell claimed to be a second statement of assets and liabilities ("Exhibit 49")?—I do.

49. Is it what you call a statement of assets and liabilities?—Certainly not.

50. Had you ever seen that document when you gave the evidence before Mr. Justice Johnston?—No, it had never been brought before my notice in any way.

51. Even if you had seen it, would you have accepted it as a statement of assets and liabilities?—No, I could not.

52. With regard to paragraph 9, is it true you told the Court, on the occasion referred to, that you formed your estimate that there was no value in the estate from a private conversation you had with Mr. Leonard Harper?—It is not true. I never had any private conversation with Mr. Leonard Harper in reference to Mr. Ell's bankruptcy or in reference to Mr. Ell's claims.

53. What was the proceeding before the Court?—The upsetting of the assignment of Mr. Ell to his son.

54. With regard to paragraph 11, did Mr. Ell ever take any steps to challenge any of the proofs of debt put in?—None whatever.

55. Did you duly apply for and obtain your release in Mr. Ell's bankruptcy?—I did.

56. I believe Mr. Ell took steps to set aside the order of release?—Yes, that is so.

57. I believe Mr. Justice Denniston went very fully into the matter, and gave an elaborate judgment?—Yes, he did. [Certified copy of judgment put in, and marked as "Exhibit 75."]

58. Did Mr. Ell ever offer to supply you with funds to proceed in these actions of his?—No.

59. Did he ever ask you to go on at all in the matter?—No, he asked me if I had gone on. I replied, without funds from the creditors it was impossible for me to do so.

60. Mr. Ell gave some evidence with regard to Mr. Austin's proof of debt in the first bankruptcy, and of the alterations in the minute-book?—I cannot call to mind the exact date, but I should think it would be immediately before applying for discharge on Mr. Ell's estate that I went through the proofs in the first bankruptcy and found that one had been incorrectly entered. I altered it, and it was in Mr. Ell's favour. I, in the capacity of my office, had a right at any time to alter any entry made by my clerks that I thought was incorrect. I wish further to state that Mr. Ell stated that, a year ago, he found this alteration had been made. I wish to state that, from the time that I resigned my position as Assignee at the end of 1889 until within the last three or four days, I have not seen the papers in Mr. Ell's bankruptcy.

61. Did Mr. Ell make any point of your getting his books from Mr. Nathan?—No; he did not give me to understand there was any value in them.

62. Generally speaking, Mr. Latter, have you treated Mr. Ell differently to any other bankrupt?—I am not aware that I have. Immediately after the second bankruptcy I pressed him to give me particulars of his claim against the Harpers to see whether I could go on with them.

63. What was the result of your pressing him?—I got no further information.

64. Referring to paragraph 10, have you any recollection of any conversation with Mr. Martin, as would be inferred from that paragraph?—No.

65. *Mr. Lusk.*] I think you said that no costs were incurred by Ell's estate under the first bankruptcy?—I do.

66. Did you instruct Mr. Austin to proceed with the action?—Yes.

67. On behalf of the estate?—Yes.

68. Were costs rendered to you by Mr. Austin?—I had no bill of costs rendered to me by Austin.

69. The first bankruptcy was in April, 1885, was it not?—That is so.

70. You state in your examination in chief that at that time Mr. Austin was Mr. Ell's solicitor. How do you know that he was?—I say he was solicitor under that action. Austin told me so.

71. And he was instructed by the creditors to continue?—That is so; by the creditors through me.

72. I suppose Mr. Ell was not consulted in that matter?—No; he did not attend the meeting.

73. Of course you know Mr. Austin did render a bill of costs, made out "Official Assignee v. Harper and Co."?—I understood that the bill of costs, as stated, was taxed.

74. Did you not know, then, that Mr. Austin had ceased to act in February of that year?—I did not know until the evidence was given before the Commissioners at the present inquiry.

75. Do you know how long Mr. Austin continued to act in connection with these actions?—No, I do not. I wish to say, having placed the matter in his hands, I took no further steps. It is not correct to say I appeared in Court.

76. Then you do not know whether Mr. Austin appeared in Court and opposed the applications made by Mr. Ell in June and July, 1885?—I was not present.

77. Do you remember sending a notice to the Judge in April that Mr. Ell's matters stood in abeyance pending the decision of the Judge ["Exhibit 40," referred to]?—I do. I reported to the Judge on every matter of bankruptcy that came on for hearing.

78. After that notice had been sent to the Judge, did the matter stand in abeyance till the Judge's decision?—No, it did not, under clause 16 of the Bankruptcy Act [read].

79. You sent notice to the Judge stating that matters were standing *sine die* until the decision of the Court, did you not?—Yes, in accordance with the regulations then in existence. [Notice marked "Exhibit 40."]

80. After that notice did matters stand in abeyance till the Judge's decision?—I did not consider under section 16 that that notice stayed any proceedings in bankruptcy.

81. It was after that notice was sent to the Judge that you made this examination of Mr. Nathan that you speak of?—Yes.

82. That examination was made only a few days prior to the annulling of the bankruptcy?—I suppose it would be at the end of May.

83. Referring to application to see papers and make copies of papers, did you and Mr. Eyes occupy the same room in the office?—No.

84. Who was in the outer office?—Mr. Eyes, Mr. Evans, Mr. Ashby, and Mr. Fisher.

85. And you had an inner room of your own?—Yes.

86. You heard Mr. Eyes give his evidence?—Yes.

87. Are you able to say positively that Mr. Ell copied the papers in the first bankruptcy over and over again?—Yes, I am.

88. What makes you certain about it?—Because I have on several occasions seen Mr. Ell copying the papers.

89. I am speaking of the first bankruptcy, No. 263?—I can only say he had a bundle of papers before him. He had opportunities for copying them.

90. If Mr. Ell says he never did copy these papers until many months after the annulment, and that he could not get an opportunity of copying them, do you say that is incorrect now?—To the best of my recollection Mr. Ell did not come for information for months after the first bankruptcy.

91. You admit you did refuse him on one occasion?—Yes, I did. I told him at the time that I refused that I had no further information to give.

92. Did you know of the information he wanted?—He never stated.

93. Then, Mr. Latter, how could you know that you could not give him the information he wanted?—I never recollect Mr. Ell coming to me for information in the first bankruptcy alone. I do not think he asked me for any information about it until after the second bankruptcy.

94. Mr. Ell stated that in February, 1886, he applied to you for information in regard to the first bankruptcy, that you refused him the information, and that he then applied to Mr. Martin for it?—I think that is quite wrong.

95. You spoke about two occasions on which Mr. Ell was in the office—on the 30th November, 1886, and the 1st December, 1886?—I do not say that I saw him then. I am referring to his own evidence in the matter.

96. Do you know what business he came on—on these days?—I do not think I saw him on those occasions.

97. Do you know that that money—£35 5s. 8d.—you afterwards got from the Supreme Court was in the Court at the time of the second bankruptcy?—I believe not. If that £35 5s. 8d. was in the Court I was not aware of it.

98. You spoke of a meeting of creditors held in connection with the second bankruptcy; on the 17th September, Mr. Ell put in his statement, as you have told us. At that time Mr. Weston had not put in his proof of debt for £5,000?—I think it was put in later.

99. You remember Mr. Ell making statement as shown in the minute-book, marked "Exhibit 45A," 17th September, 1886?—I do.

100. Is there any difference in the creditors who attended the meetings after those statements were made? Were not Mr. Beswick (acting on behalf of Hanmer and Harper and Harper), and Mr. Weston, and Mr. Haskins the only creditors who attended?—Mr. Beswick held proxies. The book shows all creditors represented except one—that is, Messrs. Holmes and Loughrey.

101. Did you try to get Mr. Holmes's attendance at any of these meetings?—I did not send for him to come to the meetings otherwise than by notice.

102. Did you send for Messrs. Holmes and Loughrey to make up a quorum?—No.

103. You remember the proceedings taken for the purpose of setting aside the deed of assignment?—I recollect proceedings were taken by Mr. Stringer on behalf of the creditors.

104. Do you remember the meeting where the resolution was passed to take steps to set the assignment aside?—Yes.

105. Do you remember a letter read by the debtor protesting against the proceedings?—Yes.

106. Can you tell me who took the most active steps in getting this assignment set aside? Who proposed the resolution, and made a speech on the occasion?—I cannot say, but the minute-book will show.

107. Was it proposed at the meeting by Mr. Beswick, for Messrs. Harper and Co., that this assignment should be set aside?—Yes.

108. These steps were to be taken on the Official Assignee being indemnified for costs?—Yes; Messrs. Harper and Co. indemnified the Official Assignee for the costs of setting aside the assignment, and employed their own solicitor.

109. You did receive, on 2nd November, 1886, this £35 5s. 8d. out of Court?—Yes.

110. What date was the assignment set aside?—On the 26th July, 1887.

111. After the setting aside of this assignment, as you stated, no steps were taken in regard to continuing these actions by you?—No.

112. On 30th November you paid to Mr. Weston, on account of creditors' costs, £20?—Yes, by order of the Court. Order for costs was to this effect: That the amount of costs were £26 9s. 1d. The Judge's order was to the effect that costs were to be paid so far as the estate would allow, and Mr. Weston consented to receive £20 in full satisfaction of all demands.

113. Was Mr. Weston the petitioning creditor himself?—Yes, on behalf of Nathan's trust estate—he was executor.

114. From the time of the setting aside of the assignment in July, up to November, you had some small sums in hand?—Yes; all was subjected to whatever order the Court might make. I had in effect a notice of the petitioning creditors' costs.

115. I suppose Harper and Co. have never offered to indemnify you for any costs in the proceedings against them?—No.

116. You remember when this assignment was obtained by Mr. Stringer from Mr. Jellicoe?—Yes.

117. Were the same creditors present on that occasion—Messrs. Haskins, Weston, and Beswick?—Yes.

118. On the same day it was proposed by Mr. Weston, and seconded by Mr. Haskins, that the Assignee should offer these claims to Messrs. Harper and Co.?—Yes, I recollect that.

119. Messrs. Harper and Co. would not have them?—They declined to have them.

120. Then six days later they decided nothing more should be done in the matter?—That was so.

121. You state that Mr. Ell never made any point of getting his books from Mr. Weston?—That is so.

122. In his statement to you he told you where the books were?—Yes; but that the book-debts were two years old at that time. He did not say there was any value in them.

123. Did Mr. Ell state that Mr. Nathan was collecting these accounts, but to what extent he had collected them he did not know?—I ascertained from Mr. Weston the extent to which the book-debts had been collected.

124. Do you remember Mr. Ell supplying you with a printed document showing all his transactions with Mr. Weston?—I do not.

125. Do you say Mr. Ell never requested you to get the books from Mr. Weston?—I do.

126. Although he had previously stated that he was not aware how his accounts with Mr. Nathan stood?—Yes, that is so.

127. Did you ever tell Mr. Ell the result of your interview with Mr. Nathan?—I told Mr. Ell that Mr. Nathan relied on the agreement.

128. You say you did not tell Mr. Ell the state of accounts between himself and Mr. Nathan?—I do not think the matter ever cropped up.

129. Do you remember Mr. Austin's proof of debt in the first bankruptcy?—Yes.

130. Do you remember the payments out of Court to Mr. Austin?—I know there were payments out of Court, but they were not referred to me.

131. Do you remember making a memorandum of the payment out of Court on his declaration?—I think not. I think you will find I took them from the face of his proof of debt.

