

1889.

NEW ZEALAND.

REPORT OF COMMISSIONER UPON CHARGES MADE BY G. W. ELL.

REPORT OF THE COMMISSIONER APPOINTED TO INQUIRE INTO COMPLAINTS AND CHARGES
MADE BY GEORGE WALDOCK ELL AGAINST THE OFFICIAL ASSIGNEE IN BANKRUPTCY FOR
THE DISTRICT OF CANTERBURY, AND THE REGISTRAR AT CHRISTCHURCH OF THE
SUPREME COURT OF NEW ZEALAND.

To His Excellency Sir WILLIAM FRANCIS DRUMMOND JERVOIS, Lieutenant-General in Her Majesty's Army, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Companion of the Most Honourable Order of the Bath, 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 21st August, 1888, and extended by a Commission dated the 18th September, 1888, I was appointed Commissioner for the purposes of inquiring into the truth or otherwise of the complaints and charges made by George Waldo Ell, of Christchurch, against Edward Circuit Latter, 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 and accounts of the said George Waldo Ell, and the actions brought by him against them and others.

I have the honour to report that I opened the said inquiry at Christchurch on the 3rd September, 1888, and continued it there on the 4th, 5th, and 6th September, and the 19th, 20th, 21st, and 22nd November, 1888.

At the first sitting Mr. Ell was present, and stated that his counsel, Mr. Day, of Gisborne, could not attend, being engaged in the Supreme Court at Gisborne, and therefore that he (Mr. Ell) would conduct his own case. Neither Mr. Bloxam nor Mr. Latter desired to have counsel. Each party was given permission to have the assistance of a friend to take notes.

Mr. Ell elected to proceed first with the charges against Mr. Bloxam, and stated that they were all contained in a letter to the Minister of Justice dated the 22nd March, 1888.

This letter consists of twenty-two paragraphs, as follows:—

"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)." There is no dispute about this. The order for taking the accounts is dated the 27th June, 1884, and is Exhibit B appended to the evidence.

"2. On the 11th day of July, 1884, the first meeting took place, and from time to time until 1st December, 1884, when the Registrar declared the case closed." The Registrar's minute, Exhibit C, says, "Case concluded."

"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, George Waldo Ell, showing a credit balance of £3,177 5s. 4d."

"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." At an early period in the inquiry Mr. Ell stated that he was having fresh accounts taken by an accountant in Wellington, and that he therefore did not propose to put in the evidence taken before the Registrar and Mr. Hargreaves, nor the accounts tendered by the respective parties on the 5th December, 1884, until later on. They never were offered by him in evidence, and, since I did not consider that I had to inquire into the accuracy of either set of accounts, I did not call for them. I pointed out to Mr. Ell several times, and he admitted, that his charge against the

Registrar was not merely that he had made mistakes, but that he had wilfully falsified the accounts.

"5. The certified accounts were promised by the Registrar by the 23rd December, upon payment of fees to Registrar, £11 5s., for forty-five hours at 5s. per hour. These fees I handed to Mr. Austin on 22nd December, 1884."

"6. Time after time I was promised the certificates by the Registrar and 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." Mr. Bloxam's evidence makes this quite clear. Mr. Hargreaves's fees were to be paid as well as the Registrar's before the certificates would be issued.

"7. On the 11th day of 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 day of February, 1885, withdrawn Mr. H. S. Austin's retainer, and had given him (the Registrar) written notice of same." If Mr. Ell had not withdrawn from the inquiry, as hereinafter mentioned, he would probably on cross-examination have admitted that an order had been made, but not drawn up, to substitute Mr. Lynch for Mr. Austin as Mr. Ell's solicitor on payment of Mr. Austin's costs, and that those costs had not been paid. And, in addition to this, Mr. Bloxam states that he gave notice to Mr. Hoban, solicitor, agent at Christchurch for Mr. Lynch, that the certificates would be handed to Mr. Austin, and that neither Mr. Lynch nor Mr. Hoban took any steps 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 the defendants on the 5th December, 1884, and by that means had wronged me in the sum of over £3,000." The order of Court said to have been ignored is that of the 29th October, 1884, Exhibit A, which states that if the Registrar and accountant are satisfied that there was a settled account, or what was so intended, between the parties, covering all transactions between 1870 and 1873, such settled accounts were not to be disturbed. Mr. Bloxam and Mr. Hargreaves both admit that there had been a settled account between the parties to June, 1873, but that it was incorrect according to the evidence. They therefore considered that under the terms of the order of the 29th October, 1884, they were justified in going behind that settled account, since they were to be satisfied. In this reading of the order it appears to me that they were wrong; but this error, if it was an error, was committed in perfect good faith and from no wrong motive. No evidence was given before me as to the alleged suppression of evidence, and Mr. Bloxam and Mr. Hargreaves both deny that they adopted either Mr. Ell's or Mr. Martin's accounts, but that, on the contrary, they considered every item, and came to the best conclusion that they could.

"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 correct.

"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." This charge is an exceedingly vague one. It appears by Mr. Ell's evidence that by some confusion he appealed against an order which he did not intend to appeal against. Exhibits E, F, I, and J show that one order was made on the 26th August, 1885, and three orders on the 2nd September, 1885. E and F, both made the 2nd September, are identical except as to the name of the defendant, being in different actions. I, made the same day, is in one of the actions to vary the certificates. Mr. Ell's statement that on the 2nd September there was no motion before the Court to vary the order of the 5th August, but that both motions were to set aside the certificates, is incorrect. The orders appear to agree with the notes of the late Mr. Justice Johnston, cited in Mr. Bloxam's evidence.

"11. In May, 1886, the Registrar sent a telegram to the Court of Appeal, Wellington, which is untrue, and tended to mislead their Honours presiding." This telegram is Exhibit G appended to the evidence. The alleged untrue statements are, that Mr. Bloxam called Mr. Ell's attention to the receipt, and that Mr. Harper brought further evidence that a sum of £250 had not been paid. This refers to an item of £250 for which a receipt had been given on the back of a mortgage given by Ell (Exhibit D). It appears probable that when this receipt was produced Mr. Bloxam may have said to Mr. Martin, "You cannot go behind this;" and Mr. Hargreaves's evidence is clear that Mr. Bloxam was in favour of giving Mr. Ell credit for the item. Its existence was unknown either to Mr. Ell or to his solicitor until it was produced, and there was and is no evidence that any money passed at the time; and subsequent investigation of the deeds satisfied Mr. Bloxam and Mr. Hargreaves that the £250 had not been paid. If this was an error, it was obviously an error made in good faith. The assertion that the telegram of the 19th May is untrue and misleading is apparently entirely unfounded.

"12. 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; and from the 9th July, 1886, until 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 order referred to was made by the Court of Appeal. The certificate appears as Exhibit H. From the reported judgment (4 N.Z.L.R., C.A., 141) it does not appear that the account was sent back because a settled account had been reopened, although that ground was pressed by Ell's counsel, but because the account to be taken should in the first instance have been brought in by the party accounting. There were several meetings for the purpose of taking the accounts, or in reference thereto, between the 14th July and 11th August, 1886. Mr. Ell alleges that the Registrar falsely asserted that certain papers had not arrived from Wellington; but this allegation is not supported by the facts, since some of the papers evidently did not come to hand until the 28th August. In the meantime, on the 6th August, 1886, Mr. Ell had been made a bankrupt, and he still remains

undischarged. Mr. Bloxam says that, practically, on account of Ell becoming bankrupt, and being still undischarged, the matter of retaking the accounts has not been proceeded with. This may be the explanation; but it is clear that Mr. Ell has not pressed on the matter, and I can only surmise that he does not wish the accounts to be taken by Mr. Bloxam and Mr. Hargreaves, since he imagines them to be hostile to him. The order of the Court of Appeal assumes that the accounts will be taken by the same parties.

"14. By these delays I was made again a bankrupt before I could get these wrongs adjusted under the Chief Justice's order of 5th June, 1886. On the 6th day of August, 1886, on T. S. Weston's petition, I was adjudicated a 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. It was untrue, and the Registrar knew it to be so; and his Honour Mr. Justice Johnston was deceived." It appears that in the case *Ell v. Harper and Hanmer*, in which there was a balance in plaintiff's favour of £2,120, the amount had been paid into Court to the credit of the cause. This amount, with some additions, had, after being once taken out by the defendants, been again paid in, after the sitting of the Court of Appeal, to the credit of the cause, and was in Court on the 8th July. Since, by Mr. Ell's evidence, his Honour the Judge was made aware that this money had been paid into Court on the 2nd July, and not paid out again until the 12th, it is hard to understand how the Judge can be said to have been deceived. Mr. Ell also omits the fact that the money had been paid into Court under a writ of sale, and that a motion to set aside that writ was successful. Mr. Bloxam was quite right in stating that it was not Ell's money, since he had no control over it.

"15. On 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 on 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 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." Mr. Ell repeated this statement on oath before me on the 3rd September, and said that he could prove it by documents; but he afterwards, on the 5th September, admitted that he was in error in swearing that the money came to Mr. Bloxam's hands on the 28th July, and that in fact it was not available until the 28th August. This complaint therefore amounts to nothing, since Mr. Ell became bankrupt on the 6th August, and could not have any claim to the money, which was afterwards paid to the Official Assignee under an order of Court.

"16. A false action was brought against me for over £1,300 by Ackland and Barnes, as agents for T. W. Delamain, through Harper and Co., in October, 1884, and was not discontinued until the 25th February, 1885; yet Mr. Bloxam has kept out of his report the fact, although he knew Austin was paid costs on same." No evidence was given on this head, and it did not appear to be a matter of which explanation was required. The report alluded to was, I believe, one made by the Registrar to the Public Petitions Committee of the House of Representatives.

"17. The records forwarded by the Registrar on the 8th December are incorrect and misleading to the Committee." The Committee referred to is the Public Petitions Committee of the House of Representatives. Mr. Ell complains that the report sent by the Registrar does not specify the receipt of £35 above referred to, nor the payment of £89 to Mr. Austin; also, that the records do not state any money paid in or out, and that one entry is incorrect. These are such obviously trivial matters that the Registrar was not called upon by me to answer them.

"18. In April, 1886, 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." This was a prosecution instituted by Mr. Austin against Mr. Ell for libel, in which the latter was acquitted, and became entitled to costs. Thereupon the bill of costs, which appears as Exhibit N, was put in with an affidavit of increase, Exhibit O. It is to be observed that the affidavit is sworn by Mr. Ell, not by any solicitor, and the bill of costs, although indorsed with the name of a firm of solicitors, was evidently not prepared by one, since it claims costs for three solicitors, and it is in Mr. Ell's handwriting. It appears to me that the Registrar was quite right in his taxation; but if he was wrong there was a remedy. Mr. Ell moved to review the taxation almost immediately; but his motion was dismissed with costs by Mr. Justice Johnston. Mr. Ell some months after set down another motion to the same effect, but did not appear to support it, 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, although served upon me at the instance of Mr. Austin." Mr. Ell gave no reason for treating this as a complaint against Mr. Bloxam. By his own evidence he proved that, although Mr. Bloxam made no note as requested, and probably would not know where to make such, he telegraphed to Mr. Justice Johnston, and proceeded, notwithstanding the notice, which was to stay proceedings, so that Mr. Ell got all that he wanted.

"20. Referring to letters, the Registrar to the Under-Secretary for Justice Department, 24th June, 1887, the money by judgment was then, and is now, standing in the Supreme Court to the credit of the cause *Ell v. Harper and another*." Mr. Ell put in Exhibit K, and took exception to the last paragraph, but failed to show to my satisfaction that he had any cause of complaint in the matter.

