AN ADDRESS

TO THE CREDITORS OF

JOSEPH WINDLE COLE,

IN REFERENCE TO THE PROCEEDINGS IN BANKRUPTCY
ARISING OUT OF

THE GREAT CITY FRAUDS

OF

COLE, DAVIDSON, & GORDON.

BY

SETON LAING,

TRADE ASSIGNEE TO THE BANKRUPT'S ESTATE.

LONDON:
PUBLISHED BY THE AUTHOR:
SOLD BY
MANN, NEPHEWS, CORNHILL;
EFFINGHAM WILSON, ROYAL EXCHANGE;
T. MURRAY AND SONS, GLASGOW.
Price Two Shillings.

1858.

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TABULAR REFERENCE TO CONTENTS.

APPENDIX.

LIST OF WARRANTS GIVEN UP BY THE MANAGER OF THE BOROUGH BANK OF LIVERPOOL, IN EXCHANGE FOR A CARGO OF SUGAR, AND FOUND UPON COLE WHEN HE WAS APPREHENDED; ALL REGULARLY ENDORSED BY MR SMITH.

LYING AT HAGEN'S WHARF.

	Tons						Deliverable to.	Date.	Rent.
Spelter	51	1	3	11	ex Æolus	from Stettin	J. P. G. Smith	2nd June, 1854	7th June, 1852.
„	27	11	3	26	ex Joseph	from „	„		29th Nov., 1851.
„	51	8	2	10	ex Pauline	from „	„		3rd May, 1852.
„	23	19	3	1	ex Edward Saiole	from Hambro	„		7th Feb., 1853.
„	50	0	0	0	ex Christine	from Stettin	„	1st June, 1854	26th May, 1851.
„	50	0	0	0	ex Zephyr	from Hambro	„	1st June, 1854	22nd Dec., 1851.
Sheeting Copper	20	0	0	0	Inland Navigation	from Davidson & Gordon	„	1st June, 1854	20th May, 1854.
Sheet Copper	20	0	0	0	„	from „ „	„	1st June, 1854	20th May, 1854.
„	20	0	0	0	„	from Freeman and Co.	„	1st June, 1854	20th May, 1854.
Sheeting Copper	20	0	0	0	„	from „ „	„	1st June, 1854	20th May, 1854.
Tin—400 slabs	12	7	1	6	ex Queen	from Amsterdam	Deliverable to J. P. G. Smith,	Dated 1st June, 1854	14th Aug., 1852.
„ 1064 „	33	1	0	7	ex Diana	from Rotterdam	„ „	Dated 1st June, 1854	25th Oct., 1852.
„ 1038 „	32	15	1	1	ex Diana	from „	„ „	Dated 1st June, 1854	23rd Nov., 1852.

(Appendix A.)

Compromise between the Borough Bank of Liverpool and Joseph Windle Cole: Surrender of Fraudulent Metal Warrants for a Cargo of Sugar, value £6,429 9s. 1d.

At the Bankrupts' Court.

AT BASINGHALL STREET, LONDON,

December 4th, 1854.

BEFORE MR COMMISSIONER FONBLANQUE,

In the Matter of JOSEPH WINDLE COLE, a Bankrupt.

[*Affidavit of* Thomas Sill, *Broker, of Liverpool.*]

Thomas Sill, of Liverpool, general produce broker, being sworn and examined, deposes as follows:—

I have known the bankrupt four to five years—about—since he was manager at Forbes and Co., Liverpool. My first

transaction in business with the bankrupt was on 15th May, 1854. I am in partnership with Edward Mugins. I have been so for six years—neither myself or firm had any transaction with Cole until the month of May, 1854. I had not been in habits of intercourse with him previously, beyond sending our weekly printed circular, and which I had been in the habit of doing for three or four years without its leading to any business. The brother of the bankrupt, James Cole, about the 12th May, 1854, called on me, and stated he regretted nothing had transpired to lead to business, but having now a parcel of metals on hand that they wished not to sell immediately, would be glad of an advance, and he proposed that we should draw upon Cole Brothers for the amount required, 25,000*l.*, which we were to discount with our bank, and to desire our bank to lodge the amount with Glyns, to be handed to Cole Brothers, against warrants. My bankers were the Borough Bank of Liverpool. I was to see the Borough Bank between the 12th and 15th May, to know if it would be agreeable to them to discount the bills: it is usual to consult our bankers on large transactions. I was to receive a commission of 1*l.* per cent.; there was an agreement in writing, which I produce. There was a verbal arrangement between me and James Cole, on the 12th May, which, subject to the bankers agreeing to it, was that we were to have one per cent. on the amount of the metals—on the market value, together with any other incidental expenses of bank commission, rent, fire insurance interest, and any other charges. I went to the bank on the 12th or 13th May, and saw the manager, Mr Smith, and stated to him the proposition made by Cole Brothers, as already detailed, which he said he would consider of, and give me an answer. On the 14th May I called on Mr Smith, when he said he had no objection to do it, provided the warrants were lodged with them as security, and that they might get them endorsed in their own name. This I made known to James Cole, and on the 16th May he brought the agreement, dated 15th May, together with the bills accepted for 25,000*l.*—which bills were drawn by us on Cole Brothers on the 15th May, and on the 16th May he brought them—they were brought down in blank—accepted by Cole, leaving a blank for the drawer's name, which I filled in with the name of my firm. The body of the bills was written out by Cole, or his clerks. The letter or agreement of the 15th May is in the handwriting of James Cole, and signed by him on behalf of Cole Brothers. The acceptances were by Cole Brothers, in the handwriting of Joseph Cole.

The following is the copy of the agreement of the 15th May, 1854:—

Messrs Sill and Mugins, Liverpool.

London, 15th May, 1854.

Dear Sirs,—In consideration of your having drawn upon us at three months date, for 25,000*l.*, and discounted the same at the Borough Bank, as security for the same we hereby undertake to place in the hands of Messrs Glyn and Co., Bankers, London, sundry warrants for about 100 tons sheet and tile copper, 100 tons sheets of Banca Tin, 450 tons Spelter, and in event of our acceptances not being duly honoured, hereby authorise you to sell the same, deducting all expenses of interest, bank commission, brokerage, and charges, and any balance remaining after you will please to pay to us.

We are, dear Sirs,

Your obedient Servants,

COLE BROTHERS.

Per JAMES E. COLE.

I took the bills to the bank, which were discounted by them at 5½ per cent. I think, which was the current rate of interest at the time, and they were to desire Glyns to pay the amount to Cole Brothers, against warrants. I wrote a letter to Cole Brothers, stating the circumstances, and requesting them to lodge the warrants at Glyns, when they would get the amount agreed on. I will furnish a copy of this letter—the letter was sent to the private address of Joseph Cole, at South Place, Camberwell Grove, by the desire of James Cole, because he said his brother always read his letters at home, prior to coming to business. I had no answer from Cole Brothers, or any letter from them about that time. The basis of the agreement with James Cole was, that we were to have a margin of 35*l.* per cent. upon the metals. In writing my letter of the 16th May, to the Borough Bank, I stated prices of the metals at about 35*l.* per cent. lower than the market prices, in order that Glyns might receive *the full amount* of warrants in value. The Borough Bank were parties to this agreement. We afterwards understood from James

Cole that the warrants were in course of being handed to Glyns, and on all being completed, the Borough Bank handed to us the particulars of the metals embodied in the warrants. The Bank (Borough Bank) retained the warrants. There were no other transactions between my firm and Cole, except the fifteen bills composing the transaction of 25,000*l.*; they were all at three months date, and due 18th August, 1854. The next thing that occurred on the 27th May, 1854, was seeing an announcement in the 'Times' Newspaper, on that or the 28th May, in the City article, that Cole Brothers' paper had been refused, owing to the stoppage of Davidson and Gordon; on which I went to the Borough Bank, and saw Mr Smith, the manager, who suggested I should go to London, and see Cole, and *get their instructions to sell the metals.* I that evening, or the following one, proceeded to London, and called at Cole's office early in the morning, and remained there the whole day, until half-past eight at night, for the purpose of seeing Cole. The clerks kept saying he was sure to be in, they had sent for him, and he was at his solicitor's, or engaged with him. They would not allow me to go—they said he was sure to be in, and they did everything, as it were, to prevent my seeing him, that was the impression on my mind. At about half-past eight in the evening James Cole came in, he told me that his brother had not stopped payment; all was arranged, or about being arranged, and that on the morrow he promised to give me, in writing, his brother's undertaking to sell the metals, and appointed to meet me at Cole's office, at eleven o'clock, or failing which at Radley's hotel at twelve, on the following morning, the 29th or 30th May. I went to Cole's office, at eleven, and waited half-an-hour without seeing James Cole or Joseph Cole. I enquired for James and for Joseph; the answer I got was, that neither had been there up to that time. After waiting the half-hour, and neither of them coming in, I went to Radley's. I am wrong in saying that it was May when I came to town, and this occurred—IT WAS IN JUNE, and on the evening of the 28th June, I left Liverpool by the evening express to come to London, and it was the 29th June; I was all day at Cole's office—when I arrived at Radley's hotel, at twelve o'clock, on the 30th June, I enquired for James Cole, and waiter replied he had not been, upon which I returned at once to the City office, determined to wait there until I did see them. After remaining about an hour there, Mr Sargant, of Fenchurch street, came in, with whom I am connected in business—he asked me what I was doing there—I told him we had business matters with

Coles; and he asked what in. I told him metals, and he said I hope they will be all in order—at this I expressed some surprise, and asked what he meant. He said, does any part exist in Hagen's Wharf? I replied, I could not tell from memory; but inasmuch as the warrants had been transferred to the bank, they must certainly be in order; but as I purposed returning that night to Liverpool, I would ascertain the matter. This was all that passed with Sargant—and he went away; I remained at Cole's office, in order to see him, up to half-past four, but could not see him, or James. Rickets told me he was sure to be about, that he would go or send for him, and he sent, or professed to send messages to the lawyer's and other places where they expected him to be, but could get no satisfaction, and I could not get to see Joseph Cole. I got a chair and sat in the public counting-house, reading the newspaper. I went into Cole's private room several times, but he was not there; I think I remained until six o'clock at Cole's counting-house on 30th June without seeing him, and then I proceeded to my hotel, and whilst I was at dinner James Cole called and stated that the following morning I most certainly should have the orders to sell the metals. I put the question to him, can anything be wrong with the warrants? at which he expressed great indignation—there was quite a scene between us, that I should make such an imputation, and he remarked, that whatever his brother might appear, now that he was in trouble, *he was an honest man, and incapable of doing an injustice*, and he stated most emphatically that his belief was everything was in order. At eight o'clock the same evening I proceeded by the train to Liverpool, and on the following morning, 1st July, I called at the Borough Bank. I never saw Joseph Cole while I was in London; I saw at the bank Mr Smith, the manager, to whom I stated my inability to see Cole, and detailed to him what I had done in London, and what I heard as before stated, and asked him if any of the metals lay on Hagen's Wharf, and what they consisted of, when Mr Smith produced the warrants, and ascertained that three-fourths of all the metals laid there, and desired me to proceed to London, and ascertain what the position really was, desiring me to call upon his friend, Mr May, of May and Sweetland, to have their advice in the matter. Immediately on getting these instructions I telegraphed to London to Sargant that I was coming up, and to meet me at the Railway station by the train arriving in London about nine at night; this he did, and I afterwards accompanied him to his house at Highgate hill, and stayed there that night,

(this was Saturday night), and I remained the following day, Sunday. I brought up the warrants with me, having obtained them from the Borough Bank. The bank gave them to me to give to Mr May. I showed the warrants to Sargant; he did not say they were fictitious; he said he hoped all would be right, and named that he had seen Mr Lord, of Mincing lane, the day prior to that (meaning on Saturday), who also had warrants for metals in that place, and that Lord had told him he was satisfied all was in order, as he had been down to see, but that I had better go the first thing the following morning (Monday), and ascertain myself. I told him I intended doing so, first seeing Mr May, having had instruction from Mr Smith to personally see all the metal whilst in London. Sargant did not tell me what Cole's position was; he did not tell me he stopped payment because of the rumours in the 'Times.' There was no conversation between me and Sargant as to Cole's position. I told Sargant our real position and what I had done, and showed him a copy of our engagement with Cole. I did not know that Cole Brothers had stopped payment until the 15th July, when I received a letter from them dated that day. I had seen the statement in the 'Times' of the 27th June, and the conversation with Sargant was about a rumour of Cole going on again. I had heard from several people there was a chance of his going on again, and I think I had seen something of the sort in the 'Times' on Monday, the 3rd July. I came to London from Highgate with Mr Sargant, and went to Mr May's office by myself, where I arrived about half-past nine. Mr May had not come up from Brighton, but I stated my errand to Mr Collins, his managing clerk, who at once proceeded with me to Hagen's Wharf. I told Mr Collins I came in consequence of Mr Smith's instructions. We got to Hagen's Wharf about half-past ten, and asked for Mr Hagen; he was not there, but a man in charge, apparently a warehouseman, informed us that Mr Maltby was in the country, and in all probability would not be there that day, upon which we produced the warrants, and demanded to see the goods; he stated he had no authority, and that he had orders from Mr Maltby to refer all parties enquiring about any goods, to a Mr Digby, of Finsbury Circus. We pressed him very much to let us see into the warehouse, but he positively refused, and then we went to Mr Digby. Mr Collins saw Mr Digby, and after that I can't tell what was passed between them. Mr Digby and Mr Collins went away and left me in the room. I never went again to the wharf. I was not present beyond a mo-

ment at any interview between Digby and Collins. They remained together about a quarter of an hour. Collins told me that Digby expressed surprise Maltby should refer him to him. I obtained no satisfaction from what occurred with Digby. I then went to Mr May, and consulted with him, and made known to him all the facts that had transpired. I then went with Mr May to Mr Digby. I saw Digby for a moment, and then Mr May and Mr Digby had a conversation in another room. Before they went into the other room, I did not, nor did I hear Mr May threaten to give Cole into custody, or prosecute him unless something was arranged about the warrants; nothing of the sort passed in my hearing; this must have been between two and three in the afternoon. Mr May remained with Mr Digby I should think about half an hour. I then went away with Mr May, and went to my hotel, and arranged to meet Mr May the following morning. Mr May communicated to me what had passed with Mr Digby. I was still dissatisfied, but I had no evidence to guide me, whether the warrants were good, or good for nothing. I did not go to Cole's office on that day, or at all, until the 7th July. I did not go to Cole's office after I arrived in London, until the 7th July, because from the information I had received, Mr Digby was to be made the medium of communication. I did not try to see Cole.

Q. Why not ?

A. The matter was entirely with Mr May. I never went again to Hagen's Wharf.

Q. Why not ?

A. After the reference we had made to Digby, we considered there was no use in our again going, as we could not get our goods, or admission to the wharf.

I inquired about the warrants of a party, Mr Reed, who had a wharf near there. I asked him if he knew anything about Maltby's Wharf; he said he did not, he knew Maltby, but had not seen him lately. He could not say whether the place was full or empty. I asked him, and he gave that answer. I made no other inquiries about the warrants. The information was not satisfactory. I made no further inquiries.

Q. Why not ?

A. As I had been refused the direct communication I

thought it was useless inquiring from parties whose information could not be relied upon.

On Tuesday, the 4th July, I called on Mr May, and we went together to see Mr Digby. Did not meet him. He had sent a note to Mr May requesting to see him, or to make an appointment, but I did not know the nature of the appointment. I understood from Mr May that interviews had taken place between him and Mr Digby. He reported to me what had occurred at these interviews. I saw Mr Digby on the 4th July, but did not speak to him. Nothing was said about prosecuting Cole. I had not ascertained anything more about the warrants on the 4th, or taken any means to do so. I made no further inquiries on the 4th July about Mr Cole. There was I think a rumour of his still going on. I heard it in Mincing lane. I believe on Tuesday evening. On the 4th July, I went to Liverpool. I saw Smith on the morning of the 5th July. I said to him that Mr May and Mr Digby had had some interviews in this matter, and *in substance Digby had stated that if we, on behalf of the Bank, would give up the warrants for all the property in Hagen's Wharf, that he would give a bill of lading for a parcel of sugar.*

Q. Did you tell Mr Smith what Mr May had advised you in London?

A. I did.

Q. What did you tell Smith?

A. That Mr May's impression was that *it might be desirable to take this sugar and give up the warrants.*

Q. Did you tell Smith that May had threatened to give Cole into custody, or institute criminal proceedings against him?

A. I understood Mr May to say that was his intention, and that he had told Digby that he should have the matter brought before the Lord Mayor and get his order to have the place searched—this, in substance, I told Smith.

Q. Did you tell Smith what you thought about the warrants?

A. I did. I told him that I could not get admission to see the property, or get it delivered—that it looked very suspicious—and I said it is for your consideration to take the bill of lading, or otherwise.

Q. Did you also tell Smith you had not been able to see Cole?

A. I did; and I also told him I heard of a rumour of his going on. Smith said he would consider or think of it—nothing further passed with Mr Smith till later in the day, when he informed me of his intention to be in London on the following day, as there were other matters requiring his attendance there, and he stated it might be as well if I was also in London.

Q. Did you tell Smith all that occurred whilst you were in London?

A. Yes.

Q. Did he express any opinion about the warrants?

A. He did not say anything.

Q. Or about giving Cole into custody?

A. He made no remark.

Q. Did you go to London that night, 5th July?

A. Yes, on the morning of the 6th July, by arrangement with Mr Smith—we met at Mr May's office about eleven or twelve. I was there only a short time, as Digby had sent a note or message requesting Mr May to call on him in the City. Mr Smith and I separated. Mr Smith said we should hear later in the day what propositions or arrangements were made between Mr May and Mr Digby. We met at May's office late in the afternoon. I had not endeavoured in the meantime to see Cole. When we met at Mr May's, Mr Smith was there. *Mr May stated that Digby had offered a bill of lading for* 2,000 *boxes of sugar, per Corporal Trim, in consideration of the warrants of the apparent value of* 25,000*l. and odd pounds, and, if agreed to, that Mr May was to hand one over and receive the other.* The warrants were in the possession of Mr May. I gave them to him on the Monday morning, the 3rd July. I never saw them again. Mr Smith said, "Well, I presume, I suppose it is the best, though I can't say." That finished that day.

Q. Was any opinion expressed by yourself or Mr Smith as to the warrants?

A. In a conversation with Mr Smith he asked me what I thought, and I told him the rumours in the City of Cole still going on, and the former assurance I had from Jas. Cole that all was right. I almost doubted in my own mind whether we were doing right in giving up the warrants, but it appeared to me that one document at the moment was more tangible than

the other; I was quite in doubt as to the real position of matters, but I still entertained a good opinion of Cole.

Q. What did Smith say to this ?

A. "I'll think on it as we are to meet in the morning at eleven o'clock." On the following morning, 7th July, we met at Mr May's office, *when Mr Smith said he had concluded to give up the warrant*, upon which we all three went into the City. The estimated value of the bill of lading was 7,000*l.* Smith did not tell me whether he had or had not made inquiries about the warrants. It was not discussed or mentioned between me and Mr Smith how Cole got this bill of lading, nor was it discussed in my presence whether Cole had the right to dispose of it. On the 7th July, on leaving May's office for the City, May was to go to Cole's office, and afterwards meet Mr Smith and myself in the Exchange. After waiting about an hour Mr Smith desired me to go to Cole's office to see what kept Mr May, and on the staircase I met Mr May, who handed to me a bill of lading for 2,231 boxes of sugar, per Corporal Trim, endorsed to deliver 2,000 boxes to Sill and Mugins, or order, which I endorsed and handed to Mr Smith, or to Mr May for Mr Smith, together with the invoices and letters relating to the cargo.

Q. What did Smith say?

A. He did not seem to say anything. Mr May handed the bill to Mr Smith and I did not see it any more, not until the arrival of the vessel in Liverpool; I remained to see the warrants of goods (not at Hagen's Wharf) were in order, and this by Smith's desire. I did not get home until the 9th July. I made no entry whatever of the transaction in my books. In the ordinary course of things there would be no entry in my books until the produce began to be disposed of.

I arrived at home on the 9th July, or morning of the 10th. I found the Corporal Trim was expected to arrive. She was to call at Cowes for orders, and I wrote the captain a letter dated 10th July, of which I will furnish a copy; my letter to the captain enclosed a letter I had received through Mr May from Coles Brothers when in London. The vessel arrived on the 12th July off Cowes, and this was telegraphed to us by Mr Day, of Cowes. I went at once to Mr Smith at the Bank, who desired me to proceed to Cowes, calling on Mr May in my way, who would have the documents connected with the matter. I met Mr May at Brighton, and proceeded to Cowes, and the vessel

afterwards went to Liverpool by arrangement through the Solicitors.

We wrote a letter to Coles Brothers, the 13th July, and received an answer the 15th July. Mr Smith gave me the bill of lading, and I sold the cargo. This is entered in my books.

Q. Were you told by Mr May that goods, apparently represented by the warrants, did not exist, and that he had ascertained the same from Cole's clerk, or anything to that effect, or that there was not sufficient to pay charges?

A. No.

THOMAS SILL.

Liverpool, 10th July, 1854,
8 Lancaster buildings, Tithebarn street.

Captain of the Corporal Trim.

Cowes, Isle of Wight.

Dear Sir,—We enclose herewith a letter from Messrs Cole Brothers, Consignees and Charterers, Agents for the cargo, per Corporal Trim, desiring you to proceed to this post, and we shall be obliged by *your using all dispatch*, being most anxious to have it discharged as early as possible. We wish you to go to the St George's Dock or Waterloo Dock, giving preference to the former.

We hold the bills of lading and charter party.

We remain, &c.,

SILL AND MUGINS.

The above is a true copy of the letter enclosed in my letter-book, and referred to in my examination, taken this day, 8th December, 1854.

THOMAS SILL.

London, 15th July, 1854.

Messrs Sill and Mugins.

Gentlemen,—As it is now quite certain we shall not be able to meet at maturity our acceptances discounted by you with the Liverpool Borough Bank, we hereby authorise you to sell, on the best terms obtainable, and as you deem most advisable for those concerned, the produce with you as security for the bills.

We are, gentlemen,

Your most obedient servants,

COLE BROTHERS.

The above is a true copy of the letter of 15th July, 1854, referred to in my examination, taken this day, 8th December, 1854.

THOMAS SILL.

EXTRACT FROM BILLS RECEIVABLE BOOK.

No.	When received.	From whom received.	By whom drawn.	On whom drawn.	To when and how payable.	Date.	Time.	Due.		How disposed.
710	May 16th.	Cole Brothers.	Sill & Mugins.	Cole Brothers.	Drawers Order, Glyn, Mills, Co.	15 May.	3 mos. date.	18 Aug.	1,500	Boro. Bank, 16th May.
1	,,	,,	,,	,,	,,	,,	,,	,,	1,500	,,
2	,,	,,	,,	,,	,,	,,	,,	,,	1,500	,,
713	,,	,,	,,	,,	,,	,,	,,	,,	1,500	,,
714	,,	,,	,,	,,	,,	,,	,,	,,	1,500	,,
5	,,	,,	,,	,,	,,	,,	,,	,,	1,500	,,
6	,,	,,	,,	,,	,,	,,	,,	,,	1,500	,,
7	,,	,,	,,	,,	,,	,,	,,	,,	2,000	,,
8	,,	,,	,,	,,	,,	,,	,,	,,	2,000	,,
9	,,	,,	,,	,,	,,	,,	,,	,,	2,000	,,
720	,,	,,	,,	,,	,,	,,	,,	,,	2,000	,,
1	,,	,,	,,	,,	,,	,,	,,	,,	2,000	,,
2	,,	,,	,,	,,	,,	,,	,,	,,	2,000	,,
3	,,	,,	,,	,,	,,	,,	,,	,,	2,000	,,
4	,,	,,	,,	,,	,,	,,	,,	,,	2,000	,,

The above is a true copy of the entries in the Bill Book, referred to in my Examination, taken this day, 8th December, 1854.
The Bills were only for 25,000*l.*; one of the Bills for 1,500*l.* appears to have been entered twice.