132. Are the figures of the pencil memorandum on Austin's proof—"Exhibit 41"—yours?—Those are my figures.

133. This memorandum is, "Received from the Supreme Court, 27th June, 1885, £175; 4th August, 1885, £195 2s. 7d." Was that memorandum made after the moneys were received from the Supreme Court?—I must have done so.

134. Can you give me any idea at all when you could have done that?—I cannot say when I did it.

135. Speaking of Mr. Weston again, you stated that he always took an active part in the proceedings, and that he was anxious to get money out of the estate?—Yes, that is right.

136. After the setting aside of the assignment to Mr. Ell's son, did he show any desire to get any money out of the estate then?—I think Mr. Weston gradually cooled down; he seemed to give up any idea of getting any assets.

137. He never suggested that you should use that £20 to go on with the account taking?—Certainly not.

138. I suppose he wanted that cash for himself?—Yes, he wanted that cash in part payment for his costs.

139. You have related to us a conversation that took place with Mr. Nathan. I suppose he discussed that agreement with you?—He did.

140. Were you satisfied with the agreement?—I knew always that any decision I came to was subject to appeal, and I considered that the weight of evidence required me to accept the proof in the first instance.

141. You expressed no opinion to Mr. Nathan as to the value of the document, did you?—I do not think I did.

142. You state Mr. Ell took no steps to have the proof set aside?—I do.

143. You took no steps either?—I did not. I expected him to take the initiative.

144. Did Mr. Ell never ask you to take steps to do so?—No.

145. You say if Mr. Ell had taken steps against the proof of Mr. Weston, you would have afforded him every facility to do so. Did you tell him so?—No, I do not think I told him so.

146. You never saw those books that Mr. Weston held?—No, I did not. I asked Mr. Weston for them, but he declined to send them to me.

147. You never took any evidence of Mr. Weston's as regards the amount collected?—Yes, I did, as to the amount of money he had received. It was not usual to put witnesses on oath as to their proofs. Mr. Weston was already upon oath upon his proof.

148. Subsequent to the question of proof, when the realising of assets came before you, if there were any, did you then either apply for the books or put Mr. Weston on oath as regards them?—Not on oath. Mr. Weston stated to me that about £24 had been collected, and that was all that could be got in.

149. You did not call upon him to produce the books after that? You simply took his word for it?—I did not make a second application for the books.

150. Do you remember Mr. Ell informing you that Mr. Stafford had stated that they did not uphold his claim of £5,000?—No, I do not. I have no recollection of it. If Mr. Ell had given me anything in writing by which I could prosecute his claims at any time, I should have been glad to do so.

151. After this assignment had been annulled and set aside you knew that there was one judgment standing in Mr. Ell's favour in the Supreme Court in one action?—Yes; I knew also there had been a consolidating order.

152. You knew that the accounts in the other action were still open?—No, Mr. Ell never gave me any information at all about the accounts.

153. You mean to say you did not know the accounts were before the Registrar and Accountant in the other action?—No, I did not know.

154. Did you get your information in respect to the judgment standing from the Supreme Court office?—I think so.

155. And they did not tell you of the account being still open?—They did not.

156. And Mr. Weston, who was so anxious to get the money, he never told you?—Certainly not.

157. You stated very positively that you never had any conversation with Leonard Harper at all about Mr. Ell's claims?—Certainly not.

158. And Mr. Harper never spoke to you about them?—And Mr. Harper never spoke to me about them.

159. Were you and Mr. Harper intimately associated in some matters?—No; we were co-trustees of a large trust estate, but never referred to these matters at all.

160. You do say Mr. Ell did ask you if you had taken any steps as regards his actions?—Yes, I do say so. My reply was, "I have no money to proceed with."

161. You say Mr. Ell never made any suggestion at all as to how you should get any money to proceed?—No.

162. Do you know what the deed of assignment to Mr. Ell's son contained?—I do not think I ever saw the deed.

163. Not after it was set aside, even?—Not after the deed had been set aside. The solicitor told me it had been deposited in the Supreme Court, and was cancelled.

164. You knew, I suppose, Mr. Latter, that £100 did pass on that assignment?—The evidence showed that it was so.

165. I suppose when the creditors took proceedings to set that aside, you thought that it was worth more than £100 to the estate?—The creditors evidently thought so.

166. Speaking about the alteration in the bankruptcy book, 263, "Exhibit 53," what date did you get your discharge?—I think it was the 12th March, 1889. It was just before that that I made the alteration in the minute-book, "Exhibit 53."

167. It was in the end of 1888 that Mr. Conolly's commission sat?—Yes.

168. Were you present at the taxation of any of the bills of costs of Mr. Austin's?—No.

169. You say in your opinion Mr. Ell was not treated differently to other bankrupts?—I do say so.

170. Both of these bankruptcies of Mr. Ell's were by petitioning creditors?—Both.

171. If the Assignee wished to expend any money in an estate which has nothing in hand, can you get any advance?—No; the instructions are to use only moneys in hand. Certain imprest moneys are allowed for Court fees and advertising the bankruptcy.

172. Did you get an advance from imprest for advertising?—Yes.

173. You see bills of costs of 26th June, 1885, purporting to be a bill of costs of Mr. Austin's?—I do.

174. Have you ever seen it before?—No. [Bill of costs put in, and marked as "Exhibit 76."]

175. This is also a bill of Mr. Austin's?—Yes. [Put in, and marked as "Exhibit 77."]

176. This is also another bill of costs for £16 9s.?—Yes. [Put in and marked as "Exhibit 78."]

177. *Mr. Beswick.*] The first two bills are in reference to the suits against the Harper's, are they not?—They are.

178. You had nothing to do with the payment of them?—No.

179. With regard to the third bill put in?—The payment was obtained, without reference to me, under an order of the Court.

180. When you said in your cross-examination that you did not appear in Court in any proceedings, do you refer to the Supreme Court proceedings, and not to the bankruptcy proceedings?—Yes; I refer to the Supreme Court.

181. It was Mr. Weston who proposed the resolution to offer the estate to Messrs. Harper and Co.?—Yes, it was. It was proposed by Mr. Weston and seconded by Mr. Haskins.

THOMAS SHAILER WESTON sworn and examined.

182. *Mr. Beswick.*] You are a solicitor in Christchurch?—Yes.

183. For some time previous to Mr. Nathan's death you acted as his solicitor?—Yes.

184. By his will you are appointed his executor?—Yes.

185. Do you recollect the date of his death?—It was just before Christmas of one year.

186. Had you any business with Mr. Nathan in reference to Mr. Ell's affairs previous to Mr. Nathan's death?—Yes.

187. In what way?—I had to sue Mr. Ell on one or more promissory notes. I think we also sued Mr. Ell upon an open account.

188. Did you know anything of the system upon which Mr. Nathan was lending Mr. Ell money?—It was a system of compound interest. There was either I.O.U.s or promissory notes given at short dates, or renewed upon terms that were stated upon memorandum given between them. The money was lent to enable Mr. Ell to carry on the proceedings against the Harpers. Mr. Nathan collected the butcher's accounts due to Mr. Ell, and as these moneys were collected, so, I think, Nathan credited him with the amounts.

189. You say the moneys were lent, and were compounded on interest charged according to memorandum?—The memorandum, a copy of which is affixed to the proof of debt, "Exhibit 44,"

is the one referred to. When these moneys were lent by Mr. Nathan, it was supposed that the proceedings against the Harpers would terminate speedily in favour of Mr. Ell, and so the high rate of interest could be well afforded by Mr. Ell.

190. After Mr. Nathan's death you took proceedings on a bill?—I commenced those proceedings a considerable time before Mr. Nathan's death. The proceedings were upon one or more promissory notes for £200, and upon those promissory notes—upon the amount we sued for—we obtained judgment. Judgment went by default.

191. You ultimately made Mr. Ell a bankrupt upon that judgment?—Mr. Ell endeavoured to get that judgment set aside before Mr. Justice Johnston. The proceedings took some little time. I think there were two if not more lawyers engaged in the proceedings for Mr. Ell, and Mr. Justice Johnston upheld the judgment. Upon that judgment I took out a charging-order against Harper and Co., believing from Mr. Ell's statement that of course there was something coming to him. That charging-order was argued by myself before Mr. Justice Johnston at considerable length, and I think Mr. Martin appeared for the Harpers; but Mr. Justice Johnston refused me an order upon the ground that it was not made out that there was money coming to Ell by the Harpers. I did my very best to get that money out of the Harpers, but failed. After the order was refused by Mr. Justice Johnston, negotiations were entered into for the settlement. Mr. Jellicoe came down from Wellington to see me, and it was hoped that terms would be arranged; but Mr. Ell could not find any security for the payment, so negotiations fell through. Well, having heard that Mr. Ell was paying some of his creditors upon being pressed, I felt it my duty, in the interest of Nathan's estate, to see whether a petition in bankruptcy would not produce payment, and I filed a petition in bankruptcy.

192. Mr. Ell has told us it was an accommodation bill. Can you tell me whether that was so or not?—I am a little disposed to think that that was one of the grounds for the application to Mr. Justice Johnston to set aside the judgment. It is not true that it was an accommodation bill.

193. I suppose Mr. Nathan was hardly the kind of man to require an accommodation bill?—No, he did not need it; besides, Mr. Ell was more than once in my office with Mr. Nathan, and in that way I knew the nature of the transaction. I offered personally to act for Mr. Ell against the Harpers, to try and recover the moneys he said were due to him. Notably on one occasion he came into Court and told Mr. Justice Johnston that he could not get anybody to act for him against Harpers; and that the last person he applied to was Mr. Weston himself, and that Mr. Weston refused to act. Upon that, Mr. Ell came to my office and I said to him—Now, Mr. Ell, it certainly does not meet with my approval that any person in the community should be able to say that he cannot get professional assistance against a brother lawyer. Now if you will give me a fee sufficient to remunerate me for a week's work in the Supreme Court, I would go up there and look through and study all the papers and accounts, and master them as well as I could, and if I saw there was anything like a case against the Harpers I would act for him. He made no reply, and did not avail himself of my offer.

194. Do you know whether Mr. Latter ever examined Mr. Nathan with regard to his proof of debt in the first bankruptcy?—I believe he did. I went with him to Mr. Latter for that purpose; I recollect distinctly walking there with him, and I had the proof in my hand. I had considerable difficulty in knowing how to prove upon this account, and Nathan and I knew Mr. Latter was a business man, and I was only too glad to go up with Mr. Nathan and see him about it.

195. You do not recollect what passed between one another?—No.

196. Had you any other object in making Mr. Ell a bankrupt than that of getting your money?—None whatever; what object could I have?

197. As a creditor in Mr. Ell's bankruptcy, do you consider Mr. Latter did his duty as an Official Assignee?—I do, thoroughly. Mr. Latter and I had many conversations over this matter. I was disinclined to abandon any claim against the Harpers that could be substantiated; but I felt personally that really there was nothing in it, and it would not be just to Nathan's estate that I should provide any of the estate's funds to prosecute claims against the Harpers. I proved upon the agreement that I found existed between Mr. Nathan and Mr. Ell; large as the amount was, I paid an accountant a fee to prepare the details, and if that agreement should be bad in law, the Court upon an application could say what Nathan's estate would be entitled to recover. As a lawyer I felt I had no alternative but to prove upon that agreement.

198. I presume it was with a view of getting something that you ultimately proposed that the estate should be offered to Harper and Co.?—Certainly so; it occurred to me that that was the only chance of getting anything out of it. I think I was the creditor that moved the resolution to that effect.