"21. 28th September, 1887, is untrue and misleading—his reference to paragraphs 33 and 35. It was he, the Registrar, who told the falsehood by the wrongs he did in the accounts." The date refers to another letter from Mr. Bloxam to the Under-Secretary, Justice Department, Exhibit L. Paragraphs 33 and 35 are the paragraphs so numbered in the statement of claim in an action brought by Ell against Leonard Harper, Thomas Shailer Weston, Andrew Roby Bloxam, Edward Circuit Latter, Francis Thomas Haskins, Humphrey Hanmer, George Harper, Henry Alan Scott, and Thomas Maude, and are as follows: "33. That during the taking of the accounts in the case of the present plaintiff and the defendant Leonard Harper, the defendant Andrew Roby Bloxam, as

such Registrar, and the accountant, William Henry Hargreaves, ignored and disobeyed the order of this honourable Court of the 29th day of October, 1884, aforesaid, and gave credit to the said Leonard Harper as against the plaintiff for very large amounts claimed by the said Leonard Harper during the years 1870, and 1871, and 1872, and a great part of the year 1873." "35. That, in thus disobeying the order of this honourable Court, the said defendant A. R. Bloxam acted by the advice and instigation of the defendant Leonard Harper, and induced the accountant, William Henry Hargreaves, also to disobey the order of this honourable Court." The matters in paragraph 33 have been already dealt with. The action was dismissed, as will presently be referred to. The charge of fraud and conspiracy contained in paragraph 35 is the most serious of any brought against Mr. Bloxam. Mr. Ell thought fit to repeat on oath that Mr. Bloxam acted by the advice and instigation of Mr. Leonard Harper, and induced Mr. Hargreaves to disobey the order of the Court. Mr. Ell was asked more than once by me how he proposed to prove these assertions, and said that the accounts which were being taken in Wellington would prove them. Upon it being pointed out to him that if those accounts should differ from those taken by Mr. Bloxam and Mr. Hargreaves, and even should be shown to my satisfaction to be right while the others were wrong, they would not be any evidence of undue influence or of any wrong-doing, he could not suggest any other way of proving the fraud and conspiracy charged. Having carefully examined Mr. Bloxam and Mr. Harper and Mr. Hargreaves on this matter, as will appear by the evidence appended hereto, I have no hesitation in reporting my opinion that the charges made in paragraph 35 of the statement of claim above mentioned, and repeated by Mr. Ell before me, are absolutely false, and never ought to have been made. It is worthy of remark that Mr. Hargreaves, although suggested by Mr. Harper as the accountant to take the accounts, was appointed by the Court with the full sanction of both parties, and no suggestion of his being an unfit person would seem to have been made until after the accounts were completed.

"22. 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 consent of Mr. Rees, to withdraw the case without costs. The Registrar chose the latter, as more agreeable to himself." The date again refers to a letter to the Under-Secretary for Justice, Exhibit M. The remainder of the complaint refers to the action above mentioned. This action was dismissed, with costs, against all the defendants except Mr. Bloxam, on motions made by them. A question then arose as to proceeding with the action against Mr. Bloxam, who had filed a statement of defence. According to Mr. Ell's evidence, the case was withdrawn by consent, without costs. According to that of Mr. Bloxam and Mr. Martin, it was withdrawn with the same costs as had been allowed to the other defendants, and the order was drawn up accordingly, Mr. Ell contends that the order was so drawn up wrongfully. The note of Mr. Justice Ward is, "Case struck out by consent," and is silent as to costs. I suggested to Mr. Ell that he should call Mr. Justice Ward at once (his Honour being then about to leave Christchurch for Hokitika) to clear up the point; but, after taking a day to consider this suggestion, Mr. Ell declined to call him as his witness. I should have called him afterwards, on resuming the inquiry, but he was absent at the Court of Appeal. On this charge it appears to me that the presumption is in favour of the order rightly representing the decision of the Court, and that the onus rested on Mr. Ell to prove the contrary by other testimony beyond his own; and this he not only did not do, but he deliberately and after consideration declined to call the Judge, whose evidence on the point would probably have been conclusive one way or the other. Mr. Martin's version of the proceedings appears very likely to be correct—namely, that the Judge made his note before the discussion as to costs took place, and did not add to it.

I have already mentioned that at an early period of the inquiry Mr. Ell stated that accounts were then being taken at Wellington by an accountant employed by him, and wished me to call the accountant—Mr. Brook—at the public expense. This I at the time refused to do, since in my opinion those accounts should have been unnecessary, and could prove nothing on the charges against Mr. Bloxam of improper conduct. He then asked that I should see those accounts before giving my final decision on the point. After having given his evidence, as taken down and appended to this report, Mr. Ell, towards the close of the third day, asked leave to postpone the rest of his case until those accounts arrived; and on the following morning (6th September) he produced a telegram from Mr. Brook, the accountant, stating that the accounts would be at Christchurch by the 14th September; and Mr. Ell then asked that I should adjourn until that time, and should then, after looking at the accounts, decide whether I would summon the accountant as a witness. He stated that he declined to go on with his case, either against Mr. Bloxam or Mr. Latter, until the accounts arrived. I replied that I had, since the adjournment from the previous day, considered Mr. Ell's application for an indefinite adjournment, and had decided to refuse it; and I pointed out to him the unfavourable position in which he placed himself by making such an application. I reminded him that about May, 1887, he petitioned the House of Representatives to inquire into his alleged grievances against Mr. Bloxam and Mr. Latter; that about October, 1887, he again petitioned the House to the same effect; that in March last he gave to the Minister of Justice full particulars of the charges which he intended to bring, and requested him to make an inquiry; and that about June last he again brought his case before the House of Representatives: and yet that in September, when an inquiry had been granted, he was not ready, and said that he must have this new evidence. I added that the necessity for this evidence only appeared to have occurred to him when he knew that a Commission had been granted; and that if he was not ready now he could not have been so when he three times brought his case before the House of Representatives, or when, six months before, he urged the Minister of Justice to institute an inquiry; and that no unprejudiced person could arrive at any other conclusion than that these repeated applications for an inquiry were not made *bonâ fide*, and that his object was not to have the matters inquired into, but merely to bring forward his own version of them. Mr. Ell still refusing to proceed with his case, the inquiry was adjourned *sine die*.

On my Commission being extended I wrote to Mr. Ell that, if he would state what the witnesses whom he had named would prove, I would consider the propriety of applying to the Colonial Secretary for authority to summon them at the public expense. The only exception that I made was as to certain lawyers that he wished to call to argue points of law. I refused to give him counsel at the public cost under the name of witnesses. I repeated this offer three times, but he persisted in refusing to give me any information, and in the end he told me that he would not appear any more in the inquiry, but should demand one on other terms.

On resuming the inquiry, after due notice to all the parties, Mr. Ell did not appear, but sent me the following statutory declaration:—"I, George Waldock Ell, of Christchurch, do solemnly and sincerely declare that I refuse to proceed under the Royal Commission granted to me [*sic*], for the following reasons: 1. That I am refused material evidence. 2. That the documents from the Courts of justice were refused me. 3. That I am refused the aid of counsel. 4. That this refusal is *bona fide*, and that I verily believe that justice could not be done in the absence of the above."

It would be difficult for a short document to contain more misstatements, and it fully bears out the opinion which I expressed to Mr. Ell previously, that he did not really wish for an inquiry. He has been refused no material evidence; every document from the Courts that he asked for has been produced; and he never asked for the aid of counsel, unless he admits that in asking that certain lawyers should be summoned as witnesses he intended to make use of them as counsel. To allow a party counsel at the public cost is not within a Commissioner's powers. He was told all along that he might have counsel at his own expense.

Mr. Ell's absence was, of course, inconvenient, since he could not be fully examined, and I had nothing before me to show what the witnesses named by him could prove if called. The only course open to me was to call Mr. Bloxam and certain witnesses as to whom he satisfied me that they were material. Their evidence has already been dealt with.

I then proceeded with the case against Mr. Latter, gleaned the charges as well as I could from a letter from Mr. Ell to the Minister of Justice, dated the 21st March, 1888, from a memorandum from Mr. Ell to the Minister of Justice, dated the 10th April, 1888, and from an affidavit sworn by Mr. Ell.

The charges in the said letter are as follows:—

"1. Notwithstanding that I petitioned to have my bankruptcy in the above-named petition [*i.e.*, petition of Harper and Co., 1st April, 1885] 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." The order of Court [Exhibit Q] shows that these costs were not disallowed, but were ordered to be paid by the petitioning creditors.

"2. After the adjudication was annulled, on the 3rd June, 1885, on the ground that it was brought for the purpose of stifling my action against the Harpers, not, from the 3rd June, 1885, until after September 20th, 1885, did I get him to relinquish his hold on my estate. 3. I many times applied for information to Mr. Latter, but was refused same. 4. After I was adjudicated bankrupt on the 6th of 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. 5. The Official Assignee admitted a claim for £5,138 of T. S. Weston, sole executor of Hyam Nathan, which was bad on the face of it, and not provable in bankruptcy. 6. He permitted one Haskins to alter his declaration of proof of debt nearly four months after adjudication, showing that his claim was £20 odd instead of £121 1s. 9d., as originally proved for. 7. He has allowed Mr. T. S. Weston, as trustee in Nathan's estate, to withhold my business books, although I have repeatedly applied for them, and asked to be allowed to inspect them." None of these charges require any comment. So far as they are material, they are fully disproved by the evidence of Mr. Latter and Mr. Eyes.

"8. He (Mr. Latter), on oath, on 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 search for the document, and returned, saying it was not there. The following morning I called and copied the document, which had been there all the while." The document in question is Exhibit R. Mr. Latter and his clerks were quite right in not recognising it as a statement of assets and liabilities. At the same time Mr. Ell may perhaps have thought that it was such.

"9. On the same day—21st or 29th March, 1887—the Official Assignee stated in Court, in answer to Mr. Holmes, that there was no value in the estate, and that he formed that estimate from a private conversation he had with Mr. Leonard Harper. This statement would naturally mislead his Honour Mr. Justice Johnston. In face of this, Mr. Latter was well aware 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, such sum being irrespective of the amount shown on my statement of assets and liabilities, filed by me on 15th September, 1886, and in October, 1886. That judgment was then and still is to the credit of the cause." Mr. Latter's evidence appears to me fully to answer this. He is corroborated by Mr. Harper as to the fact that they never had any conversation about Ell's affairs. He is still of opinion that there is no value in the estate; and, after fifteen months have elapsed since the bankruptcy, he surely ought to know.

"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." It is difficult to understand why this is brought as a charge against the Official Assignee. Nothing was done upon it, or could be done except by the creditors.

"11. That between the 6th August and the 13th November, 1886, the Official Assignee did, in spite of my protests to the *contra*, wrongfully 'accept proofs of debt amounting in the whole to £7,372 5s. 7d., whereas the correct amount of indebtedness was £1,401 12s. 1d., against about £3,000 of assets immediately recoverable, and about £3,000 of contingent assets, the former being more than sufficient to fully satisfy my debts in full." These figures are, of course, based upon Mr. Ell's own version of the state of accounts between him and Messrs. Harper and Weston. Mr. Ell never appealed against the admission of any of the proofs; and the amount stated in his letter as his indebtedness is less than that put in by him in his statement of assets and liabilities by £723. In the last paragraph of this letter Mr. Ell refers to six sections of the Bankruptcy Act as having been violated by the Official Assignee. No explanation is given by him, and a reference to the sections does not show any foundation for this charge, or any part of it.

