

THE CONVICTS' BANK ;

OR

A PLAIN STATEMENT OF THE CASE OF ALLEGED EMBEZZLEMENT,

ON THE PART OF

MESSRS. G. D. LANG, LATE MANAGER, AND F. L. DRAKE,
LATE ACCOUNTANT,

OF THE

BRANCH BANK OF NEW SOUTH WALES,

At Ballarat, in the Province of Victoria :

WITH REMARKS ON THE TRIAL.

BY JOHN DUNMORE LANG, D.D.,

MEMBER OF THE LEGISLATIVE COUNCIL OF NEW SOUTH WALES,
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of the Literary Institute of Olinda, in the Brazils.*

Spencer ;

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MDCCCLV.

KNOX COLLECTION

TO THE

Citizens of Melbourne and Geelong,

AND

THE GOLD-MINERS OF BALLAARAT,

The following pages are respectfully inscribed ;

In the hope that they will take it into immediate and serious consideration,

Whether it can either be their interest or their duty

To patronize and support any longer,

The heartless authors and abettors of that monstrous injustice and oppression
which these pages exhibit and detail ;

Or whether they ought not rather, by the mere withdrawal of their custom,

(For this is the only way to punish them,)

To force the *old Lags* of the Convicts' Bank of New South Wales,

To decamp forthwith, bag and baggage,

From the Province of Victoria.



INTRODUCTION.

THE Bank of New South Wales was originally established in the town of Sydney, in the year 1816, during the government of His Excellency Major-General Macquarie ; whose favourite maxims of Colonial policy were the two following, viz. :—1. “ That the Colony had been formed for the reformation of convicts, and free people had no right to come to it :” and 2. “ That the Colonial population in his time consisted of but two classes—those who had been convicted, and those who ought to have been so.” The original proprietary and directory of the Bank of New South Wales consisted accordingly, at least in great measure, of people after Governor Macquarie’s own heart, or, in other words, of “ Emancipists,” that is, people “ who had been convicted,” but had served out their time, or been pardoned—together with their friends and acquaintances. During the government of Sir Thomas Brisbane, who succeeded Governor Macquarie in the year 1821, a large amount of free immigration took place from the mother country, and not only changed the whole face of society in the colony, but gave rise to other Institutions of a similar kind ; as, for instance, the defunct “ Bank of Australia,” which was established in the year 1826, during the government of Sir Ralph Darling, and the two earlier English Banks, “ The Bank of Australasia,” and “ The Union Bank of Australia,” which came into existence a few years thereafter. As the Bank of Australia had been established principally at the instance of the late John Macarthur, Esq., whose connection with Colonial wool-growing, and whose long and virulent opposition to the whole class of Emancipists, were matters of notoriety, the Institution with which he was identified for a time came to be popularly known as the “ Pure Merino Bank,” while the Bank of New South Wales was designated, by way of distinction, “ The Convicts’ Bank,” a designation which is not altogether obso-

lete even at the present day. There is doubtless much of the original "blood" in the establishment yet, but a great deal more of the original spirit; for a more heartless pack of mere Mammon-worshippers, without one spark of generous and manly feeling to qualify their contemptible idolatry, does not perhaps exist at this moment on the face of the earth; as the following illustrations of the procedure and management of the Bank towards certain of its subordinates will sufficiently shew.

The Old Bank of New South Wales was on its last legs, and had nearly gone to the dogs, with almost everything else in the colony, about ten or eleven years ago, when my late brother-in-law, John Hunter Baillie, Esq., one of the ablest financiers that ever crossed the Line, was called in to wind up its affairs, and to prepare its friends and connections, who were then greatly reduced both in number and in consideration, for its death and burial. Mr. Baillie soon discovered, however, that there was a principle of life in it notwithstanding; or rather he managed to infuse one into it himself, by re-modelling its whole fabric and constitution and getting it placed on a totally different basis. The result of Mr. Baillie's universally-acknowledged masterly management was the establishment of a *New Bank*, but with the old name and character, and on the old hereditary foundation of "The Convicts' Bank." It was at Mr. Baillie's instance, and almost exclusively through his instrumentality, that Branch Banks were established successively at Brisbane and Ipswich in the Moreton Bay country; at Maitland and Newcastle on Hunter's River, and at Melbourne and Geelong, &c., in the province of Victoria; while agencies were also established, at his suggestion, and with eminent success, in England, in China, and elsewhere beyond seas. Mr. Baillie originally entered the Bank in the capacity of Assistant Secretary, an office which was created expressly for him. He afterwards became Secretary and Inspector of Colonial Branches, offices which he retained till his death. Bold and original in his views, comprehensive in his plans, and indefatigable in his labours for the welfare of the establishment, it is well known that it owes not only its present prosperity, but its very existence, to his exertions on its behalf: and it was the frequently-expressed opinion of Donald Larnach, Esq., the late Chairman of the Board of Directors, now in London, that Mr. Baillie and himself had earned not less than half a million sterling

for its proprietors. In a letter to his sister-in-law, Miss G. Mackie, of Sydney, of date, "Melbourne, March 2nd, 1853," Mr. Baillie alludes to this circumstance in the following manner, while, with singular foresight, he anticipates the probable future. "Larnach says that he and I, in the last five years, have earned for the Shareholders of the Bank full half a million of money; and yet I would not be surprised, if I should one day be snubbed by some upstart director, who knows nothing at all about it."

It was entirely at the instance, and on the recommendation of Mr. Baillie, that my son, Mr. G. D. Lang, entered the Bank, in Sydney, as a junior clerk, about the month of July or August, 1850. I had had a very different situation in view for him at the time, and one in which his general abilities and education—for he had studied three years at the Universities of Edinburgh and Glasgow—would, I thought, be turned to much better account for his native land, than in counting over pounds, shillings and pence, from morning till night, even at the largest supposable salary; but as I could not carry out my own views in that matter at the moment, I gave my silent but reluctant consent to his entering the Bank of New South Wales. Towards the close of the year 1851, Mr. Lang was removed to the Branch Bank in Melbourne, where he held for some time the situation of Teller, but was soon obliged to relinquish it, from the onerous character of the duties and the failure of his health. In the end of the following year, 1852, he was moved to Geelong, where he acted as Accountant of the Branch then first established in that locality, till the month of February, 1854, when he was appointed to undertake the temporary management of the Agency for the purchase of gold for the Bank, at Ballaarat. In all these situations he had maintained the highest character for general ability, as well as for the zealous and conscientious discharge of his duties, and had uniformly merited the confidence and esteem of his superiors and employers. But as the learned Judge who presided at the recent trial, in the case of alleged embezzlement at Ballaarat, very strangely disallowed all evidence as to this point, I deem it necessary, for the ends of justice, and especially for the light which will thereby be thrown upon the entire prosecution, to compensate in some measure for this omission, by affording the following illustrations of the previous character and procedure of the prosecutor in that case, I mean, Mr. Alexander Stuart, who succeeded Mr.

Baillie as Secretary of the Bank and Inspector of its Colonial Branches. For I have no hesitation in saying, as I am quite sure I shall shew in the sequel, to the satisfaction of every intelligent and candid person, that it is entirely to the atrocious conduct of that functionary, and the Satanic spirit he seems to have exhibited throughout this whole affair, that all the subsequent proceedings in this most anomalous case—the uncalled-for prosecution, the unfair trial and the iniquitous conviction—may be distinctly traced.

Mr. Stuart arrived in New South Wales, as a mere adventurer, in search of health and fortune, from India, in the year 1852. Some time after his arrival, he applied by letter for a subordinate situation which had fallen vacant in the Bank of New South Wales, during the temporary absence of Mr. Baillie at Port Phillip; and Mr. Baillie, to whom his testimonials had been referred by the Directors, strongly approved of his appointment. When he had subsequently risen to a higher situation in the establishment, and had returned to Sydney from Maitland, where he had been for some time previous manager of the Branch in that locality, to hold the office of Assistant Secretary at head quarters, Mr. Baillie invited him to his house, where he staid with him accordingly till Mr. B. again left Sydney himself, for Moreton Bay, in the discharge of his duties as Inspector of the Colonial Branches, in August, 1853. Mr. Baillie had for a series of years before been in very delicate health, and his close confinement, combined with his zealous and unremitting labours, had during this period brought on repeated attacks of hæmorrhage. But after his return from Melbourne, with re-established health and spirits, in the end of February or beginning of March last, the first thing he discovered was an artfully arranged plot, concocted mutually by Captain Towns, the Chairman of the Board of Directors, and Mr. Stuart, to force him to resign his situation, that Mr. Stuart might take his place. There had previously been no person connected with the Bank more obsequious in his attentions to Mr. Baillie, or more willing to acknowledge the transcendently important services he had rendered to the Institution, than Captain Towns; but having found in Mr. Stuart a person who, he conceived, would be fitter for his purposes, if not for those of the Bank, and who went heart and hand with him in this movement, a formal effort was made, without the previous knowledge or concurrence of the Board, to oust Mr. Baillie

from his situation, and to compel him to resign on the score of bad health. Mr. Baillie, although perfectly indifferent about retaining his situation, and predisposed to resign it of his own accord, had never, as he told the Board himself, been in better health for years before, or fitter for the discharge of his duties, than he was on his return from Port Phillip; but this foul blow, considering the quarters from which it came, and operating, as it did, with peculiar force upon his own generous spirit and delicate constitution, completely broke his heart; and brought on a much more severe attack of hæmorrhage than he had ever had before, of which he died in a few days—imputing his death exclusively to the conspiracy which had thus been formed against him by Captain Towns and Mr. Stuart.*

Mr. Stuart has doubtless had the modest assurance to characterize this statement, which I made in a letter published in Sydney, on the 29th December last, as "false;" but it is in no respect *my* statement, but that of Mr. Baillie himself, communicated on his death-bed to his wife and sister-in-law, and well-known to other parties, connected with the Bank. That Mr. Baillie could be deceived in so plain a matter, one of such importance, and attended with so fatal a result to himself, is incredible; and as to the fact that

* During Mr. Baillie's stay at Port Phillip, a letter had been written him by Daniel Cooper, Esq., one of the Directors, informing him that it had been proposed, on the part of the Board, to give him the general supervision of the Bank, with the Bank buildings in Sydney as his residence, and a suitable salary, and asking him how he should like such an appointment. This, it was understood, was the office which it was intended Mr. Baillie's forced resignation should prepare the way for Mr. Stuart to fill. But Mr. Stuart informs us, in his letter in the *Sydney Herald*, that he had resigned his situation in the Bank on the 10th of February last, during Mr. Baillie's absence in Port Phillip. Good! But Mr. Baillie was informed at the time, from another quarter, that this resignation was a mere sham or pretext. And on its being mentioned at the Board, after his return to Sydney, Mr. B. turned up the Minute Book, and shewed the gentlemen present that there was no record of it *there*, where, if there had been any reality in it, it must have been recorded. So much for Mr. Stuart and his *pretended resignation*. Perhaps he had made it to the *Diggers*, as he says of my son's and Mr. Drake's in his letter in the *Herald*. As for Captain Towns, it had come to Mr. Baillie's knowledge, in what way I will not say, that a letter had been written to Mr. Larnach, in London, either by Captain Towns, or at his instance, in which this expression, or one of precisely this effect, repeatedly occurred, "We must get rid of Baillie by all means." This appears to have been the *coup-de-grace* for Mr. Baillie. He spoke of it on his death-bed till he ceased to speak of earthly things at all. For my own part, although I saw him again and again during his last illness, and was with him at his death. I never in any way alluded to the Bank, nor did he to me.

he imputed his death entirely to the parties I have mentioned, the two following circumstances are quite sufficient to prove it. Mr. Baillie, when speaking of the treatment he had just received from the parties referred to, told Miss G. Mackie, his sister-in-law, a day or two before he died, "that if he should recover, he would never speak or look to Captain Towns or Mr. Stuart again." And when Mr. Stuart, doubtless stung by remorse, if not rather merely desirous of diverting all suspicion from himself, called at Mr. Baillie's and earnestly entreated permission only to see him, when he heard he was dying, the medical gentleman in attendance positively forbade his admission into the sick chamber; observing that "if Mr. B. should only open his eyes and see Stuart, he would think they were all conspiring against him, and would instantly expire."

Now, from the ingratitude which Mr. Stuart thus exhibited towards his own friend and benefactor, Mr. Baillie—for Mr. Baillie did consider it a case of the deepest ingratitude on the part of Mr. Stuart—it will scarcely excite surprise, on the part of any person at all acquainted with the developements of human character, if, in the whole conduct of the so-called investigations at Ballaarat, as well as on the subsequent trial, that gentleman should exhibit, as I maintain he has done, not the high intelligence of an honourable mind, searching for evidence and weighing it with candour, in whatever form and from whatever quarter it appeared, but the mere cunning of an officious underling seeking to ingratiate himself with his employers with a show of extraordinary zeal for their interests, and pre-determined to obtain a conviction, at whatever cost, in the case of two young men, against whom he could not but have a deep grudge, for reasons which I shall shew in the sequel. This, I have no doubt, will appear to the candid reader to be the real key to the prosecution and the trial, and especially to the heartless cruelty and the monstrous injustice they both exhibit. In one word, the intelligent and candid reader will be enabled to judge from the following details whether the whole spirit and management of the Bank of New South Wales, even at the present day, as developed in this extraordinary case, does not richly entitle that Institution to its old original designation of "THE CONVICTS' BANK," and whether it is not therefore an Institution against which every honest man in the province of Victoria should be put upon his guard.

THE CONVICTS' BANK;

OR, A PLAIN STATEMENT, ETC.

WHEN I heard in Sydney of my son's appointment to Ballaarat, in the month of February last, I confess, I had considerable misgivings as to the result—not that I had any suspicion, or fear as to his integrity, but because I thought it was most improper to place a young man, scarcely turned of twenty-one at the time, in charge of an establishment of the kind, involving so serious a responsibility, and situated in the midst of the most lawless district in either colony. The circumstance doubtless shewed the entire confidence of his superiors in his ability and tact, but it was surely anything but a wise or prudent appointment in such circumstances. I felt so strongly on the subject that I actually requested one of the Directors, Mr. Daniel Cooper, of Sydney, to endeavour to have him retained at Geelong; but such an arrangement, it seemed, could not be effected.