199. *Mr. Lusk.*] Do you know anything about the proposal that took place on the signing of that agreement?—I had nothing to do with that agreement. I was not then acting for Mr. Nathan; Mr. Austin was Mr. Nathan's lawyer at that time.

200. You have said that when these moneys were lent it was supposed that the proceedings would terminate speedily against the Harpers in favour of Ell, so that the high rate of interest could well be afforded by Mr. Ell. Can you tell me whether it was not a fixed date, the termination of these proceedings and those renewals that prevented that agreement being completed?—No, I cannot say so.

201. Perhaps you could tell me this: Whether, as a matter of fact, Mr. Ell never had any dealings with Mr. Nathan after the signing of that so-called agreement?—I know nothing about the arrangement between Mr. Nathan and Mr. Ell. I presume they were all made in Mr. Nathan's private office. All I knew was that the notes and I.O.U.s were handed to me to take proceedings.

202. Can you say whether there was ever more than one action against Mr. Ell?—I have instituted proceedings. I could not say at this distance of time whether there was more than one action. If my memory does not fail me, there were two.

203. Can you tell me this: Whether on your second action that you have spoken of, that agreement was produced in Court?—It never went to trial; I do not think that it went by default either.

204. You have spoken about Mr. Ell coming to your office, and your making an offer to act for him. What did you nominate as your week's remuneration?—We did not get as far as that.

205. At that time you knew of Mr. Ell's dealings with Mr. Nathan, and the nature of them?—Certainly I did.

206. And you knew Mr. Ell's position regarding monetary matters?—I cannot say that I knew; all that I knew was that there was an unsatisfied claim towards Nathan. I did not suppose he had much.

207. There was not much chance of his fulfilling the conditions precedent to your acting for him?—He was carrying on expensive proceedings against Harpers at the time. I supposed if it suited his purpose he would be able to find a fee.

208. Can you remember a single thing that was done in that examination?—No, I cannot remember anything.

209. You say you consider Mr. Latter did his duty thoroughly; you are speaking of matters that come under your cognisance?—Yes; he consulted me personally.

210. Do you remember proceedings being taken to set aside an assignment to Mr. Ell's son?—Yes; Mr. Stringer acted for the Assignee.

211. Did you consider that agreement between Nathan and Ell a good agreement?—I decline to say whether the so-called agreement was bad or not.

212. At the time that Mr. Ell was taking steps to set aside your judgment, was Mr. Nathan then dead?—So far as I can recollect he was still alive. I think Mr. Justice Johnston gave judgment on the charging-order motion just after Mr. Nathan died, so if that was so it must have been in Mr. Nathan's lifetime.

213. You stated that you were very anxious to get money out of the estate?—Certainly so.

214. Then I suppose if Mr. Ell had had a chance of getting moneys from the Harpers you would have been glad to see him get them?—I would have been more than glad.

215. Is that the reason you proved for £5,000 on his bankruptcy?—I have stated I thought it to be my duty; I had no alternative.

216. When the offer was made to the Harpers to buy these claims and they declined, you considered then it was no use going on any further?—I thought so, and still think so; to say anything more than that I could not, because I have not investigated all the accounts.

217. *Mr. Beswick.*] Did you hand over all Mr. Nathan's books and documents to Mr. Cohen?—Yes, I did, and got Mr. Cohen's receipt for same.

TUESDAY, 30TH MAY, 1893.

LEWIS COHEN sworn and examined.

1. *Mr. Beswick.*] What are you?—I am a solicitor, practising in Christchurch.
2. You now act for Mr. Nathan's representatives?—I took over the estate in the beginning of 1891.
3. You took over all the books and papers belonging to the estate?—All that Mr. Weston had.
4. Amongst them were there some books that belonged to Mr. Ell?—There were a great number of books that were not material to the estate in my hands.
5. What became of these books?—The books were in my clerk's office, and were burned in October last by a fire which occurred on the premises; everything was burnt.
6. Those were all the books that came over from Mr. Weston?—Yes. Mr. Weston had a schedule of them.
7. You cannot say whether Mr. Ell's book-debts were considered to be of any value?—I only know that young Mr. Nathan, who was over from Sydney, went through the books and papers for the purpose of selecting the valuable papers to have them put in my safe; he left what he regarded as lumber in my back room.
8. *Mr. Lusk.*] Did you ever see an agreement between Mr. Ell and Mr. Nathan?—No, not amongst those papers.
9. I suppose you know nothing of the condition under which Mr. Nathan held Mr. Ell's books?—No.
10. Do you know, from books and documents in your possession in that estate, whether Mr. Weston took steps at all to obtain money in Mr. Ell's estate against the Harpers?—I have no knowledge of that matter.
11. Did you see any bill of costs of Mr. Weston's?—I have no knowledge of such a bill of costs.
12. Do you know about Mr. Weston's bill of costs?—I had occasion to go through a bill of costs of Mr. Weston's, and it had reference to Mr. Ell's matter as against Nathan's estate. I do not know the amount.
13. That is all you can say about Mr. Weston's charges?—That is all I can say.

FRANCIS THOMAS HASKINS sworn and examined.

14. *Mr. Beswick.*] Are you Town Clerk in Christchurch?—I am.
15. You know Mr. G. W. Ell?—I do.
16. Some considerable time ago you let him and his son a property?—Yes, I let him and his son a property.
17. That was prior to his bankruptcy in 1886?—Yes.
18. Some time previously to the bankruptcy in 1886 you had sued Mr. Ell in the Resident Magistrate's Court?—Yes.

19. I am speaking of the first time now?—Yes, I recovered judgment for about £22 7s.
20. And costs?—Bringing it up to £28 6s. 3d.
21. On that judgment you joined in the case with Mr. Austin in an application to have Mr. Ell adjudicated a bankrupt?—Yes.
22. What was your object in making Mr. Ell a bankrupt?—I could not get Mr. Ell to carry out the terms of his lease and pay his rent. He refused to pay anything or do anything. I told him that I would make him. I wrote a letter to him to that effect. That was the reason I applied to make him a bankrupt, to get my money.
23. I believe you were eventually paid on the judgment?—I was.
24. Subsequently you sued him again in the Resident Magistrate's Court?—I did.
25. And obtained judgment?—I did, for £10 4s. 4d. and 5s. costs.
26. I believe Mr. Ell took steps of some means to get a rehearing against this judgment?—He did.
27. The judgment at all events now stands?—Judgment was given for the amount and still stands.
28. I believe you proved in Ell's bankruptcy for this debt and other money?—Yes.
29. Is "Exhibit 47" your proof of debt?—Yes.
30. Was that money properly owing to you by Mr. Ell?—It was and still is.
31. I believe Mr. Latter refused to allow the £100 proved by you?—Yes, unless I had the damages assessed by a competent person.
32. I believe he struck out the £100 and only allowed the proof for the less amount?—He did.
33. I believe you attended various meetings of creditors during the course of Ell's bankruptcy?—Yes.
34. I presume you were anxious to get your money, were you not?—Yes, I was; I tried my best to get it.
35. As far as you know, was everything done by Mr. Latter for the purpose of getting in assets that could have been got under the circumstances?—Yes.
36. *Mr. Lusk.*] Now, Mr. Haskins, you say that your sole object in suing Mr. Ell was to get the money from him?—That was so.
37. You got your money?—That is so.
38. And you were satisfied on that amount?—Yes.
39. Why did you appeal?—The money was not paid to me at all.
40. Was the money paid into Court?—I believe the money was paid into Court.
41. You appealed against it, although you knew the money was paid into court?—Yes.
42. And argued that the payment into the Resident Magistrate's Court was not payment to you?—Yes, that was so.
43. Do you still say that your sole object in getting Mr. Ell adjudicated a bankrupt was for the sole object of getting your money?—It was.
44. I think Mr. Ell left your house, did he not?—He did.
45. You asked him to do so, did you not?—No.
46. Did you not send a man up to demand that he should go out and give him up the key?—No, I did not.
47. Do you remember the month and year Mr. Ell went out of the house?—No, I do not remember.
48. Either December, 1885, or January, 1886?—I could not be sure about it.
49. As a matter of fact Mr. Ell consented to judgment for the rent in the first instance?—I think he fought the lot.
50. You said it was a lease to Mr. Ell and his son?—It was.
51. Did you ever tell people outside that you had ordered Mr. Ell to leave the house and deliver up the key?—I will swear that I did not.
52. I suppose you will admit that you got the key?—No, I will not. I have not taken possession at the present moment.
53. You have never taken proceedings against Mr. Ell's son?—No, I have not.
54. Has that property been lying idle all these years?—It has. The fences were all gone. I sent a person to re-fence it, and there it lies with nobody in it.
55. You say you were present at the meetings of creditors?—Yes.
56. You also say everything was done by Mr. Latter that could be done?—I consider that he did.
57. I want you to tell me one thing Mr. Latter did to get in the assets?—No, I do not know. He would have pursued any claim if we (the creditors) had guaranteed any money.
58. *Mr. Beswick.*] Did he put the position fully before the creditors?—He read out a number of statements and minutes of meetings.
59. He eventually, at the request of the creditors, offered Harper and Co. to sell the action?—I think he did.
60. The bankruptcy petition was the joint petition between yourself and Mr. Austin?—That is so.
61. *Mr. Lusk.*] You remember a deed of release from Mr. Austin to Mr. Ell?—No.
62. Do you remember giving a release yourself and pinning it on to the deed?—No, I never did so to my knowledge.

CHARLES JAMES MARSHALL sworn and examined.

63. *Mr. Beswick.*] You are a licensed land-broker in Christchurch?—Yes.
64. You were for some years chief clerk in the employ of Mr. Weston?—For ten years, up to March last year, at which time I left.



65. During the latter part of the lifetime of Mr. H. E. Nathan, Mr. Weston was his solicitor?—Yes. He was his family solicitor, that is, generally speaking.

66. Prior to Mr. Nathan's death, had you anything to do for Mr. Nathan with regard to Mr. Ell?—Yes.

67. Please tell us about what you did?—There were two writs issued within my knowledge. One a bill writ, and one a seven days' writ.

68. On the judgment obtained on one of these writs you eventually made Mr. Ell a bankrupt?—That is so. Mr. Weston was Mr. Nathan's sole executor.

69. Did you ever see Mr. Ell's books in Mr. Nathan's possession during his lifetime?—No.

70. Do you know whether he had any of Mr. Ell's books?—Mr. Nathan died very suddenly on a Saturday. Mr. Weston and I were sent for. It was after office-hours, but Mr. Weston put me in possession of Mr. Nathan's room, to sort all the papers and things.

71. Then you came across these books?—I came across a few books showing the business which apparently had been conducted by Mr. Ell. The remains of a butchery business, I believe.

72. I believe Mr. Nathan had a son with him, had he not?—He had, but not in his employ. He assisted Mr. Nathan in his business as a money-lender. I saw his writing in many places in the books.

73. He was one of the legatees under Mr. Nathan's will?—That is so.

74. I suppose he gave you information in respect to Nathan's estate?—He did.

75. Did he ever give you any instructions as to the collection of Mr. Ell's book-debts?—Mr. Nathan's business latterly was more or less of money-lending on bills. In connection with that business he had his office open evenings of certain days, for collection of moneys. His son Joseph helped him. His writing was in the books. I appealed to him in going into every single account shown in these books. When Ell's account was reached, at the first blush he laughed at it, and said we had better not waste any time. In the meantime, I said we had better go on with the work. We left it to the last. During the time he made remarks to the effect that his father seemed to have looked on the remainder of the book-debts as of no practical value, or I might be sure he would have done a deal to get the money in.

