suits, when the only information that could be obtained was from the balance-sheets and reports submitted to them from time to time. Therefore, they thought it the better course to apply to the directors for information to guide them, assist them, and give them confidence in the future; and, as a proof of that they readily acquiesced in a proposal emanating from the private examining committee of shareholders in Dunedin, and they entered heartily into the opportunity of assisting the business, and it was acknowledged on all sides that the share-register or proprietary was as good as any in New Zealand. The shareholders were men of substance in all the towns, and the connection was of the very best description. Mr. Callan says it is a pity we did not continue it. I have shown that the business, even when he left, was of an improving rather than of a diminishing character, and hence we were justified in our anticipations. But we were suddenly confronted with the fact that the businesses in Queensland and Victoria had been disposed of, and that the Union Insurance Company had taken the risks without a proviso for taking the buildings; whereas, in point of fact, there were English companies—notably the Sun Fire Office—who would have been only too glad of the opportunity of doing so. Had the shareholders been consulted, and taken into confidence at this time, they might have suggested means by which the whole business might have been disposed of as a going concern, seeing that the agencies within the colony were of a prosperous character.

The Chairman: Where does the criminal negligence come in?

Mr. Bevan: Well, then, I will proceed on to section 9. We were confining ourselves strictly to the memorandum and articles of association, or, a more simple definition, the deed of partnership. In carefully perusing the memorandum I found it was divided into two parts, that which may be done by the directors and that which may be done by the company. When Dr. Findlay read clause 4, he preceded the reading by saying "the directors may do this," act as agents for any person or persons whomsoever, &c. He distinctly stated in his statement that the directors had this power.

Dr. Findlay: I said, reading that section 4 with section 54 the directors had the power.

Mr. Bevan: I will now read it. "The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not by the Acts of the General Assembly of the Colony of New Zealand, or by these articles, declared to be exercisable only by the company in general meeting, but no regulations made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made."

Mr. Callan: That gives the directors power to acquire these companies.

Mr. Bevan: But this is my contention: If clause 2, subsection (1) means anything, and can be understood by people who understand the English language, it can to the most indifferent reader convey only one meaning. This subsection (1) says: "as may be deemed expedient by the directors of the company." Then we come to clause 3, in the fifth line, after the word "acquired" comes the word "also"——

Dr. Findlay: This is about taking over the company, upon which Justice Williams has already given his ruling.

Mr. Bevan: "Any . . . which may be deemed by the company conducive to its interests." The directors have the power in clause 1; and the company appears to want to be consulted as to the power of directors to assume that they can act in clause 4 without the consent of the company. The company is distinguished from the directors: the memorandum of association, to my mind, clearly putting forth the assumption that nothing must be done without the sanction of the company as relates to that part of the memorandum of association.

The Chairman: That is a question for the Court, and not for us.

Mr. Bevan: The contention of Lord Cairns is that no memorandum of association can be altered even with the consent of every shareholder. We tried to confine ourselves to what we deemed to be legal, according to the memorandum of association. When we speak of "legal" we mean the construction we put on the memorandum and articles of association. Looking at it in this light, we were surprised when it was discovered that the companies had been acquired, when no reference of any kind whatever had been made to it in any report. Now, in relation to the taking over of the Australian Mercantile Union. It was said to be a very valuable business. It has been argued by Dr. Findlay that, in the acquisition of a business, shareholders should not be consulted, for fear that they would disclose the weakness or otherwise of any company wishing to sell, and he referred particularly to the bank treaty in proof of the fact that it should be left to the directors and not to the shareholders, seeing that a certain danger would arise from any company offering a sale and the negotiations falling short.

The Chairman: There are a number of questions surrounding that: for instance, were the directors legally enabled to do so?

Mr. Bevan: I have mentioned that we looked upon it as illegal.

Dr. Findlay: That was your opinion.

Mr. Bevan: And the opinion of the shareholders whom I represent. That is why I say that in any negotiations of an important character the shareholders ought to have been consulted.

The Chairman: That is reiteration, that is not argument.

Mr. Bevan: Well, I will say this: that it is not shown by Dr. Findlay's remarks in reference to the bank treaty that the amalgamation has affected the institution injuriously. In paragraph 14 we contend that we have been misled by all that there is therein set forth. Paragraph 15 is correct; and it is true that through the attitude taken up by the directors additional burdens were imposed on the shareholders, as stated therein.

The Chairman: The question is whether the liquidator was properly appointed, and you have not answered that?