Messrs Cole Brothers, London, South place, Camberwell grove.

Liverpool, 16th May, 1854.

Dear Sirs,—In accordance with the arrangements made with you, Mr James E. Cole, we have requested the Borough Bank to place at your credit with Glyn and Co. 25,000*l.* as per letter, a copy of which we annex, which we doubt not will be quite satisfactory, of which we shall be glad to learn.

Remaining, dear Sir,

Yours faithfully,

SILL AND MUGINS.

Liverpool, 16th May, 1854.

Dear Sir, — We shall be obliged by your instructing Messrs Glyn and Co. to pay to Messrs Cole Brothers, London, the sum of 25,000*l.* upon their handing warrants to the following goods:—

100 tons of sheet sheathing and tile copper at 91*l.* per ton.
100 do. of banca or sheet tin . . at 85*l.* do.
450 do. of Silesian spelter . . at 16*l.* 10s. do.

Our object in stating the value is to simplify the matter, as the warrants may not be handed all at once.

We remain, dear Sir,

Yours faithfully,

SILL AND MUGINS.

T. S. Smith, Esq.,
Manager of the Borough Bank.

The above are true copies of the letters contained in my letter-book, and referred to in my examination, taken this day, 8th December, 1854.

THOMAS SILL.

(Appendix B.)

Compromise between the Borough Bank of Liverpool and Joseph Windle Cole: Surrender of Fraudulent Metal Warrants for a Cargo of Sugar, value £6,429 9s. 1d.

At the Bankrupts' Court.

AT BASINGHALL STREET, LONDON,
December 20th, 1854.

In the Matter of JOSEPH WINDLE COLE, of Birchin Lane, trading under the firm of COLE BROTHERS.

[*Affidavits of* John Peter George Smith, *Manager of the Liverpool Borough Bank, and of* James Bowen May, *Solicitor, of Northgate House, Brighton.*]

John Peter George Smith, of Liverpool, Manager of the Liverpool Borough Bank, being sworn and examined at the place aforesaid, saith as follows:

I have not discounted bills accepted by the bankrupt. I have discounted bills accepted by the bankrupt for Sill and Meugens—this was some time in May, 1854. Sill and Meugens applied to me to discount them. Sill called at my bank and saw me, and asked me whether the bank would discount 25,000*l.* upon security of warrants for metal lying in the London docks, the Albert docks, Liverpool and Katharine docks, and various wharves in London. I told him I would mention it to the directors ; nothing else passed at that time. I mentioned it to the directors, and told them that Cole and Brothers were to be acceptors of the bills, and from previous transactions with Cole Brothers to the amount of nearly 100,000*l.*, the directors authorised it. This was about 16th May, 1854. I saw Sill and Meugens every day about that time. There was no writing whatever between me and Sill and Meugens. I first saw the bills for 25,000*l.* within a few days of that time; Sill and Meugens brought them to me. On receiving the bill for 25,000*l.*, I instructed Glyn and Co. to pay Cole Brothers so much per ton upon the receipt of so many warrants for metals. This was in writing, and I will furnish a copy of the instructions. There was no written agreement between the bank, Sill and Meugens, and Cole Brothers. I never saw the bankrupt on that point. I do not know his brother, James Cole. Messrs Glyn and Co., in pursuance of my instructions, advanced 25,000*l.* at various times. I will furnish the dates and copy of the accounts from my books. I debited Sill and Meugens with the 25,000*l.*, less discount and charges. Some time in July I next saw Sill and Meugens about this transaction. Sill called on me ; he said he heard there was something wrong with Cole's bills, and that they were supposed to have lost money through Davidson and Gordon. It was the latter end of June, or beginning of July, Sill called: Sill said some of Cole's acceptances had been refused payment; I told him he had better go and see Cole about it. I saw Sill on his return from London. He said he had been to London, and had heard rumours that Cole was a severe sufferer from forged warrants passed upon him by Davidson and Gordon, but that Cole expected to make an arrangement that they (Sill and Meugens) should be no losers. He said that he had seen James Cole, and that James Cole told him to make himself easy about it, as whatever occurred with his brother, he (Cole) was an honourable man. I told Sill he had better go to London, and I gave him Mr Bowen May's name,

as he had no solicitor there. Sill told me that he had been to Cole's counting house to see him, but that he had not seen him, as Cole was engaged with a number of other people. I don't recollect how long Sill was in London. Sill mentioned that he had further suspicions about the warrants, for that Maltby and Co., wharfingers, had absconded at that time ; all the warrants and securities were in my possession. I told Sill that if he had any doubt about it, he should press Cole for fresh securities—he returned to London for the purpose : this was early in July. It was on the 3rd July that Sill went to London the second time, and I gave him Maltby's warrants to take to Mr May. On the following day I received a communication in writing from Mr May, to say that Cole would give a cargo of sugar in lieu of Maltby's warrants, and that he (May) should exchange them, which I telegraphed him on the 4th July not to do, with the following words, "Do not enter into any compromise until you see me to-morrow evening." I did not hear from Sill while he was in London. On 4th July I went to London, in the evening, by express train, and on the 5th July, in the morning, I called on May ; Sill was with me—I met him at Mr May's office by appointment. Sill told me he had been down to Maltby's wharf, and had been refused admittance, and referred to Mr Digby ; that Digby had told him that he knew very little of Maltby, as he had only recently been introduced to him, and therefore he had gone to Mr May. To the best of my recollection, Sill told me he had not seen Cole the bankrupt, and he had seen no person on behalf of Cole but Mr Digby. In the course of conversation it was stated by Sill that there was something wrong about Maltby's wharf, and that Mr May had advised me to give the warrants in exchange for the cargo of sugar he had mentioned. *I thought it was best to make the exchange of the cargo of sugar, worth* 8,000*l.*, *for the warrants, although of larger value.* May said that he had seen Mr Digby, who told him that though there was metal at Maltby's wharf, there were so many unpleasant rumours of forged warrants in connection with Maltby's name, and so much doubt, that he had better take the sugar and give up the warrants. We separated at Mr May's office, and I was to meet him at Mr Sill's, at the Royal Exchange, at four o'clock. We did meet, and Mr May went to Cole's office, and after being about half an hour or more, he returned with the bill of lading of sugar, per 'Corporal Trim.' I asked him if the sugar was insured, and I think Mr May went back to

ask the question, and said it was not, handing me a note from Cole Brothers in the following words, addressed to May and Sweetland. "Gentlemen—For your guidance we beg to inform you we have not insured the 2,000 boxes sugar comprised in the bill of lading you hold per 'Corporal Trim.' Your obedient, Cole Brothers." I then went to Lloyd's to give directions for the insurance. I received from Mr May, with the bill of lading, the invoice of the sugar, a letter of Steel and Woolf and Cole Brothers, instructing them to hand over the proceeds of 400 boxes to a Mr Lafrenby. I will furnish copies of all these documents. *When the 'Corporal Trim' arrived, the vessel was ordered to come to Liverpool, and the cargo was sold, and the bank had the proceeds, which yielded about* 6,000*l.* The amount is carried to credit of Sill and Meugens (No. 3 account). I will furnish a copy of this account, we having debited them with the 25,000*l.* dishonoured bills. Sill and Meugens received the money, acting as our brokers, and handed it to us. We have two other accounts of Sill and Meugens. The account No. 1 is a general banking account; No. 2 is an account opened at the time of the transaction with respect to these bills; and No. 3 is a suspense account raised in consequence of the claims of the cargo.

The bank had been connected with Sill and Meugens for many years; they kept a respectable account; they are the brokers of the Borough Bank; never had a transaction with them similar to this transaction of 25,000*l.* I was not aware that Cole had failed before; the only thing I knew of Cole was from inquiries at the Bank of England, and of Messrs Vivian, of Swansea, who gave a favourable account of him. I made inquiries previously to discounting the bills. I saw the paragraph in the 'Times' newspaper, about the 28th June, respecting Cole. The copy produced is the substance of the paragraph:

"The 'Times' 28th June.

"The recent suspension of Messrs Davidson and Gordon, which is likely to prove very unfavourable as regards assets, has led to other difficulties, the bills of Messrs Cole Brothers, East India merchants and metal dealers, with whom they had extensive transactions, having to-day been dishonoured. The liabilities of Cole Brothers have not transpired, but they are believed to be heavy. The firm was partly formed from that of Johnson, Cole, and Co., who failed during the crisis of 1847 for 153,000*l.*, with assets which yielded under bankruptcy only a fractional dividend."

I don't remember whether I sent for Sill, or whether he came to me about the paragraph, but I saw him, and then recommended him to go to London. I have no recollection of making inquiries respecting Cole or the warrants, or writing or receiving letter between that day and Sill's return from London; I felt so satisfied with the securities deposited, that I did not trouble myself about it; we trusted more to the warrants than the parties and the bills; the bills were discounted on the faith of the warrants, and to the warrants we looked; we think much more of property than the best of names. Sill went to London, I think, the day after the announcement as to Cole in the 'Times,' and remained there one or two days; when he returned, he came to me and told me what I have already stated. Sill told me he heard there were forged warrants in existence, that James Cole had told him he might be easy about the warrants, as his brother was a perfectly honourable man. I had taken the precaution of having the warrants transferred into my own name, and as some of them were Dock Company warrants I was satisfied. Sill told me he was alarmed about the warrants, and I was alarmed also, and sent him to London. Sill told me that James Cole had told him that his brother would make arrangements to go on as usual; I don't recollect that Sill said he had waited all day at Cole's office, but he said that so many persons were waiting to see Cole and having interviews with him that he had not succeeded in seeing him, but had seen James Cole, who was the party who had negociated the matter with Sill; I don't recollect whether Sill told me he had waited the whole day, but he said he had made repeated attempts to see Cole, and without success. From what Sill stated, I understood that Cole was engaged with a number of people throughout the day, and he, Sill, could not see him. Sill did not tell me that Cole was not at his office and they had sent for him several times, and had not been able to see him. Sill did not tell me that Cole's clerks had done everything to prevent him (Sill) from seeing him. Sill did not tell me that his impression was that Cole would not see him; I think I remarked to Sill that I suppose Cole did not want to see him (Sill) on disagreeable business. Sill did not tell me he had tried to see Cole on the following morning, at least I have no recollection of his having done so, and believe he did not; my interview with him was very short. When Sill said that Maltby and Co. had absconded, he said it was their warrants that were supposed to be forged, and asked me

to look at the warrants, and see if I had any of Maltby's warrants, notwithstanding which I had no suspicion, as I had communicated direct with Maltby; I had previously corresponded with Maltby, and will furnish copies of the letters which passed. Sill did not tell me, to the best of my recollection, that he had taken a chair and waited in the office, determined to see him, but what he did say was, that he had made repeated unsuccessful efforts to see Cole. I am not aware that Sill said Cole was not willing to see him, but I think I looked at the warrants, and found that about three-fourths of them were Maltby's warrants, and purporting to represent about 25,000*l.* worth of property; upon that I desired Sill again to go to London, and left the matter to Sill and Mr May, and wrote a note of introduction to Mr May. Mr May was an old friend of mine in London. The bank had no solicitor in London; Lace and Co. are the solicitors at Liverpool. I told Sill, if any difficulty arose, to place himself at once in communication with Mr May. From Sill I was aware of rumours that Cole would go on again; James Cole had assured Sill that such would be the case. When Sill was in town, I had no letter from him, but I had a letter from Mr May, of which I decline to furnish a copy. I then determined to come to town, and did not answer Mr May's letter. I arrived in town on the 5th July, I think; on seeing Mr Sill and Mr May my fears were really awakened as to the warrants. *I left Liverpool with the impression that they were good, but after my interview with Mr May and Mr Sill I had a doubt about it; my impression was there had been more than one set of warrants issued for the same goods, when I heard from Mr Sill of the rumours that there were more warrants than metal; rather than have any doubt about it, I preferred exchanging Haynes's warrant for a cargo of sugar.*

Q. Was your impression that the warrants were good or bad?

A. It is part of my business to be suspicious, and my suspicions being aroused, *I had a suspicion that they were bad.* Up to that time I pitied Cole, and thought him a victim. The story was, that he was a victim of Davidson and Gordon's frauds. The impression at our bank was, that Cole was too honourable a man to be a party to a fraud. I first heard of the bill of lading per 'Corporal Trim' before the 4th July. I heard it from Sill, who had received his knowledge from James Cole. I made no inquiries about the warrants in London beyond what Mr Sill and Mr May told

me, even after I had given up the warrants. *I thought I had given up too much for the bill of lading.* It was mentioned by Mr Sill or Mr May, that Mr May had threatened Cole to bring it before the Lord Mayor, by getting an order to search for the metal at the wharf. I made no attempt to see Cole, and did not see him. I never saw either James or Joseph Cole, or any one representing them. Before taking the bill of lading, I asked Sill or Mr May whether it was Cole's property. I was afraid to do anything to compromise the bank from its high position, and would not have done anything to get possession of property not belonging to Cole. I think I asked Mr May whether the cargo was paid for by Cole, and he replied that it was. I think I had no further discussion as to Cole's right to transfer the bill of lading. Sill mentioned, on the first occasion, that there was an advance on the bill of lading of 2,000*l.*, and that Cole would give us possession of that bill of lading by paying that sum. *I am a shareholder in the Borough Bank.* The management of this business was left entirely to me by the directors.

By Mr May, Mr Smith's Solicitor.

I had information from Mr May, that Cole had reported that there was metal to meet the warrants. Mr May handed me the bill of lading at the Royal Exchange, and which I have retained until the cargo was delivered to Sill and Meugens, as the brokers of the Borough Bank.

JOHN P. GEORGE SMITH.

JAMES BOWEN MAY, of Northgate House, Brighton, Solicitor, saith as follows:

I was employed at the end of the month of June, or beginning of July last, by the Borough Bank of Liverpool, with reference to some metal warrants deposited as security with the bank for acceptances of Cole. I had an interview with Mr Sill on the subject, who brought me, within the first day or two of July, a parcel of warrants for metals from the bank. Some of the warrants were from Hagen's Wharf. Sill told me of the report in the 'Times' as to Cole Brothers. I advised him to realise at once, and sent a clerk, John Collins, down to Hagen's Wharf, to see the amount of metal there. Did not know at that time whether it was Sill's first or second visit to London about the warrants. *He told me he had been making inquiries about the warrants, but he did*

not say of whom, nor where he had made inquiry. He did not tell me he had inquired at Cole's counting-house, or of Cole the bankrupt. I don't think he mentioned having had any interview with the bankrupt. He told me he could not get any satisfactory information, and wished me to make inquiries, and I then sent Collins to the wharf. I saw Collins on his return, and he told me that there was a good deal of metal at the wharf, but no one to point it out, and he was referred by some person at the wharf to Mr Digby, whom I afterwards saw. I think I saw Digby on the 3rd of July. Before I saw Digby I saw Sill again, and told him what I had heard from Collins.

In my first interview with Sill he never told me of his interview with Nicholl, the bankrupt's clerk. Sill did not tell me where he had been making inquiries on that day. He told me he had seen the report in the 'Times' of 28th of June about Cole, and that Smith had desired him to come and make further inquiries. He might have told me then that he had seen Cole's brother, who had represented that the warrants were all right, and that the bankrupt would go on, but he did not tell me he had seen Cole, nor that he had not seen him. I don't think the question arose as to whether he had endeavoured to see Cole. He did not communicate the steps he had taken for the purpose of seeing Cole, nor the names of any parties who had given him information. I saw Mr Digby on 3rd July, I think.

Q. Did you, in your interview with Mr Digby, intimate that Cole would get into a scrape if something was not done about the warrants?

A. I told Digby that if the warrants were not all right that he (Cole) would get into a scrape, or words to that effect.

Q. What ground had you then for assuming that the warrants were not all right?

A. I heard that Gordon and Co. and Cole were connected, and Sill had reported to me that there was a rumour about there not being sufficient metal to answer all the warrants.

Q. Was there any other explanation given by Sill?

A. I don't recollect that there was any other information given to me by Sill. Digby said that he would redeem the warrants by giving cash, or equivalent to cash, and then, or at the next interview, a cargo of sugar was mentioned. I did not make inquiries myself then as to the correctness of the warrants, but I afterwards had an interview with Cole, and

asked him about them. I saw Cole several times, but whether on the same day I don't recollect. I am not certain whether I saw Cole on 3rd July. I went to Cole's counting-house, but I don't think Sill was present at my interviews, but he was in one of Cole's offices. I don't recollect that he was present with me and Cole. This was on the 4th July. Digby was there with Cole and myself. Digby saw Cole first. I asked Cole then as to the warrants.

I think I said, "Are those warrants all straight?" he replied, "There is metal enough to meet your warrants." Digby was in the building, but I don't recollect whether he was present when I put that question. Cole was then in his private room, but I do not know whether Sill was in the room with me or not. I made a bargain with Digby for the exchange of the warrants for the sugar, subject to my client's approval. This was on the 3rd July, I believe. I wrote on the same day, reporting the result of my interview with Digby, and received the telegraphic message referred to in Mr Smith's evidence. I had three interviews with Cole, but I am unable to say whether I saw Cole on the 3rd or 4th July without reference to my diary, or whether all the interviews were on one day. On the 6th July I know I saw Cole, at his counting-house, and Sill was with me. Sill was in the building in one of the offices, but I don't think Sill heard what passed. I don't know whether Sill was in the clerk's office, or in the private room with me. At this time I made the inquiry of Cole as to the genuineness of the warrants, and he said there was metal enough to meet those warrants. It having been proposed to exchange the warrants for the sugar, I inquired whether he had paid for the sugar, and had a right to sell it. He told me he had a right to sell the whole cargo, except about 200 boxes—that he had paid 500*l.*, and the vendors had drawn, and he had accepted, for the balance. I asked whether the cargo was insured, and for the second bill of lading. He told me he had not insured it, and that no second bill of lading had been issued, or, at any rate, none had arrived in London. I think I saw Cole the first day with Digby (the 3rd July), but I am not certain. At the interview on the 6th I asked Cole about his position, telling him I had heard of the report in the 'Times.' *He said he should pull through, and they were going on again satisfactorily. I said, I suppose there is no probability of your bankruptcy, and of course there has been no act of bankruptcy. He said, "certainly not," and that they should come out all right.* I think he said they

were then going on again. I saw Cole without Digby being present, but whether Digby was present during this conversation, or not, I don't know. I think not. Digby had told me that the bill of lading was mortgaged to a bank for 2,000*l.*, and I believe, on this occasion, Digby was about to pay off the bank and redeem the bill of lading to give to me. I never told Digby that I could not see Cole about these warrants. I never told Digby that Cole had put Sill off from seeing him, and that Cole had said he did not want to see Sill. I am positive of all this—Cole did see Sill in my presence. And looking at a note from Mr Digby, dated 6th July, I have no hesitation in saying, that the day when I saw Cole, and obtained the bill of lading, was on the 6th July. I did not see Cole after the bill of lading had been given to me. This enables me to say that my interviews with Cole were before or on 6th July. I had three interviews with Cole. I know Sill was with me at the last interview with Cole, but think not on any other—he was waiting to see me, but not to see Cole. I will supply the dates of my several interviews with Cole from my diary, the entries in which I have not referred to since July. It was at this interview on the 6th that I received the bill of lading. The conversation that I have alluded to was at the same interview, and it was after the conversation that I obtained the bill of lading. It was delivered to me by Cole direct, I think, or through Digby, his solicitor. The inquiry about the insurance was made subsequently to receiving the bill of lading.

J. Bowen May.

(Appendix C.)

History of the Business Transactions of Sadgrove, one of the opposing Creditors to the Claims of Messrs Laing & Campbell.

Court of Bankruptcy,

October 20, 1857.

In the Bankruptcy of SADGROVE and RAGG.

The bankrupts were upholsterers, in an extensive way of business, in Eldon street, Finsbury. This was the certificate meeting. Mr Sadgrove brought into the concern 9,000*l.*, and Ragg 1,000*l.* The returns of the business during the period of trading were about 141,391*l.* The profits were 15,222*l.*, being between ten and eleven per cent. on the gross receipts; and the trade expenses were more than the profits, and therefore forming a larger per centage, though only by a fraction, on the receipts. The unsecured debts were 22,673*l.*; the assets, 14,842. The main charge

against the bankrupts was trafficking in bills of exchange, which did not represent any real trade transactions, and also bad book-keeping—especially an imperfect cash-book. The ledger and bill-book were grossly inaccurate, and it was alleged that much of the property was unaccounted for. In 1855 the bankrupts had circulated accommodation bills to the amount of 8,722*l.*, whilst in 1856 they had thrown upon the market no less than 29,353*l.* The whole amount of the bills which were traced was 39,378*l.*, and none of these, it was alleged, represented any real trade transactions. A large number of the names on the bills were altogether fictitious, and some of them represented mere "men of straw."

The bankrupt RAGG was examined. He deposed as follows: I discounted several bills; these handed in are in my handwriting. I had no business transactions with any one of the persons represented by those bills. One of the acceptors is a poor man, a native of Torquay; he accepted twenty of them at once for me. I used to keep such bills by me for a year or two. A man named Brown gave young Mr Sadgrove authority to act for him—that is, to accept bills whenever they were wanted. Young Sadgrove did accept bills accordingly. Our young clerks used to accept bills for me too. Mayer, one of our clerks, accepted in the name of Bradley, who was then alive; he was described as an upholsterer at Portsea. I do not know that he did live at Portsea. The bill handed in was accepted by Mayer in the name of Bradley; it was made payable at Messrs Glyn's. Another lad in my service, named Black, accepted bills for me in the name of Guthrie. All the bills were frequently discounted by a Mr Moore. These bills were entirely accommodation bills. There was no real transaction whatever. I do not recollect making any representation to Mr Moore about the bills. At the time of our failure there were of these accommodation acceptances standing out 12,000*l.*, and I had 5,000*l.* bills by me on stamped paper at my failure, which were not sent out. None of these represented any real transaction. The bills Moore discounted for me were long-dated bills. Our best customers gave bills of long date. I did not tell Moore so when he discounted those bills; at least I have not the slightest recollection of having done so. Young Sadgrove was the nephew of Sadgrove, my partner.