Assuming it, therefore, or rather taking it for granted, as the starting-point in this enquiry, that the affairs of the Branch Bank at Ballaarat presented a mass of irregularity and confusion on the first of October last, when my son and his unfortunate companion, Mr. F. L. Drake, retired from the establishment, to begin business for themselves as Gold Brokers at Ballaarat, it remains to be ascertained whether this irregularity and confusion were chargeable, either in whole or in part, to the young men previously in charge, or to the Bank itself. With this view there are two points of essential importance in the case, which, it must be obvious to any candid person, are not to be determined on the party-coloured statements and evidence of Mr. Stuart; viz. :—1st. The nature and amount of the work imposed upon my son; and, 2nd. The character of the accommodation, both in buildings and otherwise, afforded him by the Bank.

1. On the first of these points, the nature and amount of the work to be done, it must be borne in mind that when my son took charge of the establishment at Ballaarat in the month of February last (as it was given out at the time merely *pro tempore*), it was a mere Agency for the purchase of gold for the Bank, but that from the 1st of April following, it became a regular Branch Bank, of which Mr. Lang was appointed Manager, transacting all sorts of Bank business, including the purchase of gold. The duties he had to discharge in these capacities will appear from the following extract of a letter to his mother, of date, "Ballaarat, 24th August, 1854," the last he wrote previous to his arrest on the astounding charge of embezzlement. "The intelligence, first, of poor Mr. Baillie's death, and then of Billy's" (his brother's) "quite paralyzed me, and it was only the fearful amount of work that I had to do alone in the Bank that kept me in good health at all. I have been so disgusted with the Bank on account of its treatment of poor Mr. Baillie, and of several contemptible tricks they have practised upon me, that I have determined to leave it so soon as the arrangements which I have been making can be satisfactorily made. I have been worked harder here than at any of the Branches I have been at, and *for a whole month without any assistance whatever*; and since I did get assistance my labours have been almost doubled. The Bank is in a most flourishing state here at present, *and I know for certainty that when I leave it, it will not do one-third of the business it now does.*" I have established Gold Offices, for gentlemen to buy gold for the Bank, at two remote gold fields, one about fifteen and the other fifty miles from Ballaarat, and I have to visit one or other of these every week, so that I am in the saddle when I have laid down the pen."

Alluding to the arrangements he was then making for leaving the Bank, he adds, "I shall be able, in addition to attending to my duties, to pay you frequent visits, and in this respect have no need to ask such a favour from a niggardly set of Bank Directors. The whole affair is a profound secret on the Diggings, so far as I am concerned, and the Bank shall have no intelligence of my move-

* I had omitted the words in Italics in quoting from my son's letter in my letter to the *Empire* of the 29th December; but the great importance of the idea they suggest will appear in the sequel.

ments till I am ready to tell them to send a man here to fill my place. Several times I have been laid up for a day or two from hard work, and from want of proper rest, but this state of affairs I am bringing to a close. There is another matter—the Bank never took into account the danger to which we are exposed on the Diggings, when it is known that we have the charge of money. But two nights ago, the Bank of Victoria here was *stuck up* by some men, who found only about four ozs. of gold dust, worth £16; and, about a fortnight ago, the Bank of Victoria's Gold Broker here was robbed, in his iron house, of £1000. I have been not quite so well for the last two days, and that is the reason that I have taken a holiday, and am able to write you so long a scroll. Last post day, I had to write fourteen business letters, besides attending to a constant rush of customers. I shall feel comfortable when I am rid of the Bank, and all the thankless anxieties connected with it. I shall be in a position to send them my resignation in about a fortnight." Mr. Lang resigned accordingly at the close of the following month, and received a very flattering testimonial on the occasion from the respectable portion of the community at Ballaarat.*

To the same effect was the spontaneous testimony of J. Patterson, Esq., the Gold Broker, of Geelong, whom I happened to meet on board the Geelong Steamer on my way to Ballaarat on the 5th of November last. After mentioning what he had seen and learned of my son at Geelong, Mr. Patterson told me that when at Balla-

* In his letter in the *Sydney Herald*, Mr. Stuart denies the fact of Messrs. Lang and Drake having resigned their situations at all, (unless, as he sneeringly adds, they may have done so to the *Diggers*), and no doubt that so long as the books and cash were not finally and satisfactorily adjusted, they were still amenable to the Bank, and could not properly resign. But they did resign to the officer (Mr. Ochiltree) sent up to relieve Mr. Lang, at his own request, believing that, although the books were in arrears, there were materials in the office sufficient to enable that officer to make them up, and believing also that there would be no deficiency found in the cash. And with this belief they accordingly commenced business as Gold Brokers at Ballaarat, on the 1st or 5th of October, one of their first transactions in that capacity being the purchase of a thousand pounds' worth of gold for the Port Phillip Mining Company. Now I appeal to any candid person as to whether the fact of these young men's establishing themselves in business on their own account at Ballaarat was not the strongest presumptive evidence of their being utterly unconscious at the time of anything amounting to criminality on their own part, and of their fully believing that all was right. The idea of a thief establishing himself in business next door to the house from which he had stolen his wares, when he knows the constables will be out after him immediately, is too absurd to be entertained for a moment by any sane person.

rat himself, he found Mr. Lang, after working hard in the Bank all day, mounting his horse in the evening to ride to a distant gold field, at the risk of his life, in the darkness, and that he had told him, "he would not do so himself for any establishment in the Colony."

"I had to take the evenings," he says himself, in a communication which he made to me during my recent visit to Melbourne, in answer to a series of queries I had proposed to him on the subject of his duties at Ballaarat—"I had to take the evenings for visiting gold-buying stations, risking my life and every thing else. Once, in company with Mr. Lewers in the Woody Range, by Sulky Gulley, we were twice fired at, and narrowly escaped."

In short, it has been the regular system of the Bank of New South Wales to overwork the young men in its employment, to an extent endangering their health, and terminating, as in the case of my own second son, Mr. William Lang, in their premature dissolution. That young man—a mere boy at the time of sixteen years of age—was taken into the Bank, in Sydney, at the instance of Mr. Baillie, shortly after I left the Colony for England in 1852: and so overwrought was he—not getting home to dinner, for days in succession, till seven in the evening, and then, after swallowing his morsel alone, returning again after a short interval till nine—that he lost his health in consequence, and was sent, for change of climate and lighter labour, as it was alleged, to Moreton Bay. Nay, Mr. Stuart had made him sleep in the new building which was then erecting for the Bank in Sydney, for a fortnight together, when it had been just plastered and painted—a regimen sufficient of itself to implant disease in the strongest constitution. But even at Moreton Bay, there was no change for the better for this unfortunate young man. In the hot climate of the town of Brisbane in that settlement, he was kept at the Bank from day to day till eight o'clock in the evening, till one night he went up to the Manager, saying, "Mr. Craies, I can stand this no longer," and returned to Sydney to die!*

* This was not the first time that my younger son had left the Bank at Moreton Bay from sheer exhaustion. He had done so once before, but the Manager hunted him up in his lodgings and virtually obliged him to return to his work, when he could not even walk to the Bank without a staff. When he left it the second time, Mr. Craies happened to say to him, "What, Mr. Lang, are you

In another letter to his mother, of date Geelong, 10th October, 1853, my surviving son observes, "I have just as much work to get through here now as I ever had in Melbourne, and that is saying a deal. The Bank, however, does not take such things into account, but would work its clerks to death on a shilling a week, if they did not stoop to ask for more." In regard to the manner in which he was worked, while at Melbourne, let the following extract of a letter from the Rev. A. M. Ramsay, of that city, with whom he was living at the time, testify :

"While your son was under my roof, which was in the early part of 1852, I should think no young man could be more devoted to the interests of his employers. His hours were long, and the work exceedingly harassing and fatiguing. It was shortly after the commencement of the Branch here, when the premises, as the public must well remember, were very limited, and not at all adapted for Banking purposes, while the pressure of business was altogether unprecedented in the history of commerce. Your son was accustomed to leave my house at half-past 8 in the morning, and it was often 9 and 10, and even 11 at night, before he

going to run away from us in this way?"—but so completely unhinged was he at the time, both in body and mind, that this apparently harmless expostulation made so deep an impression upon him that he fancied, from that moment, that Mr. Craies had some charge to prefer against him, and that he had been guilty of some act of fraud in the Bank that would not only ruin himself but disgrace all his family. And when his watch and other valuables were taken from him on board the steam-boat, on his return to Sydney, when his state of delirium was apparent to all, the circumstance only confirmed him in his hallucination, as he imagined that it was a seizure of his effects to make good his supposed deficiency. This was the distressing state the young man had been in, with but few and partially lucid intervals, for upwards of a month, on my return to Sydney, on the 17th November, 1853, and he remained in that state for nearly two months thereafter; his mother and aunt never leaving his chamber, nor losing sight of him, night nor day. In these circumstances, Mr. Baillie having asked me, a few days after my return to the colony, whether I intended that my son should return to the Bank, in the event of his recovery, as his place was still unfilled and his salary running on, I replied "certainly not," and immediately wrote the letter to the Directors (to which Mr. Stuart refers in *his* letter in the *Sydney Herald*), on the 29th of November, expressing myself "grateful for their kindness to my son while in their service." Up to that time, however, I had never heard a syllable about my son's position in the Bank either here or at Moreton Bay; and it was only many weeks thereafter, when he had recovered his faculties, and had a partial return of health for a few weeks longer, that I came to know the whole truth. Mr. Stuart may doubtless have procured an intermission of the evening labour for my son when in Sydney, but he does not deny having made him sleep, as a common night-watchman, in the unfinished Bank buildings, for a fortnight together. And although it is doubtless true that my son's salary was paid till the 29th of November, 1853, which Mr. Stuart claims as a very meritorious act on the part of the Directors, it is but very sorry consolation for a parent to be told that the parties who had virtually killed his child by over-tasking and over-working him, continued to pay his salary for six whole weeks after he had become unfit for their service!

could get home. Often have I sat up and waited his return after the family had retired to rest, and then he would return jaded and exhausted, with little or no relish for his food, and often too wearied for refreshing sleep. Mrs. Ramsay and I often felt for the amiable and delicate youth in the circumstances, and were seriously apprehensive that if he continued much longer in the Bank, he would fall a prey to consumption, and find an early grave. Again and again I desired him to address the Directors on the subject of the long and killing hours, and, if the wishes of himself and his fellow clerks were not attended to, to leave the Bank altogether. Health was too precious to be sacrificed in such a calling. How deeply we now deplore that such a step was not taken, and that his energies, not to speak of his talents and learning, should have been devoted to a mercantile corporation, in whose service the health and character, the connexions and interests of our youth appear to be had in such poor esteem !”

At the time to which this letter refers, the pay of the Bank clerks in the establishment at Melbourne—even when they were earning hundreds of thousands for their heartless and niggardly employers—was so small in proportion to the enormous expense of living, notwithstanding the onerous nature of their duties, that they could afford to take lodgings only at houses frequented by the very lowest of the diggers, where their health and their morals were equally and simultaneously endangered. My son was fortunately much more favourably situated himself at this period ; but being of a generous disposition, he could not help sympathising deeply with the young men with whom he was associated, and expressing himself on the subject in the language of indignant remonstrance.

The result of the zealous, self-denying, and indefatigable labours of Mr. Lang in the management, first of the Gold-buying Agency, and afterwards of the Branch Bank at Ballaarat, was a development of the whole establishment, as compared with its previous condition, altogether unprecedented, and an amount of business perfectly overwhelming. In short the business increased enormously from week to week, beyond all previous anticipation : and this fact, taken in connection with the very limited force of the Bank, affords a natural and easy explanation of the irregularity and confusion that eventually crept into the accounts. In his answers to a series of written queries I put to him at Melbourne, my son states as follows : “ Mr. Stuart stated that the transactions of the Ballaarat Branch for six months were about one or two hundred thousand pounds. Now the transactions in gold alone for six months amounted to 96,000 ounces, costing £384,000. The transactions in the Geelong account were greater, and the transactions in the

Melbourne account nearly as great. Then there were all the Customers' Accounts—Diggers' and Storekeepers'—which gave us vast trouble. Mr. Stuart stated that some days the entries in the Cash Book amounted to ten and sometimes to thirty. Now Dr. Stewart and Messrs. Moore and Dunne" (two of the principal firms and best customers of the Banks at the Ballaarat Gold Fields,) "both gave me as their reason for not giving me their accounts to keep, that our office was always so full, and they had to wait so long to be served, that they were obliged to go with their accounts to the Bank of Australasia, where there were more hands and more room."

What then can the reader think of the statement of Mr. Stuart, in the course of his evidence on the trial—a statement which, he well knew, would, in so far as it was believed, go to consign two young men, of previously unblemished character, to a life of ignominy and degradation—that the work to be done at the Branch at Ballaarat "was a mere bagatelle?" Unimportant as that statement may appear to the superficial observer, it was nevertheless an atrocious statement, considering the circumstances in which it was made, and it could only have originated either in the grossest ignorance of the affairs of the Bank or in malice prepense of the foulest character imaginable. Let Mr. Stuart choose which term of this alternative he pleases.

Neither is it true, although it was attempted, on the part of the prosecution, and apparently with success, to produce such an impression at the trial, that the Bank was always ready to provide additional assistance for the Branch at Ballaarat whenever it was wanted. "I always," my son observes, in answer to another of my queries—"I always gave, as my reason for not duly furnishing the accounts, press of business and want of hands. I wrote to the Melbourne Branch, telling them there, when they demanded to know, in an imperious way, why a certain paper had not been forwarded along with my weekly letter, that the reason of its being left out was that there was only one person in the office to do all the work. Mr. Woodhouse inspected the Ballaarat Branch in *July*, when the accounts were in arrear, and he had to do the work at the counter while I sat making the accounts for him. He said, "*We had too much to do,*" and proposed to me to send up Mr. Ochiltree to assist in getting up the books, *which were then a long way in arrear; but he sent nobody.* Mr. Drake and I were all the

employés of the Bank at the time. When he returned to Geelong, he told the clerks *there*—seven in number—that we two had twice as much to do as they all had. I learned this from Ochiltree.”*

Mr. Lang’s sole object, when connected with the mere Agency, previous to the 1st of April last, was to purchase gold for the Bank, and to transact the necessary business connected with that operation; and it has been shewn that, besides the business done at Ballaarat, he had established gold-buying offices for this purpose at Creswick’s Creek and Avoca, fifteen and fifty miles distant, respectively, which he had to visit weekly. Mr. Stuart asserts indeed, in his letter in the *Herald*, that he had established these offices without authority from the Bank; but not only did Mr. Lang believe, and I am satisfied with good grounds, that it was quite within the letter and spirit of his instructions† to perform this particular service for the Bank—which greatly extended its sphere and increased its profits—but the Bank actually ratified and confirmed the proceeding, by allowing him a horse to visit them, as Mr. Stuart acknowledges was actually the case. Did Mr. Woodhouse, I ask, find fault with Mr. Lang for having established these offices when he was up at Ballaarat in the month of July?