76. Mr. Weston never got any of these book-debts in at all?—No, we never collected any accounts.

77. Credit had been given for some sums collected?—Joseph, the son, told me, and I discovered from subsequent memoranda and papers that the deceased Nathan must have collected some, and the method of dealing with the money would be by placing them to the credit of I.O.U.s and promissory notes held by Nathan, periodical rests being taken.

78. In making up the proof of debt, credit was given for any sums received?—I cannot say that to my knowledge.

79. These books were all handed over to Mr. Joseph Nathan?—I removed them to Mr. Weston's office. All the books and papers I could find relating to anything affecting Ell were placed together, and with Ell's books, on the topmost shelf in Mr. Weston's office. I could positively swear they remained there until the handing over of the estate to Mr. Nathan.

80. Were these same books handed over to Mr. Nathan?—They were handed over to Mr. Nathan.

81. *Mr. Lusk.*] I suppose you do not know the extent of moneys collected by Mr. Nathan?—I do not.

82. I suppose you cannot say whether a man named Scarlett paid £24 to Mr. Nathan?—I cannot say.

83. Did De Blois pay £13?—I do not know.

84. Greenlaw, £26; Austin, £14 and £10?—I do not know.

85. You say these moneys were placed against I.O.U.s and promissory notes?—I said Mr. Joseph Nathan gave me to understand any amounts collected were given credit for in Mr. Ell's account.

#### HENRY SLATER sworn and examined.

86. *Mr. Beswick.*] Your name is Henry Slater, and you are a solicitor practising in Christchurch?—Yes, and carry on business under the style of "Slater and Son."

87. Do you remember Mr. Ell's bankruptcy in 1878 or 1879?—Yes.

88. Your firm was a creditor in that estate?—I think so.

89. Did you ever get paid?—No, I did not get paid.

90. I believe subsequently to this you acted for Mr. Ell?—No; I had acted for him before. Mr. Ell came to me in 1878, I think.

91. Did he mention his claim against Harper and Co.?—Yes.

92. Did he give any indication to you as to its value?—Yes, he did.

93. What indication did he give you of the value?—Mr. Ell's opinion at that time, in 1878, was that there was not £50 difference between himself and Mr. Leonard Harper; and I, with Mr. Ell's knowledge, wished to settle it for £50. Mr. Parkerson, Mr. Harper's clerk, would not agree to it.

94. What was the reason for Mr. Ell leaving you or your leaving him?—I left Mr. Ell. I declined to go on with the case, because I thought there was nothing in it.

95. Was the reason you left Mr. Ell because Mr. Harper was a school-fellow of yours?—No; because I never was a school-fellow with Mr. Harper.

96. *Mr. Lusk.*] Did you know whether any accounts had been rendered by Harpers to Ell in 1878?—Yes, there were some accounts; they were not full, they were meagre accounts.

## WILLIAM HENRY HARGREAVES sworn and examined.

97. *Mr. Beswick.*] You are an accountant and merchant in Christchurch?—Yes.
98. At the end of 1884 you were appointed by the Supreme Court to take accounts in *Ell v. Harper*, and *Ell v. Hanmer and Harper*?—Yes.
99. I believe it was agreed that the accounts in the two actions should be taken as one?—Yes.
100. You and the Registrar took accounts?—We did.
101. By going through the accounts and taking evidence on all items not admitted?—Yes.
102. Do you recollect the question arising as to settled accounts?—Yes.
103. I believe there was an order of the Court on the subject?—Yes, there was.
104. Do you remember order marked “Exhibit 8”?—Yes.
105. Did you find that there had been a settled account?—No statement of any account had been placed before us, but an account was brought forward, which I think was marked “H.” That exhibit brought forward a sum of £147 13s., purporting to be a settlement arrived at between *Ell* and *Harper*.
106. Did you consider there had been a settled account within the terms of that order?—Certainly not.
107. Did *Mr. Bloxam* in any way attempt to influence you upon arriving at your decision in any of the items?—Nothing beyond the ordinary discussion.
108. I suppose you consulted together in every instance where consultation was required?—Certainly.
109. And you acted upon your own judgment?—Certainly.
110. Did *Mr. Harper* in any way interfere?—No; excepting as a witness. I never had a conversation with *Mr. Harper* on the subject outside his evidence as a witness.
111. Do you remember *Mr. Ell*’s solicitor claiming credit for the sum of £250, upon which a receipt was indorsed on the mortgage?—Yes.
112. Was credit claimed for this sum in the first instance by *Mr. Ell*’s solicitor?—It was not claimed. It was unknown until the deed was produced.
113. Who first discovered it?—It was discovered by the presence of the deed itself. Then *Mr. Austin*, *Ell*’s solicitor, claimed it. It was not claimed until September; and the accounts were commenced in July, 1884.
114. Was there any evidence whatever produced of this money having been paid by *Ell*?—None whatever, outside the receipt itself.
115. Did this appear to be a surprise to the other side?—It was a big surprise.
116. I believe *Mr. Ell*’s solicitor had put in an account showing the items for which he claimed credit?—Yes.
117. And the £250 is not shown there?—No, not shown.
118. Did you call for evidence as to the payment of this money?—Yes. I think *Mr. Martin* finally explained. I personally asked *Mr. Ell* when he paid it, and how.
119. What explanation did he give?—He did not give any explanation beyond the assertion that it was paid, according to the receipt.
120. You say *Mr. Martin* ultimately, on behalf of the *Harpers*, explained?—Yes.
121. Explained what?—Explained the mode by which the original mortgage was released in order to bring that portion of land and another portion under the Land Transfer Act.
122. I believe *Mr. Bloxam* claimed at first that there was no getting over the receipt?—*Mr. Bloxam* claimed that there was no getting over it. I objected, and said that as I was taking the accounts, and there was no evidence of any money having passed, I could not bring it in as against *Harper and Co.*
123. What happened then?—It was ultimately decided to disallow the amount, leaving the parties to appeal to the Court.
124. I believe *Mr. Austin* was the first person to go behind the alleged settled account; to the best of your memory he was?—Yes.
125. I believe he wished to take up a different position afterwards?—Yes.
126. Do you recollect the decision of the Court of Appeal setting aside judgment and referring the accounts back to the Registrar and Accountant?—I remember; but we had no particulars as to the course we should pursue.
127. What did you do, as a matter of fact?—At *Ell*’s request we commenced proceedings *de novo*.
128. And you went through every item, did you not?—Up to a certain date, from the 28th July, 1886, until the 11th August, 1886, up to the time of *Ell*’s bankruptcy. It was between the previous meeting and this appointment that *Ell* was declared a bankrupt.
129. How many meetings did you have altogether?—I think there were seven altogether.
130. After the decision of the Court of Appeal?—Seven, I think. There were four inquiries; but I think there were three appointments made, which were postponed for particulars until the 28th July.
131. At the conclusion of the accounts you asked either party to send in their own statement of accounts made up in accordance with the evidence?—Yes, we did.
132. I think you have seen those accounts which were sent in?—Yes.
133. What was the object of getting these accounts?—Simply, as far as possible, to ascertain how near the parties might come together with respect to the several items in dispute.
134. Will you give us the figures how far these accounts differed?—The first original claim on behalf of *Ell* amounted to £12,028 13s. 1d.—the claim as submitted by the draft account. The account rendered by *Mr. Austin*, *Mr. Ell*’s solicitor, after the evidence was taken, amounted to £3,174 15s. 4d. The difference was £8,853 17s. 9d. in favour of *Harper and Co.* according to *Ell*’s own account. The original claim made by *Harper and Co.* against *Mr. Ell* amounted

to £5,619 9s. 11d. The claim as submitted by Mr. Martin, as solicitor for Harper and Co., after the evidence, amounted to £2,948 9s. 11d., or a difference of £2,671.

135. Did you and Mr. Bloxam go carefully through the accounts, irrespective of these accounts that were furnished by Harper and Co.?—Yes, every item.

136. And you allowed them and disallowed them according to the evidence?—Yes.

137. *Mr. Lusk.*] You were speaking of the question of a settled account?—Yes.

138. Is it not a fact that Mr. Harper, in his evidence before you, admitted that there was a settled account of stock transactions, and, not only that, but repeated it. Do you remember Mr. Harper saying, about June, 1873, Ell promised to pay him £150 to close all stock transactions, and afterwards stating there was a distinct settlement—that was, a settlement of all stock accounts up to that time?—I remember Mr. Harper stating that he agreed to take £150 to close all stock transactions up to June, 1873.

139. On the 1st December the evidence in connection with these accounts was closed. Now, at that time, this order had been obtained from the Supreme Court?—Yes.

140. You knew what question had been referred to the Supreme Court?—I did not know it until afterwards.

141. Did you not know what had been asked from the Supreme Court?—Not until after the order was made. I may say that it is possible that the question might have been mooted during the sitting, but I took no note of it.

142. After the order was made, you knew, I suppose, it was in reference to that bill of £147 that the order had been made?—Yes; I presumed that it was so.

143. On the 1st December, according to the Registrar's notes, the Registrar and Accountant ruled that there was a settlement of accounts between plaintiff and defendant in June, 1873; but that such account was an incorrect one. There, again, you are referring to the settled account in connection with that £147 bill?—Yes.

144. Referring to the matter of £250, you remember the evidence being given in connection with that amount?—There was no evidence until the deed was produced.

145. Do you remember it being decided that the £250 should be credited to Ell, in connection with Minchin's land?—Mr. Bloxam insisted upon the amount being placed to Ell's credit up to a certain point. I never agreed to it.

146. Can you tell me whether, after the production of those deeds, and the discussion on them, any further evidence was given on behalf of Mr. Harper on the £250?—No. I do not know that there was any other evidence given up to the close of the inquiry.

147. Are you referring to the re-opening of the accounts in February?—No.

148. On the 13th February, 1885, was there any evidence called in regard to that £250?—There was no evidence called.

149. On the 10th February there is an entry in the notes "Defendant to explain the matter of the £250 on the mortgage." On the 13th February Mr. Martin contended that the amount had not been paid?—My note is that Mr. Martin objected, and explained the mode of the discharge and transfer.

150. Do you remember an acceptance of £150 which was allowed to Harper, with £191 interest?—I am not quite clear about the acceptance. It runs in my mind that it was a cheque produced in payment of an acceptance. To the best of my remembrance it represented a bill previously discounted for £150, the proceeds of which went to Mr. Ell's credit; and when the bill matured it would be returned by Harper and Co. That would be the history of it, but I am not quite sure.

WEDNESDAY, 31ST MAY, 1893.

ANDREW ROBY BLOXAM, sworn and examined.

1. *Mr. Beswick.*] You are Registrar of the Supreme Court at Christchurch?—Yes.

2. You have been so for how many years?—About twelve years.

3. In pursuance of the orders of the Court made in actions Nos. 30 and 353, I believe you and Mr. Hargreaves proceeded to take accounts. What took place?—We did. The accounts were commenced to be taken on July 11th, 1884, and the taking of evidence was concluded on the 1st December, 1884. It was then adjourned *sine die*.

4. Who first raised the question as to settled accounts?—Mr. Austin raised the question; evidence had been taken previously.

5. Did Mr. Austin first want to go behind the settled account?—Yes, Mr. Austin first wanted to go behind the settlement of the stock account.

6. And he subsequently wanted to vacate that position?—I do not remember exactly the particular attitude without going through the evidence.