The bankrupt was further interrogated respecting another batch of those bills, which were of the same character, and did not, in point of fact, represent any genuine trade transaction, but were accepted in the bankrupt's counting-house,

and were, to all intents and purposes, mere accommodation bills. On each of them it was the same story over again, the bankrupt at once admitting how they were manufactured. One of the acceptors was Mrs Irons, a dressmaker in his employment, who accepted bills to the amount of 2,000*l.* for the bankrupt, when in his employment. The signature was M. A. Irons. She was a married woman. She worked for him at the upholstery, at wages of 8s. or 9s. a week. (Sensation.) It might not have been known that she was a female. She at one time lived in Notting-hill. The name of Smith, upholsterer, in the Isle of Wight, is on some of the bills. I do not know that he lived there, nor had I any correspondence with him. I put the address "Ventnor, Isle of Wight," on the bill, because he said he came from there, though I did not know it. He used to accept for me in a batch of a dozen at a time. I never saw him anywhere but in my office. I believe Smith lived in Ventnor. I never inquired. I think Smith lived with an upholsterer named Grant at Ventnor. I gave him a sovereign for accepting. I cannot say how many times he has accepted bills for me. I don't suppose more than twice. I sent bills to him in letters for acceptance, and got them back through the post accepted. I cannot tell how I addressed him. Mr Turner accepted for me; he is a gentleman's servant. I don't know whom he served, or who his master was. Turner never was in my employ. He accepted for me to the extent of some thousands. I forget who it was that introduced Turner to me. I visited him several times. I don't know the name of any family he lived with. One of his master's residences was in Grosvenor place. I don't know the number. I was in partnership with Sadgrove for three years. I sent out more than 100,000*l.* of those bills. I don't think it was so much as 200,000*l.* A person named Taylor, in my service, accepted for me. The name given was, "Taylor, Moreton House, Isle of Wight." That was his father. Taylor is now a bankrupt. Moore discounted for me before I went into partnership with Sadgrove. He discounted for me in 1847. He discounted for me altogether 200,000*l.* or 300,000*l.* He used to charge ten per cent. He made no inquiry as to the names on the bills, but took them upon my own responsibility. Mr Alabester is Mr Moore's son-in-law. He took mine from me at about the time of my failure, at a fair valuation. Moore never sued me on the bills, which were regularly taken up until the bankruptcy, and all the parties whose names are on the bills are in existence, and I had their authority for using

their names. I informed my assignees of the nature of the bills about Christmas last. Taylor now lives somewhere in Hackney. Mrs Irons was described as "Mr Irons, upholsterer." I must have left the "s" out. The "Mr" was probably to give the paper the character of a trade bill, she being then in my employment at wages of 7s. or 8s. a week. I told my assignees before my bankruptcy the bills were accommodation bills.

Mr JOHN MOORE, jun., examined: The bankrupts came to me to have bills discounted—most frequently Ragg. My father had twenty or twenty-five of those bills in his hands at the time of the bankruptcy. Ragg used to say it was difficult sometimes to get bills from the country of any but a long date, and that his best customers gave long bills. Up to January the bills were regularly taken up. We had no reason to believe they were not trade bills. We were very intimate with Ragg. We used to think Ragg's paper very good.

Mr MOORE, sen., examined: I had no reason to suppose the bills were not trade bills. I discounted to a large amount for them. Sometimes Ragg said he could not get the bills up from the country. He said to me "Make no mistake about it, governor; long-date bills are, upon my soul, the best." I understand there is no such person as Bradley of Portsea. Had I known the real character of the bills I would not have discounted them. I knew Ragg first, I believe, in 1845, but I cannot say. I used to discount 2,000*l.* bills for him at one time. I might have discounted 10,000*l.* bills for him before he joined Sadgrove. My charge was 10 per cent. generally. During the Russian war I charged 12½ per cent. for money to Ragg.

Mr MAYNARD, accountant, examined: The bankrupts' books were put in my hands to investigate. The cash-book was very imperfect and irregular during the first part of the partnership, but latterly it became better. There is an excess of payments over receipts in 1856. The bought-ledger was also very imperfectly kept; it would be difficult in such a business to keep a bought-ledger well. The sold-ledger was very imperfect; there were several transactions which the books did not disclose. The bill-book was imperfectly kept, and the state of the books has occasioned a loss to the estate. The bankrupts bought the raw materials and then worked them up.

A little boy, who did not seem more than 16 years of age, one of the acceptors (MAYER), was then put into the witness-box: My name is William Mayer. I was in the service of

Sadgrove and Ragg, and had 20*l.* a year. I accepted bills for them. Mr Ragg told me to sign my name to them. He said Bradley could not write, and that I must do it for him. I accepted several bills in the same manner.

Another lad named JONES, who was in the service of Sadgrove and Ragg, and who seemed about 17, said he accepted bills on several occasions in the name of Guthrie, of Norwood. They told me he was afflicted with paralysis. I had a small salary of about 6s. per week. I live in Long-alley, Finsbury. Both Sadgrove and Ragg caused me to make these acceptances. Mr A. Sadgrove, in the first instance, asked me to accept.

Mr ALFRED SADGROVE is nephew to Sadgrove the bankrupt: I accepted some of those bills in the name of James John Brown. I did not know him at all. Mr Ragg said he had full authority for me to write his name, and that was the only name I accepted in. I see one of the names is James Brown and another John Brown. I do not know who James or John Brown is—I know nothing of them. I only acted as a servant by my employer's directions. I asked Black to accept by Ragg's directions. Perhaps, if I had refused to do what Ragg wished, I might have lost my situation. Some of the bills with Brown's name on them were made payable at the Commercial Bank. I did not accept more than one bill at a time. I did not accept ten bills in all. I took up some of those acceptances with my master's money. I did not see who went into Ragg's room; the window was glazed, and I could not see through into the room. I did nothing but what I was directed to do, and did not know that I was doing anything wrong. I could not refuse when I was told to do it.

It was stated that after the bankruptcy search was made for the parties to the bills, and that whole bundles of letters were returned through the post-office—those persons, whether real or imaginary, being altogether unknown to the postmen. Taylor got 200*l.*, it was alleged, for accepting bills, and another man a consideration for the same purpose. One creditor had attempted to obtain a preference, but it had been abandoned and the property given up.

On behalf of Sadgrove, it was alleged that he was wholly ignorant of those bill transactions, as he was restrained by the articles of partnership from interfering in the counting-house department. Sadgrove had been in business for many years. He joined Ragg in 1854, and confined his exertions to the buying of the raw material and having it manufactured. Sadgrove, when he went into partnership with Ragg, had a

large connection and an unblemished reputation. He had nothing to do with the finance of the concern. Sadgrove was, in fact, just in the position of a sleeping partner, and was to receive 500*l.* a year before the division of profits—the finance department having been, as above set forth, left entirely to Ragg. Sadgrove gave the assignees and his creditors generally the best assistance in his power. The cheques were to be signed by Ragg only in the name of the firm. Sadgrove accepted no bills and signed no cheques. The estate given up was an unusually good one, and would pay 10s. in the pound.

The official assignee confirmed this statement of 10s. in the pound after all expenses, and after the depreciation in the value of stock which the bankruptcy occasioned, showing there must have been at least 15s. in the pound when Sadgrove and Ragg stopped payment.

The charge for interest and discount on bills was no less than 3,000*l.*, but it was urged that Ragg was entirely responsible for this disbursement. Sadgrove's expenditure was 900*l.* a-year; but it was urged that the bankrupts had not commenced without capital, and were doing a very large trade. Sadgrove had been long in trade, and had always maintained an untarnished reputation, and he was an object of great sympathy to all his creditors. He was an old man and was now in bad health, and came to the court to-day against the advice of his family and of his medical man.

It was admitted, on behalf of Ragg, that his conduct was blameable, and that the course of trading was in some manner censurable; but it was urged that the last man who ought to complain was Moore, but for whose large profits there would be 20s. in the pound for all the creditors. Ragg only drew out 150*l.* a-year, whilst Sadgrove drew out 900*l.* a-year. Ragg had not at all been benefitted by his culpable conduct, and could really have had no bad motive.

Consideration adjourned.

Messrs Lawrance, Bagley, Pook, and Stopher were for the several parties.

At the meeting of the Court on Nov. 3, Mr Commissioner Holroyd gave judgment in the case. He said: I think the course of trading pursued by these bankrupts was both reckless and dishonest. No case within my experience exhibits a more glaring abuse of the facilities given to the operations of trade by the free circulation of bills of exchange.

At the date of the bankruptcy they owed, in round numbers, 22,670*l.*, exclusive of liabilities on customers' bills receivable discounted (6,546*l.*), and above 12,500*l.* of the 22,670*l.* were debts contracted on fictitious bills. The assets promise to pay 9s. or 10s. in the pound. The returns during the period over which the balance-sheet extends (about two years and a half) amount to 141,391*l.*, the gross profits being 15,222*l.*, or about 10¾ per cent, while their trade expenses are 15,598*l.*, or about 11 per cent. The losses on bad and doubtful debts and realisation of assets are 4,864*l.*, of which 2,583*l.* are bad debts; and the drawings by Sadgrove are 2,427*l.*, and by Ragg 461*l.* The bills of exchange received of customers for value amount to 95,271*l.*, most of which were discounted, and in the trade expenses there is an item on this account for discount of 3,508*l.* The trade expenses exceeded the profits by ¼ per cent., leaving, therefore, nothing for division between the partners. It appears that the bankrupts not only obtained discount for their customers' bills, but early in the partnership, in February 1855, they commenced the dangerous system of accommodation paper. I need hardly observe upon the pernicious effect of a fabricated credit by the undue use of accommodation bills ; it is notorious in the commercial world. Money raised in this way generally bears a high rate of interest; in the present case 10 or 12 per cent. was paid. It is obvious that the payment of so high a rate of interest on borrowed capital as against the ordinary rate of mercantile profit (in this case being about 10¾ per cent. on the returns) must, when systematically pursued, be productive of ruin to the borrower. What other result, then, could Sadgrove and Ragg expect ? Indeed, I think the only way in which a trader can with safety trade upon borrowed capital is by borrowing of those who do not wish to make use of their capital themselves by constantly turning it, but are willing to lend it for a considerable period of time, and are satisfied with receiving a moderate rate of interest for the use of it. Widely different are the dealings in accommodation paper. The spurious paper which the bankrupts issued in 1855 amounted to 8,722*l.*, and in 1856 to 29,355*l.*, and in the few weeks of 1857 to 1,300*l.* After going through the details of the case, the Commissioner concluded as follows: Having anxiously weighed all the circumstances of the case, the Court considers that a due regard to the interests of trade, to the preservation of good faith in commercial dealings, to the importance of accuracy and regularity in book-keeping, and to the obligations of traders

towards those who are in their employ, demands a severe sentence. The judgment of the Court is, that the allowance of the certificate of Ragg be refused, and that the allowance of the certificate of Sadgrove be suspended for a period of two years from the day of the application, and that when granted it be of the third class.

Upon this case the 'Times,' in its City article of Nov. 14, 1857, made the following observations:

In several instances houses which have lately suspended and submitted their accounts to creditors have been discovered to have followed the practice of fabricating accommodation paper. This circumstance is both satisfactory and deplorable. It is satisfactory to find that many of those who are swept away by the present storm are persons whose removal from the field of enterprise is an advantage instead of a calamity, and it is deplorable that a system which strikes at the root of all honest trade should be shown to prevail to a greater extent than had been anticipated. The character of the offence was exhibited in its most despicable light in the case reported a fortnight back of Sadgrove and Ragg, where a business was carried on under the eye of greedy discounters at the rate of 70,000*l.* per annum, and boys in the establishment were trained to forgery and imposture by being regularly employed in the manufacture of fraudulent acceptances. But these people were altogether of an inferior class and out of the mercantile circle. The analogous facts lately exhibited have been among individuals who have held a good place on 'Change and a position generally in which any misdeeds must compromise the British name. In one case within the present week it has transpired that bills were regularly created between one house and another for a trifling commission, with a full knowledge on the part of the acceptor that they represented no business operation whatever, and that in the event of accident he had not a shilling wherewith to meet his liability, except at the expense of his ordinary creditors. Some of the knot of Glasgow failures also, which were announced about the middle of last month, are understood to have revealed a combination in this direction of a most gigantic kind, and it is alleged that when the affairs of the Liverpool Borough Bank shall be investigated the public will be still further enlightened on the magnitude of such proceedings. When banks with a million or a million and a-half of capital are found to have been promoters of the evil, the disgrace is proportionably extended, and although, in the

punishment which such institutions sooner or later inevitably sustain, the community at large are always unhappily involved, it must be regarded as a compensating feature of a crisis like the present that for a time it clears the field from some of these pernicious influences. A permanent cure can be effected only by a gradual advance in commercial morality. It is gratifying to believe that the mercantile body feel this much more strongly than the proceedings either at bankruptcy courts or creditors' meetings might be supposed to indicate. When it is seen that, in bankruptcy, traders whose malpractices have been notorious can almost always, by adroit management, get the highest certificate, and that creditors' meetings, under the auspices of accountants employed by the debtor, are usually complimentary, the public are led, not unnaturally, to infer that that kind of toleration prevails which arises from the consciousness of a common tendency. But in neither case can these be taken as examples. Instead of the Bankruptcy Court being looked upon with favour by creditors, their first question is by what sacrifices can we avoid its aid, while with regard to creditors' meetings it cannot be expected that in the absence of legal authority persons will often be found to assume the invidious duty of an accuser. The immunity which irregular traders now obtain is in consequence of the defects of the law, and not from unhealthy sympathy. Every respectable merchant knows the category in which fictitious bill-drawers and the banks that encourage them should be placed, and would welcome any administrative improvement that would render the offenders as liable to judicial as they are to moral condemnation.

ERRATA.

At page 9, line 31.—For "Mugins," read "Meugens," and the same wherever the name appears.
" 10 " 21.—For "a security," read "as security."
" 87 " 51.—For "were his," read "were, as."

REYNELL and WEIGHT, 16 Little Pulteney street, Haymarket.

AN ADDRESS TO THE CREDITORS OF JOSEPH WINDLE COLE.

THE proceedings which, upwards of three years ago, were instituted in bankruptcy against Joseph Windle Cole having at length assumed a determinate form with respect to a large and long-debated claim upon that bankrupt's estate, the trade assignee, Mr Seton Laing (of the firm of Laing and Campbell, 39 Mincing lane), conceives it to be his duty to publish an account of the share he has had in them, as well for the purpose of showing by what motives he was actuated in undertaking the office of assignee, as for that of giving the great body of Cole's creditors an opportunity of learning the means which have been employed to protract the investigation into the bankrupt's affairs.

It would seem to be almost an established rule, in the present state of the commercial law, that the individual who voluntarily comes forward to protect the interests of the public must do so entirely at his own peril; liable to be thwarted, on the one hand, by the officials whose

duty it is to lend their aid in procuring the punishment of fraud, and exposed, on the other, to the active opposition of those who find a direct advantage in advocating the cause of crime. Hence the absence of that moral courage in the majority of the mercantile community, which makes them shrink from presenting themselves in the capacity of public prosecutor; and hence the encouragement held out to the unscrupulous to plan and persevere in a course of delinquency.

It has been shown in the pamphlet bearing the title of 'The Great City Frauds of Cole, Davidson, and Gordon,' which was published last year, that the conviction of Joseph Windle Cole at the October Sessions of the Central Criminal Court, in 1854, when he was sentenced to four years' penal servitude for a misdemeanour, in obtaining money under false pretences,—was entirely owing to the exertions of Messrs Laing and Campbell; and, but for Cole's arrest at their instance, it is no less evident from the statements contained in the same work that, bankrupt though he might still have been declared, his flight from England—for which he was well prepared—would have thrown a nearly insurmountable obstacle in the way of a settlement of his affairs. Had Messrs Laing and Campbell entered into a dishonourable compromise with Cole, had they not steadily resisted the offer of a large sum of money which was made to them by Cole's solicitor, Mr Digby, on condition of their delivering up the dock-warrants they held, which his client had forged; the culprit—countenanced by a firm whose code of commercial morality appears to be of the most convenient application,—

would have pursued his swindling career unchecked, and have daily added fresh dupes to the numbers he had already deceived.

It was on public grounds, then, that Messrs Laing and Campbell acted when they became mainly instrumental in convicting Cole; and it was upon equally public grounds that Mr Laing undertook the thankless and arduous office of trade assignee to the bankrupt's estate. It was open to him, as to all the rest of the creditors, to spare himself the labour and anxiety of watching a case so entangled by difficulty and steeped in fraud as that of the bankrupt Cole; the establishment of the claims of his firm did not, in the slightest degree, depend on the position which he held in relation to the proceedings in bankruptcy; with self-interest he had nothing to do; but that which really influenced him, the motive by which he was solely guided, was his fixed and earnest resolve to see justice done in the administration of the bankrupt's affairs: he was bent upon a thorough investigation, and he determined, as far as it laid in his power, that such an investigation should be made. A supine, a facile, or an ignorant creditor might have been elected to the place which Mr Laing—acting upon the advice of that lamented and eminent solicitor, the late Mr James Freshfield, jun.,—consented to occupy; but with what advantage to the rest of the creditors it needs no great exercise of acuteness to discover. Under the supervision of a careless trade assignee the estate would have been wholly at the mercy of Cole's legal advisers, the proceedings indefinitely pro-

longed, and the dividend,—if ever that hoped-for event occurred,—in all likelihood infinitesimally small.

When Cole for the second time became a bankrupt, in 1854, there were creditors who severally proved to the extent of 33,855*l.* 6s. 9d.; yet two of the body (who did not then move) were afterwards put forward to oppose the payment of a dividend to Messrs Laing and Campbell, whose united claim on the bankrupt's estate amounted to the enormous sum of *seventy-nine pounds* odd (!); one of them being the firm of Bailey Brothers, stationers, Royal Exchange, Cornhill, creditors for *twenty-six pounds* odd, and the other, Mr Sadgrove, a furniture-dealer in Finsbury, a creditor for a trifle more than *fifty-three!**

The imagination must be active of the man who, look-

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* The following extract of a letter from Mr Graham, the official assignee, sets forth the fact above stated.

Re J. W. Cole.

25 Coleman street,
20*th July*, 1857.

Seton Laing, Esq.

Dear Sir,—William Sadgrove, of Eldon street, Finsbury, upholsterer, a creditor for 53*l.* 1s. 6d., and Alfred and Charles Bailey, of Cornhill, trading under the firm of Bailey, Brothers, as stationers, whose debt is 26*l.* 8s. 4d., gave their undertaking, dated 18th June, 1856, to pay any costs that should be awarded against them, occasioned by examining into your debt.

The amount of creditors now proved, is 91,587*l.* 0s. 2d.

Your obedient Servant,
George J. Graham,
Official Assignee.

ing at the fact that the *joint* claim of these parties was only seventy-five pounds, could for an instant suppose that they, of their own free will and at their own expense, volunteered their services for the benefit of all Cole's creditors; and proof that such was not the case was afforded by Mr Sadgrove himself, who subsequently admitted that he did not recollect anything at all about the preliminary steps which were taken to oppose the claim of Laing and Campbell, and that it was not until he saw his signature attached to the application to the Commissioner in Bankruptcy that he remembered the circumstances of the case. He then stated, frankly enough, that he believed he was originally applied to by Messrs Bailey Brothers, who had *guaranteed his expenses*, their own interest in the matter being, as already stated, a paltry claim of five-and-twenty pounds.

If not amongst the creditors themselves, for they dreaded the disallowance of their claim to prove—though in a moment of aberration they screwed up their courage to make the experiment—there were those having an interest in Cole's transactions not inferior to that of any of his creditors, who saw with dismay the appointment of Mr Laing to the trade-assigneeship; and the persons thus characterised resolved to leave no stone unturned to mortify and annoy, and by possibility injure the house of which Mr Laing was the representative. They knew by experience that no quarter or connivance was to be expected from him; the wounds were yet open which he had so searchingly probed; further exposure of themselves was within the range of probability; and personal dislike was so mingled with their

apprehension, that it was easy to guess from what quarter the arrow came which was directed against the uncompromising trade assignee.

Previously, however, to the opposition offered to the claim of Laing and Campbell, which has been productive of so much of the delay attendant on winding up Cole's affairs, an attempt had been made by Mr Sewell,—an attorney who was contending with Mr Linklater for the appointment of solicitor to the bankrupt's estate,—to prevent the selection of Mr Laing to the assigneeship.

This subject, together with other matters having reference to Cole's bankruptcy, has already been entered into in Mr Laing's pamphlet, 'The Great City Frauds,' but as the scope of the present work is mainly to give a complete history of the proceedings in that bankruptcy, it may not be inappropriate to reproduce those passages which bear upon the earlier stages of the inquiry.

Speaking of Mr Sewell's efforts above alluded to, it is stated at pp. 79-91:

> In the first instance he appealed to the sitting Commissioner, Mr Fonblanque, and stated that as Mr Laing had instituted criminal proceedings against the bankrupt, he was by that act disqualified from being an assignee, although Mr Sewell forgot to state that Mr Laing had been previously canvassed for his interest on his own behalf.* Failing in

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* Mr Sewell has since called at Messrs Laing and Campbell's offices, in consequence of his name having appeared in Mr Laing's pamphlet—'The Great City Frauds,'—and explained to each of the partners, that his object in opposing their proof of debt was, not from any knowledge on his part of irregularity in the *accounts* of Messrs Laing and Campbell, of which he admitted that he knew nothing, but because he was anxious to prevent Messrs Linklater and Co. from getting charge of the estate. So that to gratify a vindictive feeling against a rival, Mr Sewell did not hesitate to make an unfounded statement against Messrs Laing and Campbell, thus laying the foundation of the late most unjust and vexatious inquiry.

this endeavour, he instructed a barrister who frequents the Bankruptcy Court to oppose Messrs Laing and Campbell in proving their claim, which he had himself previously sanctioned: but this effort proved equally abortive with the former one, and the learned Commissioner having fully expressed his opinion on the matter, the opposition fell to the ground, and the assignees were appointed. They were three in number—Mr G. Gabain, of St Michael's alley, merchant; Mr Seton Laing, of Mincing lane, colonial broker; and Mr Nicholas Brebart. The official assignee was Mr Graham, and the solicitor to the trade assignees Mr Murray, of London street.

* * * *

The next proceeding was the examination of the bankrupt on the 7th of October, while his trial was pending, and he was brought up from Newgate for that purpose. Mr Murray, for the assignees, said that Mr Hulson, the bankrupt's accountant, had gone into his accounts, and was of opinion that an adjournment for two months was necessary. This was agreed to, and at the expiration of that period Cole, whose conviction had taken place in the interim, was again brought up to be examined. No balance-sheet had, however, been filed, owing to the want of papers and books of account, and the facts elicited resulted from the *viva voce* statements of Cole, under the searching examination of Mr Murray. They were sufficiently startling.

Here are the *ipsissima verba* of the bankrupt, in so far as they relate to the general character of his dealings:—"I commenced business, under the firm of Cole Brothers, early in 1848. I had no partner. I had been a bankrupt in the year 1847. I had no capital when I commenced business, except loans from friends. I cannot state the amount of those loans without reference to my papers. I began without any capital, as I have stated. I carried on business under the name or style of Cole Brothers. I never took stock. I did no business that required my taking it. I never exactly ascertained the state of my affairs, but I had an estimate in my own mind. At the end of 1848, or the beginning of 1849, I was rather prosperous. I knew continually the general result of my affairs, though I never exactly ascertained it. In 1853 my affairs were in the most prosperous state of any time during the time I have mentioned. I was in a state of prosperity up to the summer of 1853.*

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* Prosperous enough, no doubt, for he was then busily engaged in passing his false warrants!

I cannot tell what I owed at the period mentioned. I could ascertain from my papers what I owed in 1853, but there is no one book in which it is to be found. My business was extensive. Its original nature was business to the East Indies—consignments for orders and shipments on my own account. It was very extensive in 1853. The amount of my transactions in 1853 was about 2,000,000*l.* I mean that I was concerned in buying, or selling, or consigning goods to that extent, or very nearly. The principal goods I bought or consigned were tin, copper, spelter, and iron. The books of account kept by me in 1853 were an invoice-book, bankers' books; no cash-book; a banker's cheque-book. There were no other books to register my transactions, except a letter-book; but there were various papers containing statements of my affairs. There were assurance-books, but no other books that I remember. I had no ledger—no journal. The banker's cheque-book was made as a rough cash-book. I should have spoiled my operations if I had allowed my clerks to write a journal. My cheque-books will enable me to make out a cash account. All moneys received in the course of my business, from the time I opened my banking account in 1848, went through my bankers to the credit of my account. All the payments I made in the course of my business came from my bankers. When I stopped payment I had no property very material in my possession nor under my control.* There were consign-

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* Cole might very well say that he had "no property very material" in his possession, as the following letter will show:

"Meriton's Wharf, London, 28th December, 1855.