Alluding to this visit, my son observes, in his answer to one of my queries, “I told the Inspector, when he visited the Bank in July, that it was absolutely impossible for two to do all the work, and he promised to send assistance. I always urged, as the reason for not sending the returns, that they could not be got ready by myself, or by myself and Mr. Drake, without additional assistance. The Bank (at Geelong) told me to stop gold-buying and get ready the returns. This I refused to do, saying that that course would ruin the business of the Bank. I wanted clerks, and not advice to stop gold-buying. Our customers were the Storekeepers and Diggers, who all had gold to sell, and would in that event have gone to the Bank of Australasia, where they could have both sold their gold and done their Banking business, instead of favoring *them* with their gold dust, and then coming to *us* with their money. *Cotton*

* As Mr. Woodhouse is now in Sydney, he can testify as to whether this statement is well founded or not.

† His duties in the Agency were simply to purchase gold for the Bank as extensively as possible in the District, and to circulate its Notes.

did not understand this, for he had never been at the Diggings, and therefore I refused to be guided by his advice."

And again, in answer to another query of mine, to the following effect,—(for I had been given to understand by Mr. Ireland, the barrister, that the circumstance had told strongly against Mr. Lang on the trial,)—"You were written to repeatedly after the 1st of July to furnish regular accounts, and rather to give up gold-buying than fail in this matter: why did you not do so?" Mr. L. immediately gave me the following answer in writing—"I was written to by Mr. Cotton," the present Manager of the Geelong Branch, "to give up gold-buying, and in my answer to him I refused, telling him that if we were to give up gold-buying, we might as well close the Bank. I always gave as my reason for not duly furnishing the accounts press of business and want of hands. I did not consider Mr. Cotton as my superior officer, and would not obey his *orders*, although I would listen to his advice."

It is stated, in the report of the trial, that "Mr. Ireland wished to ask if it was possible two men could do all the business of the Bank? *His Honor*: "What has that to do with the charge? If he could not do his duty, he ought to have said so and gone away." But this flippant and heartless remark displays either a strong feeling of prepossession, and even of bitterness towards the prisoners, utterly unworthy of the Bench, or an ignorance of human nature scarcely conceivable in a Judge. A willing horse will gallop on till he drops down dead on the highway; and so will a young man of a similar disposition. My late son is, unfortunately, not the only young man who has been worked to death, or, in his own mild language, "till he could stand it no longer," by the heartless taskmasters of "*The Convicts' Bank*."

But there was another reason why there were not more hands employed to do the Bank work at Ballarat: the accommodation was so shamefully insufficient for the purposes of the establishment that there was no room for more, even if they had come. In writing for additional help from Geelong, on one occasion, during my son's absence at one of the distant Gold-fields, Mr. Drake informed me that he had stipulated that it should not be sent till the new building was ready; and that building—the iron house—was

only taken possession of on the 1st of October, when Messrs. Lang and Drake had left.

2. The second point of importance in the case is the character of the accommodation, both in buildings and otherwise, afforded for carrying on the business of the Branch Bank at Ballaarat. Mr. Stuart swore, in the course of his evidence on the trial, that the Bank-building in that locality was an iron-house. I will not say that this evidence amounted exactly to perjury, or false swearing; but I have no hesitation in saying that it was within a hair'sbreadth of it. It had all the demerit of perjury, without the legal consequences. Its obvious intention, if it had any meaning or bearing on the case at all, was to deceive the Court, and to throw dust in the eyes of the jury, by leading them to believe that the accommodation provided by the Bank was amply sufficient for all the purposes of the establishment during the period that Mr. Lang had charge, up to the 1st of October last. And yet Mr. Stuart knew well all the while that the iron-house was never occupied by Messrs. Lang and Drake up to that date at all! Considering the circumstances in which it was given, and the effect it was likely to have upon the fate of the two young men on trial, the evidence in question was evidence of an atrocious character, worthy of a Dominican Inquisitor, or of a common hangman.

In his letter in the *Sydney Herald*, Mr. Stuart, apparently anxious to extract anything in the shape of an accusation, from any quarter whatever, accuses my son of negligence and carelessness in not getting the iron-house completed, as the materials for its construction had been sent up to him so early as the month of June. If these materials were sent from Geelong at that time, it is not improbable that they may have been six weeks on the way up, as was actually the case with a quantity of stationery that was sent up to Ballaarat about the same time last year for the use of the Bank.* But at whatever time they may have reached their destination, it must be borne in mind that, as it was extremely difficult to procure mechanics for any purpose whatever, either in Sydney or Melbourne, in July, August, and September last, it was tenfold

* It arrived in the latter end of August, one box having been six weeks on the road! The young men had consequently to purchase stationery to the amount of £3. from the *Melbourne Herald* Office at Ballaarat, and to rule columns for money entries themselves.

more so to procure them at the Gold Fields. Before I had either seen or heard of Mr. Stuart's letter, however, and consequently before I could possibly have anticipated any such charge, both of the young men told me, incidentally, (and I had actually made a memorandum of the point at the time,) that they had "hurried on the workmen to get the iron-house finished," *for the accommodation of the additional clerks which the Bank required.* The building therefore in use during the whole period of Mr. Lang's connection with the Branch at Ballaarat, as proved by the evidence of Mr. Frazer, was "a wooden building, with slits in it:" that is the slabs or pannels of which it was constructed had shrunk so much or were so ill jointed that any person from without could easily see all that was doing in the Bank. And such a feeling of insecurity and apprehension did this circumstance create, on the part of the young men, especially in the midst of a lawless population, including many of the very worst characters in the country—thrice convicted felons from Van Diemen's Land and elsewhere—that they were actually afraid to count the money oftener than twice a week. Mr. Stuart also testifies that there is now "an iron safe in the Bank;" but there was nothing of the kind during the period that my son and Mr. Drake were there, and they had not unfrequently to hide a portion of their money under their beds! The Bank consisted of an apartment ten feet by ten, with a counter stretching across it, and that counter consisted for a time only of a common deal board. There was a common drawer inside the counter, in which notes, crude gold, and coin had all to be stuffed together; and when the Bank shut at four o'clock, the contents of this drawer had all to be emptied out and rammed into a common carpet bag, which had then to be carried over to the camp for safety till next morning. The apartment which the two young men had to reside in was under the same roof and of the same dimensions—10 by 10—as the Bank. It seems, however, that they were both very watchful over the property entrusted to their care, as far as they could be, by remaining regularly on the premises during the evening, instead of spending their evenings at the hotel, as was the practice at the time with not a few young men at the Diggings. One of the robbers of the Bank of Victoria, now under sentence in the gaol at Melbourne, has told my son that he had watched him for weeks, to get a chance of robbing the Bank during the absence of

himself and Mr. Drake ; but they were always in their place, and he had never got one.

But the books and stationery supplied to Messrs. Lang and Drake were as insufficient for the purposes of the establishment as the miserable wooden shed called "The Bank," till the iron-house and safe, *sworn to by Mr. Stuart*, came at length into use on the 1st of October : and to this inexcusable and highly culpable neglect, on the part of the Directors, the irregularity and confusion that ensued may in great measure be attributed. One of the queries which, at the suggestion of Mr. Ireland, the barrister, I put to my son in the prison, was as follows, to which I subjoin his immediate written reply.

Q.—" You complained of not having had proper books for entries supplied you by the Bank ; but you had the books in use before you took charge, and these books were not filled up. Why did you not make use of them ? This, I understand, told strongly against you."

A.—" The books that I required were for the Banking business, which commenced on the 1st of April. The books previously in use were the books of the Agency, which only bought gold and issued drafts, doing no Banking business."

It had been alleged by the prisoners, and proved in evidence on the trial, that they had had to purchase a quantity of stationery from the *Melbourne Herald* Office at Ballaarat, which they had had to rule for themselves. On this point I put the following query to my son, and obtained the subjoined reply.

Q.—" The paper you say you purchased and had to rule yourselves was not produced : what had become of it ? Can you offer any explanation on the subject ?"

A.—" The books we had to rule were the Current Account Ledger, the General Ledger, (produced in Court,) before in use, and the Draft Books."

Q.—" Your accounts were not complained of, and were furnished regularly till after Mr. Drake joined you, I believe from the 1st of July : how came they therefore to fall into such irretrievable disorder then ? Were you led into any improper courses through this new connection ?"

A.—" The accounts were complained of before. The reason of their not being duly furnished at any time was want of assistance

and want of room, both before and after Mr. Drake's arrival. Besides, Mr. Drake was a good hand, and I could trust him with any of the books. By so trusting him partially with some of them, and not giving them altogether to him, entries were omitted. We depended on each other."

Q.—"Your case, in the estimation of the prosecution and the Judge, hinged almost entirely on the entire omission of all entries of Deposit Receipts from and after a certain date. How can you account for such an omission, consistently with the supposition of your innocence? Or was it the fact that there were no such entries of any kind, or in any way?"

A.—"The Deposit Receipts were not bound together, but loose. Consequently, they got out of order, and could not be entered till they were sorted. Mr. Drake put them aside from day to day, leaving a space in the Cash Book for them when they could be sorted. Not knowing of this omission, I added up the Cash Book and carried forward the balance, and Mr. Drake, supposing I had entered the Receipts, went on with the one issued on the day after I had finished adding the book."

It appears that when the Bank was formed, Mr. Lang was furnished, from Geelong, I presume, with a bound volume of printed forms of Deposit Receipts. When a deposit was made the blanks in the form were filled up and the particulars entered on the butt or block, which remained in the volume, when the receipt, duly filled up and numbered, was cut off and handed to the person making the deposit. But the business of the Bank increased so rapidly, under Mr. Lang's able and popular management, that this bound volume was soon exhausted, and an additional set of forms had to be printed for use at the *Ballaarat Times* Office. But there was no bookbinder in the vicinity to bind up these forms into volumes as before, and the consequence was that, as Mr. Lang, Mr. Drake, and Mr. Stow, the clerk, were sometimes all engaged together in filling up receipts from these loose forms, the butts or blocks got into derangement, and could not be entered without much previous trouble, as they might otherwise have been if they had been all duly arranged in consecutive order in a bound volume.

Such then is the obvious and natural manner in which, I submit to every intelligent and candid reader, the omission of the entry of a whole series of Deposit Receipts, from which the criminality of

Messrs. Lang and Drake was hastily and gratuitously inferred by both Judge and Jury on the late trial, may be easily and satisfactorily accounted for. That omission, I maintain on behalf of these deeply injured young men, was purely accidental, and the result of no fraudulent design against the Bank. Nay, it arose entirely from the heartless cupidity and culpable neglect of the Directors themselves, in not supplying them, as it was their bounden duty to have done, with the means of discharging, at all adequately, the duties of their establishment. To all intents and purposes, the Bank at Ballaarat was a mere trap, virtually set by the Directors, in which these young men have been innocently caught, and in which they are now suffering unmerited punishment through the culpability of others.

Mr. Stuart arrived at Ballaarat, as Inspector of the Branch Banks, some time in the month of October; and finding, on a mere cursory inspection of the books, as the result sufficiently shewed, that there was a deficiency in the funds to the extent of £24,400, or thereby, caused Messrs. Lang and Drake to be arrested and taken into custody on the 20th of that month, on a charge of embezzling the funds of the Bank to that amount, notifying the fact to the public in both colonies, in the most offensive manner, through the following advertisement, which was inserted in the Melbourne and Sydney daily papers.

“BANK OF NEW SOUTH WALES.

“NOTICE is hereby given, that in consequence of defalcations in the Accounts and Cash of the Ballaarat Branch of this Bank, Mr. George Dunmore Lang, the Manager, and Mr. Frederick Lee Drake, Accountant, are dismissed from the service of the above Bank.

“ALEXANDER STUART, Inspector.”

“20th October, 1854.”

Now there are three distinct parties, to whose procedure and conduct, respectively, in this crisis, I feel myself called on to advert:—1st. To that of Mr. Stuart: 2nd. To that of the Bank Directors: and, 3rd. To that of my son and his companion, Mr. Drake. I happened, quite accidentally, to learn the astounding intelligence of my son's arrest on a charge of embezzlement, almost immediately after the news had reached Sydney by one of the Melbourne steamers; and I took the first opportunity in the course of the day to wait upon Daniel Cooper, Esq., one of the Directors of the Bank, to learn the particulars of the case. Providentially

for me, Mr. Cooper proved rather "a leaky ship" for the Bank, and gave me all Stuart's case against my son, informing me also at the same time of the course which the Directors had taken on the occasion. I had in the meantime learned from the Port Phillip papers how my son had acted in the matter, and felt comparatively easy on his account; for it was there stated that Mr. Lang had indignantly repelled the charge of embezzlement, and maintained that the apparent deficiency was owing chiefly to an error on the part of the Geelong Branch of the Bank.

I learned, therefore, from Mr. Cooper, who detailed to me the main features of Stuart's case against my son, that "Young Lang had been speculating in the purchase of land to a vast amount with the funds of the Bank—that he and Drake had an "accomplice" in Melbourne, whom Stuart had also caused to be arrested—that Lang had taken the sulks when taken into custody—and that, as might be expected in such a delinquent, he had been given to extravagance and dissipation." So much for Mr. Stuart's case. As for the Directors, "they could not but approve, of course, as they did, most cordially, of the zeal and diligence of their man, Friday, in this whole affair. They authorised and requested him, accordingly, to search out the matter to the bottom; and they directed him, moreover, to seize the land which Lang had purchased, and have it sold for the benefit of the Bank."

Now what will the reader think when I inform him that there was no foundation whatever for this particular charge? Of the £24,400 of alleged deficiency, it was soon discovered, agreeably to what Mr. Lang had himself stated, that £11,862 was represented by a quantity of gold dust which he had forwarded to the Geelong Branch, but for which he had not been credited; while three different items, which Mr. Stuart had himself omitted, left a balance in favour of Messrs. Lang and Drake of £2000! No wonder, therefore, that Mr. Stuart should have felt annoyed, as, I am told, he acknowledged, himself, at having proceeded to such extremities with these young men, who were forthwith liberated accordingly!