The complaints in the memorandum of the 10th April, 1888, are as follows:—

"5. Mr. Latter is well aware that Mr. Stafford, in Wellington, in August, to their Honours said that he, for Mr. Weston, did not claim £5,138, but about £200, or any amount found due under the Act; and why or how Mr. Weston had made such a claim he did not know. But Mr. Latter is compelled to try and uphold this claim of Weston's because he has already stated in affidavit that he cannot contest it." As Mr. Latter states, he is not aware whether Mr. Stafford did or did not make the statement in question. Assuming that he did make it (and nothing of the kind appears in the report, *Ell v. Weston*, 5 N.Z.L.R., C.A. 120), it was not until the 26th April, 1887, nine months after the bankruptcy.

"6. Mr. Latter well knows Haskins's claim was paid in full, and the declaration of Haskins was kept out of my sight in a drawer by itself till 30th November, 1886, at 3.30 p.m., about, and was altered by Haskins before 10 a.m., 1st December, 1886." This is fully answered in Mr. Latter's evidence.

"8. I gave that document to Mr. Eyes, and on the following day explained to Mr. Latter the nature of the claim shown therein." This refers to the document mentioned above as purporting to be a second statement of assets and liabilities. Mr. Latter denies the alleged conversation, and it is obvious that if he had been told that this paper was a second statement of assets and liabilities he would have required that it should have been executed in proper form.

The charges in an affidavit sworn by Mr. Ell, 15th July, 1888, in addition to some already dealt with, are as follows:—

"11. That the Official Assignee did pay to H. S. Austin £175 on 27th June, 1885; £195 2s. 7d. on the 4th August, 1885. The said H. S. Austin also received £16 9s. on the 4th August, 1885, and the said H. S. Austin was my solicitor till 4th February, 1885. Acted for the Official Assignee in the above-mentioned obstructions. So that H. S. Austin had received up to August 4th £386 11s. 7d." Mr. Latter denies that any money was ever paid by him to Mr. Austin, and the orders of Court fully bear out his evidence.

"11. [There are two paragraphs in this affidavit numbered eleven.] That the said Official Assignee knew that the said H. S. Austin had been overpaid, because he, the said H. S. Austin, had filed his declaration of claim against me for costs, £361 0s. 9d., on the 7th April, 1885." Mr. Latter's evidence is that Austin's declaration in proof of debt was for £68 only. Whether Mr. Ell means the same thing by "declaration of claim against me for costs" is not quite clear. If it refers to another matter it is not shown how Mr. Latter had any knowledge of it.

On the conclusion of the inquiry, Mr. Bloxam and Mr. Latter requested me to make a note that they considered that they had been placed in a disadvantageous position through Mr. Ell having refused to appear to be cross-examined, and there being no power in the Commissioner to compel him to do so; since they should especially have wished to ask him in what way he had suffered detriment, and why he had not appealed to the Judge.

I have the honour to report that, in my opinion, the result of this inquiry may be stated as follows: (1.) That the Registrar and Mr. Hargreaves made a mistake in their reading of the order of the Supreme Court of the 29th October, 1884, and should not have gone behind the settled account to June, 1873; but that this mistake, if it was one, was made in good faith, and not under any wrong influence or from any improper motive. (2.) That all the other charges against Mr. Bloxam are either untrue or frivolous. (3.) That all the charges against Mr. Latter are either untrue or frivolous.

All this is respectfully presented to your Excellency.

Signed and sealed this 5th day of December, 1888.

(L.S.)

EDWD. T. CONOLLY.

MINUTES OF PROCEEDINGS.

MONDAY, 3RD SEPTEMBER, 1888.

COMMISSION opened and read. It was arranged that all evidence should be taken on oath. At Mr. Ell's request, Mr. McHaffie was allowed to be present, and take notes and assist Mr. Ell, it being ordered that such notes or any reports of proceedings be not published. Mr. Ell elected to proceed with his charges against Mr. Bloxam first. Mr. Ell sworn, and gave evidence.

Adjourned until to-morrow.

TUESDAY, 4TH SEPTEMBER, 1888.

MR. ELL continued his evidence. Mr. Ell applied to Commissioner to obtain authority of Colonial Secretary to summon Mr. Brook, of Wellington, accountant, as a witness. Application refused.

Mr. Ell stated that he had been promised by the Under-Secretary of Justice that any witnesses who were required should be brought at Government expense.

Adjourned until to-morrow.

WEDNESDAY, 5TH SEPTEMBER, 1888.

TELEGRAM from Commissioner to Under-Secretary of Justice and reply read, the reply denying any such promise as alleged. Mr. Ell continued his evidence. Mr. Ell applied for adjournment until he could bring witnesses. Required Mr. Jellicoe and Mr. Stafford, solicitors, of Wellington, and Mr. Denniston, solicitor, of Dunedin. The Commissioner refused to recommend the Colonial Secretary to authorise the bringing of either of those gentlemen as witnesses, they being really intended to be brought as advocates. Mr. Ell then applied for adjournment to produce accounts from Wellington. The Commissioner declined to give any answer at present. Mr. Ell to inquire when these accounts can be here.

Adjourned to to-morrow.

THURSDAY, 6TH SEPTEMBER, 1888.

MR. ELL applied for adjournment to the 14th instant, and that the Commissioner, after seeing the accounts, should decide as to applying for authority to summon Mr. Brook. Application refused. Mr. Ell then refused to proceed with his case.

Adjourned *sine die*.

MONDAY, 19TH NOVEMBER, 1888.

INSTRUMENT extending Commission read. Declaration received from Mr. Ell refusing to proceed with inquiry. Mr. A. R. Bloxam sworn, and gave evidence.

Adjourned to to-morrow.

TUESDAY, 20TH NOVEMBER, 1888.

MR. BLOXAM continued his evidence. Mr. W. H. Hargreaves sworn, and gave evidence. Mr. L. Harper sworn, and gave evidence.

Adjourned to to-morrow.

WEDNESDAY, 21ST NOVEMBER, 1888.

MR. E. C. LATTER sworn, and gave evidence. Mr. A. M. Eyes sworn, and gave evidence. Mr. E. C. Latter (recalled) gave evidence.

Adjourned to to-morrow.

THURSDAY, 22ND NOVEMBER, 1888.

INQUIRY declared closed. No order made as to costs.

MINUTES OF EVIDENCE.

MONDAY, 3RD SEPTEMBER, 1888.

GEORGE WALDOCK ELL examined on oath.

I AM a settler residing in Christchurch. My charges against the Registrar are contained in a letter to the Minister of Justice dated the 22nd March, 1888. Accounts were ordered by the Supreme Court at Christchurch to be taken in the cases of *Ell v. Harper* and another (No. 30), and *Ell v. Harper* (No. 353). [Order of Court, 29th October, 1884, read and put in—Exhibit A. Mr. Bloxam admits that this order applied to both actions.] Previous to this Mr. Hargreaves and the Registrar had been appointed to take accounts in these actions by order of Court made 27th June, 1884 [Exhibit B]. On the 11th July, 1884, the first meeting took place, and from time to time until the 1st December, 1884, when the Registrar declared the case to be closed. [Minutes of 1st December, 1884, read and put in—Exhibit C.] From 1st December up to February, 1885, I was repeatedly promised a certificate by Mr. Bloxam; but he did not furnish one. On the 23rd December Mr. Austin, my solicitor, paid £11 5s. Court fees for taking the accounts. I did not get the certificates until the 13th March. I went to the Registrar's chambers on the 11th March. Took with me £90 in cash. I asked Mr. Bloxam for the certificates. He answered that he could not give them to me because there was £88 4s. to pay for accountant's fees. I asked Mr. Bloxam whether it was fair that I should be asked to pay the whole sum, and whether it would not be fairer to divide it between the parties, or to make it costs in the cause. He said, "No; I have had bother enough with you, and I shall not hand you the certificates until that sum is paid." I then paid him the money and took a receipt. Just after I had paid it Mr. Austin came in. As soon as he came in Mr. Bloxam said to him, "Mr. Ell has called for the certificates, but as you are here I shall not give them to him, because you are the solicitor on the record." I then said to Mr. Bloxam, "You know very well that I have withdrawn Mr. Austin's retainer so long ago as the 4th February last, and that I gave you notice of that at the same time." Mr. Bloxam then spoke to Mr. Austin, and he to Mr. Bloxam: I did not hear what they said. Then Mr. Bloxam turned to me and said, "I cannot take any notice of your notice as to having changed your solicitor, and shall hand him the certificate because he is on the record." I then asked Mr. Bloxam to give me the figures as to how the accounts stood. He refused to give me the account but he gave me a slip of paper with the totals on it in *Ell v. Harper* and another, £2,120 16s. 10d. to my credit; and

in *Ell v. Harper*, £2,166 9s. 7d. to my debit. I told Mr. Bloxam at once that the accounts were wrong. He said, "You will see whether they are wrong when you see the certificates which Mr. Austin has got." The certificates were then in Mr. Austin's hands, having been handed him by Mr. Bloxam, I objecting as above mentioned. I then requested Mr. Bloxam to prepare me office-copies of the certificates, and also of his notes of evidence taken during the inquiry. I received the office-copy certificate two days later, 13th March, and office-copy of Registrar's notes on the 17th March. On examining them I found that the certificates did not refer to the order of the 29th October, and that that order had not been observed in taking the accounts; also that the certificates did not issue in accordance with the evidence taken. On the 5th December, 1884, I had rendered an account based on the evidence taken in the Registrar's notes, showing a credit balance to me of £3,177 5s. 4d. That account was made out by Mr. Austin, as my solicitor, and by Mr. Russell, an accountant, now a solicitor. An account was also supplied on the said 5th of December, 1884, by Mr. Martin, as solicitor for the defendants. Mr. Martin's figures have been very nearly copied in the certificate. [Receipt from Mr. Harper, £250, dated August or September, 1875, indorsed on mortgage No. 38,252 (Exhibit D).] On that one item I am charged £606 4s. 8d., notwithstanding that it had been paid off ten years before. On the 10th June, 1885, defendants Harper and another paid into Court to the credit of the cause £2,404 6s. 9d. 1st April, 1885, I had been made bankrupt, on petition of Harper and Co., on a matter apart from these two actions. [Order of Court, 2nd September, 1885, in *Ell v. Harper* and another, read and put in—Exhibit E.] This order is false, because the application to the Court on the 2nd September was to set aside both certificates on the ground of mistake. On the same day a motion was made by the other side to confirm the certificates. There was no motion before the Court to vary an order made 8th August. The two motions were to set aside the certificates. Both were dismissed, with leave to appeal. [Motion-paper called for, but not produced.] A similar order was served in *Ell v. Harper*, no such motion as referred to being before the Court on the 2nd September. [Exhibit F.] Orders on the two motions that were really made on the 2nd September were taken out by me, and I appealed against them. But before I took out these orders I had handed the two erroneous ones to Mr. Gibbons, who was then my solicitor, and he had prepared papers upon them. When I went to the Court of Appeal I found that I was appealing against orders which had never been made. The papers were set down for hearing. It being found that I was asking for a matter that I did not want—namely, to vary an order that had long previously been disposed of by obtaining an extension of time—the Court allowed me to set down my real ground of appeal for the sitting of the Court in May, 1886. My two appeals came before the Court in May, 1886. Mr. Bloxam was to have come to explain his certificates, but he sent a telegram, I suppose by arrangement between the counsel. I could get no explanation from Mr. Jellicoe, who was my counsel. [Telegram, 19th May, 1886, read and put in—Exhibit G.] This telegram is untrue in the following respects: (1.) When the deeds were put in as exhibits Mr. Bloxam did not call my attention to the receipt. I do not think that I was asked anything about it. Mr. Bloxam said to Mr. Martin, "You cannot go behind such documents as these." (2.) Mr. Harper brought no further evidence that the money was not paid. All the deeds referred to in the telegram were drawn by Hanmer and Harper. My appeals were not dismissed on the merits, but because I was too late. On the other appeal against judgment obtained by defendants on the 22nd September, 1885, on certificate as to No. 353, appeal was allowed, judgment set aside, and certificate of Registrar remitted to Registrar and accountant for review. [Exhibit H.] On return from Wellington I saw Mr. Bloxam. Appointment was made for the 14th July to take the accounts. Defendant's solicitor did not appear. Mr. Bloxam said meeting had lapsed. Another appointment was made for the 28th July. I attended at time appointed, 10.30 a.m. Mr. Bloxam asked me to point out the items in the account to which I objected. I did so. Mr. Bloxam said at that meeting that he could not go on, as the papers had not returned from Wellington. I lent Mr. Bloxam and Mr. Martin a copy of the first accounts rendered by Hanmer and Harper, in August, 1880. Meeting again adjourned to the 4th August. On the 4th August we met again. Accounts were partly gone into. Mr. Bloxam asked me to produce evidence as to the payment of the £250. I told him that the only evidence that I had was the accounts themselves and the evidence contained in his own notes. He then said that the onus was on me to get the documents back from Wellington, as they had not returned yet. The meeting was then adjourned to the 11th August. In the meantime—on the 6th August—I was again made bankrupt—this time on the petition of Mr. T. S. Weston. I afterwards ascertained that the papers from the Court of Appeal had been received by Mr. Bloxam on the 28th June. I ascertained this some time after I was made bankrupt. I certainly understood that none of the papers had returned from Wellington—not merely that the exhibits had not been returned. On the hearing of Mr. Weston's petition on the 6th August, Mr. Bloxam stated, in answer to Mr. Justice Johnston, that there was no money of mine in Court on the 8th July, 1886. On the 30th April order had been made for payment of £2,034 4s. 2d. out of Court to defendants. The defendants then took that money out. That was the whole sum then in Court. £2,404 had been paid in by consent on the 10th July, 1885. After judgment of Court of Appeal defendants did pay money back into Court. £2,279 18s. 11d. was paid in the 2nd July. Remained in Court until the 10th July. Paid out to Sheriff on the 12th July under order of Court. Debt to Weston was about £200, including costs. When before Mr. Justice Johnston on the 6th August I did contradict Mr. Bloxam. His Honour was made aware that this money had been paid in on the 2nd July, and paid out on the 12th. On the 28th July, 1886, Mr. Bloxam received £35 belonging to me. This was a balance out of money deposited by me as security for a change of venue in January, 1886. The cost was some £64, leaving a balance of £35, which came back from Wellington into Mr. Bloxam's hands at end of July. I know this from a bill of costs of Hanmer and Harper, which I will produce to-morrow. In August, 1886, the Registrar told me that I must find £20 to appeal against the bankruptcy. I had not the money. The Registrar did not tell me that he had any money of mine in hand. He