"We, the undersigned, do hereby certify that at the request of the official assignees of Messrs Cole Brothers, and Messrs Davidson and Gordon, we received, on the 30th Sept., 1854, from Timothy Toomy, acting as foreman to Messrs Maltby and Co., late of Hagen's Wharf, Mill street, Dockhead, Bermondsey, the several goods as per list annexed, and which were subsequently delivered to Messrs James and Shakespeare at sundry times by an order dated 1st January, 1855, duly signed by the official assignees to the aforesaid estates.

"We further certify that the said list of goods comprises all merchandise stored upon the aforesaid premises, occupied by Messrs Maltby and Co., at the date of our taking delivery of the same.

"Barry Brothers.

"Meriton's Wharf, London."

List of Sundry Goods removed from Hagen's Wharf, 30th Sept., 1854, and referred to in the foregoing certificate: Say, 50 kegs zinc nails, 13 boxes tin, 2 cases zinc, 340 bundles flat and hoop iron, 190 bundles iron rods, 7 bars iron loose, quantity of pieces broken steel and spelter weighing 5 cwt. 1 qr. 16 lbs., 290 empty boxes, and 132 lids. The whole of these goods were sold, and realized 106*l.* 0s. 2d.

ments. I think I had then two bills. I must add that there were surpluses of consignments or loans under my control at the time I stopped payment. In Christmas, 1853, I believe I was solvent. I do not consider that I was insolvent when I stopped payment. Upon reflection I entertain no doubt of my solvency in Christmas, 1853. I think I was perfectly solvent on the 5th of June, 1854, in the present year. I took out 1,200*l.* from Glyn's on the 24th of June. I received it myself by cheque. A large portion of it has been applied to the defrayal of legal expenses. I am not prepared to state how much, but nearly all for legal expenses. I appropriated about 1,000*l.* for legal expenses, paying accounts that were owing to solicitors. I paid Kersey and Co., solicitors, 300*l.*; to Mr Digby, solicitor, a larger amount—altogether, I think, about 600*l.* to Digby. The rest was disbursed in various expenses within a day or two after the 24th, with the exception of the money found on me by Forrester, the officer. Gave securities to creditors in June, between the 13th and 20th. Sent the creditors in question a cheque for 10,400*l.* The security consisted of four assignments. At that time those creditors made me advances. I sent them down to Liverpool a cheque on Glyn's for 10,400*l.* That cheque is not in the pass-book, nor on the margin of the cheque-book. The cheque was not paid, but I received it back again as cash advanced to myself. The payment of 320*l.* to Mr. Digby, the solicitor, was not until it was got from Forrester. The securities given up to me by the Liverpool creditors, to whom I sent the cheque for 10,400*l.*, were railway iron, bar iron, steel, and spelter. The goods were pledged to them for 10,400*l.*,* but they were of greater value. I had transactions in May with Sill and Mugins, of Liverpool. I obtained in advance for their bills about 25,000*l.*,† upon warrants for metals. They drew upon Cole Brothers. I got the 25,000*l.* It was all paid through Glyn's. I received no account from these parties, and I can't tell whether they sold the securities or not. I do not know precisely how we stand, not having received any account. They gave me up securities as against other securities, I think, early in July, after I stopped payment."

Cole added to the above that he believed he had told the real state of the case, and said, in reply to a question from his own solicitor, that he had "reasonable hopes of being able

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* † These warrants were nearly all fictitious.

to go on again in July." Had Mr Digby's negotiations with Messrs Laing and Campbell not been thwarted by their firmness and sense of justice, Cole's hope was "reasonable" enough, as in all human probability he would, by that time, have been carrying on the same wide system of fraud by which he had already so greatly prospered. At the close of this examination, the case was adjourned till the 29th December.

On that day Mr Bagley, on the part of the bankrupt, urged an adjournment of two months. This was opposed by Mr Murray, who said that much of the property had been made away with already, and, unless the bankrupt were put under some terms, the whole of it would be frittered away. The proposed adjournment was, therefore, limited to four weeks, and, on the 26th January, 1855, Cole was examined at some length with reference to his transactions with Davidson and Gordon. He stated, amongst other things not relevant to their affairs, that "a month before they absconded, he had received some of their acceptances for about 30,000*l.*, and had endeavoured to negotiate the paper for them. The bills were afterwards given to his clerk to give to Mr De Russett, and handed to Mr Digby a security for De Russett's account." Mr Murray asked: "What! bills for 30,000*l.*?" Cole replied: "Oh, they were not worth 300*l.*!"

At the examination which took place on the 23rd of March, it was stated that the bankrupt's accounts, which extended from January 2nd, 1854, to August 14th, of the same year, had been at length filed, and showed the following results:

	Dr.	£	
Unsecured Creditors		40,190	
Creditors holding Security		46,505	
Profits		10,137	
Liabilities		293,253	
	Cr.	**£**	
Good Debtors		55,668	
Doubtful Debtors		36,996	
Property		47,608	
Office Expenses		1,819	
Personal ditto		1,069	
Law ditto		1,271	
Charges on Merchandise		3,795	
Interest and Discounts		9,483	
Losses		136,909	
Losses by Bad Debts		22,954	
Alleged Capital at commencement			£220,692

Mr Murray said, with respect to the "property," he believed he might write off not less than 40,000*l.* Mr Graham, the official assignee, stated that the whole sum realized up to that time was only 6,100*l.*

At the next meeting when business was transacted,—July 14th,—it was announced that an investigation into the accounts filed by the bankrupt, so far as it applied to the dealings and transactions between him and Messrs Overend, Gurney, and Co., which had been undertaken by Messrs Quilter and Ball, the accountants, was not yet completed, and an adjournment took place for three months. It was also stated at this meeting, that the amount of fictitious warrants in which Cole had dealt was close upon 346,000*l.*

While these frequent examinations were going on, active steps had been taken to procure the arrest of the absconding bankrupts Davidson and Gordon, who had fled to the Continent in June, 1854, and returned to this country in April, 1855, and subsequently to their return had been examined as well in the Court of Bankruptcy, with reference to their affairs, as at Guildhall on a criminal charge. In the latter proceedings an indictment had been laid against them for conspiracy, in which Cole was included ; and on this account when pursuant to previous adjournment, another meeting of Cole's creditors took place on the 31st of October, Mr Murray said, that as in all probability the case would be tried at the next Sessions of the Central Criminal Court, it might perhaps create some prejudice against the bankrupt if any investigation took place at that time, in that Court, and the Commissioner therefore adjourned the meeting *sine die.* On this occasion, however, Cole's cash account was furnished, which showed transactions to an enormous extent. In 1852, the payments amounted to 1,531,708*l.* 11s. 6d. In 1853, they were 2,000,744*l.* 0s. 4d., and in 1854, 770,750*l.* 18s. 6d.; making a total in two years and a half, of upwards of FOUR MILLIONS, THREE HUNDRED THOUSAND POUNDS! As a set-off to this enormous sum, Mr Graham stated in answer to the inquiries of several creditors, that he had about 7,000*l.* in hand ; but that the assignees were precluded from making a dividend owing to a large claim which had been made against the estate by Messrs Overend, Gurney, and Co., to the amount of 120,000*l.*, and which was disputed by the assignees.

This claim for 120,000*l.* on the part of Messrs Over-

end, Gurney, and Co. (which they were subsequently compelled to relinquish, in addition to 3,000*l.* paid by them to the assignees of Cole's estate),* having had the effect which was probably intended,—namely, of preventing the announcement of a dividend in which Messrs Laing and Campbell would have participated without any objection being raised against their claim,—the next move on the part of those who sought to bar the claim of Messrs Laing and Campbell was to question the correctness of their accounts, Messrs Bailey Brothers, and Mr Sadgrove, being the stalking-horses employed on the occasion. But before the objections which they made are set forth, it will be necessary to go back to the period when the choice of assignees took place, and the proofs of creditors were, for the first time, tendered and admitted.

On the 6th of September, 1854, the period referred to, Messrs Laing and Campbell's claim was admitted for 11,855*l.* 18s. 2d., but it was never intended by them that this should be considered an absolute claim, but only an account rendered so far as they were able to

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* 'The Great City Frauds of Cole, Davidson, and Gordon,' p. 233, where appears the following note respecting the 3,000*l.*: "This sum was retained by Messrs Overend, Gurney, and Co., until the threat of legal proceedings by Cole's assignees compelled them to give up the amount, as well as to relinquish claims upon the estate to the extent of 126,530*l.* 0s. 10d. Mr Murray, the solicitor to Cole's assignees, refers to the first-mentioned sum in the following extract of a letter, dated London street, March 20, 1856, in which he says: 'I have this morning exchanged agreements with Messrs Overend, Gurney, and Co.'s solicitor, received the 3,000*l.*, and paid the amount into the Bank of England to the credit of the estate.'"

make it up at that time. That they never thought of presenting it as a complete account, is evident from the fact that several of the items of which it consisted were marked with the word "ABOUT," clearly showing that an approximation to the real amount was all that could then be attempted. A statement that should be perfectly accurate was, besides, impossible, for several parcels of metals, in the hands of Messrs James and Shakespeare, metal brokers, the proceeds of which were to be reported, remained unsettled at the date when the claim of Messrs Laing and Campbell was tendered.* Moreover, their account was drawn up on the morning of the 6th September, 1854, under the special instruction of Mr George, of the firm of Messrs Linklater and Co., the attornies to the bankrupt, who inspected their ledger and suggested to them to fill up the blank accounts as nearly as they could.

Between the 6th of September, 1854, and the 23rd

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* The annexed letter from Messrs James and Shakespeare, confirms this statement.

"London, July 18, 1857.

"Messrs LAING and CAMPBELL.

"Gentlemen,—The dates of delivery of some of the metals sold by us, under your instructions, on account of the estate of J. W. Cole, entirely prevented the closing of the accounts until a period subsequent to the 5th September, 1854, as in the following instances:

100 Tons sold for Oct. delivery, Acct. rendered 2nd Oct. 1854.
50 „ „ „ Nov. „ „ „ 23rd „ „
50 „ „ „ „ „ „ „ 27th „ „
100 „ „ „ Oct. „ „ „ 31st „ „

"We are, Gentlemen,

"Your obedient Servants,

"JAMES AND SHAKESPEARE."

of March, 1855, a sufficient interval had elapsed to admit of a more accurate balance being struck, and on the day last named an amended account was sent in, amounting to 7,169*l.* 19s. 7d., thereby diminishing the charge upon Cole's estate to the extent of 4,785*l.* 18s. 7d. This amended account was subsequently (in the month of April, 1856) still further reduced by the sum of 295*l.* 17s. 10d., in consequence of the discovery of an error in the interest account. The claim finally submitted by Messrs Laing and Campbell amounted, therefore, to 6,874*l.* 1s. 9d., which was handed in as a true account; with the exception of one item of 1,900*l.* on the credit side, dated July 4th, 1854, no account sales of shipment, to which this item refers, having been received by Messrs Laing and Campbell in April, 1856.

This reduction was eagerly seized upon by the partisans of Cole as affording a favourable opportunity for questioning the correctness of the general accounts of Messrs Laing and Campbell, in regard to their transactions with the bankrupt, and the prejudicial reports which were circulated reaching their ears, they at once insisted upon an official inspection of their books. A meeting took place for that purpose at their office in Mincing lane, which was attended by a partner of the firm of Messrs Quilter, Ball, and Co., the accountants, by Mr Graham, the official assignee, by Mr Seton Laing, and by Mr Goodburn, the cashier and bookkeeper of Messrs Laing and Campbell. Before they proceeded to the examination, Mr Laing stated that every book and document in the possession of his firm,—including their ledger, day-book, contract-book, cash and bankers' pass-books, and their letter-

books,—was at the service of the inspectors, expressing a hope, at the same time, that as he had already been subjected to great annoyance by the parties already referred to, the investigation would be final. The examination was then made: it lasted nearly four hours, and when it was ended the accounts of Messrs Laing and Campbell were found to be correct in every respect, not a single irregularity was discovered, not a question raised, and the accountant declared himself perfectly satisfied, as will be seen by the following letter from his principals, Messrs Quilter, Ball, and Co.:

"57 Coleman street, 14th May, 1856.

"*Re* COLE.

"DEAR SIRS,

"We are in receipt of your note of to-day. Agreeably with your request we have written to Mr Murray on the subject: to the effect that having received from you every facility for the purpose, we, with Mr Graham, made a full investigation of your accounts as rendered in this matter, with this result, that we were satisfied of the correctness of such account, and that we are of opinion that there exist no grounds for questioning it.

"We remain, Dear Sirs, yours faithfully,

"QUILTER, BALL, AND CO.

"Messrs Laing and Campbell,
39 Mincing lane."

Similar testimony to the preceding was subsequently given by Mr Murray, the attorney to the estate.

It might have been supposed that opinions so conclusive, and coming from so authoritative a source,

would at once have removed all doubts as to the correctness of Messrs Laing and Campbell's account, but such was not the case, as far as regarded the parties who had an immediate interest in harassing the trade assignee.

The active agent in this matter was Mr John Jameson, an accountant, who was employed by Cole, and who made it his especial business to go about circulating statements to the effect that Messrs Laing and Campbell had not credited Cole's account with money received, besides other irregularities. But to propagate slander was not enough: it was necessary that the libel should wear the colour of truth, and for this purpose it became desirable that amongst the creditors of Cole's estate, persons should be found who were willing to present a petition to the Commissioners in Bankruptcy for a further investigation into the account of Messrs Laing and Campbell. Messrs Bailey Brothers, stationers, of Cornhill, and Mr Sadgrove, furniture dealer in Finsbury, were accordingly selected: the former had been in the habit of supplying Cole with stationery at the time when the forged warrants in which he dealt so extensively were issued; and the latter was—as we have seen by his own admission—entirely passive in the affair. These creditors, then, who made themselves liable for all the expenses of the inquiry,—creditors jointly claiming seventy-five pounds, addressed a series of objections to the Court of Bankruptcy on the 18th of June, 1856, the principal of which were as follows:

Laing and Co's. proof, as filed, is 11,855*l.* 18s. 2d., but by Laing and Co.'s account current, rendered to the official

assignee, April, 1856, they now claim a balance of 6,874*l.* 1s. 9d. only, against the bankrupt's estate ; so that, in the absence of further opposition, the proof would be expunged as to 4,981*l.* 16s. 5d., and stand for 6,874*l.* 1s. 9d.

The opposing creditors contend that this said proof must be expunged, wholly or in part, on the following grounds.

That Laing and Co. have omitted to credit the bankrupt, or his estate under the bankruptcy, with the produce of 445 bags of cochineal, of the value of 14,685*l.*, or thereabouts, which said 445 bags formed part of a total quantity of 1,185 bags of cochineal deposited with Laing and Co. by the bankrupt, on the dates undermentioned, as security for advances made in the months of July and August, 1853.

1853.	Bags.
July 8	76
„ 29	153
„ 30	243
„ „	221
Aug. 6	229
„ 8	95
„ 22	105
„ 27	63
Total	1,185
Credited	740
Bags to be credited	445

That Laing and Co., before the 20th of August, 1854, being the time fixed for repayment of unsatisfied advances, made unauthorized sales of 584 tons of spelter, deposited as security for such advances, by which the bankrupt's estate was damnified to the amount of 1,840*l.* 11s. 9d.

That the two sums of 400*l.* 4s. 3d., and 271*l.* 6s. 0d., respectively (making together the sum of 671*l.* 10s. 3d.) at debit side of Laing and Co's. account, marked C, and described as "Loss on Re-sale of Nitrate of Soda," should be struck out, as such re-sale was made without the authority of the bankrupt, and not in his name.

That the two sums of 1,065*l.* 1s. 7d., and 1,064*l.* 7s. 11d. under date 20th and 30th of June, 1854, respectively, at the debit side of the said account, marked C, and also two sums, making together 1,598*l.* 5s. 7d., on the credit side of the said account marked C, should be expunged: such amounts respectively representing the sale of coloured cochineal, sold by Laing and Co., without the consent of the bankrupt,

express or implied, and not in his name, and involving a loss to his estate of 531*l.* 3s. 11d.

That Mr Laing holds, as security, 18 warrants for spelter,* deposited with Laing and Co., by the bankrupt, in respect to, and as security for advances, whilst the proof filed avers that Laing and Co. held no security or satisfaction whatever.

The powers and privileges of the Court of Bankruptcy being unlimited, a refusal to answer questions, or to produce books or papers, subjects the party so refusing to imprisonment. Messrs Laing and Campbell had, therefore, no alternative but compliance with the order which summoned them to produce their books in court, to undergo a second examination,—notwithstanding the severe scrutiny to which they had been exposed by one of the leading accountants of the city, and of an equally experienced attorney,—the Commissioner having granted the application of the petitioning creditors, on the ground of an objection having been raised at the time the debt was proved, this objection consisting in the opposition which was made by Mr Sewell, as already cited (ante p. 6).

The investigation accordingly took place as decreed. It was conducted for the petitioners by Mr J. H. Preston, attorney, of Carey street, Lincoln's inn, who placed a brief in the hands of Mr Bagley, a barrister who practices exclusively in the Bankruptcy Court; and Mr Seton Laing, and his book-keeper, Mr Goodburn, attended, with the whole of the books of the firm of Laing and Campbell, being assisted by Mr Edward Lawrance, of the firm of Lawrance, Plews, and Boyer; but it is to be noticed that throughout the whole period of the

* These were all false.

investigation, which lasted from the 20th of June, 1856, until the 2nd of July, 1857, neither of the petitioning creditors made their appearance at any one time.* On the other hand, Cole himself was always present, and there can be little doubt that, amongst the reasons which induced him to demand the inquiry, was the means it afforded him of evading his well-merited punishment in a felon's gaol, and of seeing his family and friends, under the pretext of assisting the assignees in explaining his accounts. Granting that his presence was necessary for such a purpose, the object sought might have been attained in six months, whereas very nearly three whole years were consumed in an investigation, in the course of which, although he occupied his time in endeavouring to establish false charges against several of his creditors, not a single word escaped his lips to show in what manner he had got rid of the enormous amount of money out of which he had

* It may be proper to observe here, that in consequence of Mr Sadgrove becoming a bankrupt, his name as an opposing creditor was withdrawn, and it was found requisite to substitute another. Messrs Sill and Meugens, of Liverpool, accordingly volunteered to supply Mr Sadgrove's place. It is difficult to understand what inducement that firm could have had to occupy such a position, after their transactions with Cole, in conjunction with Mr Smith, the Manager of the Borough Bank of Liverpool, the particulars of which are published in the Appendix to this work. From the affidavits which are there set forth it appears, that as far as Messrs Sill and Meugens and the Borough Bank of Liverpool were concerned, Cole might still have been at large, and have escaped unprosecuted, since they delivered up warrants, which they knew to be fictitious, in exchange for a cargo of sugar producing them about 6,000*l.* This cargo of sugar was the subject of an investigation by Messrs Freshfield and Co., on account of the shippers. It ended in a compromise, the Borough Bank of Liverpool refunding 3,580*l.*— *Vide* Appendix, for full details of this affair, and the *Report of the proceedings in Bankruptcy of Sadgrove and Ragg.*

swindled the commercial world. The tenderness of which this unprincipled delinquent was the object, was made still further manifest in the indulgences which he was permitted on the days of his attendance at the Bankruptcy Court; his prison fare being on those occasions exchanged for whatever food he chose to order, together with a plentiful supply of brandy, of which latter he one day permitted himself so ample an allowance that he was in no condition to give attention to the business before the Court, *and the examination was, in consequence, abruptly postponed by Mr Bagley.**

Although the undoubted right of creditors to have all accounts rigidly examined, where grave suspicion exists, or where the object is to benefit the general estate, cannot for a moment be questioned, yet too strong a protest cannot be made against a system, by far too prevalent at the present day, of sheltering fraudulent insolvents, and of exposing to insult and annoyance those who, like Messrs Laing and Campbell, have taken a fearless and independent position. By what means Cole was enabled to sustain his position and credit has been already shown, but in what manner he still continues to have the command of money and obtain the most

* When it is borne in mind that Mr J. H. Preston, of Carey street, the attorney for Cole, is not a man altogether without influence in certain quarters—for, in addition to his professional employment, he holds an appointment in the Treasury as examiner of accounts in criminal cases, and is, moreover, a Parliamentary agent,—it is scarcely straining a supposition too far to imagine that the indulgences granted to his client, such as no prisoner similarly situated was ever before permitted, may be accounted for in some degree by the official influence of Mr Preston.

influential support, is a problem which yet remains to be solved. The day may not be far distant when a more complete analysis of 'The Great City Frauds' will enlighten the community. In the meantime we proceed with the narrative of the investigation into the accounts of Messrs Laing and Campbell. This investigation, which occupied seven sittings, averaging about four hours at every sitting, was opened on the 20th of June, 1856, and not concluded until the 11th of December in the same year; but elaborate and complete as were Mr Laing's explanations, and sustained as they were by the unimpeachable evidence of his books (*in which not the slightest error could be detected*), by the authoritative report of Messrs Quilter and Ball, the eminent accountants, and by the unbiassed opinion of Mr Murray, the attorney to the estate, they were far from silencing the objections of Cole's supporters and advisers.

When Mr Laing's examination ended, on the 11th December, 1856, Mr Commissioner Fonblanque declared that the inquiry was closed, and announced his intention of giving judgment after Christmas. This intention, however, was negatived by the proceedings which were instituted on the part of the bankrupt. Resolved to insist upon deductions from Messrs Laing and Campbell's account, Cole's attorney, Mr J. H. Preston, intimated to the official assignee that he intended to prepare a statement in which those deductions should be set forth. Called upon to send in that statement, Mr Preston wrote to Mr Graham on the 13th January, 1857, to account for his having delayed to prepare it,

and made this letter the vehicle of a fresh charge against Messrs Laing and Campbell.

"It has been pressed upon me," he says, "to produce evidences to show that Mr Laing had deposited with him by the bankrupt a quantity of cochineal amounting in value to several thousand of pounds, which he has not accounted for, and I have been in doubt whether the statement should not be deferred till that evidence has been given. The accounts, however, are of so voluminous and intricate a nature, that I fear some time must necessarily elapse before I shall be in a position properly to enter upon the investigation. I must, therefore, in the course of this week prepare the statement referred to by you, and add some reasons which will induce the Commissioners to permit me to examine my witnesses."

A copy of this letter having been forwarded to Messrs Laing and Campbell, Mr Laing immediately wrote to his solicitor, Mr Lawrance, indignantly repelling the charge. "Mr Preston's statement," said Mr Laing, "is utterly false. Laing and Campbell hold no securities, neither have they disposed of any without the transactions appearing in their books, in the name of the bankrupt, and for which he has been credited."

Not satisfied, however, with a simple denial, Mr Seton Laing has put the facts above stated on record in the affidavits of himself, his book-keeper, and his warehouseman, as follows:—

Re JOSEPH WINDLE COLE—a Bankrupt.

I, SETON LAING, of the firm of Laing and Campbell, carrying on business at 39 Mincing lane, in the City of London, as colonial brokers, make oath and say, that during the years 1852, 1853, and 1854, I negotiated all loans made on produce, and amongst others those made to Cole Brothers, late of Birchin lane, in the City of London; the securities lodged from time to time by Cole Brothers usually passed through my hands; and further, that all the securities lodged by Cole Brothers with

Laing and Campbell have been realised, and the proceeds carried to the credit of Cole Brothers in the regular course of business, with the exception of eighteen fictitious warrants, which are of no value; and further, I swear that the said eighteen warrants, issued by Maltby and Co. for tin and spelter, and said to represent such goods lying at Hagen's wharf, Southwark, were received from Cole Brothers, as part security for loans made by us.