I shall leave it to the reader to form his own estimate of the heartless and atrocious procedure of Stuart in this whole transaction. There was no reference to this commencement of his investigations at Ballaarat on the subsequent trial—"Oh no! he never mentioned it!"

As for the Directors—they could not afford to give my son the benefit even of a doubt, as to whether he was really innocent or guilty, much less to make any provision for a fair and thorough investigation of the books and accounts of the Bank, as far as he was concerned. On the contrary, ignoring at once his long, faithful, zealous, and highly valuable services in their employ, as well as his long-established and previously irreproachable character, they received all Stuart's charges as if they had been already proved; and merely directed that functionary to seize the land that Lang was said to have purchased, and have it sold for the benefit of the Bank! Nay, a gentleman in business in Melbourne told me in that city, within the last fortnight, that having been recently in Sydney, he heard one of the Directors (of course, some "leaky ship,") declare at his own table here that "the Directors would expend £20,000 upon that Ballaarat case"—not to have the affair properly and fairly investigated, (for they had evidently no intention of the kind,) not to ascertain even where or how the missing money had gone, (for there was no doubt on this point in the minds of the public generally,) but simply to get my son convicted of embezzling their funds!

Had these gentlemen expended only one-fourth of this large amount in providing suitable accommodation for their employés at Ballaarat, with proper books, and a sufficient number of clerks for conducting their business, together with the requisite amount of periodical supervision, they might have spared themselves the necessity for such a sacrifice as this large expenditure would have implied. But how unlike the spirit and procedure of honorable British merchants and gentlemen—of whom English Bankers are always considered the very first class—is the spirit evinced in this whole proceeding on the part of the Bank Directors here! It is only, however, the more characteristic of the whole concern, and the more worthy of the era of Governor Macquarie—when the Bank of New South Wales first came into existence, and when the inhabitants of this colony consisted exclusively of those who had been convicted, and those who ought to have been so. Like the *Old Lags* of that period, the Directors would rather have liked to have found a felon in my family also, as there had been in so many of their own, and in those of their predecessors; for I confess that such a discovery would have put an

effectual extinguisher upon me, and shut my mouth for ever—a very desirable consummation, no doubt, in certain quarters! Surely then I am not in error in designating their Institution, “The Convicts’ Bank.” Mr. Emerson, the American writer, observes somewhere, in his work entitled “Representative Men,” that it is the highest achievement of eloquence to give a good nickname. Now I make no pretensions to eloquence in this “Plain Statement,” and I utterly disclaim the imputation of giving a nickname in the case. On the contrary, it is no nickname that I have given the Bank of New South Wales, but the only “proper name” for the heartless and contemptible pack of mere money-grubbers to whom I have applied it.

On a further investigation of the books and accounts of the Branch Bank at Ballaarat, it was ascertained, or supposed to be ascertained, (for no confidence can even yet be placed in the examination of the books and accounts of the Bank,) that there was a deficiency in the cash to the extent of £10,784 5s. and 4d. ;* and Messrs. Lang and Drake were again given into custody by Mr. Stuart on a charge of embezzlement to that amount! In explanation of his zeal on this occasion, (which, after the breaking down of his first charge, was somewhat suspicious,) Mr. Stuart had given out that he had learned that Mr. Lang had intended to abscond, a circumstance which was reported to me by Mr. Ireland. But my son, when I mentioned the circumstance to him, immediately and indignantly characterised the insinuation as an impudent and unfounded falsehood,† intended only as a foil to Mr. Stuart’s own

* In his *memoranda* for the guidance of Mr. Ireland, the barrister, on the trial, my son observes:

“I cannot believe in a deficiency of £10,000. The account of errors stands, as far as I can recollect, thus:

Dr.	Cr.
£24,400. Notes not entered.	£11,862. Gold not entered.
9,000. Deposit Receipts omitted.	23,000. Amount passed by me in the books, but disputed by Mr. Stuart at the time. It is a correct entry.
3,500. Additional General Entries.	17,600. Included in the first charge against us: was an error of Mr. Stuart’s.
<hr/> £36,900.	<hr/> £52,462.

† Mr. Lang’s indignant notandum on this imputation is as follows.—

“A lie! I had plenty of opportunities of escaping, even after I was in custody. In particular one evening I was at a distance of half a mile from the Camp without guard or police.

vindictive and iniquitous procedure towards the young men. It was also given out, and repeated again and again in the Port Phillip papers, in accordance with Stuart's first report to the Board in Sydney, that the missing money had been expended by my son in the alleged land speculations to which I have already referred. I therefore deemed it incumbent upon me to ascertain, not only from my son, but from a gentleman at Ballaarat, who had the best means of information on the subject, what these speculations had really been. I ascertained accordingly from my son that his first purchase of land was made in common with Mr. Dixie, of the firm of Dixie and Parkin, of Ballaarat, and consisted of 33 acres of land, at about £3 3s. per acre. Of this amount I ascertained that he was able to pay his proportion at the time, from having money enough of his own for the purpose. His second purchase was a town allotment of 60 feet frontage at Ballaarat, from Mr. Welch of that district, at £3 3s. per foot; one-third cash, which was paid, and the rest by a promissory note at 3 months. This purchase was for himself exclusively. His third purchase was made in the month of July, 1854, in common, like the first, with Mr. Dixie, and consisted of a building allotment of 100 feet frontage at Ballaarat, at £10 per foot; the terms being one-third cash, and the remainder by bills at three and six months. The cash part of this purchase, I was given to understand, Mr. Lang paid, amounting to £166, or thereby. Before the maturity of the first bill, however, the joint purchasers sold thirty feet frontage of their purchase at a profit of £5 per foot, or £75 for each; but as Mr. Lang had not sufficient funds of his own at the time to make up the difference between this amount and that of his first bill, viz., £96, he marked upon his own bill, when presented for payment at the Bank, "Not sufficient funds," and requested Mr. Dixie to pay it, which he did.*

This, then, was the utmost extent of my son's speculations in land, (of which so much has been said, both here and at Port Phil-

* Mr. Lang's notandum on this point is as follows:—"Purchased and paid for about £350 worth of land. Part of the £350 was £166 which I gave as part payment of a piece of land to cost £1000; Mr. Dixie, of the firm of Dixie and Parkin, going shares with me in the purchase. I was still in the Bank when my first acceptance of £166 was presented for payment, and had I wished to tamper with the Bank's money, I could have paid my bill. I dishonoured the bill, although a portion of the purchased land had been previously sold, and I had for my share £70 of profit on the sale towards the payment of the bill; but not having at hand the other £96, I dishonoured my bill."

lip,) while in charge at Ballaarat. And considering that his salary, as Manager of the Bank there, was £600 per annum, with £100 additional as a bonus, and considering the much larger income of which he had the almost certain prospect as an intending Gold Broker on his own account, I can see nothing to condemn in this extent of speculation. But the circumstance of dishonouring his own bill when presented for payment, rather than touch the funds of the Bank, (of which proof positive was tendered at the trial, but, strangely enough, rejected,) was a most convincing proof of his having no private horde to recur to on such an emergency. After receiving this information from my son, desirous of having the testimony of some disinterested person, I wrote Mr. Dixie, of Ballaarat, for information in the case on the subject, and the following is an extract of his letter in reply :—

“Ballaarat, 15th January, 1855.

“Dear Sir,

“I have but just received your note of the 9th instant, having been absent from town for a few days. In reply to yours, I have to state that your son is interested jointly with myself in 33 acres of land at the Bald Hill, and that he had agreed to take one-half interest in a Town Allotment, value £1000; but as the purchase was made in the names of my partner and myself, we became responsible for the money; and on your son not retiring the Bills when they became due, we consider he has lost all interest in that; so that there is but one piece of land, in extent 33 acres, purchased at a cost of £110, in which we are equally interested.

* * * * *

“Should you visit Ballaarat, I shall be glad to see you and afford you any information in my power. In the mean time,

“I remain, yours sincerely,

“TH. DIXIE.”

“Rev. Dr. Lang, &c., &c., &c.,
“Melbourne.”

Such, then, was the mare's nest in which Mr. Stuart's first and famous report to the Directors, in regard to the alleged delinquencies of my son, was found to result. But when charges of this kind are brought against any person, it becomes a matter of policy, if not a point of honour, for their authors to stick to them, as the mere repetition of such charges has a tendency to induce the belief that they are well founded. It has doubtless been with this view that it has been mooted in the Port Phillip papers that an application was about to be made, on the part of the Bank, to His Excellency Sir Charles Hotham, to appoint a Commission to ascertain whether my son had not been purchasing extensively at the

Government Land Sales, *in order to account for the disappearance of the missing money.* Whether Mr. Stuart has been in any way connected with this bright idea or not, I neither know nor care; but the circumstance sufficiently exhibits the sheer malevolence in which the prosecution originated, and the superlatively bad spirit in which it has been pursued. It had been hastily and gratuitously assumed in the first instance that my son had been speculating largely in land with the funds of the Bank, and, as a matter of course, it must by all means be proved that he had.

There was not a shadow of evidence produced on the trial to prove that Messrs. Lang and Drake had any funds of their own, (as they must have had, if they had embezzled the funds of the Bank,) when they commenced business as Gold Brokers on their own account at Ballaarat. Mr. Surplice, a gentleman of the highest standing in that locality, told me, as he was ready to have proved in Court had his evidence been received, that they had not; all their capital consisting in their superior tact and ability, and in their great and acknowledged popularity. My son had stated, in his letter to his mother, that he knew for certain that the Bank would not do one-third of the business it had been doing, after he should leave it; and there was nobody who was likely to know this better than Mr. Stuart. It was therefore not merely a matter of policy, but a matter of necessity, for the Bank to put the two young men down. As to what had become of the missing money, that was a minor question; but to get a conviction for embezzlement against the young men, and thereby to hunt them off the ground altogether—that was the trick for the Convicts' Bank!

And it is matter of certainty that this was precisely Mr. Stuart's trick; for it was as plain to him, as it is to almost everybody else, how the missing money had gone. In his first report to the Directors here, Mr. Stuart had informed them, as the circumstance was detailed to me by the "leaky ship," that Messrs. Lang and Drake had "an accomplice," in their alleged conspiracy to rob the Bank, in Melbourne, whom he, (Mr. Stuart,) had caused to be arrested in that city. This person was an Irishman, of the name of Burtchell, who had for some time been post-master, but had afterwards become a gold-buyer, at Ballaarat.* "Burtchell," my

* It has been stated, on what authority I do not know, that Burtchell was originally in the Detective Police Force.

son observes, in his answer to one of my queries, "was a gold-buyer for Mr. Frazer, the Gold Broker of the Bank of Australasia, before I employed him, and he was the best gold-buyer on the diggings. He bought more gold than any Bank or any other Broker." This person, it seems, had been often in the Bank buying and paying for gold, with bundles of notes which were handed him for the purpose by my son, apparently with perfect confidence, (as is testified by an eyewitness,) as he required them; and he had therefore peculiar facilities of helping himself to the cash—especially considering the wretched accommodation which the Bank afforded—if he had felt so inclined. Nay, it was matter of notoriety that during the unavoidable absence of Messrs. Lang and Drake—sometimes from bad health, sometimes from absence at distant gold-fields, and sometimes even from business connected with the Bank in the district—he had repeatedly been in the Bank for a minute or two at a time alone. In this way, Burtchell had had extraordinary facilities for stealing from the Bank, by the practice of "weeding," as it used to be designated by the "old hands," that is taking a little at a time.

It had been alleged, on the part of the prosecution, that when the deficiency was first discovered, Mr. Lang had never suggested that the missing money had been stolen, or that Burtchell had taken it, and that this had told strongly against him. This was told me by Mr. Ireland; but on putting a written query on the subject to my son, he denied the allegation altogether, and this denial happens to be corroborated in the strongest manner by the procedure of Stuart himself. "When the books were balanced," my son states in answer to my query, "and it was found there was a deficiency, I immediately suggested that it" (the money missing) "had been stolen, and by Burtchell, long before Stuart or Cotton arrived. Mr. Ochiltree can testify as to this. I heard privately that Burtchell had got a draft for £1600 on Melbourne. This was before we discovered the deficiency in the cash. This tended greatly to raise my suspicions. I mentioned the fact to Ochiltree, and we both said that we were afraid that he had robbed me. This was a considerable time before any deficiency had been seen, or before either Stuart or Cotton arrived."

But the circumstance that leaves no doubt whatever as to the straight-forward conduct of my son in this matter, is that Burtchell,

although he had then left Ballaarat altogether, was included, *by Stuart himself*, in his original charge against Messrs. Lang and Drake. In his first report to the Directors on the Ballaarat case, (as Mr. Daniel Cooper told me at the time,)—taking it for granted, without the shadow of proof, that there had been a regular conspiracy to rob the Bank on the part of these young men, and a third person, (whose name I did not then learn,) *their accomplice*,—Mr. Stuart informed the Directors that he had caused that person, viz., Burtchell, to be arrested in Melbourne; for a Sub-Inspector, of the name of Taylor, (as I afterwards learned at Melbourne,) had been sent down from Ballaarat, expressly for the purpose. And so strongly did public suspicion concentrate itself upon that person, in this stage of the proceedings, that a warrant was actually forwarded at the same time overland, from the Bank at Geelong, for his apprehension in Melbourne. And how, I ask, could such an idea have got abroad, how could it have been taken up and acted on immediately by Stuart himself, but from the strong and repeated allegation of my son and Mr. Drake, that he had robbed them? Burtchell had no *status* in the Bank, and although *morally* responsible as much as either of these young men, while he had its funds, to any extent, in his hands, he was in no way *legally* responsible, as the result unfortunately proved.