paid this £35 to the Official Assignee in November, 1886. I object to Mr. Bloxam's report to the Committee because it does not specify the receipt of £35, nor the payment of £89 to Austin. The records sent do not state any money paid in or paid out. The last entry as to action 1,397 is not correct.

TUESDAY, 4TH SEPTEMBER, 1888.

Mr. G. W. ELL continued his statement.

As to Mr. Bloxam's telegram to the Chief Justice of the 19th May, 1886, the £800 was not retained by me, but was taken into account. I cannot say whether I paid the £250 at the time. I have paid Messrs. Harper many large sums at various times. I have not the bill of costs which I referred to yesterday, and which I undertook to produce. The bill of costs which I have is a bill taxed in Wellington. The one taxed in Christchurch is in Mr. Bloxam's hands. Entry 14th July, 1886, in records, is incorrect, since it says "No appearance," when in fact I appeared, and was there for half an hour. This entry is in action 353. I put in copy of order that was really made on the 2nd September, 1885 [Exhibit I]. The application to vary the order of the 5th August was made on the 15th August, and disposed of by order of the 26th August, 1885. [Order put in—Exhibit J.] In April, 1886, a bill of costs, myself against Austin, was reduced by Mr. Bloxam from £80 to £15 15s. This was a prosecution by Mr. Austin against me for libel. I was acquitted. The case was tried in Christchurch. I paid Mr. Denniston £50 to come from Dunedin. My friends paid him £25. I did not pay any of the witnesses. I shall bring evidence that the taxation was wrong, and that Mr. Bloxam unfairly used his position in the matter. I do not think that the balance of £25 due to Mr. Denniston has been paid yet. As to charge 19, a day or two before the morning appointed for taxation Mr. Russell served a notice on me stating that an order had been made at Wellington staying taxation. The order was incorrectly cited. I showed the notice to Mr. Bloxam, and asked him to make a note of it, which he declined to do; but he did proceed to taxation, having received a telegram from Mr. Justice Johnston that taxation was to proceed. As to charge 20: In the early part of June, 1887 (8th June) I first petitioned the House. Inquiry was made by the Justice Department of Mr. Bloxam whether the sums paid by him to Mr. Austin in June, July, and August, 1885, out of funds belonging to me, included all the costs taxed by Mr. Austin against me, both as between party and party in *Ell v. Harper*, in April, and as between solicitor and client, in August. Mr. Bloxam replied 24th June. [Letter put in—Exhibit K.] I take exception to the last paragraph. I was adjudicated bankrupt the 1st April, 1885, on the petition of Harper and Co. I applied to annul the bankruptcy. The application was heard on the 5th May, before Mr. Justice Johnston. On the 3rd June judgment was given annulling the bankruptcy. Seven days after, £2,404 6s. 9d. was paid into Court by Harper and Harper to credit of the cause. In September, 1887, I brought an action against Harper and Co., Weston, Bloxam, Latter, and others. This action was dismissed against all the parties except Mr. Bloxam, on summonses, on the ground that I was an uncertificated bankrupt. Mr. Bloxam had filed a statement of defence. After the other matters were dismissed, Mr. Martin, solicitor for Mr. Bloxam, asked my solicitor, Mr. Rees, to withdraw the case against Mr. Bloxam also. Mr. Rees consented. Mr. Bloxam then said to Mr. Rees or to Mr. Martin that as the charges were of a serious character he thought that the case against him should be struck out with costs. Mr. Rees made answer that if Mr. Bloxam was not satisfied as to what had been arranged he had better stand his trial on the merits. Mr. Bloxam declined to do this, and the case was withdrawn by consent, without costs. An order was drawn up by Mr. Martin, and signed by Mr. Justice Ward on the same day. That order states that the action against Mr. Bloxam was dismissed with £2 18s. costs. This order was made the 19th October, 1887. On the 22nd September, 1887, Mr. Bloxam had written to the Justice Department, requesting that the Crown Solicitor should be employed to defend him and Mr. Latter. On the 26th September the Department asked for further particulars, since no reason had been shown for the interference of the Government. On the 28th September Mr. Bloxam wrote again to the Under-Secretary of the Justice Department. [Exhibit L.] The paragraphs 33 and 35 in the statement of claim, which Mr. Bloxam in his letter alleges to be absolutely false, I assert to be true. I say that Mr. Bloxam ignored and disobeyed the order of Court of the 29th October, 1884, and that he and Mr. Hargreaves gave credit to Leonard Harper as against me for very large amounts claimed by him during the years 1870, 1871, 1872, and 1873. I also say that it is true that in thus disobeying the order of the Court Mr. Bloxam acted by the advice and at the instigation of the defendant, Leonard Harper, and induced the accountant, Mr. Hargreaves, to disobey the order of the Court.

WEDNESDAY, 5TH SEPTEMBER, 1888.

G. W. ELL continues evidence.

I SHALL require the attendance of the following witnesses: J. T. Matson, auctioneer, Christchurch; A. Ayers, auctioneer, Christchurch; T. G. Russell, solicitor, Christchurch; H. S. Austin, solicitor, Christchurch; J. Holmes, solicitor, Christchurch; — Stafford, solicitor, Wellington; E. G. Jellicoe, solicitor, Wellington; J. E. Denniston, solicitor, Dunedin; — Day, solicitor, Gisborne; — Brook, accountant, Wellington. I have applied to the Colonial Treasurer for authority for witnesses to be brought here at Government expense. As to the £35, I produce bill of costs of Hammer and Harper, mentioned in my evidence given 3rd instant. I received this on the 15th July. By Mr. Bloxam's copy of records of the same action (No. 683) the papers were received from Wellington on the 28th August, 1886. I was in error in swearing that the £35 came to Mr. Bloxam's hands on the 28th July, 1886. It now appears that it was not available before the 28th August, 1886. In Mr. Bloxam's copy of records (action No. 353), date the 1st December, 1884, "Case conducted, and adjourned *sine die* for certificates:" in No. 30 there is no entry of that date. The two

actions, the same evidence was taken. Referring to Mr. Bloxam's telegram [Exhibit G], the exhibits were not returned to me. If they have been returned Mr. Bloxam should have a receipt, and should produce it. At the meeting on the 14th July I waited for half an hour, and asked Mr. Bloxam to make a note of it, so that I might claim costs. He refused to do so. At the meeting on the 28th July I also lent Mr. Bloxam and Mr. Martin a copy of certificate on No. 353; and I made my objections to certain items, of which Mr. Bloxam made a note. Mr. Bloxam retained the copy of the certificate, and also the account referred to. I have since repeatedly applied for them. [Mr. Bloxam was here called upon to produce his notes. He produced a document, which Mr. Ell, on perusal, declined to put in.] As to Mr. Bloxam's letter of the 10th November, 1887 [put in—Exhibit M], it is false in this way: that no costs were allowed to the Registrar. The orders of Court dismissed the action against the Registrar with costs. No such order should have been taken out. I never heard Mr. Justice Ward say that if the action was called on he should dismiss it at once. Mr. Bloxam might have had the case tried upon its merits. I paid to the Registrar, 11th March, 1885, £88 4s., as already stated. The Registrar also received £11 5s., 23rd December, 1884. My letter of 22nd March was forwarded to Mr. Bloxam.

THURSDAY, 6TH SEPTEMBER, 1888.

GEORGE WALDOCK ELL continued his statement.

I INSTRUCTED Messrs. Brook and Co. on the 13th August to prepare accounts. I decline to call Mr. Justice Ward as my witness. I produce a telegram from Messrs. Brook and Co. stating that the accounts can be here by the 14th instant. I decline to go on with the charges against the Registrar until these accounts are here. I decline to proceed with the charges against Mr. Latter in the meantime.

MONDAY, 19TH NOVEMBER, 1888.

ANDREW ROBY BLOXAM examined on oath.