SETON LAING.

Sworn before me, this twenty-first day of February, one thousand eight hundred and fifty-seven,

THOMAS Q. FINNIS, Mayor.

Re JOSEPH WINDLE COLE—a Bankrupt.

I, SAMUEL GOODBURN, of 39 Mincing lane, in the City of London, cashier and book-keeper to Laing and Campbell, colonial brokers, of Mincing lane aforesaid, make oath and say, that for about seven years I have had the custody of all warrants and other documents lodged with Laing and Campbell as securities for money advanced, and among such securities the warrants deposited by Cole Brothers, late of Birchin lane, in the City of London, as security for the repayment of loans, and I hereby swear that all the goods represented by the warrants so lodged by Cole Brothers have been sold, and the proceeds carried to the credit of Cole Brothers in the regular way of business, save and except the following warrants, purporting to represent goods under the charge of Maltby and Co., and lying at Hagen's Wharf, St Saviour's Dock, Southwark, and which warrants are found to be worthless, there not being any goods in existence under the care of Maltby and Co. at Hagen's Wharf, as represented by such spurious warrants ; and I further swear that all such fictitious warrants were received from Cole Brothers, and given to Laing and Campbell as security for the repayment of money advanced, and with the exception of these eighteen spurious warrants, Laing and Campbell do not at the present time hold any warrants or securities belonging to Cole Brothers, and I make this oath solemnly declaring, to the best of my knowledge and belief, the same to be the truth.

S. GOODBURN.

Sworn before me, this seventh day of February, one thousand eight hundred and fifty-seven,

THOMAS Q. FINNIS, Mayor.

Spurious Warrants received from Cole Brothers, and now in the possession of Laing and Campbell.

TIN.

Tons	cwt.	qrs.	lbs.
21	14	3	5
32	9	1	20

SPELTER.

Tons	cwt.	qrs.	lbs.
48	0	0	24
75	1	1	14
100	17	2	5
35	8	0	22
50	5	3	15
25	8	0	0

SPELTER—*continued.*

Tons	cwt.	qrs.	lbs.
30	0	3	0
47	19	0	24
51	9	0	23
50	15	2	16
50	11	3	6
46	19	0	12
50	0	0	0
45	0	0	19
60	0	0	0
25	4	2	12

Eighteen Warrants.

Re J. W. COLE—a Bankrupt.

I, JOHN GRAY, warehouseman to Laing and Campbell, of 39 Mincing lane, in the City of London, colonial brokers, make oath and say, that in 1853 I had under my care all the samples in the possession of Laing and Campbell, and among them cochineal samples of Cole Brothers, late of Birchin lane, City, and that detailed lists of such cochineals were prepared in the counting-house of Laing and Campbell, and such lists, so made out, were given to me for the purpose of checking the samples and selling the goods; and when the cochineal was all sold, I considered such lists no longer of any use, and I put them among my waste papers, according to my usual practice, and to the best of my knowledge and belief such lists were destroyed with the waste paper.

I also further swear that all the goods represented by the samples then and since under my care belonging to Cole Brothers have been sold, and that there are not in the possession of Laing and Campbell at the present time any samples representing unsold goods of Cole Brothers.

JOHN GRAY.

Sworn before me, this seventh day of February, one thousand eight hundred and fifty-seven,

THOMAS Q. FINNIS, Mayor.

Mr Preston and his client were too persistent to be deterred from making their unfounded charge, by regu-

larly kept books, or the sworn statements of honest men: they had, it is true, no books of their own to produce, no vouchers of any description whereby to verify their assertions, but, to the convict Cole, the preparation of a counter-affidavit was "as easy as lying," and the allegation made in Mr Preston's letter of the 13th of January, 1857, being persevered in, the Commissioner in Bankruptcy acceded to his demand, and the investigation was reopened. At the expiration of rather more than four months from the date of Mr Preston's letter, Cole's affidavit, sworn at the Millbank Prison on the 20th of May, 1857, was produced. It would appear that the whole of Cole's time since his conviction has been occupied in examining his papers, making affidavits, &c., a convenient and pleasurable substitute for the labour and imprisonment imposed upon criminals.

Cole's affidavit was a very remarkable document, and might well have proceeded from the man who had been convicted of uttering forged warrants, being filled with the falsest statements, and the most reckless assertions. It would simply weary the reader to reproduce in detail the contents of this affidavit, which evidently produced no effect on the mind of Mr Commissioner Fonblanque, who, at the close of the arguments of the bankrupt's counsel, observed as follows :

"The material point on which the first part of this case must turn, is this :—on the one side there are books regularly kept, openly kept books, in which, if there were falsifications, all the clerks in the establishment must have been privy to them. There is no mode of

accounting for the fraud imputed, but to suppose this—that Mr Laing took the warrants, put them in his pocket, never allowed them to go into the accounts, and that he has some way or other, since then, sold this cochineal. ALL THIS I CANNOT BELIEVE. Further, from the mode in which Mr Laing has given his evidence, corroborated by his book-keeper at his side, I cannot believe that there is any wilful mis-statement. On the other hand, the bankrupt, who is the principal party in giving this information, stands in this position —that while those who adopt the bankrupt's account impute to Laing and Campbell (I must observe not Laing only, but there must be a partner in the fraud), that they did not keep proper books, and did not keep lists of this property,—What has the bankrupt? *Where are his books? Where are his vouchers? Where are his documents? Where is even the proof that he ever had these things to deposit to this extent? Where did he get them? There must have been other transactions at the same period with other persons, by which these goods might have been accounted for.*"

That the value of Cole's affidavit may not, however, be made to rest upon the statement which characterises it as false and reckless, but that its quality may speak for itself, the following extract is given *verbatim:*

"I say that, on a careful retrospect of my accounts, and of the causes which have entailed such losses on my estate, *I am still of opinion I was quite solvent in June*, 1854, and that I had then a share of valuable metal monopoly, which has been lost to my estate, and was also about getting from the excise a crown title to the

plant of the West Ham Distillery, of which I was in possession, which would have left me with a surplus of some amount *after paying all my just debts.* I say, I deny the truth of Mr Laing's assertion of 25th November, 1856, as to frauds being afterwards exposed, and *I deny his right to call those transactions frauds, which verdicts of juries have declared not to be so, with the full particulars of which charges I was never even furnished, nor had any opportunity of disproving.* And although I am under criminal sentence for obtaining 10,000*l.* from Laing and Co., on 29th July, 1853, by false pretences, I swear I am not guilty of that offence, as Laing and Co.'s own accounts,* in possession of the official

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* What thought the jury before whom Cole was tried on the 25th October, 1853? what said the judge in passing sentence? and where was Cole's avowal of innocence when sentenced? Here is an extract of the trial bearing upon these points:

Query 1854

"The jury, *without retiring,* deliberated in their box *for a few moments only,* and then returned a verdict of GUILTY.

"Mr BODKIN said there were *several other indictments against the prisoner for similar transactions,* but it was considered that the purposes of justice would be sufficiently answered by the present conviction.

"Sentence was deferred till the following day, when the prisoner Cole was brought up.

"The CHIEF BARON, addressing him, said—Prisoner at the bar, you have been tried and convicted for misdemeanour, for obtaining money under false pretences. The false pretence consisted in presenting, as a valid security for goods, warrants signed by a person named Maltby, purporting that goods were in his warehouse, when it turned out that no such goods at any time were there, but goods of that description were in a neighbouring warehouse, which it seems very clearly were pointed out to the clerk of the person who advanced the money. Upon the faith of those securities you obtained the sum of 10,000*l.*, and from the result it appears that by this false pretence you obtained that money, and the jury have found you guilty of using that security with

assignee, show, and that I was convicted from the want of those accounts with which to defend myself, and

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a perfect knowledge that it was altogether worthless. *I entirely agree with the verdict of the jury.* I think from the facts which came out in evidence it is quite clear that you had a guilty knowledge of the security not being worth anything. I don't think it material to inquire whether this is one of many other instances in which the same sort of conduct may have been adopted, and the same crime committed. There may be some reason for believing that this is not a solitary instance, from part of the evidence adduced. This, however, I do not deem it necessary to inquire into, nor do I think it material to inquire whether you intended ultimately to repay the money, and adopted this fraud merely to get over a present difficulty. The offence is that of obtaining a very large sum of money upon the faith of a security which was substantially a forgery, professing to represent goods which did not exist on the spot, and under the circumstances which the document represented they did exist. *I can conceive few offences of a dishonest character more dangerous to the community in which we live than that of which you have been found guilty.* Comparing your offence with the dishonest acts of many thousands who have poverty and want, bad education, and worse example, as possibly some extenuation for their offences, *it appears to me that the offence of which you have been found guilty is among the worst that can be brought under the notice of a Court, the character of which offence is dishonest as between man and man.* You have apparently been involved in transactions to a very large amount; but I can receive that as furnishing no pretence for saying that this by any possibility could have occurred through neglect and carelessness. It may have been either from a love of wealth, or a desire to become rich. You may have adopted this method of raising money when you had no legitimate means upon which to ask for credit in order to get over a present difficulty; but in whatever way the transaction began, *it appears to me that your offence against society is one of the most dangerous, and one of the most criminal, that can be committed under circumstances of this sort.* Upon these considerations, passing sentences of severity upon persons who commit crimes, in my opinion, far less dangerous, and far less criminal, *it is impossible for me not to proceed to the utmost limit of punishment which I have by the power of the law the means of inflicting upon your offence,* so that your example may deter others from committing similar offences, and that it may

from the false swearing of Mr Laing, his clerk Mr Goodburn, and others, as well as partially *from the exaggerated form in which the charges were brought against me.* Laing and Co. have indicted me for gross amounts to 108,000*l.*, which were all read over before the jury who tried me. And I say, as to Mr Laing's assertion 24th July, 1856, that certain warrants were fictitious because the goods referred to in them had no existence on the wharf, that *such warrants do not imply that the goods are lying on the particular wharf, but simply that they are under the control of the wharfingers, from whose usual place of business the warrants are dated.* And I say, further, that Mr Laing *is altogether in error, and jumping to unjust conclusions from erroneous information as to what the wharf consisted of, and as to its not being licensed;* and I swear that, whenever I am allowed the opportunity, I can disprove Mr Laing's assertions, and show, by official evidence, *that the whole of that wharf was licensed, and the wharfingers were enabled to, and did act extensively under such licence.*"

In refutation of all the special pleading contained in the preceding extract it is only necessary to refer to the pamphlet of 'The Great City Frauds of Cole, Davidson, and Gordon;' but to disprove the impudent assertion which Cole makes respecting his solvency in June, 1854,

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not be supposed that the magnitude of a man's transactions is to exempt him from a severe punishment, if he is guilty of that sort of disregard of the property of others which would bring persons in different circumstances to condign punishment. The Sentence of the Court is, that you be detained in Penal Servitude for the space of Four Years.

"*The Prisoner attempted no remarks to the Court,* and was then removed from the Dock."

something more may be desirable,—and that "something more" is supplied in the Chancery Affidavit of William Bois, the confidential clerk of Messrs Overend, Gurney, and Co., to whom, on the 13th of October, 1853, *eight months before the period named by him,* Cole made a full avowal of his hopeless insolvency, *at the same time making them fully aware of the fact that warrants for metals to the value of two hundred and sixty-nine thousand pounds and upwards, purporting to be in existence at Hagen's wharf, were altogether valueless and fictitious.*

Yet, notwithstanding Cole's complete avowal, Messrs Overend, Gurney, and Co. continued to foster this great criminal, by making him very considerable advances, in the shape of loans and discounts, *for a period of nine months* (from October, 1853, to the end of June, 1854) *after his frauds were known to them,* materially reducing their claim upon Cole by the concealment of this knowledge.

Here follows the affidavit: whom it damages most it is difficult to say.

BOURNE *v.* GRAHAM.

AFFIDAVIT OF WILLIAM BOIS, CLERK OF MESSRS OVEREND, GURNEY, AND CO., OBTAINED FROM THE RECORD OFFICE, CHANCERY LANE.

In Chancery.

Filed 31*st May,* 1856.

BETWEEN Timothy Bourne and Fletcher Rogers,
Plaintiffs.

George John Graham, George Gabain (out of the Jurisdiction of this Court), Seton Laing, and Nicholas Brebart, and Robert Dirom, Thomas Forsyth Gray, and Charles Ryder, since dismissed, - *Defendants.*

I, William Bois, of Lombard street, in the City of London, Clerk to Messrs Overend, Gurney, and Co. of Lombard street aforesaid, money dealers, make oath and say:

1. That Joseph Windle Cole (in the Plaintiffs' Bills named), late of Birchin lane, in the City of London, merchant, a bankrupt, who traded under the name, style, or firm of Cole Brothers, had extensive dealings with the said firm of Overend, Gurney, and Company, previous to and during the year one thousand eight hundred and fifty-three.
2. That the nature of such dealings consisted of loans and advances made by the said firm of Overend, Gurney, and Co., against wharfingers and dock warrants and documents of a similar character, which purported to represent metals, and other merchandize of great value.
3. That on or about the thirteenth day October, one thousand eight hundred and fifty-three, the said firm of Overend, Gurney, and Co. held wharfingers' and dock warrants, purporting to represent spelter, tin, copper, Swedish iron, lead, tin plates, and cochineal, lying at Hagen's Sufferance Wharf, Dockhead, in the county of Surrey, and at various other places, to the gross value of three hundred and twenty-three thousand two hundred and thirty

pounds, and upwards; and the said firm of Overend, Gurney, and Co. were under advances to the said firm of Cole Brothers against such warrants to the amount of one hundred and ninety-five thousand six hundred and fifty-five pounds, and upwards; such warrants were deposited by or on behalf of the said Joseph Windle Cole, and a large portion of the same, namely, to the value of two hundred and sixty-nine thousand pounds, and upwards, were issued by a Mr William Maltby, who then represented himself as carrying on the business of a wharfinger at the said wharf, under the trading firm of Maltby and Co.

4. That in a conversation which took place at the house of business of the said Messrs Overend, Gurney, and Co. in Lombard street aforesaid, on the thirteenth day of October aforesaid, in my presence and hearing, between Mr David Barclay Chapman, a member of the said firm of Overend, Gurney, and Co., and the said Joseph Windle Cole, the said Joseph Windle Cole admitted, as the fact was, that the said warrants issued by the said trading firm of Maltby and Co. were valueless, the goods which they purported to represent not being at the said wharf; and upon the said David Barclay Chapman requesting to know how the balance due to his said firm was to be liquidated, he was informed by the said Joseph Windle Cole that he was unable to meet the liability he was under to the said firm of Overend, Gurney, and Co., and he never did discharge the balance so due to the last-mentioned firm, and at the date

of the bankruptcy of the said Joseph Windle Cole, a sum of one hundred and twenty-six thousand two hundred and eighty pounds, and upwards, remained due to the said last-mentioned firm, on account aforesaid, and for which last-mentioned sum the said firm of Overend, Gurney, and Co. had no security or satisfaction whatever, save and except a promissory note, dated twenty-seventh day of October, one thousand eight hundred and fifty-three, drawn by the firm of Davidson and Gordon, payable on demand to the order of Cole Brothers, for the sum of one hundred and twenty thousands pounds, and by the said Joseph Windle Cole, in his trading firm of Cole Brothers, endorsed.

5. That on the said thirteenth day of October the said firm of Overend, Gurney, and Co. held numerous similar warrants issued from Hagen's Wharf, and signed as aforesaid by the said William Maltby, deposited with them by the said Messrs Davidson and Gordon, who were largely mixed up in business with the said Joseph Windle Cole, and which last-mentioned warrants purported to represent goods at Hagen's Wharf to the value of one hundred and four thousand pounds and upwards, and at the interview aforesaid the said Joseph Windle Cole admitted, in my presence and hearing, and in the presence and hearing of Cosmo William Gordon, of the said firm of Davidson and Gordon, and such admission was assented to by him, that such

warrants so deposited by his said firm were valueless, the goods represented in such warrants not being at the said wharf, and there was due to the said firm of Overend, Gurney, and Co., on the seventeenth day of June, one thousand eight hundred and fifty-four, when the said Messrs Davidson and Gordon stopped payment for the sum of eighty thousand pounds, and upwards, and no portion of such balance has ever been repaid.

(Signed) WILLIAM BOIS,

Sworn at No. 1 Frederick's Place, Old Jewry, in the City of London, this 21st day of May, 1856,

Before me,

(Signed) CHARLES LAVIE,

A London Commissioner to administer Oaths in Chancery.

It was not until the 29th of June, 1857, that Mr Bagley, the counsel for the bankrupt Cole, addressed the Commissioner in Bankruptcy on behalf of the opposing creditors. If its value had been estimated by its length, there is no doubt that Mr Bagley's address would have earned the highest praise; but although it occupied in transcription very nearly sixty folios (irrespective of documents cited), and took at least five hours to deliver, so little had been said to the purpose, there had been so much assertion and re-assertion, so

much tautology and irrelevant argument, and such an utter absence of proof, that when the learned counsel had at last brought his speech to a close, Mr Commissioner Fonblanque felt himself under the necessity of asking Mr Bagley if it would be practicable to state his heads of objections *shortly?*

The result of this question was the preparation, in a few minutes, of the objections which appear at pp. 16, 17, 18, of this work, but which, for greater clearness and the readier comprehension of Mr Lawrance's reply on the part of Mr Laing, and the rejoinder of Mr Bagley, are here reproduced, together with a summary of the learned counsel's address.

Laing and Co.'s proof, as filed, is 11,855*l.* 18s. 2d., but by Laing and Co.'s account current, rendered to the official assignee, April, 1856, they now claim a balance of 6,874*l.* 1s. 9d. only, against the bankrupt's estate; so that, in the absence of further opposition, the proof would be expunged as to 4,981*l.* 16s. 5d., and stand for 6,874*l.* 1s. 9d.

The opposing creditors contend that this said proof must be expunged, wholly or in part, on the following grounds.

That Laing and Co. have omitted to credit the bankrupt, or his estate under the bankruptcy, with the produce of 445 bags of cochineal, of the value of 14,685*l.*, or thereabouts, which said 445 bags formed part of a total quantity of 1,185 bags of cochineal deposited with Laing and Co. by the bankrupt, on the dates undermentioned, as security for advances made in the months of July and August, 1853.

1853.	Bags.
July 8	76
„ 29	153
„ 30	243
	472

1853.		Bags.
	Brought forward - - -	472
July 30	- - - -	221
Aug. 6	- - - - -	229
„ 8	- - - - -	95
„ 22	- - - - -	105
„ 27	- - - - -	63
	Total	1,185
	Credited	740
	Bags to be credited	445

That Laing and Co., before the 20th of August, 1854, being the time fixed for repayment of unsatisfied advances, made unauthorised sales of 584 tons of spelter, deposited as security for such advances, by which the bankrupt's estate was damnified to the amount of 1,840*l.* 11s. 9d.

That the two sums of 400*l.* 4s. 3d., and 271*l.* 6s. 0d., respectively (making together the sum of 671*l.* 10s. 3d.) at debit side of Laing and Co.'s account, marked C, and described as "Loss on Re-sale of Nitrate of Soda," should be struck out, as such re-sale was made without the authority of the bankrupt, and not in his name.

That the two sums of 1,065*l.* 1s. 7d., and 1,064*l.* 7s. 11d., under date 20th and 30th of June, 1854, respectively, at the debit side of the said account, marked C, and also two sums, making together 1,598*l.* 5s. 7d., on the credit side of the said account marked C, should be expunged: such amounts respectively representing the sale of coloured cochineal, sold by Laing and Co., without the consent of the bankrupt, express or implied, and not in his name, and involving a loss to his estate of 531*l.* 3s. 11d.

That Mr Laing holds as security 18 warrants for spelter,* deposited with Laing and Co., by the bankrupt, in respect to,

* These were all false.

and as security for advances, whilst the proof filed avers that Laing and Co. held no security or satisfaction whatever.

Mr Bagley, after noticing the reduced amount of Messrs Laing and Campbell's claim on the estate of the bankrupt, began by submitting that the proof so made should be expunged altogether, or if a proof for a certain amount should be allowed to be placed on the proceedings, that the dividend should be stayed until the amount was explained. He then referred to the general nature of the transactions of Cole and Mr Laing, as between merchant and broker, and coming to the subject of loans, entered largely into the loan of 54,000*l.*, from whence arose the circumstances which eventually created the claim of Messrs Laing and Campbell.

Having described the nature of the goods deposited as security for the money advanced, viz.: that they consisted of three kinds, spelter, tin, and cochineal, Mr Bagley proceeded to question the alleged value of the cochineal deposited, on the ground that Mr Laing had stated in his examination that he was unable to state how much of that article had been handed over to him upon any particular advance. This point, indeed, was Cole's *cheval de bataille*, as in bringing it forward he relied upon the fact, admitted by Mr Laing, and recognised as the constant practice of the brokers of London, that the deposit notes and lists, which did or should accompany the goods, were, as a general rule, not kept. The inference deduced by Mr Bagley consequently was, that a much larger amount of Cole's property was deposited than credit had been given for, and the learned

counsel even argued that, because Cole kept no books of any kind, this inference was the more probable. A specific statement followed;—to the effect that, instead of the 803 bags of cochineal accounted for by Mr Laing, there was a further quantity of 153 bags which remained unaccounted for, or 956 bags altogether instead of 803, divided into two several parts of 740 and 63. Upon this theme Mr Bagley argued at excessive length, supporting his argument by interminably involved and constantly contradicted calculations, settling at last, however, to the conclusion that a sum of 6,000*l.* remained to be placed to Cole's credit. When the cochineal was finally disposed of, Mr Bagley brought forward the question of the spelter deposited by Cole with Mr Laing, which spelter the latter sold without the authority of Cole, while a transaction respecting a fresh loan was still pending.* Mr Bagley next harped upon the theme of the reduced claim, overlooking the fact that Mr Laing had stated, in the outset, that the first claim put in by his firm was only an approximate and not a positive account. Mr Bagley then went into the subject of the re-sale of the nitrate of soda, contending that Mr Laing had no right to debit Cole with the loss arising from it. The sale of the coloured cochineal

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* The real nature of the securities deposited by Cole with Messrs Laing and Campbell, in reference to the loan of 54,000*l.*, is explained by the following statement, which was handed in during Mr Laing's examination :

On the whole of the sales of the cochineal there was a surplus beyond the amount advanced on that security. The amount of the spel-

came next, and Mr Bagley said that the question which arose was whether the loss on this sale ought to be credited to the bankrupt, or whether Messrs Laing and Campbell ought not to take it on themselves. Mr Bagley urged the last-named consequence.

At the next meeting of the Court, on the 2nd of July, 1857, Mr Lawrance addressed the Commissioner on the part of Messrs Laing and Campbell; Mr Murray

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ter, taken at 15*l.* per ton, will come out about 27,000*l.*, supposing all to be genuine.

		£	s.	d.
The tin was originally -	110 tons	27,000		
Less given to Cole - -	57 „			
Leaving - -	53 „ at 85*l.*	4,500		
		31,500		
Leaving to be accounted for by cochineal -		22,500		
		54,000		
The cochineal actually realised as per Exhibit "E," in gross - - - - -		25,772	1	11
To which is to be added 60 bags cochineal shipped at St Petersburg - - -		1,800	0	0
Gross - - - - - - -		£27,572	1	11
Leaving a surplus of the cochineal of about 5,000*l.* gross.				
The net amount of the cochineal as per Exhibit "E" - - - - - - -		£24,492	1	11
After deducting charges, discount, and commission.				
This last sum does not include the 1,800*l.* above specified, but if this were included it would make a surplus of about 4,000*l.* on the cochineal.				