7. He applied to the Court, I believe?—Yes; for an order that that particular stock account should not be disturbed.

8. An order was made upon his summons, I believe?—There was.

9. That was the order of the 29th October, 1884?—Yes. It was not the order he asked for. "Exhibit 8" was the order referred to. [The order was read by Mr. Bloxam.] The order made was that if we found there had been a settled account covering all transactions during those dates, it was not to be disturbed.

10. Did you find there had been a settled account covering all transactions between those dates?—We did not, for the following reasons, as far as I was concerned: Mr Harper, in his evidence on page 4 of my notes, stated that stock transactions closed about September, 1873. On page 7, he stated "there was no question in 1879 of any dispute between them on the accounts." On page 16 he says, "the item £147 13s. 0d., in account 'H,' is the one I admitted to be agreed upon as

the basis of the account—namely of stock account up to June, 1873, but it was not admitted by the other side.” That was what Mr. Harper said in evidence. Then “in settling with Ell in June, 1873, I gave him a liberal allowance, as it was useless to do otherwise, because Mr. Ell represented himself not to be in a position to pay.” Then, on page 28, F. C. Hall in giving evidence, said, “I think I got the amount, £147 13s., from Mr. Harper in his office.” Further on he says “It was given by Mr. Harper out of some memorandum-book and not out of books of the firm.” Then, on page 36, Mr. Ell says in his evidence, “In 1870 I had transactions with Mr. Harper; I asked him if he would buy Mr. Minchin’s land.” Later on he says “It was about August or September, 1870; Mr. Harper bought the land for £250.” On page 37, “If I owed Harper between £800 and £900 at the beginning of June, 1873, he must have left out many sums of money that had been paid. I know of some items that have been left out in the account rendered to me before this action; credit items 10 of the account down to 18 were left out of the account. This is the former account rendered to me (Exhibit ‘H.’)” On page 38, then, he says, “In June, 1871, I had transactions as to leasehold land, item 40, Gerkin and Rathgin, £200. I asked Mr. Harper if he would buy the leasehold at the Halswell. He agreed, and bought it for £180.” On page 39 there are references to crops which were sold in April, 1872, and 1873. On page 40 Mr. Ell says, “In the account ‘H’ I am neither debited with the £200 nor credited with the £100 and the £190.” On page 43 a further reference to accounts in 1872. On page 58 there are still further references. On page 62, “October 16th was the date that Mr. Austin asked that we should exhibit the item of £147 13s. as a commencing item of all stock accounts between the parties. We then ruled that the accounts must be taken from the date of June, 1870, as mentioned in the decree.” On page 65 Mr. Ell, being examined by Mr. Martin, said, “I do not recollect having a settlement of accounts with Mr. Harper in June, 1873.” That would be on Thursday, October 30th, 1884. On page 68, on November 26th, Mr. Leonard Harper being recalled by Mr. Martin, said, “In June, 1873, I went through accounts with Ell at the commencement of this action. Ell refused to admit the correctness of an account produced by me purporting to be a settlement of stock transactions between us in 1873. He further claimed the right to go behind that date, and to produce accounts previous to that time and to require me to do the same.” Being examined by Mr. Austin, he said, “The refusal took place before the arbitrators in an action, Ell v. Hanmer and Harper. Exhibit ‘H’ is the account I refer to. The effect of what Ell said at the arbitration was that there was no settlement of accounts in June, 1873.”

11. Neither Mr. Ell nor his solicitor ever produced an account purporting to be a settled account of transactions?—Not of all transactions answering to the order.

12. I believe this matter was not gone fully into before Mr. Justice Conolly; no explanation was given?—No. No explanation was given.

13. Do you remember when Mr. Ell’s solicitor claimed credit for £250, being the amount of receipt indorsed upon a mortgage?—Yes, I do.

14. Was credit claimed for that amount in the accounts put in by Mr. Ell?—No.

15. Do you know who first discovered this?—I first noticed this when the exhibits were put in.

16. I believe you drew attention to it?—Yes; I drew attention to it.

17. Did Mr. Austin then claim credit for that sum?—Yes; Mr. Austin then claimed credit for the first time.

18. I believe he had not apparently known of this before?—No.

19. Was any evidence produced to show that this money had been paid?—No.

20. Was Mr. Ell called upon to produce evidence of the payment?—I recollect Mr. Hargreaves calling upon Mr. Ell to produce evidence of the payment.

21. In the first instance, you contended that credit would have to be given for this sum?—When Mr. Hargreaves and I were talking over the items of the account, I considered that credit would have to be given for it, for the simple fact of there being a receipt indorsed.

22. You ultimately agreed with Mr. Hargreaves’ view?—I always felt certain that it had not been paid, and so gave way to Mr. Hargreaves, who would not admit of it being credited.

23. I believe Mr. Martin explained the nature of the transaction?—The matter was discussed at a later meeting. I have no notes of all that took place at that meeting at which it was discussed.

24. You verified what Mr. Martin said by making inquiries at the Land Transfer Office?—I went through all the documents. I produce notes on the occasion. [Notes of searches of the deeds put in, and marked as “Exhibit 78.”]

25. I think you have already told us that there was no direct evidence produced as to the payment. What was your reason for coming to the conclusion that you ultimately did?—In the face of their being no evidence to show that the amount had been paid, and on looking at the nature of the transaction, I came to the conclusion that the receipt had simply been indorsed as they were bringing the land under the Act. With regard to the item of £150, referred to by Mr. McHaffie in his evidence: I find on my notes that an exhibit was produced marked “G 15,” “cheque filled up Ell’s acceptance,” and further on my notes showed words, “Ell does not remember.”

26. On the taking of the accounts being concluded, I believe it was arranged that either parties should prepare accounts based upon the evidence, and sent them in to you and the Accountant?—Yes; my note is, “A short statement of accounts as claimed by either side to be sent in by Friday next.” My own impression is that Mr. Hargreaves and I talked it over, and thought that if there were any amounts which happened to be agreed upon by either party it would save us considerable trouble. The accounts were sent in. When we looked at them we found that they would not help us, and we took no notice of either of them in working out our own conclusions.

27. You then prepared accounts based upon the evidence, I believe?—Yes; we then prepared accounts.

28. Mr. Hargreaves worked out the interest, did he not?—After the items were settled between us I left it to Mr. Hargreaves to work out the interest, and had not the slightest idea how the amounts would work out until he had done so.

29. You then prepared your certificate?—Mr. Hargreaves then wrote out the accounts, and I wrote out the certificates.

30. With regard to charge No. 5, is it true that you promised Ell the certificates by the 23rd December on the payment of £11 5s.?—It is not true that I promised. As a rule I never make any promises as to when any document shall be ready; and it is utterly impossible that I should have promised them then. They were adjourned *sine die* on the 1st December. On the 8th December I went to Timaru sittings, and remained there until the 22nd December, 1884, so that from the 8th to the 22nd Mr. Ell could not have seen me. From the 24th December to the 3rd January were the Christmas holidays. The criminal sittings here commenced on the 5th January, and lasted until the 8th January. There were civil cases on January 12th, 13th, 14th, 15th, 16th, 19th, 22nd, 23rd, 24th, and 26th, and the 29th was a holiday.

31. When were the certificates ultimately ready?—The certificates were ultimately ready on the 20th February. On that date I wrote to Mr. Austin and Mr. Martin, stating that the certificates were ready to be issued as soon as the Accountant had signed the same, the fees due to him amounting to £88 4s.; will you please arrange to pay the same into Court. On the 11th March those fees were paid in by Mr. Ell, and the certificates were at once signed by Mr. Hargreaves on the same day. On the same day I wrote to Mr. Hoban, agent for M. J. Lynch, Esq., solicitor, Timaru: "Mr. Hoban, the certificates of the result of accounts taken by the Registrar and Accountant in the above case are ready for issue. The solicitor on the record, Mr. Austin, has requested me to hand them over to him, which I intend to do to-morrow at 11 a.m. As an order was obtained by Mr. Lynch for the change of solicitors in both cases, I forward the above information to you in order to give Mr. Lynch an opportunity to take out the order should he wish to do so."

32. Previously to this you had received a notice from Mr. Ell, which has been put in and marked as "Exhibit 61"?—Yes.

33. What is that document?—A notice that he makes application to remove Mr. Austin off the record in the case filed in the Supreme Court wherein he is plaintiff or defendant.

34. He subsequently set down a formal notice in the Court to have Mr. Austin removed from the record?—Yes, on the 21st March. Previously, on the 24th February, an order had been made by consent, appointing Mr. Lynch solicitor for the plaintiff, instead of Austin, upon payment to him of what may be found due to him from the plaintiff.

35. Do you know whether Mr. Lynch ever took out that order?—I see no trace of any order having been taken out. No order was taken out at all events, prior to my letter to Mr. Hoban. [Summons put in to change solicitor—Austin to Lynch—marked "Exhibit 79," indorsed by Judge "Order by consent."]

36. Would it have been right for you to have handed the certificates to Mr. Ell while there was a solicitor on the record?—In my opinion it would not, and I felt that I was confirmed in my opinion by the fact that on March 16th the very question came up before His Honour Mr. Justice Johnston on an application by the plaintiff in person, in action No. 683. A note in action-book No. 1, folio 138, "The plaintiff appeared in person and Mr. J. C. Martin for the defendants. Question as to whether plaintiff could appear in person waived by defendant, and by Mr. Austin, solicitor on record for the plaintiff."

37. Referring to charge No. 6, is it true that you, time after time, promised Mr. Ell certificates?—No; he would be told in the ordinary course, if he asked about them, whatever was being done.

38. Mr. Hoban never took any steps to prevent the certificates being handed to Mr Austin?—No.

39. Was a notice of motion set down by Mr. Ell on the 25th March; if so, what for?—It is indorsed to vary an order to set aside certificate in action No. 353.

40. What became of it?—It was struck out on the 27th March, "No appearance." [Motion-paper to set aside certificate in action No. 353 put in and marked as "Exhibit 80;" also affidavit in support of same motion put in and marked "Exhibit 81."] The result of motion appears in minute-book as follows, in action No. 353: "(Plaintiff in person), Mr Lynch appeared for plaintiff; Mr Austin objected to his appearance." Our note is "No appearance of plaintiff; struck out." The same notes appear *verbatim* in connection with action No. 30.

41. Is it correct, as stated in paragraph 9 of Mr. Ell's letter? Did defendant pay into Court, to the credit of cause, £2,404 6s. 9d.?—Yes, that is so; it was paid in on the 10th June, 1885.

42. Is it correct that in August and September, 1885, you did sign and issue incorrect orders?—Not so far as I am aware of.

43. Mr. Ell appealed to the Court of Appeal at its first sitting after the month of September, 1885?—That is so.

44. The orders that he went to the Court of Appeal on are what he terms the correct orders, are they not?—That is so. They were sealed, and he took them out on October 19th, 1885. On the 5th November he set down a notice of motion in the Court of Appeal, and filed an affidavit in support, in which he drew attention to the alleged incorrect order. [Affidavit put in and marked as "Exhibit 82."]

45. Was Mr. Ell's appeal on that occasion dismissed?—It came on on the 12th November, 1885, and the motion was dismissed with £5 5s. costs, and costs out of pocket. Mr. Jellicoe appeared for the plaintiff. I produce copy of the Chief Justice's notes in the appeal matter on the 12th November, 1885. [Copy put in and marked as "Exhibit 83."]

46. Is it correct that in May, 1886, you sent a telegram to the Court of Appeal in Wellington, which was untrue?—No, it is not correct.