It was notorious at Ballaarat, as reported to me by Mr. Surplice, one of the most respectable Gold Brokers in that locality, that Burtchell had not a shilling of his own, when he threw up his office of postmaster to commence gold-buying at Ballaarat only a few months before. He had been employed in this capacity for a short time, as I have already observed, by Mr. Frazer, for the Bank of Australasia; and during the time he was subsequently employed by Mr. Lang for the Bank of New South Wales, he had bought about 18,000 ounces for that Bank, receiving a commission first of 9d., afterwards of 6d., and finally of 3d., per ounce. Taking the average of 6d., this would only have amounted to £450, and my son is strongly of opinion that he could not have been worth more than from £500 to £750 altogether, if he had been acting honestly. But it was notorious at Ballaarat that he was in possession of drafts on England and elsewhere, before he left that locality, to the extent of £8,300, besides a quantity of gold nuggets; and when asked how he had managed to make so much money, he replied, on one

occasion, that he had bought the gold he had been purchasing with heavy weights, that is, that he had cheated the diggers and pocketed the difference! At Geelong, instead of selling gold, as would have been a matter of course in a gold-buyer newly arrived from the mines, he had been purchasing gold largely at second-hand; and when asked how he had made so much money, he merely replied that he had been very successful at the diggings. It was this circumstance that awakened suspicion in that locality, and led to his apprehension in Melbourne. In short there is the strongest circumstantial evidence that such a case can admit of, that Burtchell had abused the confidence reposed in him by my son, and had robbed the Bank, in all probability, of the whole amount of the missing money. At all events, he is known to have carried home with him, per the "Great Britain," about £11,000.

That this was the general impression on the subject at Ballaarat, will appear from the following further extract of Mr. Dixie's letter, of which I have already quoted a portion:—

"In reference to the other matters on which you wish me to express my opinion, I firmly believe that the money lost from the Bank was stolen, and that by Mr. Burtchell, the Gold Broker. I knew him to be a man of no principle, and often expressed my opinion of him to your son; but his unsuspecting character never allowed him to esteem the man a rogue, and while Mr. Burtchell conducted himself well, he was allowed to come into the Bank, and to assist in the duties of the Bank *after hours*."

That the same impression was general also at Geelong, will appear from the following extract of a letter, from James Paterson, Esq., Gold Broker, of that city, which I shall insert at length in the sequel. Speaking of Mr. Lang, he says:

"His prosecutors completely failed to shew any purpose to which the missing funds had been applied, and there is a strong feeling abroad that the individual to whom you refer in to-day's *Argus*," (Burtchell,) "is the most likely party to have appropriated the Bank's funds."

Immediately after his apprehension in Melbourne, Burtchell was sent up in custody to Ballaarat, and underwent an examination accordingly before the Police Court in that locality. He was defended on the occasion by A. L. Lynn, Esq., a solicitor at Ballaarat, whose professional zeal for his client was doubtless not a little stimulated by the fact that he had known either Burtchell himself or some of his friends in the South of Ireland, and that he had entrusted him with a nugget to carry home to his own brother, on his leaving Ballaarat. Mr. Lynn, as the matter was reported to

me, "bullied the Court" on behalf of his client; and, by shewing that he had no more money on his person than he could honestly account for, and that there was no proof whatever of his having stolen any of the missing funds of the Bank, he succeeded in obtaining his immediate discharge.

Now, I believe no other result was possible in such a case as Burtchell's. It is not sufficient in such cases that suspicion should attach itself strongly to a particular individual, in the event of a theft or robbery having been committed. It is not sufficient even that that individual should be found possessed of money which he cannot prove that he had come honestly by. Our law requires that it should be proved that he had actually committed a theft or robbery; and failing such proof, the suspected individual must be discharged. The law of Scotland indeed allows of a verdict of "Not proven," in any case in which there are strong grounds of suspicion, as is often the case in criminal proceedings, but no legal proof to sustain a conviction; and such a verdict would doubtless have been given in that country in the case of Burtchell. But as there is no such distinction under the law of England, to which alone we are subject here, the suspected individual must be set free by that law, provided there is an acknowledged deficiency of legal proof against him.

There was a famous case of a Bank robbery in Scotland during the present century, in which a large amount of money was found in the possession of a suspected individual, against whom, however, there was no legal proof of his having actually committed the robbery. In defect of such proof, the advocate for the prosecution insisted that the accused must show how he had come by the money, for otherwise he could not be an honest man. "It is not necessary," replied the advocate for the defence, the celebrated John Clark, afterwards Lord Eldin,—"It is not necessary for my client to prove that he is an honest man. My learned friend must prove that he stole the money." But as no legal proof of this was obtainable, the accused was discharged, on a verdict of "Not proven."

But Mr. Stuart—whether in his kindly feelings towards the person whom he had described to the Directors, and caused to be apprehended in Melbourne, as "the accomplice" of Messrs. Lang and Drake, in their alleged conspiracy to rob the Bank to an enormous amount, or rather in the bitterness of his malignity towards

these young men, let the reader judge—would endeavour to persuade us, in his letter in the *Sydney Herald*, that Burtchell had completely established his innocence in the Ballaarat Police Court, as the only money he had in his possession when arrested consisted, in addition to a few pounds, of 250 ounces of gold nuggets which he had purchased from Mr. Lang, before leaving Ballaarat. But can any person of the commonest intelligence suppose for a moment that an artful thief, as Burtchell appears to have been, who had previously stolen a large amount of money from the Bank, would retain on his person a single sixpence more than he could honestly account for in the event of his apprehension? He had been two or three weeks in Melbourne and Geelong, previous to his arrest; and was there no place in either of these towns, in which he could put his drafts on England in safe custody till he was out of danger?

The circumstance of his purchasing a quantity of nuggets from Mr. Lang, which he had in his possession, of course quite openly, when he was apprehended, tends rather to strengthen than to neutralize the strong suspicion of his guilt; for this was precisely the course which an artful villain would have had recourse to, to divert all enquiry about his drafts on England. That he had such drafts to a large amount, and that he could never have come by them honestly, is certain and can still be proved. The question, therefore, as to Burtchell's guilt or innocence, is not in the slightest degree affected by the result of his examination before the Police Court at Ballaarat. And as to Mr. Stuart's insinuation that Messrs. Lang and Drake had had extensive private transactions with Burtchell, independently of their transactions with him as a Gold-broker for the Bank, I believe that, like various other gratuitous statements of Mr. Stuart in this matter, it is an impudent and unfounded falsehood. Nay, the very conduct of Messrs. Lang and Drake, in giving no evidence against Burtchell, when asked to do so, was a strong proof of their own conscious innocence, and not of their guilt. For if the missing money had been abstracted secretly, by a sort of *legerdemain*, as it must have been, by the artful thief, what evidence could either of these young men give against him? The written answer of my son to one of Mr. Ireland's queries, when requiring him to furnish him with materials for his defence on a certain point, was—I appeal to every intelligent and candid person—the only answer which conscious innocence could possibly give in such

a case. "The deficient money," my son states, "must have been stolen; it was never missed till the books were balanced with the Cash. In all probability it was stolen by our Gold-Broker, who, from the nature of his connexions with the Bank, was repeatedly allowed, by one or other of the clerks, to be in the Bank alone for several minutes together. To this fact Mr. Arthur Surplice can testify." And again—"The money was under the immediate control of no person in particular in the office. My duties often took me away from the Bank during business hours: then the money was under the control of Mr. Drake, Mr. Worth, or Mr. Stow; so that no amount can be traced to the actual possession of any body."

The arrest and examination of Burtchell was unquestionably the culminating point of the Ballarat Bank case; and if Mr. Stuart had only been possessed of the common feelings of humanity, or in other words, if he had combined in his person mere ordinary intelligence and virtuous principle, the case would in all probability have ended there and gone no further. But I shall shew in the sequel,—I trust, to the satisfaction of every intelligent and candid reader,—that the whole procedure of that functionary, from first to last, exhibits malice prepense of the foulest character imaginable towards his unfortunate victims, and a degree of low-bred brutal malignity worthy only of an incarnate dæmon. And I shall also shew that, in backing up their man, Friday, as they did, in all his heartless and outrageous procedure, without even admitting for one moment the bare possibility of the innocence of my son and his unfortunate companion, the Directors of the Bank of New South Wales have richly earned for their Institution the appropriate designation of "The Convicts' Bank," and for themselves the indignant reprobation and the bitter scorn of every honest and virtuous man in the province of Victoria.

1. In the first place, Mr. Stuart's original charge, alleging defalcations, on the part of Messrs. Lang and Drake, to the extent of £24,400. broke down at once and fell to the ground; the principal item of that amount consisting of a quantity of gold delivered, for which the young men had not been credited, and the other items being errors of Stuart's own. One might have thought that such a commencement would have somewhat neutralized the malignity of the man.

2. The extensive land speculations—in which, as Stuart alleged in his original report to the Directors here, that my son had been expending the funds of the Bank to an enormous amount, and with the idea of which the press of both colonies has been ringing for months past—growing, as they did,

“Small by degrees and beautifully less,”

dwindled down in reality to the paltry amount of £350 in money, payments, and a promissory note or two for a few hundreds more—an amount quite within the limits of the young man’s own means. And so scrupulous was Mr. Lang, as to tampering with the funds of the Bank, that when his own note for £166, of which he was £96 short at the moment, was presented to him for payment as Manager of the Bank, he marked on it “Not sufficient funds,” and requested that it might be taken up, as it was, by another party interested.

3. The extensive and organised conspiracy to rob the Bank, which Stuart had conjured up in his first report, apparently to frighten the Directors here, and at the same time to magnify his own zeal and merit in the matter—informing them, as he did on the occasion, that he had caused “the accomplice of Lang and Drake” in the said conspiracy, to be apprehended in Melbourne—this formidable conspiracy proved also a mere hallucination of Stuart’s, if not rather the wilful concoction of his own malignity. For although Mr. Stuart insinuates in his letter in the *Herald*, that the two young men had had pecuniary transactions with Burtchell, other than those of the Bank, there is not the slightest evidence of the fact; and I have shewn already, from two specific instances, that the mere statements and assertions of Stuart, even under the sanction of an oath, are not to be depended on. That Mr. Lang had been warned against Burtchell by his friend, Mr. Dixie, is undoubtedly the fact; but as he had found that person the best gold-buyer on the Diggings, his continuing to place confidence in him, if at all reprehensible, was an error of judgment merely, but nothing more.

In such circumstances, what, I ask, would any man of superior intelligence and virtuous principle, supposing that such a person had been in Stuart’s place, have done, even when it was discovered that there was a large deficiency in the funds of the Bank? Are Bank robberies so rare even in England—notwithstanding the ample securities against theft or robbery uniformly provided *there*, in strong stone walls, strong boxes, strong bolts and bars, efficient establish-

ments and vigilant superintendence—that such a person would never have conceived of the possibility of a theft or robbery having been perpetrated on the Bank at Ballaarat, without the knowledge of either Manager or Accountant; especially considering that the said Bank consisted only of a miserable wooden shed, “with slits in it,” (as if for the express accommodation of “outside barbarians” from Van Dieman’s Land and elsewhere,) and that the whole establishment of the Bank was notoriously inadequate for the due discharge of the duties it implied? Would the very first step which such a person would have taken in the case have been to arrest both Manager and Accountant—two young men of superior education, of highly respectable connections, of previously unblemished character, and generally esteemed and respected in the district—on a charge of embezzling the funds of the Bank; and confining them forthwith, with felons and other criminals of the vilest character, in the common gaol of a Gold mining district, without the shadow of evidence, either direct or indirect, to substantiate the charge?

4. For the omission of a whole series of entries in the books of the Bank, was of itself no evidence of embezzlement. That omission, as I have shewn already, from the testimony of the young men, which bears upon the very face of it the impress of truth, was purely accidental, and the result of defective arrangements on the part of the Bank, in not supplying them with the proper means and materials for carrying on the business of the establishment. Instead of being bound up in a volume, as they ought to have been, the printed forms for deposit Receipts were all loose; and when three persons were all engaged simultaneously, as was actually the case at times, in filling up such receipts, it was to be expected that the butts, or blocks, would get into derangement and disorder, and that unintentional omissions would occur; especially as the entries were made sometimes by the Manager and sometimes by the Accountant. But as these butts or blocks remained in the Bank, and were all numbered, there were ample materials in the office for making up the Books, and ascertaining the real state of the funds, at any time. Nay, there is reason to believe, (for there is no evidence to the contrary,) that it was entirely from these butts or blocks, constituting as they did *the original entries*, (although existing only on scraps of paper, through the fault of the Bank,) that the charge of the omission of the formal entries in the Bank books was made up by the prosecution.

But even although there had been no butts or blocks of the Deposit Receipts issued by Messrs. Lang and Drake left in the Bank, the very existence of these Receipts, all duly numbered, as they were, and forming of themselves a standing evidence against these young men, is utterly inconsistent and irreconcilable with the idea of an intentional omission of a whole series of entries to defraud the Bank. Had the young men absconded with the missing money, immediately after issuing these Receipts, the issue of the Receipts would have been in perfect keeping with the omission of the entries. But their remaining upon the spot, and commencing business on their own account, with such damnatory evidence of their fraud all around them—supposing the omission of the entries to have been intentional and therefore fraudulent—would imply a degree of idiocy and madness on the part of these young men utterly inconceivable.

5. But the circumstance which exhibits the real object, as well as the malice prepense and the brutal malignity of Stuart, in the clearest light, is his refusal to allow the young men to be out on bail, although bail to a large amount was offered on their behalf by three of the most respectable inhabitants of the district! I could scarcely have believed this myself, had Stuart not taken credit for the fact in his letter in the Sydney Herald. Blind as a mole to the utterly discreditable and disgraceful character of his own procedure in refusing bail in such circumstances, in the case of two young men of superior standing and of previously unblemished character, this worthy functionary of "The Convicts' Bank" makes himself merry at the circumstance of my son's offering him, in such an emergency, the small portion of land he was possessed of at Ballaarat to help to make up any deficiency in the funds! But that was not exactly "the pound of flesh" which this Shylock required. He evidently wanted to ruin the young men out and out, to prevent them not only from doing anything in the way of business for themselves, but from even obtaining the means of establishing their own innocence. He was well aware of the damaging effect which the incarceration of Messrs. Lang and Drake, on a charge of embezzlement, would have upon the public; and his low-bred malice could be gratified only by reducing them to herd for weeks and months together with the inmates of a common gaol at the Diggings.!