And we had given the bankrupt credit for the above surplus, as exhibited in the account marked "E." As to the 60 bags cochineal, they were sold, and did not realise the amount advanced on them by 27*l.* 6s. 9d., which is debited to the bankrupt in the account of 24th June, 1854.

The 1,900*l.* referred to at p. 14 was included in the final account rendered by Laing and Campbell, as well as the 1,800*l.* mentioned above.

gave evidence as to the perfect correctness of Messrs Laing and Campbell's accounts; Mr Bagley replied in detail; and finally Mr Commissioner Fonblanque expressed the opinions which have been already cited (ante, p. 26), reserving his judgment on the question of costs until a future period, after he should have accomplished the arduous task of examining the very voluminous accounts which had been laid before him.

The proceedings of the 2nd July, 1857, are published *verbatim* from the notes of the short-hand writer engaged to report them.

Court of Bankruptcy.

BASINGHALL STREET,
JULY 2ND, 1857.

BEFORE MR COMMISSIONER FONBLANQUE.

In re J. WINDLE COLE.

MR LAWRANCE: I do not know whether your Honour has had an opportunity of reading the minutes, which my friend Mr Bagley has been so good as to hand in.

THE COMMISSIONER: I never got them till this minute.

MR LAWRANCE: They are very short; and they seem to me to be but a very lame and impotent conclusion to the enormous waste of time and money involved in this proof. However, they are satisfactory, insomuch as they will narrow my labours, and enable me I think in a very short time—a time quite out of proportion to the time which was no doubt very usefully occupied by my friend Mr Bagley—to satisfy you, that there is not the slightest pretence for the application to reduce the proof.

Now I need scarcely say, that this is a matter of very grave importance to Mr Laing, not as affecting the entire amount of the proof, even supposing they were to strike off the whole of it in pounds sterling, nor as affecting the very small dividend which under the most favourable circumstances will be paid out of the estate. As a question of character, it has been broadly stated more than once, that this proof has been most improperly tendered in the first instance, that is, to the larger amount of 11,000*l.*, and is sought to be, with equal impropriety, sustained at the last moment. I need scarcely say, that to a man in Mr Laing's position in the City of London, it is all-important to him, and quite entirely beside the miserable question of money, that the judgment of the Court in this case should satisfy the world at large, as well as Mr Laing's clients and constituents, that if there have been any errors, which I am not prepared to admit, they have been errors of judgment; but that there is not the slightest pretence for supposing that he has sought to put on these proceedings a proof which he did not consider himself fairly justified in making, nor that he at the last moment seeks to sustain that proof by any irregular or improper means.

Now, Sir, reserving other general observations to a future period, I will confine myself to the points as they are stated in the paper now before you. It is stated—and that has been relied upon again and again—that Messrs Laing and Campbell filed a proof for 11,855*l.* 18s. 2d. as the amount in respect of which they not only sought to prove, but in respect of which he hoped, or expected at that time to receive a dividend. Now, I ask your Honour to look at the record, I ask you to look at the proof made by Mr Laing, on the day when he was appointed assignee, by the concurrent wish of creditors of all classes :—so soon as it was known that Mr Laing was prepared to act as assignee in conjunction with two other gentlemen—independent creditors—everything like a semblance of opposition was substantially withdrawn ; and your Honour will find that the amount of creditors who voted on that occasion was beyond all proportion to the amount of debt proveable against the estate, showing the confidence that all classes of creditors reposed in Mr Laing. Perhaps, Sir, you will permit me to refer to your proceedings. Mr Laing stated in the common form, that the bankrupt was, at and before the date of the petition, and "still is" justly and truly indebted to him and his partner in the sum of 11,855*l.* 18s. 2d., balance of account for money lent and advanced by deponent and his said partner, to the bankrupt at his request, for which said sum of 11,855*l.* 18s. 2d. this deponent hath not, nor hath his partner, nor hath any person by his or their order, or to this deponent's knowledge or belief for his or their use, received any security or satisfaction whatever. At the same time that Mr Laing tendered this proof, he tendered an account which I hold in my hand, and which was delivered to the official assignee, either previously or at the same time, and that account gives the bankrupt credit for the proceeds of certain goods—spelter and tin—with the word "about," against each item which had not been realised, showing therefore that the whole question of credit still remained open, and was subject to realisation. Not only does that word "about" stand against their several items, but at the top there is this memorandum in red ink, "Credit is given in the above account for all securities, as if all had been realised ;" then there is the usual note at the bottom, "errors excepted. London, 5th September, 1854. Signed Laing and Campbell. Balance now due 11,855*l.* 18s. 2d." That is an exact copy ; that was handed in to you at the time, as I am told, by the gentleman who sits beside me (Mr George), and an objection was then taken by Mr Hawkins, who appeared as counsel for Mr Sewell, anxious up to a given point to carry the choice of assignees, that Mr Laing could not prove, because he had not realised the securities, that on the face of the account now before the Court the amount to be realised by those securities was assumed and estimated, and that Mr Laing was not in a situation to prove : and upon that your Honour made this memorandum, which is signed by Mr Graham, and another memorandum afterwards, which is signed by yourself. Mr Graham states in the margin, "subject to further investigation." That memorandum is made on the 4th of September, 1854, but in consequence of its being stated, after Mr Laing was chosen assignee, that if it was subject to investigation he would be placed in the very anomalous position of investigating his own proof, your Honour, in your own hand, made this addition—"admitted subject to investigation by the co-assignees only." It is all-important, in this case, that the mind of the Court should be relieved from the slightest impression unfavourable to Mr

Laing as regards the *bona fides* of his conduct throughout, because Mr Laing here has not only to sustain his position as an assignee, because he is to all intents and purposes a trustee for the creditors; and one cannot conceive a graver offence against the Bankrupt Law, and no graver offence against morality, than a person using his position as assignee for purposes of his own, adversely to the interests of those whom he represents. Therefore it is, that I entreat your Honour's especial attention to every step in this part of the case, for the purpose of showing with what perfect candour and good faith Mr Laing acted.

The first objection is taken by Mr Graham most properly. Mr Graham says, I cannot receive this account except subject to investigation, because you admit that certain goods are not realised, and you yourself say, that the amount you record is only an approximate, a *pro forma* amount. Your Honour thinks that does not go far enough, and you require the investigation to be conducted by his co-assignees. But without waiting for any investigation on the part of his co-assignees without waiting for any suggestion on the part of Mr Murray, the Solicitor for the Assignees,—as to whom I may venture to say in his presence, a more high minded, conscientious, and independent man does not exist, in my—or any other branch of the profession;—without waiting for any suggestion either from the co-assignee, or the Official Assignee, or Mr Murray, the Solicitor for the Assignees—as soon as Mr Laing proceeds to realise these securities from time to time, according as the market enables him to do so, Mr Laing renders an account, and of his own motion consents to the reduction of his proof from 11,855*l.* 18s. 2d. to 7,169*l.* How is that proof reduced from 11,000*l.* to 7,169*l.*? I will go to the amount at which it now stands afterwards. Is it reduced by carrying to Mr Laing's debit sums which he had omitted from his account? Is it reduced by surcharging or falsifying that account? Is it reduced by Mr Laing, carrying from time to time the net proceeds of the goods which he had realised, those proceeds being larger than was anticipated, having regard to the improved value of articles pledged? Now that applies to every item in the account which has been already handed to the other side, with the exception of the item of 1,900*l.* Your Honour will remember the learned counsel on the last, as well as on previous occasions, adverted very strongly to that item of 1,900*l.* for which credit was not given. It was a question discussed at some length, namely, whether, as a matter of mercantile account, Cole was entitled to credit for 1,900*l.*; that being in point of fact represented by goods which were put on board and consigned to a foreign market, and in respect of which goods no account sales have been received to this hour. So that if we were disposed to strain the case very strongly, we might still insist on a proof in respect of that 1,900*l.* But inasmuch as Cole's account has been debited with the 1,900*l.* goods bought by Laing on his account, and inasmuch as those goods have been shipped by Mr Laing to his own correspondent, it is considered fair and reasonable—and I adopt that view of it—that the bankrupt should have credit for that 1,900*l.* But bear this in mind, that the 1,900*l.* forms part of the amount deducted from the 11,000*l.*, and that when the proof was reduced, or when, from the state of circumstances, the amount in respect of which Mr Laing will be entitled to take a dividend was reduced from 11,800*l.* to 7,100*l.*, in the 4,000*l.* written off was included that 1,900*l.* On that 7,100*l.* Mr Laing was,

as the account then stood, entitled to receive a dividend. Stopping for a moment, permit me to make this observation. Suppose Mr Murray, on behalf of any of his clients who are merchants or bill-brokers, came here to prove for the purpose of carrying the choice of assignees, Mr Murray's clients, whatever might be the character of the bills—whether they were accepted by Rothschild or Baring—it is perfectly clear that the proof rendered by Overend, Gurney, and Co., would be proof on the full amount of those bills, but the creditors would have that protection which the law gives, namely, that if those bills run out before the dividend was in course of payment, the proof was reduced proportionably. So here Mr Laing tendered a proof for 11,000*l.*, being the amount which he alone is enabled to prove, and that is the amount due to him when he votes in the choice of assignees. And inasmuch as by subsequent events, between September, 1854, and April, 1856, these goods have been realised advantageously by Mr Laing, but incidentally also for the benefit of the estate, Mr Laing writes those amounts off, and reduces his proof. The loss, then, so far as it is ascertained, is taken upon himself, because if he gets nothing in respect of the goods consigned to India, he adds 1,900*l.* to his loss. He has written off that 1,900*l.* precisely as if Cole had had 1,900*l.* in hand, although he has never received a single shilling. If, therefore, Mr Laing had been disposed to draw the string tight he would have insisted on proving for 1,900*l.*, plus the 7,100*l.* Between the realisation of these goods and the declaration of the dividend, Mr Graham himself went into an examination of Mr Laing's account, and Mr Graham was assisted in that inquiry by Messrs Quilter, Ball, and Co., and by Mr Murray. Mr Graham took the trouble of going to Messrs Laing and Campbell's counting-house for the purpose of inspecting their books, and satisfying himself as to the general accuracy of those accounts. The result upon Mr Graham's mind was to leave no doubt as to the *bona fides* of Messrs Laing and Campbell's dealings, but Mr Graham discovered—and I mention that fact for the purpose of showing the care which Mr Graham has bestowed on this case, and I may mention also incidentally, that my experience of Mr Graham enables me to state, with some degree of authority, that without regard to the amounts involved, Mr Graham feels it to be his duty conscientiously to investigate every subject matter of account which can by possibility be the subject of question—Mr Graham investigates the accounts, and he discovers that Messrs Laing and Campbell have in error charged 200*l.* odd twice for interest—they have made an overcharge for interest for 200*l.* I may tell you that Messrs Laing and Co.'s transactions with Cole during the years 1852, 1853, and 1854, amounted to very nearly 300,000*l.*, and that this transaction represents but a very small portion of the large transactions in which Messrs Laing and Campbell are engaged as Colonial brokers, and such accidents will occur even when the greatest regularity and precision are evinced throughout extensive transactions. It does so happen that Mr Laing, or Mr Laing's clerk—Mr Laing takes it upon himself, if necessary,—had improperly debited the bankrupt with a sum of 200*l.* twice. That evidence was discovered by Mr Graham: it was stated to Mr Laing, and written off immediately, and that reduces the sum to 6,894*l.*, at which it now stands. I do not propose to put in the letter because it is not strictly in evidence, but I state in the presence of those who can correct me if I am wrong, that Messrs Quilter, Ball, and Co. did express their entire satisfaction with the mode in which Laing and Campbell kept their accounts. But the case pre-

sented by the learned counsel — unintentionally, I am sure,—undoubtedly unexplained would appear to sustain this proposition in favour of the present applicants, namely, that Mr Laing's proof had been reduced from 11,800*l.* to 6,800*l.* by some external pressure put on him, or by some independent inquiry which had been conducted either on behalf of the assignees, or on behalf of my friend's clients. With the exception of the 200*l.* discovered by Mr Graham, whose reductions were made by Mr Laing himself, in discharge of the duty which he owed to himself, apart from that which he owed to his co-assignees and the creditors whom he represented.

All these reductions were made by Mr Laing himself; there is no dividend declared between September, 1854, and April, 1856. That is, the order for the dividend is in the month of April, 1856; on the dividend list Mr Laing's proof stands at the reduced amount of 6,800*l.* The dividend is calculated on the 6,800*l.*, and no more, and what is still more extraordinary the attempt to deal adversely with Mr Laing's proof coming from my friend's clients is not made till June, 1856. Now, sir, if any application had been made on behalf of my learned friend's clients previously to 1856, I should have said at once that my friend would have been justified in assuming that Mr Laing at once took fright; that he said, oh, some of these errors, or misrepresentations, or concealments on my part have come to light, it is time for me to take the wind out of the enemy's sails; I must take the initiative; I will go to the fullest margin with all the show of candour and fairness, and make a clean breast of it by saying, true it is as I did prove for 11,800*l.*, but I am only a creditor for 6,800*l.* That cannot be suggested as a reason why these reductions were made, because no step is taken, whatever, by those whom my friend represents, to impeach Mr Laing's proof until three months after the proof has been reduced to the amount at which it now stands, until three months after the dividend lists had been made out, and until some time after the dividend had been paid to every creditor except Mr Laing. It is important the Court should understand this in determining the question whether the estate or the creditors have derived the slightest benefit from the interference of my friend's clients. As I said before, if it could be shown that Mr Laing's proof for a large amount has involved any loss or inconvenience to the estate, or if it can be shown that Mr Laing has directly or indirectly sought to gain an advantage in respect of that large proof to the prejudice of those creditors; if it can be shown that that claim was defeated by the vigilance or astuteness of my learned friend's clients, undoubtedly the petitioners will have made out a strong case for questioning the general accuracy of Mr Laing's proof, and there can be no question whether they should charge on this estate the costs of proceedings which they have initiated.

Then it is natural to inquire, why should Mr Laing have been selected in preference to some other creditor—why, unless there had been some suspicion as to the *bona fides* of Mr Laing's dealings.—Is it difficult to understand the reason? Mr Laing is an assignee. Mr Laing is one of the gentlemen who have felt it to be his duty to investigate the accounts of this bankrupt with all reasonable—I will not say, severity—but with all reasonable care. But that is not all. It does so happen without proposing to re-open questions which have been determined elsewhere, and which this Court, even if it had the power, would not have the inclination to adjudicate upon—it does so happen, that Mr Laing in respect of the very transactions which formed part

of the loan of 54,000*l.* which has been so much talked of, was the prosecutor. It does so happen, that Mr Laing's position as a creditor under the estate, arose in respect of these fraudulent and fictitious warrants on the faith of which Mr Laing advanced his money, and on the faith of which the bankrupt succeeded in getting 54,000*l.* I do not mean to say, that Mr Laing's loss is 54,000*l.*, on the contrary, his loss is represented by the amount in respect of which he now stands as a creditor on the files of this Court. But it is quite clear beyond all question, that but for these fictitious warrants, Mr Laing would have been no creditor; if no Creditor, no Assignee, and no prosecutor, and it is not difficult therefore to understand the motives which induced Cole to return the compliment—not by indicting Mr Laing, thank God he was above that—but by casting on him as much pain and inconvenience as possible in questioning his debt. Mr Laing stood forward to his own credit, and amidst the acclamations I may say of the merchants and colonial brokers of the City of London—to prosecute this great criminal, and he succeeded in satisfying the jury by the same evidence which has been produced before your Honour at successive sittings—he succeeded in satisfying the jury, that a gross fraud had been perpetrated on him in respect of these fictitious warrants, and the judge sentenced the man to four years' imprisonment, which he is now undergoing, and a great part of which has run out, because the prosecution was so prompt, so little had Mr Laing to fear from anything Cole could say or do. The bankruptcy took place in September, 1854, and the prosecution was instituted in October, or November of the same year. I am told, that in August, 1854, Cole was adjudicated bankrupt; in the early part of September, 1854, Mr Laing was chosen Assignee; in the month of October, 1854, I believe Cole being previously in custody, and being in custody at that time, Mr Laing indicted Cole, and at or about that time, I think in October, 1854, Cole was tried, convicted, and sentenced to four years' penal servitude. Therefore, there was no shrinking back, no dallying between Mr Laing and the bankrupt; but Mr Laing's conduct has been fair and consistent throughout. He stood forward for the purpose of redressing a great public wrong, and succeeded in the attempt. Who complains of Messrs Laing and Campbell's proof? Two creditors, one of whom, in consequence of his bankruptcy, has been substituted for another.

Mr Bagley: A creditor for 10,000*l.**

Mr Lawrance: We will deal with the case as it stood at first, or rather when the proceedings were instituted, and up to the time when there was substituted a solvent, for an insolvent man. Only two creditors there are by whom this application was made to the Court in June, 1856, and not before. Those two creditors were creditors whose debts amounted in the aggregate to 80*l.*, and those creditors for 80*l.* are found weak enough to place themselves in the van for the purpose of questioning these accounts. Can any man suppose for a moment, that it was a *bona fide* proceeding on the part of those creditors? Can anybody suppose for a moment, that any creditor would be mad enough, or foolish enough, to embark in an inquiry of this kind, which will cost I think I may say, without exaggeration, hundreds of pounds, simply for the purpose of increasing a dividend from two and sixpence to three shillings, or thereabouts, on their respective proofs of 80*l.*? There can be no question, that the persons were put in motion by the

* Meaning Sill and Mugins, as representing the Borough Bank of Liverpool.

bankrupt, or those who were interested, or well affected towards the bankrupt personally, and it has become and continued throughout a personal question. Mr Laing is no party to any personal collision with the bankrupt, but I say, that having regard to the lapse of time; having regard to the information which has been supplied to the Assignees, and to the Official Assignee; having regard to the independent character of the Solicitor, no unimportant consideration in determining questions of this kind, it is impossible to doubt for a moment, that all the creditors except two, who signed the memorandum to expunge the proof, are satisfied, and that there is no pretence for making this charge against Mr Laing. As soon as it was suggested, that Mr Laing's proof was to be questioned, he took the course which your Honour recommends—and where you have the power the Court orders—he laid open to the other side every paper, every book, every document of every kind in his possession. Nothing was withheld, nothing was kept back. Why we did not give the information they required, was because we had it not to give: why we did not give these lists about which so much was said, it was that they were not preserved. But every book which he had they had a transcript of—the cash-book, the contract-book, the correspondence, everything was voluntarily supplied to the other side, and I ask your Honour—if it was necessary to glance at the examination—to look not only at the evidence taken down in writing with great fairness, and with the greatest precision by the learned counsel—for I never saw a case in which it was less necessary for a witness under examination to be represented, protection was quite unnecessary, having regard either to the witness under examination, or to the learned counsel examining—every question was carefully put; every question was answered not only by Mr Laing, but by his managing clerk, who sat by his side, whom my learned friend permitted to give explanations; who after all found the examination very much more the examination of the clerk than of the principal—that Mr Laing's books were produced, and the table of the Court was covered with documentary evidence of all descriptions. The examination before your Honour does not represent a hundredth part of the material which was brought to bear on this question. I need not tell your Honour that when you are dealing with huge volumes of books, that that which is imported into the examination represents but very faintly what actually took place. And hence it was that your Honour more than once when called upon to adjudicate finally on this question said, "Will anybody guide me through this maze, is it possible to understand it? Can any human being understand it? Do you understand it,—or do you?" appealing to one or the other of us. How was it possible for your Honour, sitting as a judge, to become acquainted with the intricacies and minutiæ of large and complicated mercantile transactions? Therefore it was that you professed your inability to understand all the details of these various transactions. But those transactions are either simple or confused according as it suits the purpose of those who are interested in making the worse appear the better reason. On the one side we have produced Mr Laing as a witness, and he has been examined seven days. We produce his clerk, who sits by his side, and who virtually answers the questions which Mr Laing adopts. We produce our day-books, our ledger, our banker's-books, our cheques, our contract-books, our letter-books, where goods have been consigned to parties beyond the seas. We produce everything that can by possibility sustain the *bona fides* of account. What is pro-

duced on the other side? Absolutely nothing! And there is not a fragment of paper; there is not the stroke of a pen before you from the other side that in the slightest degree questions the general accuracy of Mr Laing's accounts. Why do they not, as I shall hereafter show with reference to alleged improper sales, produce the parties? If we have sold improperly, let them show the state of the market at the time we sold. Take the first calculation,—that which forms the prominent feature in the allegation against Mr Laing as to the amount of his proof, which I trust I have entirely satisfied your Honour was made in good faith, was guarded by all the precautions which it was possible for the Court to throw around it, was accompanied by an account which has not been questioned or falsified, supposing as I do that I have disposed of the adverse impressions sought to be made on your Honour's mind with reference to the general observations. In the first instance let me go to the first objection. It is said that we have omitted to credit the bankrupt with 445 bags of cochineal. Your Honour will find under the date of 1853 sundry items respecting the dates of July 8th, 29th, and 30th, August 6th, 8th, 22nd, and 27th, and against those items you will find a column headed "Bags" containing a certain number. You will find the details on the one side relating to the gross total of 1,185 bags, credit being given for 740, and then the balance being struck, 445 bags to be credited. I am alluding now to Mr Bagley's heads. We have not seen a document of any sort or description to sustain those dates and quantities. There is nothing in any paper produced by Mr Laing—there is nothing on the face of his evidence—there is nothing produced on the other side that establishes the connection between July 8th and the 76 bags of cochineal. The same observation applies to every one of those items. There is nothing produced on the other side, nothing deduced from our books, which establishes a connection between the dates and the number of bags set against those dates. Nothing. So that I say advisedly that is a simple fallacy, and in order that your Honour may not be led astray, so to speak, by trying to find out how this very extraordinary guess, or this apportionment may be made, I will tell your Honour how it is arrived at. Cole finds in the account which we have rendered, that on a certain day he has credit for certain sums of money which he paid, and he assumes that those sums of money represent certain bags of cochineal. As to this cochineal question it depends entirely on estimate, or rather on the mere assumption of a state of circumstances. In order to enable the Court to understand the process, I will state shortly the course of dealing as to the calculation from Mr Laing's evidence. Cole being a merchant, extensively engaged in business, and possessing a large and almost unlimited credit in the years 1852 and 1853—so large, that on the bankrupt's own statement, it appears that the amounts of his transactions during those three years amounted to 4,300,000*l*.—Cole having large credit applies to Mr Laing, as he does to other persons, for advances. Whether the practice of borrowing or of lending is a practice more honoured in the breach than the observance, I do not stop to inquire; but it prevails to a large extent in the City of London. It has been found useful, and been recognised by legislative enactments, and I need not tell your Honour that hundreds of cases have established the regularity of the course as regards mercantile use. The bankrupt wants money; he goes to Mr Laing, and he proposes to deposit with him certain securities. He hands him over a bundle of cochineal warrants. It does so happen that each warrant represents one bag only.