I AM Registrar of the Supreme Court of New Zealand at Christchurch, and have been so about seven years, and previously Deputy-Registrar about two years. With reference to having handed the certificates to Mr. Austin, an order had been previously made, on the 24th February, 1885, that Mr. Lynch should be substituted for Mr. Austin as Mr. Ell's solicitor, on payment of Mr. Austin's costs. On the 20th February, 1885, notice had been sent to Mr. Austin and to Mr. Martin, as the solicitors for the respective parties, that the certificates were ready, and would be issued as soon as Mr. Hargreaves's fees were paid. On the 11th March the fees were paid into Court by Mr. Ell. On the same day I wrote to Mr. Hoban, solicitor, agent at Christchurch for Mr. Lynch, who lives at Timaru, that the certificates were ready, and would be handed to Mr. Austin, the solicitor on the record, who had requested me to do so unless Mr. Lynch took out the order, should he wish to do so. No order for change of solicitor had then been drawn up, and to the best of my belief none ever was drawn up making Mr. Lynch solicitor in the actions. A great part of the conversation narrated by Mr. Ell as having taken place on the 11th March is incorrect. When the £88 4s. was paid the certificates were not signed, and were not handed to Mr. Austin until the 12th, nor were they in Mr. Austin's hands on the 11th, nor did I on that day give Mr. Ell a note of the amounts. I admit that Mr. Ell claimed to have them given to him. Neither Mr. Lynch nor Mr. Hoban attended at any time on the matter. On taking the accounts Mr. Hargreaves and I found that there had been a settled account between the parties to June, 1873, but that it was incorrect. We found this on the 1st December, 1884, from all the evidence that had been given on the matter. 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 [Exhibit A] 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—namely, on the 1st December. We did not adopt either Mr. Ell's or the defendant's accounts. We went through all the accounts that were tendered, and arrived at the balances upon the evidence as nearly as we could. There was discrepancy of evidence on some items. The certificates were approved by the Judge on the 20th March, 1885. Mr. Austin appeared, and was heard on behalf of Mr. Ell, and took no objection to them. He did not oppose Mr. Martin's motion for approval of certificate in the action in which balance was in favour of Mr. Harper. Several motions to set aside these certificates have been made, but none have been granted. The Court of Appeal sent one of the certificates—the one in which Mr. Ell is a debtor—for review. This matter is still in abeyance because Mr. Ell has not proceeded with it, practically on account of his becoming bankrupt in August, 1886. He has not as yet got his discharge. With respect to the £250 secured by mortgage, for which receipt was given, August, 1875, the first conveyance was a conveyance, Harper to Ell, 20th March, 1873, for £250. The next day Ell gave mortgage to Harper for the same amount, for which the receipt was given 6th September, 1875. On the next day, 7th September, 1875, application was made to bring the land under the Land Transfer Act. The £250 for which the receipt was given does not appear to Ell's credit in the accounts, and we were satisfied that it had not been paid. The £2,404 6s. 9d. paid into Court to the credit of the cause was so paid in under order of Court of the 1st May, 1885. Ell was at that time a bankrupt. Harper subsequently obtained an order to set off against this amount the balance due from Ell in the other action. Before, however, this was done, Mr. Austin had obtained orders for payment of his costs out of the £2,404. The order to set off judgment in one action against the other was not made until the 8th March, 1886; and on the 30th April, 1886, Mr. Martin obtained an order for the amount remaining, £2,034 4s. 2d., to be paid out of Court to Mr. Harper or his solicitor. The same amount, with interest, was again paid into Court the 2nd July, 1886, under writ of sale taken out by Ell. It

was paid into Court by the Sheriff. On the 9th July Harper obtained an order setting aside the writ of sale, and thereupon the money was repaid to the Sheriff on the 12th July. The orders of Court made on the 2nd September [Exhibits E, F, and I] are all correct. I do not consider myself responsible if Mr. Ell made a confusion of them. 8th January, 1886, Ell paid into Court under an order of Court £100 as security for certain costs. The costs were taxed in Wellington, but the money was always here. £64 out of this was paid to Harper and Co. the 7th September, 1886, on a bill of costs taxed in Wellington. The balance, £35, was paid to the Official Assignee the 26th October under order made the 22nd October. Mr. Ell was adjudged bankrupt the 6th August, a month before he could have touched the money. At the time that he wanted to appeal against his bankruptcy I had no money of his in hand. I remember Mr. Justice Johnston asking me on the hearing of Ell's petition, 6th August, 1886, whether there was any money of Ell's in Court. I do not remember that the date 8th July was mentioned. There was no money belonging to Ell in Court on that date. It must have referred to the £2,200 paid into Court by the Sheriff. With regard to the bill of costs for £86 2s. 10d. taxed by me at £15 19s., the bill of costs is headed "Mr. Lynch's costs," and "Mr. Denniston's costs," and "Mr. Jellicoe's costs," and is indorsed "Jellicoe and Menteath, solicitors, Wellington." Neither Mr. Lynch, nor Mr. Jellicoe, nor Mr. Menteath appeared on the trial or at taxation. Mr. Denniston conducted the case for the defence in the Supreme Court, and Mr. Ell personally attended the taxation, and I believe that the bill of costs is in his handwriting. On taxation, Mr. Austin objected that all the costs called "Mr. Lynch's costs" should be disallowed without production of Mr. Lynch's bill or proof that Mr. Lynch had done the work. Mr. Ell contended that they should be allowed on the ground that he (Mr. Ell) paid Mr. Lynch some money, and Mr. Lynch said that he would make no further charge, and had never rendered an account, and that Mr. Hammersley (who was then at Timaru practising as a solicitor) drew the bill of costs. I ruled that, as Mr. Lynch's bill was not produced, and these costs were not specifically mentioned in the affidavit of increase, they must be disallowed. As to "Mr. Denniston's costs," as solicitor, Mr. Austin objected that the work had not been done, and Mr. Ell admitted it. I therefore disallowed them, and also the costs of witnesses, since none of them had been paid, and reduced his fee as counsel from £50 to £15 15s., which would have been a fair amount if he had been resident at Christchurch. "Mr. Jellicoe's costs" were reduced to 4s., being the correct allowance on the reduced bill. The date of taxation was the 1st March, 1886. On the 15th March Mr. Ell set down a motion to review my taxation. On the 19th March it was dismissed by Mr. Justice Johnston, with £2 2s. costs. On the 3rd June, 1886, he again set down a notice of motion to the same effect, with an affidavit in support. There was no appearance on this motion, and it was struck out. [Bill of costs, Exhibit N; affidavit of increase, Exhibit O.] Referring to paragraph 35 of the statement of claim in the action *Ell v. myself and others*, No. 1,397, I do not admit that I did disobey the order of the Court, as I have already explained. I have never spoken to Mr. Harper on the question of the accounts or the certificates, excepting when he was a witness, when Mr. Ell was always present or represented by his counsel, Mr. Austin. In arriving at the conclusion that I and Mr. Hargreaves did as to the accounts between the parties, I did not in any way act by the advice or at the instigation of Mr. Leonard Harper, nor did I in any way induce or attempt to induce Mr. Hargreaves to disobey the order of Court or to favour Mr. Harper or Messrs. Harper and Hammer in any way.

TUESDAY, 20TH NOVEMBER, 1888.

A. R. BLOXAM continues evidence.

As to the action brought against me and others in September, 1887, I filed a statement of defence, and the plaintiff Ell set down the case for trial at the sittings in October. Shortly after the action had been dismissed against all the other defendants the case against me would have been heard. After the action had been dismissed against the other defendants Mr. Martin made some remark such as, "How about the case against the Registrar?" There was some conversation thereon between the Judge, and Mr. Rees (Ell's solicitor), and Mr. Martin (my solicitor). The Judge said that he would not hear the case, since no action would lie against the Registrar, or to that effect. Mr. Rees suggested that the case should be withdrawn. A discussion arose between the counsel as to costs. I told Mr. Martin, in Mr. Rees's hearing, that I would not agree to its being withdrawn without costs. I understood the case to be withdrawn with the same costs as had been allowed in the other cases. Mr. Justice Ward's note is, "Case struck out by consent." The formal order was drawn up by Mr. Martin, and signed by the Judge, dated the 19th October, 1887 [Exhibit P]. I certainly should not have consented to the case being withdrawn without costs, because if the action had been called on and dismissed or plaintiff nonsuited, as intimated by the Judge, I should have recovered costs of action according to the scale, and in that case Mr. Martin's costs would have been larger. In any case it would have been impossible to recover any costs against Mr. Ell. I wish that Mr. Justice Ward should be examined as to the allowance of costs being part of the order. It is not correct, as sworn by Mr. Ell, that the accounts and evidence which had been before the Court of Appeal were returned by the 28th June. Some papers came back at that date, but not the accounts and evidence, which did not come back till 27th September. In the late Mr. Justice Johnston's note-book, 5th August, 1885, there is an entry, "Official Assignee, *Ell v. Harper*. To vary certificate S.O." The next entry is, "Official Assignee, *Ell v. L. Harper*. Hammersley. Time enlarged to 30th September." Argument follows. Then there is an entry, "Time extended to 2nd September to hear motion to vary certificate, on terms payment into Court of amount of certificate and costs or security therefor to satisfaction of Registrar within fourteen days." Next entry is, "Official Assignee of *Ell v. Harper*. Motion for judgment for defendant to stand over until after 2nd September." Next entry is, "Official Assignee of *Ell v. Harper*. Motion to vary certificate. Austin, for Official Assignee, withdrew. By consent, in both actions name of Official Assignee withdrawn and name of Ell substituted. Rule to

be drawn up after rule for enlarging time to vary certificate. In both cases, by consent, Austin's name removed from record and Hammersley's put on, as solicitor, before rule." In the same book, under date the 12th August, there is an entry, "Ell v. Harper. Ell in person, Martin for defendant. Two motions same in two actions. Ell moved that certificates in both actions may be varied or set aside on the ground of fraud." Argument follows. Then another entry, "I refuse to grant the motions, with £3 3s. costs in each case." On the 26th August, in the same book, there is an entry, "Ell v. Harper. Ell in person, Martin for defendant. Ell moved to vary order of 5th August by striking out part referring to finding security or paying money into [*sic*]. Summons discharged, with costs £3 3s." On the 2nd September, in the same book, there are entries, "Ell v. Harper. Martin moved for judgment. Ell read affidavit. Martin read affidavit. Order of 5th August for time to 2nd September on terms. Terms not complied with. Judgment order as prayed." "Ell v. Harper. Action No. 30. Ell wished postponement. Martin refused to consent to adjourn. Ell motion to vary or set aside certificate." Argument thereon. "Motion dismissed, with costs £3 3s. Leave to appeal if appeal lies." "Same v. same, No. 353. Ell moved similar case. Motion dismissed, with £3 3s. costs."

WILLIAM HENRY HARGREAVES sworn and examined.

I am a merchant and accountant, residing at Christchurch. At the end of 1884 I was appointed by the Supreme Court to take accounts in the action of Ell v. Harper and Ell v. Harper and Hanmer. The Registrar and I took evidence on each item except when admitted on both sides. I remember a question arising as to settled accounts. To the best of my recollection, we found that a settlement had been made, but that that settlement was incorrect. Mr. Bloxam did not in any way attempt to influence me in arriving at a decision upon any item. We consulted together, but in every instance I acted upon my own judgment, and fairly and without bias. Mr. Harper never to my knowledge interfered except as a witness. The case was one of exceptional difficulty, since we had to wade our way through the papers that were presented to us. If I had the same duty to perform again, with the same evidence and the same papers, I should come to the same conclusion. There was an item of £250 on a land-transfer transaction claimed by Mr. Ell and disallowed by us. We had all the deeds before us. Until the deeds were produced it was evidently unknown either to Ell or his solicitor that they could claim this £250. There was not a tittle of evidence that any money had passed when the receipt was given. The existence of any such receipt was quite a surprise to Ell. Mr. Austin claimed credit for it, but we saw by the subsequent deeds that it had only been given with a view to bringing the land under the Land Transfer Act, which had been done immediately, and the same land was included in a subsequent mortgage from Ell to Harper. Mr. Bloxam at the time thought that there was no getting over the legal receipt, and that the amount should go to the credit of Ell, and urged that it should do so. I, in opposition, 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. We ultimately determined that the amount should not be placed to the credit of Ell, leaving it to the parties to appeal to the Court if they should think fit. Mr. Ell had no properly-kept books, and was mainly dependent upon accounts kept by Messrs. Harper. Mr. Bloxam was the one who called the attention of the parties to the receipt for £250. Ell's solicitor (Mr. Austin) was the first to endeavour to go behind the settled account. Afterwards he wished to vacate the position. During the whole of the inquiry Mr. Bloxam showed no leaning against Mr. Ell, or in any way led me to imagine that he (Mr. Bloxam) was acting under the advice or instigation of Mr. Harper. On the contrary, he acted, in my opinion, in the most strictly impartial manner.