6. Still, however, Messrs. Lang and Drake were too well, and too

favourably known, at Ballaarat, to render it either likely or practicable to get a verdict against them in that locality. What then must be done in such an emergency? Why, let the *venue* be changed by all means to Melbourne—that is, 80 or 90 miles distant from the place in which the alleged crime was said to have been committed—where the public on the one hand would be incapable of judging of the circumstances and condition of a Banking establishment at the Diggings, and where the young men on the other, incarcerated as they were, would be utterly incapacitated from providing the means of defence. I cannot say indeed that this superlatively wicked course was taken at the instance of Stuart, for I have no information on the point; but I fully believe and am persuaded that it was. For although there was an obvious reason, on the part of the Crown, for changing the *venue*, in the case of the State prisoners, from Ballaarat to Melbourne, there was no reason whatever, but the one I have stated on the part of Stuart, for changing it in the case of a charge of embezzlement. Of course, the prosecution reaped the full benefit of this discreditable manœuvre, in the unfair trial and the unjust condemnation that ensued.

7. But, as if the iniquitous sentence, obtained in this surreptitious manner, was not enough for the unfortunate young men who have been the victims of this atrocious prosecution, Mr. Stuart affords the most convincing proof of his own malice prepense and brutal malignity throughout the whole case, by endeavouring to bring fresh charges against my son, and to prepossess the public with the opinion of his guilt. He accuses him, in his letter, of absenting himself from his proper business at Ballaarat, and going even to Melbourne, to present some address to the Governor on behalf of the Diggers. In reply to this unfounded charge, I beg to refer to the following letter of James Paterson, Esq., of Geelong, who was personally cognizant of the circumstances of the particular case to which Mr. Stuart refers.

Geelong, 12th Jan. 1855.

DEAR SIR,—I am in receipt of your favour of 9th instant, and beg to express my unfeigned sympathy for your son in his present painful position, feeling fully convinced of his entire innocence of any criminal transaction.

I have had many opportunities of witnessing your son's general conduct, which, I am happy to say, was always such as to elicit my highest commendation; and I believe this feeling was universal wherever he was known. Nor were his unwearied efforts in behalf of the Bank with

which he was connected at Ballaarat, less worthy of favourable notice. With scanty assistance, and accommodation totally inadequate in point of space or safety for the proper discharge of his onerous duties, he nevertheless pushed hard, and was never known to miss any opportunity that presented itself of furthering the interests of his employers. He made many personal visits to the several gold fields, the better to secure as plentiful a supply of the metal as possible. Indeed so convinced was I of the inadequate assistance and accommodation at his disposal, that upon one occasion I remarked to him, that I for one would not incur the risks that devolved on him, in being provided with so little accommodation and assistance.

That your son appropriated any portion of the Bank funds to his own purposes, I do not for a moment believe; neither will any one who knows him—his general conduct and disposition was quite the opposite; and he was universally recognised, especially at Ballaarat, as an open-hearted young man, and I never heard of his integrity being once questioned.

I have had a good deal of experience in gold-buying now, and know, that the quantities your son purchased must have occupied much of his time, and diverted his attention considerably from the other duties connected with the Bank; and I cannot conceive how Mr. Stuart could be induced to say that your son's duties were "a mere bagatelle," unless upon the supposition that he was ignorant of the duties your son had to perform.

I observed in the report of the trial, that the fact of your son's being absent on one occasion for two or three days from Ballaarat was commented on, and he was made to appear as if altogether truant from business, and on pleasure. I believe I am in a position to explain this visit to Melbourne, and to show that it was not altogether unconnected with the Bank business. I happened to be at the Avoca when his Excellency was visiting the gold-fields; whilst there I heard that the officials of Castlemaine and the Avoca were getting up a strong case against his arrival on that field, to induce him to withdraw the escort from Avoca *via* Ballaarat to Geelong. I returned quickly to Ballaarat, waited on Mr. Elliott, Manager of the Bank of Australasia, Mr. Douglas, of the firm of Rankin and Douglas, and your son. Together we drew up a remonstrance on the matter, (change of Escort,) when it was arranged that Mr. Douglas and your son should proceed to the Avoca to present the same to his Excellency. On their arrival at Avoca they found he had proceeded to Castlemaine, where they had to follow, in order to execute their mission. They returned by the way of Melbourne.

I believe this is the occasion alluded to by Mr. Stuart, and the remark was as unjust as it was unkind; for it was felt to be of the greatest importance to the interests of both Ballaarat and Geelong, that the Avoca Escort should traverse this route; and none were more interested in this matter than the Banks themselves—so that so far from your son in this instance neglecting his duties, (as Mr. Stuart's remarks must have led people unacquainted with the facts to suppose,) he was in reality endeavouring to do his employers, along with others, good service.

[Here follows the paragraph already quoted, page 33, about Burtchell]

I think it would be a good plan to agitate the matter as you propose, being fully convinced that popular feeling is strongly in favour of your son and Mr. Drake ; and the despotic manner of the trial, and the severity of the sentence, universally acknowledged.

I am, dear Sir,

Yours respectfully,

JAMES PATERSON.

Rev. Dr. LANG,
Melbourne.

To the same effect, Mr. Dixie observes, as follows, in the letter of which I have already quoted a portion, in reference to Burtchell, page 33.

I have noticed with pain a statement made by Mr. Stuart, I think, in reply to your letter, in which he states that your son left the Bank to attend to some Diggers' petition, and that on another occasion he was seen in Melbourne, not having called at the Bank ; now, this is untrue in a great measure. Your son did consent to accompany a gentleman, and present an important memorial to the Governor, (who by the way had only just left here, and had gone to the Avoca), not from the Diggers, but from the Banks and others, respecting the altering of the Avoca Escort. It was on this occasion that, having been obliged to go to Castlemaine to meet his Excellency, your son proceeded to Melbourne, and was seen by the Manager of the Bank there. He may have been wrong in not calling, but that was no justification to his being charged with two distinct periods of absence. Whatever other time he may have been absent from here, it was, I feel assured, solely to advance the interests of the Bank ; and I have known him to start on a journey of 28 miles on foot, when unable to procure a horse, *and solely on Banking business*. Upon the way in which the Bank have treated your son, there can be but one opinion ; and the injustice, if not illegality, of his trial in Melbourne,—90 miles distant from the place where he was committed—is a point that may be worth a legal inquiry. With regard to poor Drake, he has been the complete victim of the Bank : he resigned several times—during his stay here he was laid upon his back with dysentery, and for days unfit for duty ; and very frequently the boy Mr. Stowe has had charge of the Bank, and I have no doubt on some of these occasions Mr. Burtchell has helped himself.

8. Mr. Stuart alludes, in his letter in the Herald, to certain charges, implying direct fraud, which he alleges could still be brought against my son, in addition to those brought forward on the trial. Whether Mr. Stuart is so very merciful a man as to have kept such charges in abeyance, if he really had them *in retentis*, I leave the reader to judge. Fortunately, however, Mr. Ireland, the Barrister, had informed me, before I saw Mr. Stuart's letter, what these charges were ; and as the circumstance staggered me at the moment, I made it the very first of my written queries

to be proposed to my son, and put it down, as the reader will perceive, pretty strongly, as follows; to which I subjoin his immediate answer:—

Q. It is alleged that evidence could be produced that you had money deposited to your private account in another Bank in Geelong. Mr. Ireland was told this positively, and stated that if you were even getting a new trial, in the event of the verdict being found illegal, this new charge would be brought against you and substantiated. Answer me truly on this point; for if this is really so, any further attempt of mine in your favour would only land us all in deeper disgrace.

A. Mr. Drake and I entered into business as Gold Brokers about the 1st or 5th of October, and gave out to our customers that we would collect cheques payable at Melbourne or Geelong. When any customer wished to draw money from town in this way, we took his cheque, and sent it down to our credit with the London Chartered Bank here or at Geelong, and when we were advised by the Bank that the cheque was paid, we paid the Digger his money at Ballaarat.”

It had never occurred to the discoverers of this second mare's-nest that these private accounts with other Banks at Geelong and Melbourne referred to a period subsequent to the young men's leaving the Bank of New South Wales, and to their entering into business on their own account; for they had the fairest prospect of an extensive and lucrative business at the time. And in answer to another query of mine, in reference to an intended private Bank which my son had mentioned in his letter to his mother of the 24th of August, and which certain gentlemen at the Diggings were then contemplating, my son adds, “There was money deposited at Creswick's Creek and Avoca by diggers with Mr. Alexander Lewers at the former place, and Mr. William Young and Mr. Theodore Mantel of the latter. The three offices were open for the receipt of deposits as late as December to my knowledge, and had nothing to do with any Bank, further than that each of them bought gold and sold it to one or other of the Banks. These gentlemen advertised to receive gold on deposit, and issue drafts on Geelong and Melbourne, and procure Drafts on London or any of the Colonies.” It was an establishment of precisely the same kind that Messrs. Lang and Drake commenced, and it had been contemplated at one time

by all these parties to unite together and form a private Bank of their own. Mr. Stuart's insinuation, that the project of a private establishment had originated with Burtchell, has no other foundation than his own malice, and no other intention than that of damaging my son, by associating his name with that of the person who is generally supposed to have stolen the missing money.

9. I have already stated that, in order to strengthen his original charge of enormous defalcations and embezzlement, Mr. Stuart had thrown out insinuations, in his first report to the Directors, against the moral character of my son generally. And it is quite accordant with the principles and practice of human nature that, when a specific criminal charge is brought against any person holding a prominent position in society, and especially when such a charge is followed by so very serious a step as incarceration, such insinuations are uniformly thrown up on all hands like mushrooms, and are usually implicitly received, without the least attempt at examination, by the gaping portion of the public. In a letter, however, which I have just received from the Rev. Mr. Ramsay, of Melbourne, that gentleman states as follows, after reporting what the Rev. Mr. Hetherington, also of Melbourne, had just told him of my son's condition and employment in the prison: "Mr. Hetherington also mentioned that, in consequence of some vile reports reaching him concerning your son, he had written to the Presbyterian Minister at Ballarat to make *special* enquiry into his character in the district, and that Mr. Martin (the minister written to) had informed him that he had made strict enquiry at one and another in the district, and found that Mr. Lang had sustained an excellent and honourable character."

In his extreme anxiety to criminate my son, Mr. Stuart alleges, in his letter in the *Herald*, that Mr. Lang had on some occasion given an entertainment to the subordinates of the Bank, with whom he had formerly been associated in the same capacity, in Melbourne. No doubt so imprudent an act would never have been performed by a stingy fellow, like Stuart; but I am utterly at a loss to discover its criminality: and occurring, as it seems to have done only once in Mr. Lang's Port Phillip life, it was not likely to be beyond his limited means. My son was naturally of a generous disposition; and he uniformly took a warm interest in the welfare of the subordinates in the establishment to which he belonged. He had ex-

hited precisely the same feelings when a student at the University of Glasgow, and these feelings were always strongly reciprocated by his fellow-students.*

I shall follow up this anatomy of the prosecution against Messrs. Lang and Drake, to which, I believe, there will scarcely be found a parallel in the whole annals of Banking, with the following letter from the Rev. Mr. Ramsay of Melbourne on the case generally.

“Melbourne, 11th January, 1855.

REV. AND DEAR SIR—It must be soothing to you, and Mrs. Lang and family, under the anguish of the present unexpected and fearful affliction, to learn that, amongst those to whom your son was best known, a conviction of his innocence still remains, while a very general feeling pervades the community here that both he and the young man Drake have been unjustly and harshly dealt with. For my own part, having been present throughout the whole of the trial, and having occupied a position in the immediate vicinity of the witness box, where I could distinctly catch all that was said, I have no hesitation in giving it as my opinion, that whatever amount of confusion and irregularity in the keeping of the accounts, and of actual deficiency in the funds, might be established, no evidence whatever was adduced of wilful and felonious appropriation of the money of the Bank to their own use, a point which enters essentially into the crime of embezzlement. From the want of evidence the Crown Prosecutor was obliged to abandon the charge of Larceny, for which the prisoners were also indicted; and I cannot see

* During the Session of 1848 and 1849, when Mr. Lang was a student of the third year at the University of Glasgow, the celebrated Statesman and Historian, Macaulay, was proposed as a candidate, in the liberal interest, for the Rectorship of the University. On all such occasions, the University—Professors and Students indiscriminately—is divided, after the example of the Ancient University of Paris, into four *nations*, as they are called, according to the birth-place of each Professor or Student; and the vote is taken by nations, not by heads. Being a native of Australia, Mr. Lang necessarily belonged to the smallest of the four nations, and his vote was proportionally valuable on that account; but he was lying dangerously ill at the time of suppuration sore throat. A deputation of the Students, however, waited upon him, and being admitted into his sick chamber, as their object was not known to his relatives, they induced him to get up from his sick bed, at the risk of his life, to array himself hastily in his College gown, and go down with them to the University, and give his vote for Macaulay. By this means the liberal vote was secured in the smallest of the four nations; and as Macaulay had already a majority in two out of the four, he was accordingly declared Lord Rector of the University. What a change from such a scene to a prosecution on a charge of embezzlement at Ballarat—at the instance too of an individual who, whatever may have been his previous history and condition, has exhibited sufficient malice throughout this whole case to warrant the belief that he had taken his degrees in Pandæmonium! Need I add, however, that there is a very general impression in this colony that my own alleged political delinquencies have had as much to do with this atrocious prosecution as the peccadilloes of my son? For my own part I have nothing to expect from “The Convicts’ Bank.”

why, for the same reason, that of embezzlement should have been allowed to go to the jury. Nor am I alone in this view; with but one exception, I have not met with any within the wide range of those with whom I have conversed on the subject, who professed to deduce from the evidence as reported, anything beyond culpable negligence—a fault which, while sufficient, perhaps, to warrant the dismissal of a servant from his situation, furnishes no ground for his arraignment before a court of judicary. I feel satisfied, indeed, that the jury were not careful to distinguish betwixt carelessness and criminality. But even for the confused and disordered state of the accounts, and the actual deficiency, there are not a few who think the Bank Directors fully as much to blame as the young men. Certainly, nothing was better established on the trial than the fact that their arrangements for the comfort of the young men, and the proper conducting of the business, were insufficient and niggardly in the last degree. The conclusion, in fact, is forced upon many minds, that the young men have been immolated by the Directors on the altar of their own cupidity. Why was not the Bank occasionally visited by the Inspector, the state of things looked into, and every facility afforded for the regular and accurate transaction of business? Apart from the question of the young men's guilt or innocence, the Bank Directors, I am persuaded, will never escape the very serious reflection of having first imprudently placed two respectable youths in circumstances of peculiar trial and temptation, and afterwards recklessly prosecuting them for offences they had themselves occasioned.