Cochineal is an article of value; a bag of cochineal is worth, or was at that time worth, about 30*l.*, and the Dock Company having regard to the value of the article issues single warrants for each particular bag. I will suppose that Cole goes to Mr Laing with 100 warrants representing 3,000*l.*, and he says to Mr Laing, I want to borrow of you 2,000*l.* or 2,500*l.* on these warrants, leaving a margin of 25 per cent. to guarantee the lender against the probable fall in the market. Mr Laing looks at the warants, does not doubt their genuineness, and I am bound to say, that as regards the cochineal warrants, from a cause which it is not necessary to explain, they were all genuine; there was no fiction as in the tin warrants, which formed the subject of the indictment, and the conviction. They were passed through Messrs Maltby and Co.'s wharf, who, as the result has shown, were participators to a great extent in this fraud between Davidson and Co. and Cole. But if warrants had been produced representing cochineal deposited at Hagen's wharf, Mr Laing, as an old broker, would have said at once, here is something wrong; there are only three or four wharves in the City of London where cochineal is warehoused, and there must be a screw loose if cochineal finds its way into such a wharf as this. Particular wharves receive particular goods, and, therefore, whatever may have been the cause, it is but fair to state that all the cochineal warrants represented goods which were afterwards sold by Laing and Campbell, and the only question is whether we have given credit for all that we have received from the bankrupt. Then, reverting for a moment to the course of dealing, he handed to Mr Laing say these 100 warrants, representing in value 3,000*l.*; he borrows from Mr Laing 2,000*l.* or 2,500*l.* An entry in Mr Laing's book is made to Cole's debit when the loan is made. He cannot keep his cash-book without. If he advances Cole 2,500*l.* on a given day, he crosses that sum to Cole's debit, and on the face of the debit account Cole stands as a debtor 2,500*l.*, and there is nothing standing to Cole's credit in respect of the warrants which he hands to Mr Laing simultaneously with the receipt of the money. The warrants are kept in an envelope, as appears by Mr Laing's evidence, and I will endeavour to confine myself to what has been stated, and I am sure my friend's recollection and his accuracy will set me right if I misstate. These are kept by Mr Laing in an envelope; they are handed to him not for the purpose of sale, but, in the first instance, as a loan, with the usual directions, that he is to sell if they are not redeemed by a particular day. Mr Laing has told you on his solemn oath that it was not usual to enter goods of all kinds on the receipt of the warrants; that it was usual to make out lists of the warrants so received for the purpose of enabling him to write them off or his warehousekeeper, when any portion was sold, but not usual for him or any man carrying on that business to make out a list of the particular goods deposited with him. There is not a broker in London who does it; it would be impossible for them to do it. I put the case to your Honour of Cole going into Mr Laing's counting-house and borrowing money on 800 bags of cochineal, or 740. Why, sir, it would involve on the part of the lender the obligation of making out a list of 740 items. It would involve on him, if the account was to be kept as a strictly mercantile account, that Mr Laing's clerks would have to write against the debit side of the account representing the loan, 740 items representing goods which had been deposited for that loan, and even then the account would not be correct, because it would be cash on the one side sought to be balanced by goods deposited on the other. The only question is, therefore, whether Mr Laing did

keep, or whether he ought to have kept any check on the warrants, or any transcript of the warrants which he received from Cole for these loans. Mr Laing says: I did not; it is not usual to do so: I made out some lists for my own guidance to enable me, as the goods were disposed of, to have the items written off, and there was an end of the lists, for they were waste paper. Mr Laing says: "From time to time, as I sold these goods on Cole's account, I entered in my day-book the persons to whom I sold them; I described the vessel out of which the goods came; I described the prices at which they were sold; and I carried to Cole's credit then and there, and the proceeds of the goods as against the loan which I had made him." Is this a fallacy? Is it assumption? Is it figures of speech? The mere attempt to bolster up a weak or falling case? Why the book speaks for itself. I refer to an entry of the 12th of August, 1853, which in truth represents part of the cochineal pledged to secure the loan of 54,000*l.* (Mr Lawrance handed a book to his Honour.) If your Honour will refer to page 533, on the left hand, you will find there Knight is made a debtor to Cole Brothers. Mr Laing does not suggest that he acted as principal in the sale to Knight. He sells a portion of this cochineal to Knight, and he establishes the relation of debtor and creditor between Knight and Cole, the bankrupt. He debits Knight in account with those goods in favour of Cole Brothers. Your Honour will find the name of the vessel. If you look to the other side you will find that account is balanced with Messrs Knight; that the commission is charged; that the ordinary trade allowances are made; and that a certain balance being arrived at,—page 534, of that book—that balance so arrived at is carried to Cole's credit in the ledger.

The Commissioner: What is this book called?

Mr Lawrance: The day-book. If your Honour will look at the ledger you will see how the item is carried from that page to Cole's credit in the ledger.

(Mr Laing's clerk explained the ledger to his Honour.)

I will not weary the Court by repeating the same sort of evidence, because that one case is really the history of a thousand. The course is this: Mr Laing as broker sells a portion of that cochineal, he sends to the bankrupt and apprises him of the intended sale, sends him a contract note; the contract note, your Honour knows, is not to pay in cash on the day, but on the prompt which is usually fourteen days or a month. When the prompt day arrives for settling the account, Mr Laing settles with Messrs Knight the contract made with Messrs Knight, having been previously entered in Mr Laing's books, to which contract books the learned counsel and his client have had access. The first thing, as your Honour will readily understand, is the making of the contract, that is in writing: that is transcribed by the letter-press in the contract book, and one copy of the contract is sent to Knight, the purchaser of the goods, and another copy of the contract is sent to Cole, as the principal in the transaction whose goods are being dealt with. So matters remain until the time for payment arrives, limited by the terms of the contract. When that period comes, then the account is balanced up, the weights are adjusted, the commission is charged, and Mr Laing receives from Messrs Knight the cash, and he credits Cole's account with it. So that although the item of cash carried to Cole's debit on the advance made by Mr Laing, stands alone, so to speak, for a certain period unrepresented by goods on the other side, as soon as those goods are in course of sale, and payment in respect of those sales is made, the amount of those sales is carried to

his credit. That is a course of dealing which seems to me consisten with the ordinary mercantile course, and I will not insult my friend Mr Laing, by supposing that there is any question as to the perfect genuineness and *bona fides* of those entries. They have not been questioned. The entries are made at the time; that is, the day-book with entries made from day to day, recording the transactions of the day. There are corresponding entries in the cash-book in respect of those goods, with which cash-book the bankrupt has nothing to do, or any one of the customers, and the amount is carried as matter of account to the credit of the customer whose goods are so represented. Your Honour sees there is no mode whatever of arriving at the fact which the bankrupt assumes, namely, that on a certain day, certain bags were deposited against a particular loan. The payment made on that day did not represent particular loans, but represented a particular advance in respect of a general loan. There was a loan of 54,000*l.*, which your Honour will find carried to the bankrupt's debit in the cash-book. That loan was made at different periods partly by cheques, and partly by acceptances, and it is a singular fact, that throughout this enquiry, the accuracy of our cash accounts and the accuracy of our receipts and payments has not been questioned in any particular. It has never been said you have received more in the shape of cash than you have charged us with. It has never been said, that you have charged us with more than you have actually paid on our account. The accuracy of the account as between Cole, and Laing and Campbell, has never been questioned: but there has been a question, and that is the only one, as regards the cochineal. It has been said, you have received more cochineal than you have given credit for. Is the ordinary proof to be dispensed with in a case like this? It may be said, that Mr Laing has kept no copies of the warrants so deposited with him. Was it no part of the duty of the bankrupt to keep such an account? In what respect, except in the magnitude of the amount involved, does that case differ from the case of Somers the Jeweller, that your Honour dealt with the other day, and who pledged his goods? Your Honour said to that bankrupt—as your Honour would say to this bankrupt—"You say you pledged goods to the amount of 50,000*l.*, or 100,000*l.*, and you do not know what they cost you. The fault is yours. Do not throw on your creditors the consequences of your own misconduct. It was your duty to have kept an account of goods so pledged." And I quote your Honour's judgment in favour of my argument. I say it was incumbent on the bankrupt himself to charge the creditor, or to show what quantities of goods he pledged, under what circumstances, when, and where, and other particulars of them. I say you have had a transcript—they have had a transcript of our day-books; they have had the details that we have laid before your Honour to-day, much more extensive and multiplied—so extensive as almost to weary the power of calculation. We have said, we have given you an account of all that we have ever had: we have told you what we credit you with; we have given you in our account the names of the vessels from which it came; we have given you all those descriptions which would enable you to identify it; and we said as we say now, give us the mark, the brand, the name of the vessel, tell us where you got it from, show us if we have omitted anything, and we will allow it. I will not pretend to say, that my client or his clerk, perhaps, as having more knowledge of the details in this case, or in any other case where there are such large

transactions, may not have made a mistake, particularly where as I have said the warrants were handed over simply for the purpose of getting advances of money, and not as sent to Messrs Laing and Campbell, accompanied by a detailed invoice. It is possible we may have omitted one or more bags, or a dozen bags. My client says it is impossible, because he has discharged himself of all goods he ever had from Cole. On whom does it lie to prove it? On the one side there is superabundant evidence; on the other side there is none. The bankrupt professes to have dealt to the extent of 4,300,000*l.* He kept his five or six clerks, besides one or two members of his own family—who were found convenient to constitute the firm of Cole Brothers—he dealt to the extent of between four and five millions sterling, partly fairly, partly fraudulently and falsely, and there is not a vestige of his transactions to lay before the assignees. There is nothing which will enable the Court at the present moment to determine whether he ought at any time to pass his last examination. Is it to be endured? Call a man like that a merchant—I will not dignify him by calling him by the name of an adventurer, I say it was a simple case of piracy—a man going into the world and dealing to the extent of four and five millions sterling, keeping a phalanx of clerks for purposes of his own, either for show and for outward appearance to the world, or for the purpose of keeping such documents as were necessary to enable him to know when it was time for him to substitute forged warrant A, for forged warrant B—is it to be endured, that such a man, steeped in moral and mercantile guilt as deeply as it is possible to conceive a man to be, should come forward in a public court of justice, and charge one of the most eminent Colonial brokers in the City of London with having cheated his creditors out of certain bags of cochineal, pocketed the proceeds, and given no credit for them in his account? It is almost an insult to try this case by its probabilities, because probably the facts are all on one side; and on the other side it is a case of absolute impossibility, and not of single bare improbability. What could Mr Laing gain by this transaction? Why should he present himself as a public prosecutor? Why should he present himself as a creditor? Why should he present himself as assignee? Is it to be believed for a moment, that Mr Laing, for the sake of this wretched and miserable fragment of a dividend, out of an estate exhausted by the frauds and forgeries of this delinquent bankrupt, is to be presumed to come and falsify his books, and commit the most wilful perjury—would permit his clerk to sit by his side for the purpose of sustaining him in that perjury—for what? For the sake of that wretched dividend on a sum of 6,000*l.* I will not presume to calculate Mr Laing's moral status by 6,000*l.*, or 60,000*l.*, or a hundred times 60,000*l.*, but I say the case on the face of it is utterly absurd and ridiculous. Mr Laing's proof is true or false; his right to prove is just or not. On this question whether Mr Laing has or not duly accounted for all these bags of cochineal, if Mr Laing is properly to be charged with 400 bags of cochineal at 30*l.* a bag, he is a debtor to the estate which would amount to 12,000*l.*, and then instead of being a creditor to the amount of 6,000*l.*, he would be a debtor for very nearly the same amount. Did we ever in our wildest imaginations conceive that a man would be so insane as to rush suddenly into the Court of Bankruptcy to try to establish a claim of 6,000*l.* and get a dividend of 2*s.* 6*d.* in the pound, when he himself in his conscience well knew he was a debtor from 5,000*l.* to 6,000*l.* It is a waste of time to over-elaborate this part of the case. I say that Mr Laing's

statement throughout has been this, and that statement has not been questioned by surmise or suggestion,—true it is I had large dealings with Cole to the extent of 300,000*l.*; true it is I am now a creditor on the balance of accounts to the amount of 6,800*l.*; true it is that the debt arises solely and exclusively in respect of fraudulent warrants for spelter which formed part of the 54,000*l.* loan; but every one of my transactions with Cole have been recorded in my books. When I have made him an advance, whether 500*l.* or 54,000*l.*, the entry appears under its proper date in my cash-book to the credit of the cash in my banker's-book, and then by draft or by acceptances when it becomes due. I have entered that to Cole's debit in my ledger; I have received goods against the advances so made; I have sold those goods at fair market prices; I have sent him the contracts before I made him the sale; and I have carried the proceeds of those contracts to his credit in the books as soon as the contract was made, and as the sale has been carried out it has been written off. If the cases stood upon an equal footing; if there were no books on one side, and no books on the other; if there was no character on the one side, and no character on the other, your Honour would rather lean to the conclusion, that it was not likely a man would try and prove for 6,000*l.* or 7,000*l.*, for the sake of getting this wretched and miserable dividend. But when I call your attention to the overwhelming and uncontradicted evidence on the one side of the case, and there being nothing, nothing like a suggestion of evidence on the other side, it is impossible that you can come to the conclusion, that Mr Laing has fraudulently and wilfully—and if he has done it at all he has done both, received the proceeds of cochineal, which he has not carried to Cole's credit. The transactions in cochineal are not represented simply by the 700 or 800 bags. They have had transactions during those three years, to the amount of 1,690 bags, of which the 740 form a portion. I get these quantities from the books which have been before your Honour; because, whenever the bankrupt is credited with a sum of money in respect of cochineal, that fact is stated. He is credited with so much as proceeds of the cochineal. Taking out the cochineal items, we find he has credit for 1,690 bags. Not anticipating any objection, I put these in.

Mr Bagley: Things we have never seen before.

Mr Lawrance: It is only for the purpose of illustrating the course of dealing.

Mr Bagley: I do not think you ought to put them in.

Mr Lawrance: I ask his Honour whether he will take judicial notice of the form of a dock warrant?

The Commissioner: I will; because I was on the point of asking for it. I want to know whether the Dock books contain the amount of cochineal held by any particular person?

Mr Lawrance: They would not; these do not relate to anything in this matter.

Mr Bagley: My friend has taken away all my objection by telling me that they have no reference whatever to the case between the parties.

Mr Lawrance: One is a London Dock warrant, and the other is an East India Dock warrant.

Mr Bagley: They are not endorsed.

Mr Lawrance: They do not want an endorsement.

Mr Bagley: According to modern legislation they propose to make them like bank-notes.

Mr Lawrance: Having handed the warrants to his Honour, I ask you whether it would not amount to a physical impossibility that a merchant should transcribe 300 or 400 of those as representing a security for a particular loan. I will take my friend's clients, Messrs Overend and Gurney. Why the transactions of that house in respect of property of this kind are enormous. Your Honour knows to what a fearful extent they went in the case of Davidson and Gordon, the bankrupts. It would be an amount which one would be afraid to mention. It was suggested as a matter of policy at the time, "Why don't you inquire whether there are goods representing these warrants? Do you give a cheque for certain pieces of paper without satisfying yourself that the goods which are purported to be represented by those warrants are in existence?" The answer was, "We have confidence; we could not carry on our business if we were compelled to inquire into the validity so to speak of every warrant, and to satisfy ourselves as to the existence of the goods which that warrant represented; we should be obliged to keep a legion of clerks to do the work, and then do it very imperfectly." It would destroy the object which the legislature has in view, by sanctioning the transfer of that species of property, namely, prompt action. A merchant wants 10,000*l.* to meet a pressing emergency; he goes to Overend, Gurney, and Co., and gets a cheque then and there. Suppose they said—these represent goods lying in the West India Docks, London Docks, and Hagen's Sufferance Wharf, and we must send out seven clerks immediately to inquire. Long before the result of that inquiry could be known the object would be defeated, and the merchant would be under the special care of Mr Hazlitt the next morning, instead of having a considerable balance at his bankers. That is the reason why brokers are not in the habit of making lists of these warrants. They do that which I have suggested. A man brings in a bundle of these warrants; the lender looks them over till he satisfies himself that they afford a fair margin for the amount he proposes to advance; he gives his cheque accordingly; rolls the warrants up, and according to the terms of the contract with his principal, the borrower, he holds them for a given period or sells them from time to time as the market serves. The Dock Company keep a record of these transactions. In the first instance they enter in the Dock books the name of the person who first enters the goods in words; that is to say they must be entered to somebody's account; and the warrant is issued to that somebody, and he must endorse the warrant before he can part with it. Having once endorsed it, it passes like a bank-note, it goes from hand to hand, and no subsequent entry is made in the Dock books until the person goes there for the purpose of reclaiming the goods, or selling them. If the goods are delivered, they are delivered not on any special endorsement, but on the Dock warrant; a receipt is written on the Dock warrant and the goods go out, so that Mr A. may enter the goods as his goods, but they may pass through all the letters of the alphabet before they are wanted for the purposes of sale. Your Honour had to consider that question in the case of Gall and Wilson, in which my friend Mr Murray also appeared. In that case, certain tallow warrants passed from hand to hand, representing transactions without any endorsement whatever, without the goods ever being seen, even if they ever existed, in respect of which the transactions took

place. But it is due to the bankrupt to state that, with the exception of these fraudulent warrants, all the other warrants were in the ordinary course of business. Mr Laing was satisfied with the value of the goods pledged with him, and it happened in this case that, if the warrants which Mr Laing received—if the frandulent warrants had been genuine—Mr Laing would have been an accounting party to the estate, to the amount of several thousand pounds, in respect of these transactions. I mention that for the purpose of showing the care and prudence with which he conducted his business. If Mr Laing was deceived, it was against his belief, and it was by the confidence that was reposed in Cole, generally, at that particular time; so that in point of fact, if these particular warrants, the delivery whereof my friend stipulates for in one of his objections to the proof, had been genuine warrants, Mr Laing would have been an accounting party to the estate to a very considerable amount in respect of the goods which those warrants represent. I think I can satisfy you that there is nothing whatever to impeach the overwhelming evidence produced on the part of Mr Laing, namely,—that he has accounted for all that he has received. I say again, with all the time the other side have had, and they have had twelve months, if they can show that we have omitted to give credit for a single bag of cochineal from a particular vessel which they do not find represented in our accounts, we will endeavour to ascertain if they or we are right or wrong, and give them credit or not accordingly. If they show us that we have omitted to give credit for ten bags ex *Coromandel*, because it does not appear in our books, we will say we were in error, and will give credit for that accordingly, precisely as we did when Mr Graham charged us with 200*l.* which was the result of a palpable error. That could be traced in the books, and if there are any vouchers kept back for any purpose by the bankrupt, or any fragment of paper kept back by him which would enable him to make this surcharge against us—if he can show that he did give us ten bags ex *Coromandel*, and that that does not appear in our books—he can give us something which will enable us to go to the docks and ascertain whether those ten bags came through his hands at any period. But in the absence of that it is pure fiction, based upon nothing except his anxiety to inflict as much annoyance, and, it may be, as much expense as possible.

But we will go to that which is rather a question of mercantile usage than a positive charge against Mr Laing—because if the charge as to excess of bags is abandoned, as it must be for lack of evidence—then we come to No. 2, "That Laing and Co., before the 2nd August, 1854, being the time fixed for repayment of unsatisfied advances, made unauthorised sales of 584 tons of spelter, deposited as security for such advances, by which sales the bankrupt's estate was damnified to the amount of 1,840*l.* 11s. 9d." It is true that Mr Laing did sell certain spelter, and this spelter is actually sold. He sold it in August, 1854, the time being limited by the deposit-note, and it is quite true that if the assignees can show, or if the bankrupt, not being bankrupt, could have shown, that Mr Laing had sold that spelter so prematurely or so unadvisedly as to entail a loss on him, the bankrupt, Mr Laing, would have been liable for that loss. I concede to my friend to the fullest extent that if a man makes a bargain with another he is bound to hold to that bargain as a matter of law, and that Mr Laing had no more legal right to sell that spelter before the time limited by the terms of the loan-note than he had to sell another man's property. But what is the state of the circumstances? The loan-note would have expired on the

2nd August. Before the 2nd August Cole is in custody. Davidson and Gordon had failed or absconded on the 19th July. Between Davidson and Gordon and Cole, as was well known and as the result showed, there were the most intimate relations. It was a gigantic scheme of fraud, which could only be conceived and certainly could only be carried out and sustained by the efforts of men who were perfect adepts in all the arcana of mercantile science, and who also possessed that position, manner, demeanour, and credit which would enable them to conceive and carry out so atrocious and stupendous a fraud. It is matter of record on the files of this Court, in Mr Commissioner Goulburn's Court, and elsewhere, that the fictitious warrants used by Davidson and Gordon, either on their own motion, or in conjunction with others, amounted to very nearly half a million sterling. At that time Mr Laing held a large quantity of these spelter warrants; it was known that between Cole and Davidson and Gordon the most intimate business relations had subsisted; it was known that Cole was a large holder of spelter, he was a great operator in spelter, and he had acquired the same reputation for speculating in spelter as others have in Consols. Mr Laing then, as a prudent broker, sees that the effect of the failure of Davidson and Gordon, and the effect of the failure of Cole, would be to throw on the market an enormous quantity of the articles in which they dealt: it was well known that that would result in a depression, and Mr Laing was a creditor, he having advanced these moneys. Cole had very soon after become a bankrupt, and therefore Mr Laing went into the market adopting not only his opinion but the opinion of others, and he proceeded to sell this spelter. It is said that this spelter was sold at a sacrifice. I leave that to any broker or merchant in the city of London accustomed to deal with this particular article. I leave it to my friend Mr Graham, as an independent judge in this matter, and if Mr Graham, after availing himself of the ordinary means of information, comes to the conclusion that the sale made was one which resulted in a loss to the estate, or, in other words, if we had kept the spelter on the 4th of August, we should have sold it at a higher price, I will allow that to be taken off my proof. I will show your Honour as matter of evidence beyond all doubt that that which Mr Laing anticipated did happen, that the market did fall, that we sold at a better price before the 2nd of August than we could by possibility have sold at after the 2nd of August, and that the result of Mr Laing's operations has been to improve the condition of the estate by diminishing the amount of his proof, that is to say, if he could hold on after the bankruptcy he would have sold at a greater sacrifice, and his proof would have been so much the more. Your Honour knows, on the authority of ex-parte Moffatt, that a party is entitled to sell at the prompt day, and prove for the amount of unliquidated damages; but that principle has gone much further since. Mr Laing acted in the exercise of what he thought a sound mercantile discretion. He may have acted wrongly as regards the strict letter of the law, but does it lie in the mouth of the bankrupt, being in custody on a charge of felony, having borrowed many thousands of pounds, to complain of his having set to work and realised his securities at the earliest moment? Is it pretended that the sale was colourable, or collusive, or that Mr Laing was at the same time the seller and buyer of his own goods? No, they were sold through one of the first brokers of the city of London at the best market price, and they were in truth and in fact—and the observation applies to every parcel of the spelter sold—sold at a higher price than they would have realised

if sold in the month of August. So that, undoubtedly, if it were a complaint that could be made at all it is a complaint which seems to me to result favourably for Mr Laing rather than otherwise. Will the assignees adopt the alternative of the proposition? If we consent to reduce our proof by the amount which it is said would have been realised if we had sold on the 2nd of August, will they consent to our proof being increased by the increased price which we say we then obtained? We have debited the bankrupt with the sale of this spelter because we say that sale resulted in a loss. The bankrupt complains of that debit. Why? He does not complain of the debit by saying you could have got a higher price in a particular transaction which I will advert to; but he says, you had no right to sell at all—you ought, regardless of all consequences—it was your duty to hold on until the 2nd of August; you had no right to sell; I have a right to assume that that which you sold for 22*l.* 10*s.* might have come to 30*l.* I may indulge in any imagination I like, and say, you ought to be charged with the amount. That is not the way in which justice is administered in the Court of Chancery; that is not the way in which justice is administered in the Court of Bankruptcy—the way is to look at the point equitably—has the estate sustained any loss by the course which Mr Laing has taken? I will prove, if necessary, that it has sustained a profit, but to say that that is to result in a loss of dividend to a creditor which has resulted in no loss to the estate, seems to me a palpable absurdity. Mr Laing has acted *bona fide:* he may have acted precipitately or prematurely, but he has acted to the best of his judgment, and it is not pretended on the other side that the sale could have been more advantageously made afterwards. It has been suggested that a certain portion of this spelter was sold to Mr George Hudson, M.P., for 24*l.* 10*s.* Having regard to the nature of that gentleman's dealings, I should not have been surprised if he had given 34*l.* 10*s.*, seeing that in exchange for his spelter he gave his bills. The sale was made to a man of the name of Bramwell, but we all know that to a man who wants money, or money's worth, and proposes to give in exchange for money his bills, it may be worth his while to give a much higher price than other people will give, and nobody pretends that any person of mercantile standing would have given 24*l.* 10*s.* for this spelter at that particular time. An isolated sale is no indication of the actual cost, or what is termed the ruling of the market. I repeat, if it could be shown that because of this premature sale of Mr Laing, a loss has been actually sustained by the bankrupt's estate, independently of the dry legal question, I am willing to write the amount off from Mr Laing's proof. He would then be punished, and perhaps properly punished for an error of judgment. But if it can be shown that Mr Laing has exercised a sound discretion, as the result has shown between himself and the estate, it is monstrous to say that he is not to charge this loss where that loss ought to fall, and to say that if we had acted strictly according to the letter of the law, our proof would have been larger, and because we have anticipated the events, those events being precipitated by the bankrupt, we are to be charged with that loss. I am not aware that where one party is absolutely incapacitated from performing his contract, the other is to hold it strictly. There is a mutuality in all contracts, and it would be monstrous to say that the holder of goods should continue to hold them for a series of months, or a series of years, under a current of most adverse circumstances, and in the event of a loss he cannot call on the

other party to repair that loss. The matter here is between borrower and lender—a security for goods given by the borrower—supposing the borrower to be solvent if the goods do not realise the amount he is liable in point of law to make up the deficiency, and I repeat, it seems to me monstrously unjust, not to say absurd, to contend that the lender who will be a loser, is to hold on, to have his hands tied when a similar ligature is not applied to the hands of the borrower, who, by his own conduct, has deprived himself of the possibility of performing his part of the contract. Cole was in Newgate at that time; it was known that bankruptcy was impending over him; that bankruptcy followed, and it was known he never could redeem his goods. I cannot conceive for the life of me on what pretence it can be argued, either by him or by those who support his view of the case, that Mr Laing was not intended to realize and take credit for the loss of that realisation.