47. After the decision of the Court of Appeal, in June, 1886, did Mr Ell ever take out any appointments to proceed with the accounts?—No, he did not take out any appointment. On June

28th, Mr. Ell applied for the appointment. I informed him I must inquire of Mr. Hargreaves what day would suit him. I wrote to Mr. Hargreaves, saying that "I did not see my way for fixing any date before July 15. Will that date suit you? Are you engaged on Friday 9th if I should appoint that day?" I received a note on the 29th from Mr. Hargreaves that the 9th or 15th would suit him. On the 29th Mr. Ell being told that the 9th or the 15th could be appointed—the first being subject to the Criminal sittings being over—took away his application. On the 29th Mr. Jellicoe was in the office, and stated to me, as the result of a conversation, that he was satisfied that Mr. Martin had the carriage of the order, and asked if—when the appointment was made—I would allow a long interval. I told him that the 9th or the 15th was convenient for Mr. Hargreaves, and that when Mr. Martin applied for the appointment a proper time would be allowed. On the 3rd July Mr. Martin applied for the appointment, and the appointment was then made for the 14th.

48. What happened then?—On the 14th I made a note "At 10.38 a.m., no appearance of anybody but Mr. Ell; appointment lapsed."

49. What took place after that?—Mr. Martin took an appointment out on the 17th for the 28th at 10.30 a.m.

50. What happened then?—The certificate had then come from the Court of Appeal. I remember that at the time the question arose as to what was the meaning of it, as we were aware that the motions to set aside the certificates had been dismissed; but the Court of Appeal certificate stated that the judgment in the one action No. 353 was to be set aside, and the certificate of the Registrar and Accountant reviewed. Mr. Martin had not been at the Court of Appeal, and Mr. Ell could not explain, so that we could not understand what the Court of Appeal meant; the report of the judgment had not then been received. I then took down what Mr. Ell wanted. "Mr. Ell desires to be reviewed, in accordance with the certificate of the Court of Appeal, all the items in the certificate of the Registrar, both on debit and credit side, marked and ticked in red;" that would be on the account attached to the certificate. I feel sure that they must be the ones. "Mr. Ell also claims the £147 13s. amount of bill drawn in settlement of stock account, 'Exhibit H,' on taking accounts, be debited against him. Mr. Ell stated that there was no question as to the amount of the items. Adjourned until Wednesday, 4th August, at 10.30 a.m., for either parties to bring such evidence on the items in question as they may deem advisable."

50a. Either on this or a subsequent occasion a document called "Exhibit H" was required?—Yes.

50b. Where was it then?—I believe it was in Wellington.

50c. Mr. Ell lent a copy?—Yes; Mr. Martin did not object to it. It made no difference whose the exhibit was.

#### THURSDAY, 1ST JUNE, 1893.

Mr. BLOXAM'S examination continued.

51. [Mr. Beswick.] Will you tell us shortly what took place on August 4th?—Mr. Martin and Mr. Ell were present. My note is as follows: "With reference to the item of £250, on application of Mr. Ell and by consent of Mr. Martin, to stand over till next sitting. Item £39 12s. 6d.: Mr. Ell claims this amount as having been included in the account settled between himself and Mr. Harper. Item referred to the Judge under Rule 422. All other items claimed to be settled to stand over till ruling of Judge obtained. Item Ell £50, April 8th: Ell claims that the amount should have been inserted in Hanmer and Harper's accounts on the grounds that all stock accounts previous to June, 1873, belong to Leonard Harper. Item referred to Judge under Rule 422." Next four items to stand over till after reference to Judge. There was further reference to items, and it was adjourned till Wednesday, August 11th. On August 10th I received a notice from Mr. Ell that by deed of assignment of June 10th, 1886, he had assigned absolutely to Henry George Ell all the judgment debt and others in these actions.

52. So that Mr. Ell had been proceeding with his action after the assignment to his son?—Yes, and without any notice to us, till after the adjournment on August 4th. On August 11th, Mr. Martin appeared, and Mr. Ell. My note is "Mr. Ell having been adjudicated a bankrupt on August 6th, adjourned *sine die*."

53. Did you ever adjourn any appointment on the ground of documents not having been returned from Wellington?—No.

54. I believe at this time you did not know the reason why your certificates had been sent back for review?—No, we had nothing but the bare certificate of the Court of Appeal.

55. You allowed Mr. Ell to go into the accounts as he wanted?—Mr. Ell was allowed to go into the accounts as he wanted. Mr. Martin raised no objection.

56. Do you know anything of letters referred to in latter part of paragraph 13?—I know nothing of them whatever.

57. With regard to charge No. 14, did you ever tell Mr. Justice Johnston there was no money in Court on the 8th July, 1886, belonging to Mr. Ell?—Whatever was told was that the money was paid in to the credit of the cause. Of course it was not Mr. Ell's money. The Judge knew exactly what money was paid into Court, and how it was paid in, on the 2nd July; and there was a charging order taken out and received on the 3rd July.

58. With reference to paragraph No. 15 of this letter, will you explain the circumstances under which there was money in Court at any time?—On January 8th, 1886, £100 had been paid into Court by Mr. Ell as security in the Rakaia Island action tried at Wellington. On September 7th, 1886, £64 14s. 4d. of it was paid out to Mr. Martin under order of December 22nd, 1885. It was on account of costs which had been taxed in Wellington, so that there was no money available in any case on the 6th August, 1886; and on the 7th September, 1886, the money could not then be Mr. Ell's because he was then a bankrupt. Mr. Ell, before Mr. Conolly, admitted that he was in error in reference to this charge.

59. In any case, Mr. Bloxam, Ell could not have made use of this money as security for his appeal in bankruptcy?—He could not touch it. I could not pay it out to him, because it belonged to the Official Assignee.

60. With regard to paragraph 16?—I did not see any occasion to make mention of the action referred to in that paragraph, I did not see in what way it would benefit Mr. Ell. I do not know that Mr. Austin was paid any costs on it.

61. If so, the costs would have been procured from Acland and Barns?—I presume so, as the action was discontinued.

62. Is it true that you ever forwarded any incorrect or misleading records to the Public Petitions Committee?—No; not that I am aware of. I do not know what records are referred to.

63. Is it true that you unfairly used your position as taxing-master to reduce the bill of costs referred to in paragraph 18?—It is not true. The bill of costs referred to was reviewed by Mr. Ell before Judge Johnston; and his application was dismissed with £2 2s. costs on the 19th March, 1886. He set down another motion-paper for review on the 8th June, 1886. On the 11th June, 1886, there was no appearance, and it was struck out. [All papers in connection with taxation in libel action, office No. 144, put in and marked as "Exhibit 84."]

64. What do you know about the matter referred to in No. 19?—I know nothing at all about it. I have not seen it. The taxation proceeded.

65. Is the letter referred to in paragraph 20 true or correct?—It is perfectly correct.

66. Was there ever any money in the Court in the actions Ell v. Harper, or Ell v. Hanmer and Harper, belonging to Ell?—There was no money in the Court that Ell could touch; it stood to the credit of the cause.

67. And at this time had been paid out again to the Harpers?—Yes; on July 12th, 1886.

68. I presume Mr. Ell could not get any money under his judgment so long as the order setting the judgments off one against the other remained in force?—So I take it. In any case money paid into the credit of the cause could only be paid out by an order of the Court.

69. As to paragraph 21; are the facts contained in that letter true?—[Copy of letter put in and marked as "Exhibit 85."]  
—Yes; they are absolutely true.

70. You still say the statements contained in those two paragraphs in the statement of claim in action No. 1397 are false; that is, paragraphs 33 and 35?—As to paragraph 33, Yes. Letter of the 10th November is perfectly correct.

71. Just explain what took place in Court, when the order was made dismissing the action as against you?—On the 19th October, 1887, summonses were heard in which all the other defendants except myself applied for a stay of proceedings. The action had been set down for trial by Mr. Ell himself on the 4th of October, for trial at the sittings in October. All those summonses were allowed; so that there simply remained a statement of claim against myself set down for trial, and with no relief prayed for against myself, except that certain accounts in other actions were to be taken at Wellington. Mr. Martin then made some remarks with reference to the case against the Registrar; and the Judge said something to the effect that there was no case against the Registrar, and would not hear the evidence. A discussion then ensued, and I remember distinctly going down to Mr. Martin from my seat and telling him to let the case come on for trial. A discussion further went on, and there was some discussion as to costs. I told Mr. Martin that I would not consent to its going without costs. The matter then ended, and the order was taken out.

72. Did Mr. Justice Ward award costs?—Mr. Justice Ward awarded costs. It would have been absurd for costs of summons not to have been awarded, because when the case came on for trial it must have been dismissed with costs of the action. Practically it made no difference to me, because, even if I had to pay them, there was no getting them from Mr. Ell. Mr. Ell afterwards complained to the Justice Department, and they wrote down with reference to it. They also wrote to Mr. Justice Ward with reference to it; and Mr. Justice Ward so informed me, and gave me the draft of the letter he had sent, in which he stated that "the case against the Registrar was either struck out or dismissed with costs. No relief was prayed against him, and it would have been absurd to allow the case to go to trial;" and, further, "with the view of testing certain charges of misconduct against him as Registrar, respecting which an inquiry might have been directed by yourself had there been any foundation for them." [Letter referred to dated 6th June, 1888.]

73. I believe, in giving evidence before Mr. Conolly, you asked that Mr. Justice Ward should be examined on this point?—I did.

74. An opportunity was afforded Mr. Ell to call Mr. Justice Ward?—Yes, and Mr. Ell absolutely declined to call him.

75. Is Mr. Ell's statement correct, that the cases against the other defendants were dismissed by Mr. Justice Ward, not because they were frivolous and vexatious, but because they were brought under the wrong rules?—I remember nothing whatever about their being brought under the wrong rules. [Papers in action No. 1397 put in, and marked as "Exhibit 86."]

76. Mr. Eyes, who was Deputy Registrar at the time of all Ell's litigation, died in August, 1887?—Yes.

77. Has the Justice Department made any complaint as regards your conduct in Mr. Ell's affairs?—No, they have not made any complaint at any time.

78. Certain matters have from time to time been referred to you?—Yes, there has been a great deal of correspondence. In January, 1890, I was asked by the department to make remarks in reference to a report by Mr. Graham. In the letter I asked the department for particulars of the charges made to Mr. Graham, as it was an *ex parte* report, and for documents which had been before him. Correspondence ensued, which was ended, eventually, by a letter from the department, dated the 20th April, 1891, in which the Under-Secretary states: "I have the honour to

acknowledge receipt of your letter, number and date quoted in the margin, with reference to your request to be supplied with copies of certain documents in connection with the case of Mr. G. W. Ell. And, in reply, I am directed by the Minister of Justice to inform you that he is satisfied that Mr. Ell has no real cause of complaint, and that it is not intended to proceed any further in the matter. Under these circumstances it is scarcely worth while to furnish the copies asked for." [Copy of letter put in, and marked as "Exhibit 87."] I propose to put in an extract from the record-book, showing all documents filed in actions No. 30 and No. 353. [Documents put in and marked as "Exhibit 88," No. 30; and the list in connection with No. 353 marked as "Exhibit 89."] I propose to put in, *en masse*, the whole of the papers in actions Nos. 30 and 353. [In action No. 30, marked as "Exhibit 90." In action No. 353, papers marked as "Exhibit 91." Four of Judge Johnston's note-books put in and marked as "Exhibit 92." All bankruptcy papers in bankruptcy, No. 555, put in and marked as "Exhibit 93."]

79. *Mr. Lusk.*] Of course, you remember the adjournment of accounts in December, 1884?—I do not remember it specifically, except from my notes.