I feel bound, Rev. and Dear Sir, and it gives me much pleasure to testify, to the excellent deportment of your son while residing in my family, which he did for several months, shortly after the formation of the Branch in this city. He was strictly sober in his habits, of a gentle and unassuming spirit,—modest and agreeable in his manners. And being possessed of extensive and varied information, his society was a pleasing acquisition to our family circle, when the pressure of business admitted of our enjoying it. I had formed, indeed, a high opinion of him as an amiable and trustworthy young man, and nothing but the most positive and conclusive evidence would ever lead me to believe him guilty of any act of dishonesty or embezzlement. And certainly nothing approaching to this transpired in the course of the trial.

[Here follows the paragraph already quoted, page]

But I must stop—and conclude by desiring that all concerned may receive, at the hands of our gracious God, who is constantly bringing light out of darkness and good out of evil, the sanctified use of this mysterious and affecting dispensation.

With tenderest regards to Mrs. Lang and family,

Believe me, Rev. and Dear Sir,

Ever affectionately yours,

A. M. RAMSAY.

MELBOURNE,

REV. DR. LANG,

I believe my esteemed friend and brother, Mr. Ramsay, would have been led to modify considerably the opinion he seems to have expressed in this letter, in regard even to the alleged carelessness and neglect of duty on the part of Messrs. Lang and Drake, if he had been better acquainted with the state of things in the Bank at

the Diggings. The young men themselves made no such admissions: on the contrary—they allege that they did everything in the circumstances in which they were placed, that any person in their situation and circumstances could be expected to do. In proof, however, of the general prevalence of a strong impression in favour of my son, throughout the Colony of Victoria, I subjoin the following copy of a note which I have also had great pleasure in receiving on the subject from a well-known lady, with whom I had had no communication for many years previous, Mrs. Caroline Chisholm:—

Melbourne, January 4, 1855.

DEAR DR. LANG—It is many years since you and I met, but having strong impressions in favour of your son, I am anxious to know if you can suggest anything I can do. Deeply sympathizing with you under your present trial,

Sincerely yours,

CAROLINE CHISHOLM.

When Messrs. Lang and Drake were incarcerated, on a charge of embezzlement, at the instance of Mr. Stuart, the only solicitors at Ballaarat, were Mr. O’Cock, who had been employed by the Bank, and Mr. A. L. Lynn, who, it has been seen, subsequently defended Burtchell, when brought up for examination before the Police Court in that district. Now, whatever Mr. Lynn may think in the matter, I am utterly at a loss to conceive how he could possibly reconcile it with professional etiquette and propriety, in the peculiar circumstances of the accused parties respectively, to undertake the defence of Messrs. Lang and Drake after he had succeeded in getting off Burtchell. If Burtchell was innocent, the presumption, (although it does not necessarily follow), was that the two young men were guilty; if, on the contrary, Burtchell was guilty, how could the lawyer who had undertaken his defence, and had “bullied the Court” successfully to get him off, be a fit and proper person to defend these two young men who had been the victims of his iniquity? But Stuart having refused to allow of bail in the case, and there being no other lawyer in the district, the young men had to employ Mr. Lynn, although, as my son told me himself, and for obvious reasons, “he had no confidence in him.” Had I been aware beforehand of the change of the *venue* to Melbourne, I should certainly have been on the spot, in time to have employed some other agent who would in all likelihood have made a very different use of the case of Burtchell from that which seems to have

been done, from an obvious regard for his own consistency of professional character, by Mr. Lynn. But there seems to have been some fatality in the case of these young men ; or rather, they had fallen into the hands of thoroughly unprincipled men, who were ready to sacrifice every thing like honour and justice in their case to ensure a conviction. "It is a principle of the criminal law," observes the Solicitor-General for Ireland, in the famous case of Mr. Daniel O'Connell, "that in an indictment the trial must take place in the county where the offence is committed." Why this principle of common justice should have been set aside and violated in the case of Messrs. Lang and Drake remains to be explained.

After the plain statement I have thus given of all the previous circumstances of this anomalous case, the intelligent and candid reader will be able to form a pretty correct judgment of its real merits, and will doubtless estimate aright, agreeably to the principles of enlightened reason, the innocence or criminality of these deeply injured young men. On the trial that ensued—a trial worthy of the era of Lord Jefferies—and that issued in the conviction of Messrs. Lang and Drake on a charge of embezzlement, and in the sentence of the former to five and the latter to four years' hard labour on the roads, it is not my intention to make many remarks. If it is true that *Summa lex est summa injuria*, I would merely beg, by way of preface, to translate the axiom as follows:—"The proceedings of our Supreme Courts of Law in the Colonies are often a perfect outrage upon justice and common sense."*

The Attorney General observes in his charge that "up to a certain date all was accurately entered, and that then the omissions occurred very suddenly." Of course they must have done so, if it is true, as alleged by the young men, that Mr. Drake had laid aside for future entry the memoranda of a number of Deposit Receipts which had got into derangement through the press of business, leaving a blank space for them in the Books ; but that the manager, not being aware of this at the moment, had added up the Books without including them.

* This, however, is not peculiar even to Colonial Courts, as the following sally from one of the Counsel in a celebrated State trial will serve to shew.

Mr. McDonough.—Oh, there are a great many things in this Court which are very fit subjects for laughter and ridicule. Trial of D. O'Connell, Esq., M.P., for Conspiracy. Townsend II, 437.

Mr. Frazer, the former agent of the Bank, speaks volumes as to the disgraceful state of things in the establishment. "I left the Bank business because I had a store at the diggings, and could not attend to both. There were two of us assigned to do the whole business of the Bank; Lang for some time afterwards had to do it himself. Then he had an assistant. He had to take the carpet-bag full of notes to the camp, at three o'clock in the afternoon, and fetch it again next morning. The bank at Ballaarat was not a shingle building—it was wooden, with a zinc roof on it. There were no iron safes to keep the money in. I generally had a sum of £5000 or £10,000 in the Bank to buy gold with. Any one could see through the walls, even if the door was shut. The Bank" (including the sleeping apartment for the young men, which occupied half its extent,) "was twenty feet long by ten feet. There were slits in the wall. The diggers could see through and watch us counting out the gold. All the business was huddled together, and the business transacted in one room. There were no shelves. We put our books under the counter when we had done with them."

So long as the business was limited, as it was under Mr. Frazer, it was quite practicable, even in such circumstances, to keep the accounts properly; but when it had increased so greatly as it did under Mr. Lang's management, the case was altogether different. Mr. Henry Parkin, accountant under Mr. Frazer, gives the following evidence:—

"After Mr. Lang took charge, the cash-book was kept sometimes by himself,—sometimes by me.

Mr. Ireland wished to ask if it was possible two men could do all the business of the bank?

His Honor: What has that to do with the charge? If he could not do his duty, he ought to have said so and gone away.

Witness continued:—We were only able to count the cash twice or thrice a week. It went backwards and forwards to the camp in the carpet-bag, and we had not time to count it. Business rapidly increased when Lang came; then I got leave of absence, and he had to carry on the business by himself. We occasionally kept some of the cash under the counter or under the beds. It was dangerous to count it at night. Mr. Woodhouse was manager of the Bank of New South Wales at the Branch at Geelong. His

instructions were particularly to strive above all things to buy as much gold as we could. We kept the money under the beds and counter when we kept the cash in the bank, to count it, and sort the notes. Had not always printed forms of deposit receipts; sometimes had to write them upon paper. We had no stationery. We got nothing. We bought two or three pounds' worth of books, and paper from the *Melbourne Morning Herald* office. These were not calculated to carry on the business of a bank with.

His Honor: Really all this has nothing to do with the charge, which is specific enough, that the prisoners received certain sums of money which they never entered in the books.

Mr. Ireland: Because, from the press of business, it was physically impossible they could do so."

I have already characterised, as I think it deserves, the flippant and heartless remark of the Judge, that if my son had had too much to do, "he ought to have said so and gone away." His Honor's second interference in the case was simply an outrage upon the common sense of mankind, and was equally unseemly in a Judge. To allege that the state of the Bank-building, and the enormous pressure of business in the establishment, had nothing to do with the omission of certain entries in the Books, which the accused maintain was purely accidental, and had arisen exclusively from this very state of things, was, in plain English, a monstrous perversion of justice, and nothing less. It is commonly understood to be one of the duties of a Judge to act as counsel, in case of need, for the prisoner at the bar, in order that the innocent may in no case be condemned. Will his Honor, Sir William A'Beckett, pretend to say, in the face of the general intelligence of these two colonies, that he was not acting in direct violation of this beautiful maxim of English law and eternal justice, in both of these cases—that he was not virtually acting as Counsel *against the prisoners* at the bar?

I attach no importance to the insinuations of Mr Stuart in regard to my son's deportment and procedure on being charged with defalcations to a large amount. It seems to have been done in Mr. Stuart's peculiar manner—the most unfeeling and brutal imaginable.* No wonder the young men were at their wits' end on the

* A gentleman, who now occupies a highly respectable position as a private accountant in Sydney, has informed me within the last few days that, on his arrival

occasion ; knowing neither what to say nor what to do. In the half jocular half brutal style of a turnkey who likes his office, Stuart had reported to the Directors that "Lang had taken the sulks" on the occasion ; and it is quite in accordance with the usual developments of human nature for conscious innocence, under a foul charge, unfeelingly and impudently preferred, to exhibit itself in some such way. But the whole of Mr. Stuart's evidence amounts to nothing more than that certain Deposit Receipts had not been entered in the Bank Books, and that certain funds had disappeared. Neither he nor any of the other witnesses for the prosecution had a shadow of evidence to offer that either of the young men had feloniously appropriated for his own purposes a single sixpence of these funds.

But why, I ask again, was the trial transferred from Ballaarat to Melbourne at all ?

"It was imposible," observed Mr. Henn, one of the Counsel for the defence in the famous case of the prosecution of the late Daniel O'Connell, Esq. M.P. "that the object of the Attorney General could be to procure, *per fas aut nefas*, a conviction. He was as much interested as any other person that the trial should not only be conducted to a just result, but *so conducted as to leave no doubt*

in the Colony, he applied, at the instance of one of the Directors, for employment in the Bank of New South Wales, to the late Mr. Baillie, who was then on the eve of his departure for Melbourne for the last time, and who agreed to employ him on the strength of the Bank accordingly. In Mr. Baillie's absence it fell to Mr. Stuart to assign him his particular place and work ; and finding himself placed by that functionary as a junior clerk at a salary of £70 a year, which, as a married man who had held a much higher situation at home, did not at all suit him, he mentioned the circumstance to his friend, one of the Directors, and, with his express concurrence and approval, accepted of a more eligible situation in a private establishment. On informing Mr. Stuart of the circumstance, after he had been a week in the Bank, that gentleman—no, that grizzly bear—told him, in an overbearing and insulting manner, to which he had never been accustomed elsewhere, that "he regretted it was not in his power to send him to prison, which he would otherwise have done, for leaving the Bank in that way." Mr. Stuart, it seems, had this very desirable power in the case of Messrs. Lang and Drake, and he exercised it accordingly. For so rapid were his movements in the matter, that, as it appears from the evidence of Mr. Cotton, that he and Stuart arrived at Ballaarat on the 19th of October, the two young men, as I have shewn, were arrested and placed in custody on the 20th. It was sharp practice certainly. Mr. Stuart was, therefore, in every respect, a fit and proper person to be the Man Friday, for "The Convicts' Bank." Nay, he would have been fit even for the superintendence of the Triangles in the days of *The Old Lags*.

on the public mind that justice had been done ; and if a trial took place, with a jury selected from such a pannel, and if the defendants were forced on their trial in such a way that it was impossible they could be prepared for their defence, the verdict, if a conviction, would be a mischievous one, and not conducive to justice.”—*Townsend's Modern State Trials, Vol. II. page 425.*

Will the Attorney General in the case in question pretend to tell us that a trial could possibly be conducted with safety to the accused at Melbourne? Will he pretend to tell us that the accused could possibly be prepared for their defence in such circumstances as the trial actually took place in? Will he pretend to tell us that the result has “left no doubt on the public mind that justice has been done?”

It is stated in the report of the trial that “Mr. Ireland applied for leave to call witnesses to character” ; but “His Honor considered that it was not a case where such evidence could be useful.” And it is added, “this closed the defence.” Now I cannot help considering this a monstrous proposition, equally at variance with common justice and common sense. Had there been any clear direct evidence adduced on the trial of a felonious appropriation of the Bank funds on the part of the accused ; nay, had there been any actual denial of their having received the money for which they had issued receipts, but had not made formal entries in the Books, His Honor would doubtless have been right ; for such an appropriation or denial would have established the criminality of the young men without question. But when the case was simply one of omitted entries and money amissing, without the slightest proof of a criminal intent, evidence as to character was of the utmost importance, in order to enable the jury to arrive at a just decision. For, if it is a universally recognized maxim, as I maintain it is, that *Nemo repente turpissimus**—nobody becomes a confirmed villain all at once—it was clearly a case for the Jury to decide, whether the balance of probability was that two young men, bearing the high and previously irreproachable character that would have been given them from all quarters, had all at once—without any assignable

* I have heard this maxim translated, “Nobody becomes a Colonial Chief Justice all at once: he must, previously, have gone through all the subordinate degrees of political subserviency.”

object, and in the entire absence of any thing like the evidence of a criminal intent—become confirmed villains, by feloniously abstracting a large amount of the Bank funds, or that these funds had been abstracted by some other party and in some other way. And I maintain, therefore, that, by refusing to allow of evidence as to character in this stage of the proceedings, His Honor was not only doing the greatest injustice to the accused, but was actually prejudging the case, and taking it out of the power of the Jury, in so far as his own personal and official influence went, to give a verdict of acquittal. In short his Honor's justice in this case was not British but Chinese justice; for as the law of China assumes that any person found near a dead body must have murdered the dead man, and subjects him accordingly, without either trial or investigation, to capital punishment, so His Honor assumed that, because the two young men on trial had been found on the spot where a Bank robbery had been committed, they must necessarily have perpetrated that robbery themselves!

But the *gravamen* of the whole case, as far as the Judge is concerned, was the dictum of his Honor, given in explanation of his entire treatment of it throughout, as well as of his charge to the Jury, "*the gist of this case is the non-entry of the sums of money.*" In the course of the trial, Mr. Ireland had said, "As to the charge of embezzlement, there is no denial as to the receipt of the money. Not accounting for it does not amount in law to embezzlement."