JAMES CROSBY MARTIN sworn and examined.

I am a solicitor, practising at Christchurch. Remember an action, Ell v. Bloxam and others. I was solicitor for Mr. Bloxam and Mr. Latter in that action. I was present when action against all the defendants except Mr. Bloxam was dismissed with costs to each defendant. All the defendants except Mr. Bloxam took out summonses to dismiss the action on the ground that the statement of claim was bad on the face of it, and an abuse of the process of the Court. I did not do so in Mr. Bloxam's case, considering that grave charges against an officer of the Court should be proved or disproved in an action. In his case I filed a statement of defence. The action was entered for hearing by the plaintiff as against the Registrar. Before the day on which the case would have been heard, but after it had been entered for trial, the summonses issued by the other defendants came on for hearing. Mr. Rees appeared for Ell, and the summonses were disposed of practically as asked for. Just as they were disposed of I said to Mr. Rees, "How about the Registrar?" The result of conversation with him was that I mentioned the matter to the Judge. The Judge said that it was nonsense going on with the action against the Registrar, because on the face of the pleadings there was no case. This was said openly in Court. He also said, "I shall strike the action out of the list of cases for trial." I said that it would be hanging over the Registrar's head, and that I wished it to be disposed of. Then the Judge said that the action would be dismissed. Mr. Rees consented that it should be so. I asked for costs, and the Judge allowed them. I do not think that Mr. Rees made any objection, except that there was some discussion as to the amount. The Judge's note was made when he said that he should strike out the case, and before the matter was disposed of. The order was drawn up in my office. The amount of costs therein stated, £2 18s., was the amount ordered by the Court—namely, £2 2s. and costs out of pocket. There can be no doubt but that if the case had come on for trial the plaintiff would have been nonsuited or the action would have been dismissed, in which case the costs would have been very much larger. I remember Mr. Ell, at one of the meetings in July, 1886, referring to an exhibit, statement of accounts, which had been marked H. It was not forthcoming at this meeting. I stated that I would not object to a copy being used, and a copy was used which was produced by

Mr. Ell, and a copy of that copy was given to me. The want of the original did not delay the proceedings five minutes. Mr. Bloxam never signed or issued any false order in which Mr. Ell is concerned, so far as I know. I never used any orders signed or issued by Mr. Bloxam which were false, to my knowledge. I attended the taking of the evidence and the accounts in 1884–85 as solicitor for Mr. Harper and for Hammer and Harper. I was there throughout. The evidence was fairly and impartially taken by Mr. Bloxam and Mr. Hargreaves.

LEONARD HARPER sworn and examined.

I am a solicitor, practising at Christchurch. I remember accounts and evidence being taken at the end of 1884 and beginning of 1885 in actions brought by Mr. Ell against me and against me and Mr. Hammer. Mr. Bloxam and Mr. Hargreaves took the evidence. I gave evidence as a witness. I was represented by Mr. Martin as my counsel. I took no part except as a witness. I never spoke to either Mr. Bloxam or Mr. Hargreaves about the matter. Never gave any advice to either of them. Never had the slightest conversation about it with them. In going behind the settled account Mr. Bloxam did not act by my advice or instigation. I never had any conversation with Mr. Latter about Ell's affairs.

WEDNESDAY, 21ST NOVEMBER, 1888.

EDWARD CIRCUIT LATTER sworn and examined.

I AM Official Assignee in Bankruptcy for the Canterbury District, and have been so since "The Bankruptcy Act, 1883," was brought into force, on the 1st January, 1884. I have seen the charges made against me by Mr. Ell in a letter from him to the Minister of Justice dated the 21st March, 1888. To paragraph 1, I say that Mr. Austin was conducting the case for Ell at the time of his bankruptcy, and undertook to continue it without charge to the estate unless he succeeded. The costs for which Mr. Austin applied were not disallowed, but were ordered to be paid by the petitioning creditor. I put in order of Court [Exhibit Q]. I cannot understand paragraph 2. There was no estate in my hands. Ell never made any statement of assets and liabilities, as required by the Act. As to paragraph 3, I never refused any application by Ell for information except once, in November, 1887, when he wanted again to go through the papers in the bankruptcy which had been annulled. This is also referred to in paragraph 4. I never told him that I had no records in the business. I told him that I had no statement from him. He had access on many occasions to the papers, and made copies, to my knowledge, of such as he thought fit to copy. I do not understand the allegation as to Mr. Austin extorting £150 from Mr. Ell. I know nothing about it. The sole asset in the bankruptcy on Weston's petition was an item of £35 5s. 8d. lying in the Supreme Court. As to paragraph 5, I admitted the proof of debt referred to. Mr. Ell never appealed to the Court against the acceptance of the proof, as he might have done under section 7, subsection (3), of the Bankruptcy Act. As to paragraph 6, I objected to Mr. Haskins's proof, and allowed him to alter it as alleged. Four months is the time within which a proof may be altered. As to paragraph 7, I applied to Mr. Weston for the books, and he produced to me an agreement showing that they had passed to Mr. Nathan. The agreement was between Ell and Nathan, before Nathan's death. I believe that I could not compel Mr. Weston, as Nathan's executor, to deliver them to me. As to paragraph 8, I did, I believe, make oath as stated, and Mr. Fisher, my clerk, was sent to the office to search, and returned saying that no second statement of assets and liabilities had been lodged. On the following day Mr. Ell produced from among the papers that which he called a second statement, dated the 5th October, 1886. I do not admit that this document is a second statement of assets and liabilities, since any such must be verified by a declaration, and if accepted as such statement the date of its receipt at the office should have been indorsed upon it. [Exhibit R.] As to paragraph 9, in my examination on the 21st March, 1887, I did state that I believed that there was no value in the estate. I certainly never said that I formed that opinion from a private conversation with Mr. Leonard Harper, or anything to that effect. I never had any conversation with Mr. Leonard Harper as to Mr. Ell's affairs. With respect to the £2,404 or £2,600 mentioned, the money referred to had been paid out of the Supreme Court, under an order of that Court, before the creditor's petition was filed, and while in Court it would not have been an available asset in bankruptcy, since it had been set off against a judgment by Harper against Ell, and there were also charging orders against it. As to paragraph 10, it is possible that in April, 1885, while Ell was bankrupt on petition of Harper and Co., the question of assigning Ell's actions against Harper, and against Harper and Hammer, may have been mentioned, but I have no recollection of it, and nothing of the kind could have been done except in pursuance of a resolution of creditors. As to paragraph 11, I did admit proofs of debt amounting to £7,372 5s. 7d., which I believed to be legally due. Mr. Ell never appealed to the Court against the acceptance of any of the proofs. In the case of the debt to Holmes and Loughrey, £169 15s. 8d., Mr. Ell states that the declaration was too late, and therefore that the debt was not provable. This is a mistake. The adjudication was on the 6th August and the proof was given in on the 13th November, being within the time by the Amendment Act of 1885. Mr. Ell makes the true amount of his indebtedness £1,401 12s. 1d., as follows: T. S. Weston, £26 0s. 1d.; Leonard Harper, Esq., £12 12s.; Harper and Co., £1,200; Hammer and Harper, £163: total, £1,401 12s. 1d. Whereas in his statement of assets and liabilities, as filed and declared to, he shows and admits liabilities to the amount of £2,124, and assets £2,604; the liabilities being stated as follows: Harper and Co., £1,800; T. S. Weston, £215; F. T. Haskins, £9; H. E. Nathan's estate (T. S. Weston, executor), £100: total, £2,124. There was no sum of £3,000, or any other sum by way of assets immediately recoverable, and if there had been any value in his actions he had assigned them to his son in June, 1886. The assignment was dated the 10th June, 1886. It was afterwards upset on proceedings taken by me at the request of the creditors; but this was not done until the 26th July, 1887. I fully believe that there is no value in the estate. As to

the last paragraph in Mr. Ell's letter, I never sent any affidavit to Mr. Haselden. I sent a statement in answer to Mr. Ell's charges. I have never treated Mr. Ell in any way differently from other bankrupts, and to the best of my belief he has been treated not only with justice, but the greatest latitude has been allowed him. With respect to the sections of the Act cited in the said letter, I am not aware that I have violated any of them, nor, so far as I know, have I allowed any other person to infringe them. The letter does not state in what respect I have violated them. With respect to the memorandum to the Minister of Justice from Mr. Ell, of the 10th April, 1888, paragraph 5, I am not aware what Mr. Stafford may or may not have said as to Mr. Weston's claim. That claim was made in the ordinary form, with statutory declaration by him that the bankrupt was indebted in the amount named. As to paragraph 6, I do not know that Haskins's claim was paid in full. I held his proof of debt and declaration to the contrary. I know nothing of it being kept out of Ell's sight: he might have seen it at any time. The Court of Appeal held that payment into the Resident Magistrate's Court was not payment to Haskins, although Mr. Justice Johnston had held differently. As to paragraph 8, I say that until March, 1887, I was not aware of the existence of the document referred to, and that the conversation with Mr. Ell referred to by him (presumably about the 6th October, 1886) never took place. The amounts alleged to have been paid by me to Mr. Austin, by paragraph 11 of an affidavit sworn by Mr. Ell on the 15th June, 1888, were not paid by me, but were obtained by him out of the Supreme Court, by orders of that Court. I know nothing of the £16 9s. mentioned, but it may be the amount due to him from the petitioning creditor under order of Court, since it is the same amount. No money was ever paid by me to Mr. Austin. Mr. Austin's claim was only for a balance of £68 0s. 8d. As I have already stated, I had no statement of assets and liabilities filed by Ell in that bankruptcy, and had nothing to do with any settlement between him and Mr. Austin. The statement in paragraph 13 of the affidavit sworn by Mr. Ell, 2nd June, 1888, is similarly incorrect. I did not accept declaration in proof of debt from Mr. Austin for £361 0s. 9d., but, as already mentioned, for £68 0s. 8d.

ALEXANDER MILLAR EYES sworn and examined.

I am clerk to the Official Assignee in Bankruptcy for the Canterbury District, and have been so rather more than four years. Mr. Ell has very frequently been in the office for the purpose of obtaining information and inspecting and copying papers. I have no recollection that, excepting in one instance, he was refused access to any papers. That was after his bankruptcy on Weston's petition. He wished to see the papers in connection with his first bankruptcy, which had been annulled, to which papers he had had access previously, and of which he had made copies times out of number. It was Mr. Latter who refused the permission. I was present. I think that Mr. Latter gave as a reason that he had had them many times before, and that there were only a few proofs, and that there never had been any statement of assets and liabilities, and that the bankruptcy had been annulled. With reference to Mr. Ell's books, I understood that they were in the hands of Mr. Weston as executor of Nathan's estate, and had been in his hands for some time before the bankruptcy. Mr. Ell never complained, to my knowledge, that Mr. Latter had not got back the books. Ell used sometimes to say that he supposed that Mr. Weston had not sent the books. I remember this document [Exhibit R] being brought to the office. Mr. Ell brought it, and gave it to me. To the best of my recollection he called it a memorandum showing how the matter stood really, and that the claim put in by Hanmer and Harper was not right. I understood it to be in some way in reference to the proof which they had put in. He did not seem to attach much importance to it at the time, nor did I. If it had been put in as a second statement of assets and liabilities I should not have received it in this form. I should have required the usual declaration. If it had been a document filed I should have indorsed the date of filing, and signed the indorsement. The figures "555" on the back are in my handwriting. The date is not so. 555 was the number of the bankruptcy.

EDWARD CIRCUIT LATTER recalled.