80. On that date, the 1st December, 1884, you made an entry on the Supreme Court records, on the conclusion of the taking of the accounts?—Yes, that would be entered up.

81. I suppose the entry there would be the correct entry of what took place at the time?—Yes, it would be the correct entry.

82. What is that entry?—"Case concluded and adjourned *sine die* for certificate." The entry is made by the Deputy-Registrar and signed by me.

83. Then, on the 1st December the whole matter was concluded, and you retired to consider the verdict?—Yes, unless we wanted to call them together again.

84. You remember at the taking of the accounts the question of the settled account?—Yes.

85. You state here, Mr. Bloxam, that "Mr. Austin applied to the Court for an order that the stock accounts were not to be disturbed"?—That is my impression; the papers will show what the motion was.

86. The papers were filed with you in the office of the Court?—Yes.

87. Did you or did you not know what was referred to the Court?—I understood that Mr. Austin wanted that the account which he then put in should be taken as the settled account and the basis upon which we were to start.

88. That is to say, the stock transactions?—Yes; the stock account, as put in by him, as the basis of the whole of the transactions.

89. You gave us a whole lot of instances, Mr. Bloxam, to show the reason you did not treat this as a settled account of all transactions. Is there a solitary instance in all that you have given us to show that Mr. Austin wanted that settled account to include all transactions in land prior to 1873?—I do not understand your question.

90. Do you know what Mr. Austin asked for in this summons concerning settled accounts ("Exhibit 7")?—I do not know without seeing it. My impression is as I stated it. I know he did not get what he wanted.

91. What Mr. Austin asks for in this summons is that the Court should declare this settlement in 1873 as a settlement of all stock accounts up to that date, and why the Registrar and Accountant in taking such stock accounts should not as to such stock accounts start from the said settlement of accounts. Is that what you understood Mr. Austin was asking for?—I understood he was asking for it as a basis of all accounts.

92. Do you know whether anything more than was asked for was argued before the Judge?—I do not remember what was argued before the Judge; but I know the Judge would not make the order in terms of that summons.

93. At any rate the Judge made his order on that summons?—Yes.

94. Do you know what the Judge's order made on that summons was?—The Judge's book will show.

95. Now, Mr. Bloxam, you have tried to-day to show in your evidence the reason you took no notice of this settled account was that it was not in terms of the order?—That is so.

96. Now, Mr. Bloxam, when did you first discover that point?—At the time.

97. On the 1st December you found that there was a settled account?—Yes; we found that there was a settled account referring to that stock account, but that it was incorrect. In other words it did not cover all transactions between the parties.

98. Not all stock transactions?—No, not all transactions.

99. That is what you say you meant when you used the word "incorrect"?—Yes.

100. Do you remember giving evidence before Mr. Conolly?—Yes, I remember giving evidence.

101. Did you give evidence on the 19th November, 1888?—Yes; I gave evidence then.

102. Why did you not explain the meaning of the word then to Mr. Conolly?—The evidence as printed was simply answers to questions given by Mr. Conolly. I feel perfectly sure it was never read over nor ever signed. Mr. Conolly had been in a difficulty when Mr. Ell retired from the Commission.

103. Do you want to say that this is not correct as taken down—that is, the evidence?—No; I do not say it is incorrect.

104. You say "Mr. Austin had applied on the 17th October for an order that the defendants should be bound by the settled account of June, 1873, and that in taking the accounts we should start from that date; but the Court would only grant the order whereby we were only to be so bound if we were satisfied as to such being a settled account. We then gave our finding that there had been a settled account as above, but that it was an incorrect one, and we informed Mr. Austin thereof at the time." Was that what you said?—I cannot tell you whether it is absolutely correct or not.



105. When Mr. Hargreaves said the same, at the same time you did, and made no reference to this objection to the order, you still say that he meant it?—I do not know what Mr. Hargreaves said.

106. He says, "To the best of my recollection a settlement had been made, but that that settlement was incorrect."—That referred to the stock account.

107. Now, Mr. Bloxam, you quoted what Mr. Austin said on the 16th October of taking of accounts. "Austin asked that we should accept £147 13s. as the commencement of all stock accounts, and we ruled that the accounts should be taken from June, 1870, as mentioned in the decree"—Very likely.

108. Speaking of that £250, as you say, you for a time did not think the £250 receipt on the deed could be got over?—That was my impression. As a matter of law we could not get over that—that it would have to be allowed. I afterwards gave way to Mr Hargreaves. I was satisfied that it had not been paid. Mr. Hargreaves would not give way in the matter at all. I do not remember it, but it was brought to my recollection that the matter was to be referred to the Court.

109. You say when the accounts were sent in on the 5th December they did not help you in any way, so you did not take any notice of them?—We found they did not help us.

110. There is a great similarity between your certificates and the accounts put in by the other side?—I do not know. I have not compared them.

111. Mr. Hargreaves has told us that, after the production of that deed and the evidence then given concerning it, that there was no further evidence given of the payment at any later meeting?—There were no further witnesses called. I went through the deeds.

112. You have denied, Mr. Bloxam, that you ever promised Mr. Ell the certificates?—Yes, I make it a habit of never promising anybody anything.

113. Now, Mr. Ell paid on the 23rd December, 1884, £11 6s.?—Yes.

114. Do you say that when Mr. Ell paid that money, he did not ask for those certificates and did not ask when they would be ready?—He might have asked in the office when they would be ready. He paid that amount in the office.

115. At any rate you say you did not promise the certificates at that time?—It is not likely that I should have promised it to him

116. Later on, on March 11th, Mr. Ell paid into Court £88 4s.?—Yes.

117. Prior to his paying that money into Court, did you tell him you were going to hand the certificates to Mr. Austin?—I do not know. I know that Mr. Austin claimed them.

118. You cannot say whether you told Mr. Ell you intended to hand those certificates to Mr. Austin when he paid that £88 4s.?—I should not have told him.

119. You would not have told him?—I should think not.

120. You have spoken about sending notice to Mr. Hoban. At that time there was no order taken out to substitute Mr. Lynch?—No.

121. Because the order would only be taken out after Mr. Austin's costs were paid. Then you knew Mr. Austin's costs had not been paid?—I did not know what arrangements had been done outside.

122. You say Mr. Austin applied to you for the certificates?—Mr. Austin applied for the certificates. Mr. Austin stood on his rights all along.

123. Did Mr. Austin not tell you then that he had not been paid his fees?—Very likely he did. I do not remember what he said. I only know he came as solicitor on the record.

124. At that very time Austin was summoning Ell for criminal libel, was he not?—I would know what was going on in the Supreme Court. If it was going on, I should probably have heard of it.

125. You sent no notice to Mr. Ell at all?—I sent no notice to Mr. Ell, but I sent a notice to Mr. Austin as he was the solicitor on the record.

126. You were speaking of a motion that came before the Court on 16th March, which confirmed you in your opinion?—Yes.

127. Was that in another action altogether?—Yes.

128. You also made a point yesterday, Mr. Bloxam, of a motion coming on on the 27th March, to vary or set aside certificates in action No. 353?—That was the occasion on which Lynch, Ell, and Austin all appeared.

129. Mr. Austin stood upon his rights as solicitor on the record?—Yes.

130. As a matter of fact there was an appearance of the plaintiff and also the plaintiff's solicitor?—They appeared there, but there was technically no appearance, and the Court must have held so or the case would have been heard. Mr. Austin objected to Mr. Lynch appearing.

131. Now we come to the orders. You say it is not correct, so far as you are aware, that you ever signed or issued incorrect orders?—No, I am not aware that I ever signed any.

132. You see those two orders, "Exhibits 25 and 26"; are those two orders correct orders?—As far as I know they are.

133. They purport to dismiss the motion to vary the order of the 5th August, do they not?—Yes.

134. They also purport to be made in pursuance of affidavits filed, one by Mr. Ell on the 29th August, and one by Mr. Martin on the 1st September. Now, Mr. Bloxam, did such a matter come before the Court on the 2nd September at all?—On the 2nd September there were several matters before the Court, and I know the matters got into a considerable state of confusion.

135. Will you tell me now whether that matter was before the Court on the 2nd September?—As far as I know it was.

136. It would be your duty to know before you issued an order?—Yes, it would be.

137. Now, Mr. Bloxam, on the 5th August an order was made that the time to hear the motion to vary the certificate was to be enlarged to the 2nd September on payment of the money, or lodg-

ing security in Court?—I do not remember specifically without looking to the books. That is he note.

138. Now, Mr. Bloxam, on the 14th August, Mr. Ell set down a motion to vary that order by striking out the part varying the security or paying money into Court?—On the 19th there was a motion of some sort to vary order of the 5th August; that was adjourned to the 26th, and on the 26th a motion to vary the order of the 5th August was discharged with £3 3s. costs.

139. Then, Mr. Bloxam, that motion to vary the order of the 5th August was finally disposed of on the 26th August?—Yes, apparently it was.

140. Was it or was it not?—That motion was.

141. Was there any other motion taken out to vary the order of the 5th of August, between that and the 2nd of September?—There was a notice of motion of some sort set down on the 28th.

142. Is not that notice of motion to vary certificate?—That notice of motion is to set aside certificate or report, on the ground of mistake.

143. Was not there one in each action?—Yes.

144. On the 9th of August there is an affidavit amongst the papers put in, and on the 1st September another affidavit—one by Mr. Ell, and another by Mr. Martin, on the 29th of August and 1st of September. In what matter were those affidavits made?—I cannot say. Mr. Ell's affidavit speaks for itself. Regarding Mr. Martin's affidavit it contradicts a statement in Mr. Ell's affidavit on the 2nd September.

145. Those affidavits could not have been filed in support of motion of the 26th August?—No.

146. On the 2nd of September, was there any motion of Mr. Ell's before the Court to vary the order of the 5th August?—No, there was not.

147. Order of the 26th August marked "Exhibit 23"—that is the order dismissing Mr. Ell's motion to vary the order of the 8th August, is it not?—Yes, it is.

148. That was taken out on what day?—It was taken out on the 2nd of September.

149. Looking at orders "Exhibits 23 and 25," could you say now whether those orders are correct orders or incorrect orders?—These orders tally with the entry in the minute-book on the 2nd September.

150. Are those orders incorrect orders?—Without going into the question with Mr. Dinwiddie and seeing all the papers which he drafted, and which he put in his orders, I cannot admit that they are incorrect. That is my signature to the orders. They would be read over in the office, and I should then sign them.

151. Then what time would Mr. Ell have to appeal to the Appeal Court on such an order as that?—Within thirty days.

152. Can you say whether he did appeal against those?—By the appeal papers put in he had copies of these orders before the Court of Appeal, and referred to them in his affidavit.

153. On the 19th October Mr. Ell took out another order, did he not? What we call correct orders of that date; "Exhibit 28," that purports to be the order or the motion of the 2nd September?—Yes, that is so.

154. Do you know whether he appealed on that?—I do not know what he appealed on. I never saw the Court of Appeal papers until they were opened here the other day.

155. The Judge's notes of the Court of Appeal are referring to the appeal against the order of the 5th August, are they not?—The notes speak for themselves.

156. What is motion in Court of Appeal papers No. 396?—Motion for leave to extend the time within which to appeal against the orders of the 2nd September. [Papers put in, and marked as "Exhibit 94."]

157. The orders taken out by Mr. Ell on the 19th October were too late for him to appeal on, if he wanted to?—Yes, unless the Court gave him special leave to do so.