"His Honor: Do you say there is no *constructive* evidence of denial or concealment? Then, according to your doctrine, if a man does not use the words, I deny &c, he is perfectly safe."

Nay, admitting the fact which I have already stated, viz., that a number of original entries were made for the reason I have stated above on the loose blocks of the Deposit Receipts, or on slips of paper torn off from these Receipts, His Honor observes, in his charge to the Jury, that "it would have been as easy, he conceived, to have made the entries direct in the Cash Book, as to have made memorandums on slips of paper."

How could His Honor know this? It was contrary to the fact. The slips of paper were the blocks of the Deposit Receipts, and formed the *original* entries, being cut or torn off at the Counter for future entry in the Books; and it was the fault of the Bank that

proper Receipt books were not furnished for the purpose. In short, according to His Honor, "the gist of the case was the non-entry of the sums of money," as this non-entry was in his estimation a "*constructive* evidence of denial or concealment."

Now I have no hesitation in characterizing this dictum as a monstrous dictum, directly at variance with the acknowledged principles of English law and eternal justice. In a high legal authority, (*Russell on Crimes, Book IV, Chapter XVII.*) it is stated that the 7. and 8. Geo. 4. c. 29. S. 47, "for the punishment of embezzlement committed by clerks and servants," declares and enacts,

"That if any clerk or servant, or any person employed for the purpose or in the capacity of a clerk or servant, shall, by virtue of such employment, receive or take into his possession any chattel, money, or valuable security, for or in the name or on the account of his master, and shall fraudulently embezzle the same, or any part thereof, every such offender shall be deemed to have feloniously stolen the same from his master:" &c.

"But in Page 182, it is added, "If the prisoner regularly admits the receipt of the money, the mere fact of not paying it over is not felony. It is but matter of account."

"It is not enough to prove that a clerk has received a sum of money, and not entered it in his book, *unless there be also evidence that he has denied the receipt of it or the like.* Upon an indictment for embezzlement (of this kind) Bolland B. "There is not a felonious conversion; I will take it that the prisoner put the money into his own pocket, and has made no entry; that is not sufficient. Had he denied the receipt of the money, the case might have been different; and if the mere fact of not entering a sum was enough to support an indictment for embezzlement, every clerk who, through carelessness, omitted an entry, would be liable to be convicted of felony. The prisoner must be acquitted."

Upon a second indictment against the same prisoner, Bolland B. "There is nothing in this case to bring the prisoner within the Statute. He never denied the receipt of the money, and was never called upon for it. I think it essential that there should be a denial of having received the money, or else that some false account should be given. The prisoner must be acquitted."

"It is not sufficient to prove at the trial a general deficiency in account. Some specific sum must be proved to be embezzled, in like manner as in larceny some particular article must be proved to have been stolen," (Alderson, B.) Page 184.

Now there was no evidence, in the case in question, of the prisoners having "taken into their possession and fraudulently embezzled" any portion of the funds of the Bank. They admitted the receipt of all the sums for which they had issued vouchers, and the mere omission of the formal entries in the regular Books of the Bank—of which a sufficient explanation has been given above, and which may very possibly have arisen from mere carelessness, if not from press of business—is not tantamount to embezzlement, according to the high authority I have just quoted. Doubtless His Honor regards this non-entry as a *constructive* evidence of denial, and virtually directs the Jury to find the prisoners guilty on this new principle of "constructive criminality"—a principle which I have no hesitation in saying the Law of England repudiates and abhors.

In one of the magnificent bursts of oratory that characterised the famous trial of the celebrated Daniel O'Connell in the year 1844, Mr. Sheil expresses the feelings of the British constitution and the British people in regard to *constructive crime* as follows:—

"Gentlemen, the promises of Mr. Pitt, when the Union was carried, have not been fulfilled—the prospects presented by him in his magnificent declaration have not been realised; but if, in so many other regards, we have sustained a most grievous disappointment—if English capital has not adventured here—if Englishmen have preferred sinking their fortunes in the rocks of Mexico rather than embark them in speculations connected with this fine but unfortunate country—yet, from the Union let one advantage be at all events derived: let English feelings—let English principles—let English love of justice—let English horror of oppression—let English detestation of foul play—let *English loathing of constructive crime*, find its way amongst us." Speech of Mr. Sheil, on the Trial of Daniel O'Connell, Esq., M.P., for Conspiracy. Townsend's Modern State Trials, Volume II., page 484.

But Mr. Sheil is not singular in the abhorrence with which he regards, and with which, he tells us, the people of England universally regard the principle of *constructive crime*—that peculiar feature of the justice of Sir William A'Beckett. At a meeting of the Friends of Parliamentary Reform, held in London so recently as the 6th of November last, to celebrate the 60th anniversary of the acquittal of Thomas Hardy, John Horne Tooke, John Thelwall, &c., from a charge of high treason in 1794, Mr. W. J. Fox, M.P., is reported to have spoken as follows:—

“ Out of the twelve there was not one of them who did not deserve the gratitude of their country. Yet they were the men whom the Pitt policy of those days would have made to die the death of dogs, or cast out of society. (*Hear, Hear.*) Not only were their names deserving of commemoration from their personal worth, but still more for the principles with which they were connected. With the failure of the attempt on them, perished the notion of *constructive treason*—that doctrine which, out of a number of nothings, would produce something. That doctrine was then exploded once for all. No Lawyer now believed in *constructive treason*.” (*Hear, Hear*), *Empire*, 9th February, 1855.

The late Sir Francis Forbes, by far the ablest Chief Justice we have ever had in Australia, once observed to me, in conversation, that this country was treated by the authorities at home as if they considered it a sort of lumber-garret, in which they could stow away all the worn-out, or antiquated furniture of past ages. Sir William A'Beckett accordingly re-produces from this garret, for the condemnation of two young men of whose criminality there is not a shadow of evidence, the monstrous doctrine of *constructive crime*, which has thus, for upwards of half a century past, been both exploded and detested in England!

I maintain, therefore, with perfect confidence, that Messrs. Lang and Drake have been unfairly tried and unjustly condemned; and I appeal to the intelligent and candid reader as to whether the whole trial, with its antecedents and accompaniments, was not entirely worthy of the era of Lord Jefferies—that judge of infamous memory in the annals of England.*

* The following *jeu d'esprit* was first published in the *Colonial Observer*, a paper which I had established, in the month of January 1843. I shall not say who wrote it, or for what Colonial Judge it was originally intended, as an instructive illustration of Colonial practice:—

RELIQUES OF AUNCIENT POETRIE.

JUDGE JEFFERIES.

Judge Jefferies was as juste a judge,
 As anie judge coulde be,
 Who hanged two hundred honeste men,
 On Tyburne's fatal tree,
 He alwaies pleaded for the Crowne,
 As loyall judges shoulde;
 And presupposed the pris'ner's guilte,
 Even though his cause was goode.

“Your guilte is written in your face,”
 This loyall judge would say ;
 “I’ll have you hanged to morrow, sir,
 For you’ll be tried to-day.

My friende, th’ Attorney-Generall, is
 A *verie* honeste man—
 He wishes you convicted, and
 I’ll help him if I can,”

Then, pointing, with his staffe in ’s hande,
 To the pris’ner at the barre,
 “There is a villaine at the ende
 Of this sticke, I declare.”

“At which ende of the sticke, my Lorde ?”
 Th’ undaunted Briton said ;
 The loyall judge then blushed, I weene,
 And hung his full-wigged heade.

As for the gentlemen of the jury who followed so implicitly as they did the guidance of Sir William A’Beckett, when virtually directing them, in his one-sided charge, to convict the prisoners at the bar, I shall leave them to the self-contempt and the bitter remorse they will doubtless feel for their atrocious verdict, when they come to see themselves as others see them. One at least of their number has expressed these feelings already, and has done everything in his power to repair the enormous wrong he was thus the means of inflicting.* I have no doubt that there are various others in the same condition, notwithstanding the impudent attempt of their foreman to back up the learned judge in a letter *published* in one of the Melbourne papers, in his anti-English, most dangerous and monstrous doctrine of *constructive crime*.

I have drawn up this Plain Statement of the facts and circumstances connected with this unprecedented and most anomalous case of colonial injustice and oppression, not merely with a view to its bearing on the present position of my son and his unfortunate companion, but also as a record of the whole proceeding for all future time in these colonies ; for otherwise nothing would, in all probability, be long remembered in the case, but the mere fact

* William Newman, a Polish Refugee, who has made affidavit that he has never been naturalized as a British subject ; and who therefore could have no right to sit on a jury for the trial of Englishmen.

** By the old law an alien-born could not be a juror in a jury, for he was out of the allegiance of the King, and was not liege of the King.”—*Hansard on the Law of Aliens*, page 6. This law has never been repealed.

of the trial and the subsequent conviction. If I have made any mis-statement in the course of it, as to minor points—for I am confident there is none in any matter of importance—it will doubtless be imputed by the candid reader to the fact of my having had no opportunity of conferring with my son after I had read Mr. Stuart's letter in the Herald, or of asking explanations on some points of lesser moment on which I should otherwise have gladly consulted him.

I beg to conclude with the following Extract of a letter which I addressed at Melbourne, to the Citizens of Melbourne and Geelong, and the Gold Miners of Ballaarat, and which was published in the *Melbourne Argus* of the 12th of January last.

“Certain kind friends in this city and elsewhere have been advising me, both before and since my arrival from Sydney, to appeal in my son's case to the clemency of the Local Executive; but I have no intention to do anything of the kind, as such a course would, not only in my own estimation, but I am happy to add, in that of my son also,—for he gave me his opinion on the subject before I told him mine,—be tantamount to an admission of one or other of the following points, viz. : the fairness of the trial, the impartiality and uprightness of the judge, the criminality of the prisoners; the justice of the verdict, and the equity of the sentence—all of which I unhesitatingly and firmly deny. As far as I am concerned, my son shall leave his prison—and this is his own spontaneous determination too—with a clear character, or not at all. He will solicit no pardon, nor sanction any attempt in any quarter whatsoever to obtain one—being conscious that he has committed no act of criminality. He will ask no mitigation of sentence or remission of punishment; but submitting patiently, in the spirit of an old Roman, or rather in that of a Christian suffering wrongfully, to his inevitable destiny, he will continue to break stones, either in the gaol or elsewhere, like a man—feeling assured, that while doing so, he is under God's own peculiar training, just as much as he was a few years ago at the Universities of Edinburgh and Glasgow, for some high and honorable office in our future Australian Republic; the speedy advent of which, in such circumstances as these, taken in connection with various others, I have no hesitation in saying, is morally certain. For as most, if not all, of the great advances that have been made by mankind in all past ages, in the cause of popular freedom and the rights of men, have originated in acts of enormous injustice and oppression to individuals, I have a strong presentiment that this particular case of injustice and oppression, in which I happen to be so deeply concerned, will prove eventually, although in what way I cannot tell, of transcendent importance to the advancement of that cause in this land.

APPENDIX.

MR. Stawell, the Attorney General of Victoria, having filed an *ex officio* information against the writer of this pamphlet, charging him with endeavouring to bring the administration of justice in that province into contempt, in the letter of which the concluding paragraph (page 58) is an extract, the case was tried before His Honour, Judge Barry, one of the Puisne Judges of the Supreme Court of Victoria, on the 20th of February, 1855, and resulted in an immediate and unanimous acquittal. In reply, however, to certain observations of mine, delivered in my address to the Court, of the same nature and tenor as those in the pamphlet, on the subject of the gross injustice of the change of the *venue* from Ballaarat to Melbourne, in the case of the recent trial of Messrs. Lang and Drake, the Attorney General stated that "if there had been any application either for delay or for the appointment of the trial at Ballaarat, it would have been granted". Now this is simply *untrue*, however the Attorney General may attempt to reconcile it with the facts of the case; for both Mr. M'Farland, the Solicitor, and Mr. Ireland, the Barrister, applied to the Crown Law Solicitor, at the instance of the accused, to have the case tried at Ballaarat, and were told that "it could not be granted as the case was of too much importance to be tried any where but in Melbourne", and the Attorney General, being spoken to on the subject, gave the same reply. The simple fact is, that the Bank and their man Friday had no chance of obtaining a verdict at Ballaarat, where the whole circumstances of the case, as well as the parties accused, were all known; and the Attorney General virtually lent himself to get one for them at Melbourne, where I maintain it was impossible for the accused to have a fair trial*. And Mr. Stawell attempts, at this late hour, to get himself out of the scrape, in which he evidently felt himself after my observations in defence, *by saying the thing that was not!* If he has a bad memory, it seems at all events to be a very convenient one.

To exhibit still further the real character and the particular *animus* of the parties concerned, and to throw some additional light on the regular conspiracy against my son and his companion, I beg in addition to draw the reader's attention to the following circumstance. About the same time that the deficiency was discovered in the cash of the Branch Bank at Ballaarat, and Messrs Lang and

*In the laws of Henry I., it is declared that "every cause is to be done in fixed places nigh to the suitors; lest remedies delayed and distant shall only add to the wrong already suffered".

Drake were given into custody, a similar deficiency, to a very considerable amount, was also discovered at Castlemaine, where Mr. James Larnach was manager at the time. When charged with the deficiency by the Inspector, and asked to account for it, Mr. Larnach, either afraid to acknowledge any deficiency, or wishing to put the matter off for the moment, replied that "the money was over at the Camp." This satisfied the Inspector for the time, but it was afterwards ascertained, beyond all doubt, that the money was gone. What then was done in the case, of which these particulars have come to my knowledge on unquestionable authority? Why, the reader may conceive when I tell him that Mr. Larnach is the younger brother of the Managing Director in London, and a relative of one or more of the Directors in Sydney. It would not have done of course to have sacrificed *him*, like my son and Mr. Drake.* The affair was consequently hushed up or passed over *sub silentio*. So much then for the incorporated villainy of "THE CONVICTS' BANK."

* "Kithless an' kinless loons," said an old Scotch nobleman of the olden time when expressing his astonishment that Cromwell's Judges in Scotland dispensed justice even to people who had no connection with the aristocracy of the country. Of course my son and his companion had no connection with the aristocracy of the Convicts' Bank. For my own part I believe the money amissing at Castlemaine was abstracted in much the same way as at Ballarat, and I should do Mr. Larnach a serious injury if I said anything to the contrary; but Mr. L. evidently went a great deal farther than my son ever did when he said "the money was over at the camp".