I never understood that the books in Mr. Weston's hands were of any importance in connection with Ell's bankruptcy. They had been handed to Mr. Nathan several years (I think at least three years) previously. Mr. Ell never made any point of having these books back, or pressed me to try to get them back.

THURSDAY, 22ND NOVEMBER, 1888.

No further evidence given.

EXHIBITS.

A.

In the Supreme Court of New Zealand, Canterbury District. Between George Waldo Ell, plaintiff, and Leonard Harper and Humphrey Hanmer, sole executor of the will of Philip Hanmer, deceased, defendants.

Wednesday, 29th October, 1884.

ON the application of the plaintiff, and upon hearing Mr. Austin, of counsel for the plaintiff, and Mr. Martin, of counsel for the defendants, it is ordered that in taking accounts herein under the order of this Court of the 27th day of June, 1884, if the Registrar and accountant are satisfied that there was a settled account, or what was so intended, between the plaintiff, of the one part, and the defendant Leonard Harper and the late Philip Hanmer, deceased, or either of them, on the other

part, covering all transactions between 1870 and 1873, such settled accounts are not to be disturbed ; and it is further ordered that the defendants do pay to the plaintiff for his costs of and incident to the said application and this order, the sum of £5 5s. and all necessary payments out of pocket.

By the Court,
W. H. EYES, Deputy-Registrar.

B.

In the Supreme Court of New Zealand, Canterbury District. Between George Waldock Ell, plaintiff, and Leonard Harper, defendant.

Friday, 27th June, 1884.

UPON hearing H. S. Austin, of counsel for the plaintiff, J. C. Martin, of counsel for the defendant, and upon reading the summons of the plaintiff herein of the 2nd day of June instant, the affidavit of the plaintiff filed herein on the same date, and the order herein dated the 7th day of March last : It is ordered that so much of the aforesaid order as directs that the accounts and inquiries therein mentioned to be taken and made before the Registrar of this Court be rescinded : And it is ordered that such accounts and inquiries be taken and made before the Registrar and Mr. William Henry Hargreaves, of Christchurch, accountant, instead of before the Registrar alone : And it is ordered that in taking the aforesaid accounts, with regard to particular items, when vouchers have been lost or other evidence cannot be given, the books of account in which the accounts required to be taken have been kept by the defendants be *prima facie* evidence of the truth of such items, with liberty to the plaintiff to take such objections thereto as he may be advised : And that the costs and incident expenses of the said summons and this order be £3 3s. and all necessary payments, and that the same abide the event of this action.

By the Court,
A. R. BLOXAM, Registrar.

C.

Monday, 1st December, 1884.

(Mr. Austin for plaintiff, Mr. Martin for defendant.)

No further witnesses called. Case concluded. By agreement between counsel, interest on items to be calculated up to 30th November, 1884. A short statement of accounts as claimed by either side to be sent in by Friday next. Registrar and arbitrator ruled that there was a settlement of accounts between plaintiff and defendant in June, 1873, but that such account was an incorrect one. Mr. Martin asked for ruling on certificate whether or not defendant was induced at that settlement to accept as the balance due to him a less sum than was really due, in consequence of the representations and statements of plaintiff that he was unable to pay more. Mr. Austin asked for ruling on certificate whether or not, in the document transferring the balance of Minchin and Todman's land from Ell to Harper, there was an agreement embodied for the sale of such land for £1,200.

Adjourned *sine die*.

D.

Register No. 38,252.

Christchurch, August, 1875.

RECEIVED from the within-named George Waldock Ell the sum of £250, in full discharge of all principal moneys and interest secured by the within mortgage.

LEONARD HARPER, Mortgagee.

Witness—Thos. Papperill, clerk to Messrs. Hanmer and Harper, solicitors, Christchurch.
(Stamp.)

E.

In the Supreme Court of New Zealand, Canterbury District. Between George Waldock Ell, plaintiff, and Leonard Harper and Humphrey Hanmer, sole executor of the will of Philip Hanmer, deceased, defendants.

Wednesday, the 2nd Day of September, 1885.

UPON reading the affidavits of the said George Waldock Ell, filed herein the 29th day of August, 1885, and this day respectively, and the affidavit of James Crosby Martin, filed herein the 1st day of September, 1885 : And upon hearing the said George Waldock Ell in person, and Mr. J. C. Martin, of counsel for the said defendants : This honourable Court doth hereby dismiss the motion of the said George Waldock Ell to vary the order made herein the 5th day of August, 1885 : And, further, this honourable Court doth hereby order that the costs of this order, to be fixed at the sum of £3 3s., and the further sum of £1 3s. for out-of-pocket fees, making in all the sum of £4 6s., be forthwith paid by the said George Waldock Ell.

By the Court,
(L.S.) A. R. BLOXAM, Registrar.

F.

In the Supreme Court of New Zealand, Canterbury District. Between George Waldock Ell, plaintiff, and Leonard Harper, defendant.

Wednesday, the 2nd Day of September, 1885.

UPON reading the affidavits of the said George Waldock Ell, filed herein the 29th day of August, 1885, and this day respectively, and the affidavit of James Crosby Martin, filed herein the 1st day

of September, 1885: And upon hearing the said George Waldoek Ell in person, and Mr. J. C. Martin, of counsel for the said defendant: This honourable Court doth hereby dismiss the motion of the said George Waldoek Ell to vary the order made herein the 5th day of August, 1885: And, further, this honourable Court doth hereby order that the costs of this order, to be fixed at the sum of £3 3s., and the further sum of £1 3s. for out-of-pocket fees, making in all the sum of £4 6s., be forthwith paid by the said George Waldoek Ell.

By the Court,
(L.S.) A. R. BLOXAM, Registrar.

G.

COPY of TELEGRAM sent by A. R. Bloxam to his Honour the CHIEF JUSTICE, Wellington.

ALL exhibits in charge were forwarded with papers. Deeds exhibited were returned to owners after accounts were taken. *Re* £250, credit was not allowed, as Registrar and accountant, on very full consideration of all land transactions, were satisfied money was not paid. When deeds put in as exhibits I called attention to receipt. Austin, for Ell, for first time claimed credit for amount. Matter stood over for further evidence. Harper brought evidence that money not paid. No further evidence for Ell. Land conveyed by Harper to Ell, March 20th, 1873, for £250. Mortgaged by Ell to Harper, March 21st, 1873, for £250. Receipt dated September 6th, 1875. Application to bring same under Act, September 7th, 1875. Mortgaged by Ell, with other sections, December 9th, 1875, to Ackland and Henry Harper for £800. Receipt indorsed June 20th, 1876. Transferred by Ell to Hanmer and Harper, June 20th, 1876, for £1,200. Accountant, W. H. Hargreaves, concurs in telegram.

Christchurch, 19th May, 1886.

A. R. BLOXAM, Registrar.

H.

No. 413. In the Court of Appeal of New Zealand. G. W. Ell, appellant, and — Harper, respondent.

I, JAMES PRENDERGAST, Knight, Chief Justice of Supreme Court of New Zealand, do hereby certify to the Registrar of the Supreme Court at Christchurch that, at a sitting of the Court of Appeal held at Wellington on Monday, 10th day of May, 1886, at which I presided, it is adjudged that the judgment in the Court below dated 22nd day of September, 1885, be set aside, and the certificate of the Registrar dated 11th March, 1885, be remitted to the Registrar and Accountant for review, each party to pay his own costs of the appeal.

Given under my hand and under the seal of the said Court at Wellington, this 5th day of June, 1886.

JAMES PRENDERGAST.

(L.S.) ALEX. S. ALLAN, Registrar.

I.

In the Supreme Court of New Zealand, Canterbury District. Between George Waldoek Ell, plaintiff, and Leonard Harper and Humphrey Hanmer, sole executor of the will of Philip Hanmer, deceased, defendants.

Wednesday, 2nd Day of September, 1885.

UPON reading the motion paper set down, and the affidavit of George Waldoek Ell filed herein on the 29th day of August, 1885, and the affidavit of James Crosby Martin filed 1st day of September: And upon hearing the said George Waldoek Ell in person, and James Crosby Martin, of counsel for defendants: It is ordered that the motion of the said George Waldoek Ell to vary the certificate of the Registrar and William Henry Hargreaves on the ground of mistake be dismissed, and that the said George Waldoek Ell do forthwith pay to the defendants or their solicitors the sum of £3 3s., costs of and incidental to the said motion, and the further sum of £1 3s. out-of-pocket costs, making in the whole the sum of £4 6s., and that the plaintiff do have leave to appeal from this order if such appeal lies.

By the Court,
(L.S.) A. R. BLOXAM, Registrar.

J.

In the Supreme Court of New Zealand, Canterbury District. Between George Waldoek Ell, plaintiff, and Leonard Harper, defendant.

Wednesday, the 26th Day of August, 1885.

UPON reading the affidavit of the said George Waldoek Ell filed herein the 15th day of August, 1885, and the affidavit of James Crosby Martin filed herein the 18th day of August, 1885: And upon hearing the said George Waldoek Ell in person and Mr. James Crosby Martin, of counsel for the said defendant: This honourable Court doth hereby dismiss the motion of the said George Waldoek Ell to vary the order made herein the 5th day of August, 1885: And, further, this honourable Court doth hereby order that the costs of this order, to be fixed at the sum of £3 3s., and the further sum of £1 3s. for out-of-pocket costs, making in all the sum of £4 6s., be forthwith paid by the said George Waldoek Ell.

By the Court,
(L.S.) A. R. BLOXAM, Registrar.

K.

Memorandum to Mr. Haselden.

Supreme Court, Christchurch, 24th June, 1887.

WITH reference to your memorandum No. 1,015, the amounts Mr. Austin received on the 27th June and 4th August, 1885, were paid under order of Court made on the 26th June, 1885, in the action of the Official Assignee of the property of G. W. Ell v. L. Harper and H. Hammer, No. 30, out of a sum paid into Court, under order of the 1st May, to the credit of the cause, and subject to the further order of the Court. The order fixed the amount of the party and party costs, and provided for the taxation of the solicitor's and client's costs, at which taxation Mr. Byrne, for Mr. Hammersley, appeared for Mr. Ell, and Mr. Ell was also present. You must not imply from the foregoing that, according to the form of your questions, the moneys paid into Court "belonged to Mr. Ell."

A. R. BLOXAM, Registrar.

L.

SIR,—

Supreme Court, Christchurch, 28th September, 1887.

I have the honour to acknowledge the receipt of your letter of the 26th instant. With reference to it I enclose for the Hon. the Minister's perusal Mr. Latter's copy of the statement of claim (my copy being in the Crown Solicitor's hands, the time for pleading expiring this day); also a copy of a letter received from Mr. Austin by Mr. Latter. From the statement it will appear that Mr. Ell has been engaged in litigation for a considerable time, and is at present an uncertificated bankrupt. Summonses have been taken out by Mr. Weston and Messrs. Harper and Co. for plaintiff to show cause why the suit should not be dismissed on the grounds that the action is frivolous and vexatious and an abuse of the process of the Court. Most of the allegations with reference to the orders of Court are incorrect. Of those referring to the conduct of the Official Assignee and myself, the statement of defence will admit some and deny others (those in paragraphs 33 and 35 are absolutely false), and plead that whatever was done by us was done in our judicial capacities, and submit to the decree of the Court. The reason for our request is that whatever has been done by us has been so done judicially, that no relief is prayed for against us individually, and that the merits of the case rest in the hands of the other defendants, as officially we are not interested in the matter. Mr. Latter concurs in this letter.

I have, &c.,

The Under-Secretary for Justice, Wellington.

A. R. BLOXAM, Registrar.

M.

SIR,—

Supreme Court, Christchurch, 10th November, 1877.

ELL v. HARPER AND OTHERS. No. 1,397.