158. Do you know, Mr. Bloxam, whether Mr. Ell went to the Court of Appeal again on these orders of the 2nd September in May 1886?—I do not know. The papers speak for themselves. [All Court of Appeal papers No. 412 put in, and marked as "Exhibit 95;" also Court of Appeal papers No. 413 put in, and marked as "Exhibit 96."]

159. Do you remember telegram marked as "Exhibit 32"?—Yes.

160. What is the date of it?—Dated 19th May, 1886.

161. Sent by you to the Chief Justice?—Yes, in reply to a telegram from the Chief Justice.

162. That was at the time Ell's appeals were before the Court?—I take it they were before the Court of Appeal that day.

163. You state there that the matter of that £250 stood over for further evidence?—Yes.

164. And that Mr. Harper brought forward that further evidence?—Yes.

165. Is that statement true? Answer me, Yes or no.—If I had known an inquiry seven years after had been going to take place with reference to the wording of it, I might have been more particular how it was worded. There is no doubt that I must have gone into the deeds at some time or another, and they were evidence. What was in my mind at the time I wrote this I cannot possibly recollect. The telegram was shown to Mr. Hargreaves before I sent it, because he was the accountant in the case, and he concurred in it. I see it is marked "Urgent," and I have no doubt it was written immediately on the receipt of the telegram from the Chief Justice, and, from one's recollection at the time, without reference to the papers.

166. Speaking of the attempts that have been made to show that Mr. Ell was in no hurry to take accounts after the Court of Appeal had set the judgment aside, is this correct?—The facts are simply as I have related. On the 28th day of June, Ell came to my office and asked for the appointment, and so on, as I have stated.

167. Mr. Jellicoe came the next day, and stated that Mr. Martin had the carriage of the order?—Yes; Mr. Jellicoe had come down to Christchurch, and his interview with me was in reference to the writ of sale; and then we had a conversation on the 29th with reference to the carriage of the order.

168. I think Mr. Martin did take out the appointment?—That is so.
169. That was for the 14th of July?—Yes.
170. Have you any recollection of the 14th of July? Do you remember whether Mr. Martin was in the Court on that day?—I recollect that Mr. Martin was somewhere about the Court.
171. Can you tell me, Mr. Bloxam, whether the day before that, on the 13th July, Mr. Weston had filed his application for Mr. Ell to be adjudicated a bankrupt?—Yes, there was a petition filed on the 13th of July.
172. To be heard on the 19th?—Yes, that was so. The summons was issued and made returnable on the 19th.
173. On the 28th of June, the papers had come back from the Court of Appeal with the certificate, had they not, with the letter?—Yes, I have a letter of the 26th June. [Letter put in, and marked as "Exhibit 97."]
174. That letter you received on the 28th June?—That letter I received on the 28th June.
175. That letter purported to cover all the papers sent up in these two actions?—Yes.
176. And you put a note on the letter of the receipt on that date, on the 28th June, the receipt of the letter?—That is so.
177. Now, Mr. Bloxam, did you receive all the papers on that day?—The exhibits did not come back.
178. What exhibits did not come back?—Apparently, the whole of the exhibits that were sent.
179. Can you tell me what they were?—They were exhibits in the list in action No. 30, produced on the taking of the accounts.
180. Were those words "Not returned" placed opposite exhibits, as appears in press-copy of your letter-book, put in by you on the 28th June—that is, on receipt of papers?—Yes.
181. Did you subsequently write for those exhibits to Wellington?—I do not think so.
182. Then they would still be in Wellington in the Court of Appeal?—There appears to be no such letter.
183. Then those papers will still be amongst the Court of Appeal papers?—No; they were sent down in another action, or at all events some of them were.
184. Give me your reason for saying that?—I put in Mr. Cooper's (Registrar, Court of Appeal) letter, marked "Exhibit 98;" also further letter from Mr. Cooper, on the 29th October, 1886, forwarding other papers in action No. 683, put in, and marked "Exhibit 99;" also receipt from Mr. Ell in action No. 683, put in, and marked as "Exhibit 100."
185. You have stated that the papers returned with that letter of 25th September are—or some of them at least—papers in actions No. 30. and No. 353—they purport to be papers returned in action No. 683?—Yes.
186. Will you turn up your schedule?—There was no schedule when they were sent up to Wellington. The reason I say they were returned was, in Mr. Justice Richmond's notes on the trial of that action, which I saw myself at Wellington, I found that Mr. Ell in his examination said "The account I received in 1880 was rendered before the Registrar at Christchurch. I produced account delivered by Messrs. Hammer and Harper, last item dated 21st May, 1885;" and in Wellington Mr. Ell, before the Committee of the House of Representatives, said that he had received back part of that exhibit. The exhibit was simply a single sheet of paper with the debit and credit account, as far as I can remember. I never saw the papers that were put in before the Committee of the House of Representatives; but I find in the list there is an account known as "Exhibit H."
187. You say you account for the return of "Exhibit H"?—Yes.
188. Do you account for the return of the other exhibits?—Except unless they were accounted for with the other exhibits in that receipt of Ell's.
189. And if they are not there, they will be still in the Court of Appeal?—I do not know where they will be.
190. On the 28th of July the second appointment came on, taken out on the 17th. Did not the certificate come back on the 28th June?—Yes.
191. On that 28th July do you remember calling upon Mr. Ell to produce his evidence on his objections?—I remember nothing but what is on my notes.
192. Do you remember Mr. Ell calling for your note-book?—I do not remember. I do not see how he could possibly call for my notes.
193. Do you remember Mr. Ell stating that he could not bring evidence in support of these items he objected to until the papers came back from the Court of Appeal?—No, I do not.
194. You state, Mr. Bloxam, that that meeting was adjourned to allow either parties to bring evidence. Does not that call to your memory that Mr. Ell called for further evidence?—No.
195. You do remember on that day an exhibit and account lent to you?—I take it that it was on that day.
196. That meeting was adjourned until the 4th April?—Yes.
197. On the 4th of August then there was another sitting?—Yes.
198. Do you remember Mr. Ell calling for your notes again of the evidence that had been taken?—I do not.
199. Can you distinctly say that adjournment on the 4th was not in any way caused by the non-return of the papers?—Not that I am aware of. There is nothing on my notes to show that. If it had been I think I should have made a note of it.
200. Now, these items that were objected to on this date were the same items that came before you on the previous taking of the account?—Yes.
201. And you had never referred any of them to the Judge then?—No.
202. On this occasion you take a note that you referred them to the Judge?—We were referring them to the Judge because we did not know the meaning of the Court of Appeal's certificate.

203. That meeting was adjourned, to come on again a week later—on the 11th?—Yes. It was formally adjourned so that the parties could go before the Judge as they were advised.

204. All this time, from the 13th July up to this 4th August, Mr. Weston's application for adjudication was in movement?—It was down.

205. And heard on the 19th?—Yes.

206. And Mr. Ell was adjudicated a bankrupt on the 6th August?—Yes, that is so.

207. Do you contradict Mr. Martin, Mr. Ell, and Mr. McHaffie, that these meetings were adjourned on account of the non-return of those papers from Wellington?—I have no recollection of their being adjourned on account of the papers not being returned from Wellington. On looking on my notes I do not see the slightest reference to that as a reason.

208. On the 28th an account was lent to you?—Yes, I take it that it was.

209. Will you give me that account?—I have not got it.

210. Did you not mark the objection taken on it?—I think I marked the objection on our own papers.

211. Do you hold anybody's receipt for the return of the exhibit?—It would be handed straight back.

212. Now, you have said that when you were taking these accounts on the 4th August, you did not know why the certificate had been sent back for review?—Just so, beyond anything contained in the certificate itself.

213. The Court of Appeal delivered that judgment in June?—Yes.

214. Your first appointment was on the 14th July?—Yes.

215. Did you take any steps to get a copy of the judgment of the Court of Appeal?—No; it was not my business to get it.

216. With regard to that taxation of costs that we say that false notice was produced, where Mr. Ell said he wished to make a note of it?—I have no recollection of it. There would be no occasion for me to make a note of it. I believe a telegram had been received from Wellington stating that the taxation was to proceed. It did proceed.

217. Referring to that action brought against yourself and others, you say you went down and spoke to Mr. Martin, and that then a discussion arose as to costs?—A discussion arose, but I do not know whether it was before or after I went and spoke to Mr. Martin.

218. Is there any note at all of any discussion in regard to costs?—No.

219. If there is a discussion as to costs, it is usual to have some note of it in the Judge's note-book?—In some cases.

220. As a matter of fact, there is no note of any costs being allowed in the note-book?—No, there is not.

221. I think His Honour Judge Ward afterwards stated that he had awarded costs?—Yes.

222. Do you know whether other people representing parties who stated that there was no order made for costs?—Mr. W. L. Rees stated that, as there was no order for costs made, as a matter of course the action would be dismissed, with costs of action.

FRIDAY, 2ND JUNE, 1893.

ANDREW ROBY BLOXAM: cross-examination continued.

223. *Mr. Lusk.*] You remember when the accounts were re-opened, in February, after the adjournment on the 1st of December?—Yes.

224. To whom did you send notice of this meeting?—I sent a notice to Mr. Austin and Mr. Martin.

225. On what dates in February?—On the 5th of February.

226. Of course you know that these accounts had been gone into by other people?—Yes.

227. They do bring in big credits?—They bring in all sorts of things that had nothing to do with these actions.

228. *Mr. Beswick.*] Attention was called to what was, apparently, a discrepancy between the Judge's note and the order as to settled accounts. Who took out that order?—Mr. Austin took out the order.

229. Did the Registrar of the Court of Appeal frequently send you down letters saying that he had returned you all the papers?—About this time several letters came down saying that documents were not returned as purporting to be sent.

JAMES McHAFFIE sworn and examined.

230. *Mr. Lusk.*] Mr. Slater has given evidence, and states that Mr. Ell told him that there was only a matter of about £50 between him and the Harpers. Who was acting as Mr. Ell's attorney at the time Mr. Slater was employed?—I was.

231. Who gave Mr. Slater instructions in the matter?—I gave Mr. Slater instructions in the matter.

232. Did Mr. Slater render you an account?—He did.

233. First of all, did you ever tell Mr. Slater that there was only a matter of £50 between Ell and Harper and Co.?—I never did.

234. On looking at an account rendered by Mr. Slater to Mr. McHaffie, there is an entry there of the 19th October, 1880, and of the 22nd, in which Mr. Slater was told that the balance due to Mr. Ell by Mr. Harper was over £2,000.—I did not tell him so.

235. On the 21st Mr. Slater wrote to Harpers for that amount?—Yes, he did.

236. Now, Mr. McHaffie, I want you to tell me in a few words who made any offer of £50 in this

matter?—Mr. Leonard Harper sent a message through Mr. Slater to me, stating that he would give me £50 to quash all proceedings.

237. Did you accept that?—I did not accept it.

238. I believe that Mr. Slater advanced Mr. Ell moneys out of his own pocket?—So he claims in his account.

239. And costs up to the amount of £52?—That is so.

240. You remember Mr. Slater withdrawing from acting in the estate. Did he withdraw because there was nothing in the matter?—He did not say so.

241. Why did you put in the account for £12,000 in the first instance?—Because I embodied in the account put in on behalf of Mr. Ell—I embodied all the items which Messrs. Harper and Co. claimed against Mr. Ell, as well as all the items which Mr. Ell claimed against Messrs. Harper and Co. So that we would compel them to prove them. [Mr. Slater's bill of costs put in, and marked as "Exhibit 101." All departmental papers in Mr. Ell's matter put in, and marked as "Exhibit 102;" put in by mutual consent.]

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