With reference to your letter of the 5th October, 1887, J. 87/1,383, No. 1,488, I beg to enclose herewith (1) bill of costs of the Crown Solicitor, amounting to £10 10s., against myself as Registrar and Mr. E. C. Latter as Official Assignee in the above action; (2 and 3) newspaper reports of the proceedings before his Honour the Chief Justice and his Honour Mr. Justice Ward on the 8th and 19th October; (4) at the request of Mr. Latter, copy of affidavit filed in the matter; (5) copy of letter, Mr. Austin to Mr. Latter; (6) copies of orders dismissing the action against the Registrar, with costs, and staying all further proceedings against the Official Assignee, also with costs: and I respectfully ask, on behalf of the Official Assignee and for myself, that Her Majesty's Government will cause the said bill to be paid.

In support of the application I would point out that the plaintiff is a bankrupt, and that no costs can be recovered from him. The true proceedings connected with his bankruptcy are summarised in the judgment of his Honour Mr. Justice Richmond in the case of Ell v. Weston, Court of Appeal Reports, Part 7, July, 1887. With reference to the costs incurred, after consultation with the Crown Solicitor, I deemed that it would be more agreeable to Her Majesty's Government that I should, if it were possible, meet the case on its merits, which I could only do by filing a defence denying the allegations in the statement of claim, although the cases reported show that no action would lie against the Registrar; and his Honour Mr. Justice Ward stated that even if the action were called on he should dismiss it at once. I would also respectfully submit that it never has been contemplated that judicial officers should privately pay law-costs incurred in defending actions improperly brought against them. In the present case, moreover, no relief whatever is claimed against the Registrar or Assignee. The only apparent reason, therefore, for joining the Registrar was to further the prayer for accounts to be taken at Wellington; but such a course was unnecessary, as the particular accounts desired to be reopened by the plaintiff had been referred to the Judge under Rule 422, and no further action had been then taken by the plaintiff. Both Mr. Latter and myself will be happy to afford any further information that may be asked for; and Mr. Latter desires me to state that he concurs in this letter.

I have, &c.,

The Hon. the Minister of Justice, Wellington.

A. R. BLOXAM, Registrar.

N.

In the Supreme Court of New Zealand, Christchurch District.—Austin v. Ell: Libel Case.—
Costs of Defendant on Judgment dated the 10th April, 1885, in Action for Libel.

1885.	£ s. d.	£ s. d.	1885.	£ s. d.	£ s. d.
Mr. Lynch's costs as follows:—			Brought forward	21 11 10	18 17 6
March 25.—Instructions to defend action for libel	0 6 8		Instructions for subpoenas for James Preece, T. G. Russell, Harry G. Ell, Edward Aslin, G. F. Gee, William Gale, H. E. Nathan, Harry Feast, Frederick William Delamain, James McHaffie, and Walter Gee ..		
Instructions to subpoena James McHaffie, Mrs. M. A. Atkins, Leonard Harper, Henry G. Ell, J. C. Martin, and Walter Gee	..		Drawing præcipe	0 7 6	
Preparing 6 subpoenas, at 3s. each	0 15 0		Engrossing same	0 5 0	
Attending to obtaining signature of Justice of Peace	(sic.) 0 6 8		Preparing subpoenas (10) ..	1 5 0	Disal- lowed;
Six copies for service	0 7 6		Attending to seal	0 6 8	not in- curred
Attending issuing subpoenas ..	0 6 8		Ten copies for service	0 12 6	
Service of 6 subpoenas, at 3s. each	0 18 0		Service of 10 subpoenas, at 3s. each	1 10 0	
March 30.—Copy of affidavit of J. C. Martin, 4 folios	0 4 0		Fee to counsel on brief	50 0 0	34 5 0
The like, L. Harper, 3 folios ..	0 3 0	18 17 6	Attending Supreme Court, Christchurch, when case dismissed	..	
Attending Resident Magistrate's Court on defence of criminal action for libel, when same adjourned till to-morrow	5 5 0		Paid witnesses' expenses as follows:—		
March 31.—Attending Resident Magistrate's Court herein, when accused committed for trial	5 5 0		H. G. Ell	0 10 0	
Paid witnesses' expenses as under:—			T. G. Russell	1 1 0	
J. McHaffie, 2 days	1 10 0		J. Preece	1 0 0	
Mrs. Atkins, 2 days	1 0 0		E. Aslin	0 10 0	Disal- lowed;
H. G. Ell, 2 days	1 0 0		F. C. Gee	1 0 0	not in- curred
W. Gee, 2 days	1 10 0		Mrs. Atkins	0 10 0	
Mr. Denniston's costs as follows:—			William Gale	0 10 0	
April 9.—Instructions to defend action in Supreme Court	0 13 4		H. E. Nathan	1 0 0	
Long consultation re evidence ..	1 1 0	Disal- lowed;	F. W. Delamain	1 0 0	
Instructions for copy of depositions; attending Court therefor; making copy of depositions, 20 folios	1 0 0	not in- curred	James McHaffie	1 1 0	
Carried forward	21 11 10	18 17 6	Walter Gee	1 0 0	
			Mr. Jellicoe's costs as follows:—		
			Drawing bill of costs, 6 folios ..	0 6 0	0 5 0
			Two fair copies	0 6 0	0 5 0
			Drawing affidavit of increase ..	0 5 0	0 3 6
			Fair copy	0 1 8	0 1 2
			Letter to Christchurch therewith, and explaining	0 3 8	0 3 8
				86 2 10	70 3 10
				70 3 10	
				15 19 0	

Taxed, and allowed at £15 19s.

1st March, 1886.

(Stamp.)

A. R. BLOXAM, Registrar.

O.

In the Supreme Court of New Zealand, Christchurch District. The Queen on the prosecution of Henry Selwood Austin against George Waldo Ell, of Christchurch, stock-dealer.

THE above-named George Waldo Ell makes oath and says as follows:—

1. I appeared before the Resident Magistrate on the 13th day of March and on the 21st day of March, 1885, to answer a summons issued at the instance of the said Henry Selwood Austin for defamatory libel.

2. I caused subpoenas to be issued out on my behalf for James McHaffie, Mrs. M. A. Atkins, L. Harper, H. G. Ell, J. C. Martin, and Walter Gee, and all of them were severally subpoenaed on my behalf, at the hearing of the said summons.

3. On the 31st day of March, 1885, I was committed for trial, and I caused subpoenas to be issued for James Preece, T. G. Russell, Leslie J. Ell, Edward Aslin, C. T. Gee, William Gale, H. G. Nathan, Harry Feast, L. W. Delamain, and James McHaffie.

4. All the said witnesses were material and necessary for my case, and it would not have been safe or prudent for my defence to have been carried down for trial without their evidence; and the six persons mentioned in paragraph No. 2 attended at the investigation in the Magistrate's Court, and also at the trial of this indictment; and all the persons mentioned in paragraph No. 3 except Leslie J. Ell and Harry Feast were present at the trial of this indictment, and they were witnesses in no other matter or cause, as I verily believe.

5. The witnesses have claimed or I am liable to pay them the sums of money set opposite to their respective names in the schedule hereto annexed, and marked with the letter "A," for their loss of time, trouble, and expenses.

6. I have paid to Mr. Denniston, of counsel, on his brief for conducting the said trial, the sum of £50; and to Mr. Lynch for conducting the preliminary investigation before the Magistrates, and to Mr. Jellicoe, of Wellington, the proper charges debited in the bill of costs filed in this matter, for the charges of drawing up the order for costs and settling the said bill of costs, and preparing this affidavit and the costs for taxation.

G. W. ELL.

Sworn at Christchurch, in the said district, this 20th day of February, 1886.—W. H. EYES, Deputy-Registrar.

Schedule before referred to.

James McHaffie, accountant, two days before Magistrate, £1 10s.; ditto, one day before Supreme Court, £1 1s.; H. G. Ell, accountant, two days Magistrate's Court, £1; ditto, one day Supreme Court, 10s.; C. F. Gee, tinsmith, one day Supreme Court, £1; M. Atkins, two days Magistrate's Court, £1; ditto, one day Supreme Court, ; T. G. Russell, solicitor, one day Supreme Court, £1 1s.; J. Preece, tailor, one day Supreme Court, £1; G. Aslin, solicitor's clerk, one day Supreme Court, 10s.; W. Gale, clerk, one day Supreme Court, 10s.; H. E. Nathan, money-lender, one day Supreme Court, £1; F. W. Delamain, coach-proprietor, one day Supreme Court, £1; Walter Gee, window-blind maker, two days Magistrate's Court, £1 10s.; ditto, one day Supreme Court, £1.

This is the schedule referred to in the annexed affidavit of George Waldoek Ell.

Sworn this 20th day of February, 1886, before me—W. H. EYES, Deputy-Registrar.

P.

In the Supreme Court of New Zealand, Canterbury District. Between George Waldoek Ell, plaintiff, and Leonard Harper, Thomas Shailer Weston, Andrew Roby Bloxam, Edward Circuit Latter, Francis Thomas Haskins, Humphrey Hanmer, and Leonard Harper, George Harper, Henry Alan Scott, and Thomas William Maude, carrying on business as Harper and Company, defendants.

Wednesday, the 19th Day of October, 1887.

UPON the application of Mr. J. C. Martin, of counsel for the above-named defendant, Andrew Roby Bloxam, and by consent of Mr. W. L. Rees, of counsel for the above-named plaintiff, George Waldoek Ell: I do hereby order that this action be and it is hereby dismissed as against the said defendant, Andrew Roby Bloxam: And I do further order that the sum of £2 18s., the costs of the said defendant, Andrew Roby Bloxam, in this action, be forthwith paid by the said George Waldoek Ell to the said Andrew Roby Bloxam.

C. D. WARD.

(Stamp.)

Q.

In the Superior Court of Bankruptcy, holden at Christchurch. In the matter of the Bankruptcy Acts, 1883 and 1884, and of a petition to adjudicate George Waldoek Ell a bankrupt.

UPON hearing Mr. Stringer, of counsel for Messrs. Harper and Co., the petitioning creditors, Mr. Austin, of counsel for the Official Assignee, and Mr. Deacon, of counsel for George Waldoek Ell: It is ordered that the costs of the Official Assignee for appearing on an application of the said George Waldoek Ell to annul the order of adjudication made against him on the 1st day of April last be fixed by the Registrar, and when so fixed be paid by the petitioning creditors.

By the Court,

A. R. BLOXAM, Registrar.

(Stamp.)

R.

ELL v. HARPER AND ANOTHER. No. 30.

<i>Dr. to G. W. Ell.</i>			£	s.	d.	<i>Cr. by</i>	£	s.	d.
1883. To costs incurred by your refusing to finish arbitration as agreed by your counsel, Mr. J. C. Martin (say) ..	200	0	0			1886. Costs against me in action No. 683, about	195	0	0
1886. Costs in action No. 683—						Taxed in Wellington, refusal of new trial	15	15	0
Cash paid by Mrs. Ell to Leonard Harper, Esq.			3	1	0				
To Geo. Harper, Esq.			3	1	0				
To Mr. Papperill			3	1	0				
Security lodged with — Bloxam, Esq., Registrar	100	0	0						
Expenses incurred by Harper and Co.'s petition to adjudicate me a bankrupt, afterwards annulled (say)	100	0	0						
			£409	3	0				
						Costs due to Ell	409	3	0
						Costs due by Ell to Harper and Co. ..	210	15	0
						Balance due Ell	£198	8	0

5th October, 1886.

[Approximate Cost of Paper.—Preparation, nil; printing (1,300 copies), £12 1s. 6d.]

By Authority: GEORGE DIDSBUY, Government Printer, Wellington.—1889.