The next is "Loss on resale of nitrate of soda." That the two sums of 400*l.* 4s. 3d. and 271*l.* 6s. respectively, making together the sum of 671*l.* 10s. 3d. at debit side of Laing and Co.'s account, marked C, and described as "Loss on resale of nitrate of soda" should be struck out, as such resale was made without the authority of the bankrupt, and not in his name. That was the sale that was made to Fischel. It appears by the examination of Mr Laing himself, that Cole accepted that contract, and that he actually directed his own attorneys, Messrs Hughes, Kearsey, and Masterman, to bring an action against Fischel for a breach of that contract. The case put by the other side was that the sale to Fischel was not authorised, or rather the cancelling of the contract was not authorised. It appears that Fischel took advantage of some words in the sale note. The nitrate of soda was sold to him forward—"to arrive" on a given day, and it so happened that the vessel made a quicker voyage than was anticipated, and that which was sold "to arrive" had actually arrived. The truth is these contracts are made very much a matter of speculation. A man makes a contract "to arrive," relying on a short supply of the market during the interval, and expecting upon the arrival of the goods to resell that which he had purchased at a profit through the market becoming higher, and it did so happen in this case that the goods were sold "to arrive," when in fact the vessel had actually arrived. Fischel, who happened to be a very acute man, did not see his way clear to making a profit, and in the mean time the goods had gone down, as was likely, it being an article not very extensively dealt in, and Mr Fischel said I will have nothing to do with it, and Mr Laing was thereby thrown on his own hands. He represented it to Cole; Cole communicated with his own solicitors, men of high standing in the city of London, they bring an action, adopt substantially what Mr Laing had done, and that action is stopped by Fischel coming here and filing a petition for arrangement. That was the end of Fischel's career, as was likely to be the end of so very clean a merchant, not a very long time after the transaction.

Another objection made is as to the dealing with Mr Ouchterlony. Mr Ouchterlony, it appeared, had made a contract with Mr Laing and with other persons for the purchase of certain goods, those goods being Cole's, or a portion of them—that portion in respect of which Mr Laing had made a contract. Mr Ouchterlony was found to be in failing circumstances, and it was considered inexpedient to complete the contract. The contract was rescinded. Mr Ouchterlony paid 200*l.*, of which Mr Laing had his share as representing his portion of the

aggregate amount of the three contracts, and that portion Mr Laing has credited to Cole's account. One of the purchasers discovered that Mr Ouchterlony was not a good man, and it was determined to rescind the contract, thinking that the retention of their goods was better even accompanied by a certain loss than the absolute sale of them to a doubtful man. The contract was rescinded upon the terms of Mr Ouchterlony paying 200*l.* as a sort of compensation for the difference between the price at which the goods had been sold and the price at which they had taken them back. Mr Laing gives Cole credit in account for the payment of that 200*l.*, his proportion having reference to the aggregate amounts of all the three parcels of goods, and ultimately selling the goods he debits the account with a further loss. Now it is said that this transaction was a transaction which Mr Laing ought not to have entered into, because he made this bargain for the 200*l.* after the bankruptcy, he being assignee. Now I believe that is so, and undoubtedly if the contract had in the slightest degree ensued to Mr Laing's benefit, it may be that it was not justifiable. The only question is whether it was made in good faith. Did Mr Laing exercise a sound and independent discretion as assignee, and apart from his position as creditor, in disaffirming or annulling a contract which he knew the vendor could not carry out. If he did it seems to me to be very much like the case of a premature sale of the spelter, that Mr Laing has done that which has had the effect of reducing his proof, and could by no possibility have had the effect of increasing the assets of the estate. If it can be shown that the assets of the estate would be increased had not Mr Laing entered into this compromise, the matter would be different. They were Cole's goods; they were handed by Cole to Mr Laing for the purpose of sale, and they were sold to Mr Ouchterlony. They were goods which he was to realize for the general benefit of Cole's estate. There was the 100*l.* which was paid at the time of the contract; of that Cole had the benefit; that is carried to the credit of his account; and he also has the benefit of his position by the 200*l.* paid on the rescinding of the contract. If by holding on the contract would have been a positive benefit resulting to the estate in specie, or to Mr Laing as a matter of account, it may be complained of, but if he has done that which subsequent events show he was justified in doing as a prudent merchant, of course the same observation applies to Mr Ouchterlony's case as to the spelter case. Mr Laing being in possession of these goods, and knowing they never could, under any circumstances, be redeemed by the bankrupt, knowing they would not be redeemed by the assignees, it seems to me that he did what 99 men out of 100 would have done, and that he was justified in doing what he did, provided he acted *bona fide*.

The same transaction applies to the two sums of 1,065*l.* 1s. 7d. and 1,064*l.* 7s. 11d., the sale of the coloured cochineal. There the cochineal was sent out partly to Bombay, and part was sold in this country, the same reasonable discretion therefore being exercised. It would only be to weary the Court to travel over the same arguments which are applicable to this state of circumstances. I have yet to learn that where no substantial benefit is sought to be derived to the bankrupt, the depositee of goods has no right to exercise his discretion. I make the same offer with regard to the nitrate of soda and the coloured cochineal as with regard to the spelter. If it can be shown that Mr Laing adopting any other time or mode of sale a larger sum would have been obtained, and his proof proportionately reduced, I am willing that the reduction shall

take place now, although I think that I ought to have the alternative of the proposition, namely, that the proof should be increased if it could be shown that the course Mr Laing took resulted in a profit to the estate. One cannot conceive, treating it apart from the ordinary discretion which a man is supposed to exercise, why Mr Laing should wantonly and wilfully sacrifice his own property. It was his, he having the custody of it, and would in a very few days have become his by operation of law; it was certain to be his, because the power of redemption in the bankrupt was gone; it was his to all intents and purposes, and he at that time knew the full extent of the loss he would sustain by the fictitious warrants, and it is childish to suppose that he who was not pressed for money should do so insane a thing as sacrifice his own property for the purpose of proving upon an estate which would give 2s. 6d. in the pound instead of 20s. This case must be looked at in a fair and liberal spirit with reference to the motives which influenced the person against whom the charge is made. All his motives, all his inducements were in the opposite direction. His motives and inducements were to get the best price he could to indemnify himself against this most wicked loss, not arising from any misconduct of his own, or from any due or overweening confidence, but from a gross, deliberate, and atrocious fraud on the part of a person with whom he had extensive dealings. The observation ordinarily thrown out by the Court—you ought to have taken care—you ought not to have trusted such a man—will not apply. Mr Laing's transactions with Cole were to the extent of 300,000*l.* in three years, and they now result in a loss of 6,000*l.*, and that represented solely and entirely by fictitious warrants upon which the bankrupt obtained money.

Another point is with regard to a sum of 187*l.* "That a sum of 187*l.* charged to bankrupt in an account of Laing and Co., dated May 1854, such sum being described as 'commission' paid to lenders, which said sum of 187*l.* forms part of the sum of 514*l.* in the said account, marked C, under date 1st May, 1854, be deducted from the said sum of 514*l.* 5s., the said sum of 187*l.* having been erroneously charged to bankrupt." Now it appears, that as was stated in the course of the examination, it was not convenient on Messrs Laing and Campbell's part to make the whole of the advances which Cole from time to time required; and a portion of these advances were made by a very large mercantile house—made on certain terms as to interest and commission, and the money was lent to Cole on the like terms. Messrs Laing and Campbell made an inquiry, and found that the firm would lend on certain terms, and Cole agreed to borrow on those terms, and there is a letter which shows the terms. It appears that the loan was repaid by Messrs Laing and Campbell, and with the repayment of the loan Laing and Campbell also paid 140*l.*, being part of the 187*l.* which forms the subject of this item 5. That is to say the 140*l.* represents the commission on that loan. There is no doubt about the facts in any respect. But when Messrs Laing and Campbell settle up their accounts with the lenders, and pay them this money, including the 140*l.*, part of the 187*l.*, the firm, in the course of the same afternoon, as I think appears by Mr Laing's evidence, returned Messrs Laing and Campbell the 140*l.* They say "No, we have charged you interest on our money, because money is an article of commerce, but we cannot, having regard to the enormous loss you have sustained by this man's frauds, put in our pockets this 140*l.* If the case had continued as a simple and ordinary mercantile transaction, we should have retained

the commission with the same conscience as we have retained the interest, but having regard to the fact that you are losing several thousands of pounds by this man's frauds, we cannot make a profit beyond the interest, and the interest which we have charged you and which we have received is all that we could have got elsewhere. We cannot forego that, but the commission was something more; that is in the nature of a gratuity for the advance of money, and therefore we make you a present of it." The complaint is as I collect from my learned friend that Mr Laing has not given Cole credit for this interest. Now the question is whether the lenders had any intention of making Cole this present. That is the question, or whether they had any intention of making the assignees the present—whether their affection for Cole was so great or their affection for Mr Graham so much greater that they would immediately have said—true it is we have charged certain interest; we will keep the interest, but not the commission, and pay it into the coffers of the Court. The first proposition is the one I have to support and sustain. It is this—is Cole entitled to credit for that which never was a matter of account between him and the lenders? Cole contracted through Mr Laing to pay certain interest and commission. It does so happen that that interest and that commission is paid by Mr Laing as agent, and charged in Cole's account, and on a balance of the account Cole is still a debtor in the sum of 6,000*l.* or 7,000*l.* The lenders decline to retain the commission, and they say we give you this as against the loss you have sustained. It is really very much like the case of a man receiving the amount of his account, which we in our branch of the profession are not unused to do, and saying although I will not consent to any reduction of my bill of costs, still, under the particular circumstances, you having been a loser by this litigation, there is a cheque for 50*l.* or 100*l.*—according to circumstances—a course not unfrequently taken by professional men where a client has been engaged in a lawsuit which has resulted disadvantageously. That is a question which I am almost ashamed to argue, having regard to the smallness of the amount involved in it as represented by a dividend on 140*l.* It is simply a matter of dividend. I leave that to the Court. If the Court thinks they see the slightest scintillation of opinion that Cole ought to have credit for that sum of 140*l.*, let him have credit; but do not let it justify the expense to which they have subjected themselves—the assignees and my client—an expense which will go very far towards exhausting the dividend payable to my client. That I leave entirely with the Court. It seems to me that it is a matter entirely between the lenders and Mr Laing. It is a sum which under no circumstances would have been paid by them to Cole, because the reason given for making the repayment is quite inconsistent with the supposition that they were under any moral obligation to pay Cole. They repay Mr Laing because Cole had cheated them, and not because they thought Cole was entitled to a profit on his own frauds.

The Commissioners: Had Mr Laing charged commission in gross?

Mr Bagley: This is an account delivered on the 1st May, 1854 (handing a paper to his Honour).

Mr Lawrance: He charges it as commission paid to lender. There is no question about it at all. No doubt Mr Laing has substantially charged that commission as paid which was agreed to be paid, and which has ultimately been repaid to him.

We now come to the last item, which is very much of the same kind. It appeared that Cole had agreed to borrow a certain sum at a certain rate of interest, through Messrs Laing and Campbell, and that money was repaid by them earlier than was stipulated for by Cole, or was advanced out of Mr Laing's own moneys, so that other parties were not the lenders of so large a sum as was originally contemplated they should be or should continue to be. Mr Laing thinks there is no difference as regards Cole, whether the loan was paid by other parties, or by himself, and therefore in his interest account, he has charged that 140*l.* as paid, treating it as one loan, whereas in truth he has charged interest on his own moneys. Really it seems to me on a question so minute, and involving no consequences either personal or pecuniary, that it is not worth more than a single observation. I contend, that Mr Laing is entitled to charge, and Cole is bound to pay the rates of interest agreed on, whether Mr Laing makes that advance out of his own moneys, or whether he makes the advance out of the moneys of others. The bankrupt is not prejudiced in any degree by the fact. Supposing a client comes to me to get him 30,000*l.*, and I say I can get it, as I probably could, from my friend Mr Bagley, at 5 per cent., and he agrees to pay Mr Bagley 5 per cent., and I afterwards find, that from the state of my balance, I can advance 5,000*l.* of that 30,000*l.*, and I only want 25,000*l.* of my friend, and I still lend the 30,000*l.* to my client, if it should turn out, either disclosed by me, or by mere accident, that out of that 30,000*l.* so lent to my client, and so agreed to be paid for at a certain rate of interest by him, 5,000*l.* of it is mine; is he to say, I agreed to pay the learned counsel 5 per cent. on his 30,000*l.*, but I did not agree to pay him interest on 25,000*l.*, and you 5 per cent. on 5,000*l.* Why not? You have got the money; you agreed to pay a certain rate of interest; does it make any difference to you, whether you pay him or me? Am I to have no interest on my money? That is precisely the proposition put here; that is really the proposition here, whether Mr Cole is to put in his pocket, or rather, whether Mr Laing is to lose a dividend of two shillings and sixpence in the pound on 40*l.*, being so much of the interest as represents that portion of the loan advanced by Mr Laing; these are the only questions which ought to engage the time and energy, to say nothing of exhausting the funds of persons in these ways; that a bankrupt is to be allowed to stimulate supposition to oppose a proof on such wretched and miserable questions as these, cannot be pretended for a moment.

If the Court thinks, that the 40*l.* therefore ought to be dealt with as the 140*l.* is proposed to be dealt with, I care not one single straw. It seems to involve a loss of a very small dividend on 187*l.*, but it is a very important question with reference to what the Court will ultimately have to decide, namely, the question of the expediency of these proceedings. We are not here in the position of a plaintiff in an action at law, who brings an action for 5,000*l.* and recovers 40s., which carries costs. The mode in which the Court is in the habit of administering justice here is essentially different; it will take a broad and general view of the circumstances, and if they have not succeeded, as I feel confident they have not, in impeaching the accuracy of my proof in any particular, they will not be held to be justified by the Court in the course they have taken, because they do not succeed on the suggestion made by the Court, but which I think will not be adopted by the Court in reducing the proof by those two miserable

sums, which never at any time formed part of the bankrupt's estate and never could by any possibility form part of it.

In the course of some observations made by the learned counsel the other day, he spoke of the position in which Mr Laing stood as assignee, and the inconsistency of that position, and he rather intimated that that position, or the power which the position gave him, had been wrongfully used. From the month of September, 1854, to the month of July, 1857, we have not had any expression of opinion from the creditors of the estate, and such has been the opinion of unlimited confidence in Mr Laing, and the unabated confidence in his integrity and the manner in which he has devoted himself to this estate, by the official assignee, the co-trade assignees, and the solicitor for the assignees, that no creditor from that period to the present time has come forward and made a complaint against Mr Laing in this Court; and if there had been I should have said there might have been some foundation for the charges with which he has had to deal. But from first to last Mr Laing has been actuated by an anxiety to discharge his duties to his co-assignees and to the creditors, and has never withheld, or sought to withhold, any information from the assignees, or from the solicitor, or from any one of the creditors, not even the other side; although these accounts have been rendered for months, although the books and correspondence of every description to the utmost extent of our means have been open to the inspection of the other side for months, although Mr Laing has been under examination, the accuracy of those books, the genuineness of the documents, and the fact of the payments made by Mr Laing to Cole, or the fact of the receipts given by Mr Laing for the benefit of Cole,—not one single fact in any one unimportant or important particular has been questioned from first to last. Show me that my client has misinstructed me, and I will be the first to avow it to the Court. Show me in any one respect that Mr Laing has sought to give an unfair or untrue version to these transactions, and I will submit on Mr Laing's part to any judgment, however adverse, the Court may make; but if, on the other side, evidence taken in detail—evidence fairly taken by the learned counsel, I am bound to admit—giving so clear, so unvarnished an account of all his transactions as to impose on me the duty of not putting a single question in cross-examination, or by way of examination, and not asking leave of the Court to put any question to Mr Laing—not asking an opportunity of examining Mr Goodburn, his clerk, or any other person—so clear and so straightforward has been Mr Laing's conduct throughout—that the Court can come to no other conclusion than that these proceedings are most unjustifiable, most vindictive and malicious, and that the costs ought properly to fall on those who have initiated them. To suppose that the Court would saddle the costs on the estate is a suggestion that would be strongly struggled against by Mr Murray. Mr Murray is here, and he will tell your Honour whether he has had any reason to question the *bona fides* of Mr Laing's conduct, and I ought, perhaps—unless it is to be supposed that Mr Murray's inclination is in his favour—as being the solicitor for Mr Laing, to remind your Honour that Mr Murray was brought into this case as a perfect stranger, and that he had no communication, directly or indirectly, with the assignees until after they were appointed. I do not think Mr Murray knew Mr Laing at the time; certainly the relation of solicitor and client had never subsisted between them, and I state that as a fact in order to relieve the Court from the suggestion that Mr Murray, as solicitor for the assignees,

would not impeach the conduct of one of them. Mr Murray may have been concerned with Mr Laing in certain matters of business before this, but Mr Laing determined that there should be no question raised as to the *bona fides* of the transactions with this man, who had been placed in that wretched and disagreeable position that it was suggested—I do not know by whom, when Mr Freshfield attended here—if there is any question as to the conduct of these proceedings, to appoint a person in whom all the world will have confidence—Mr Murray; and Mr Murray has discharged his duty, and the result is that he has come to the conclusion that there is no pretence for these proceedings.

Mr Murray: I do not know whether I ought to make any observations now.

The Commissioner: It is your time now.

Mr Murray: I came into this matter as the solicitor of the assignees somewhere about a week after their appointment. I was perfectly unknown to the assignees, as far as I know I had no knowledge of them, and coming into the matter the first thing that occurred to me was that I should look at the proceedings that had taken place, and there I discovered that Mr Laing had proved a debt for somewhere about 11,855*l.*, and on the face of the proceedings it stated that his debt was to be investigated by his co-assignees. The appointment of assignees took place on the 4th of September, 1854, and an adjournment was then taken to the 6th of December. On the same day the bankrupt was examined here, and I found he had no books—no cash-book, no ledger, and no documents of any kind except sheets of paper—in a word, there was nothing whatever on the face of his vouchers from which the assignees could lay any foundation for an account against anybody whatever. From the 6th of December his examination was adjourned till the 29th of June, and on the 26th of January, 1855, it was again adjourned till the 23rd of March, 1855, and on that day the bankrupt furnished his account. That was the first time I had an opportunity of ascertaining the amount of the debt of any of the creditors, and the amount of anything like the assets of the bankrupt's estate. *On turning to that account I find that Laing and Campbell were returned by the bankrupt as creditors in the sum of* 8,273*l.* 16s. 11d., with this remark—"this balance is contingent on the goods held realising cost." So that I assume by that that had the goods held by Laing and Campbell realised the costs, still they would be creditors for 8,273*l.* 16s. 11d. That was the *bankrupt's own version on the 23rd of March*, 1855. Then his examination was adjourned from that day till the 22nd of May, and thence to the 13th of July, and down to the 30th of October. On the last day mentioned, your Honour granted an adjournment *sine die*, with liberty to the bankrupt, with the consent of the assignees, to apply at any time for an examination to pass his accounts. Between that time down to the 23rd of April, 1856, when this account of Mr Laing's was under investigation, I myself went to his counting-house for the purpose of looking into his books and ascertaining the facts, because I always venture to flatter myself that if I see a man's books, and his clerks, and his machinery, I can arrive at something like a conclusion whether the entries are made by himself, whether they are made by clerks from fiction, or whether they are made on anything like substance, and I get some foundation for the entries. About the 23rd of April, 1856, the investigation took place which I have alluded to. *I found Mr Laing's books as correct as any books I have ever examined.* I do not pretend to tell your Honour that I examined all the items. I

did no such thing, but I took items here and there and checked them by others, and I took a dozen items, more or less: then the books; I found them all correct. I traced the cheques and found they were all correct, and I came to the conclusion that the books were properly kept, and if there was anything wrong in Mr Laing's account then rendered, there must be not only Mr Laing and his partner in the wrong, but there must be the clerks—not one, not two nor three. On that day Mr Laing's proof was reduced, he having sold the property he *had in his hands* for 6,919*l.* 19s. 7d., and the dividend list was made out accordingly. It seems it should have been 6,874*l.* 1s. 9d. Whether it is my mistake, or whether it is my clerk's mistake, I do not know, but the real amount of his proof should have been, according to the figures I see now, 6,874*l.* 1s. 9d. Then from the time the bankrupt rendered his account on the 23rd of March, 1855, down to the 23rd of April, 1856, no communication was made to me on the part of the bankrupt, or on the part of the creditors, or by any one throwing any discredit on Mr Laing's account. No information was given to me to assist the sifting of this account more than I could do in the ordinary course of one's business, and I may add that I had the assistance of Quilter, Ball, and Co. I got Mr Quilter to look into two or three accounts of gentlemen whose names I have heard, and they reported to me their opinion on the result. Their opinion to me was very satisfactory.* Having now brought you down to the 23rd of April, 1856, when all the securities were realised, and the account reduced to that amount, the next step in the progress of this business was after the order of dividend had been made, and after it had been signed by your Honour, on that day an application was made on the part of the creditors—on the 18th of June, 1856. Now, I should have thought that it would have been the bounden duty of the bankrupt, if he had been competent to make a complaint against any creditor, and particularly after the order of your Honour that the other assignees should investigate his accounts, that he should have made that communication to the solicitors of the assignees, or to the assignees themselves, but instead of that it was thought right that there should be an investigation under the sanction and under the undertaking of two creditors. Of course he had that right, and he has gone on under the advice of Mr Bagley, and they have continued this examination from the 18th of June down to the present time. I have had no information whatever, but I find that on the 21st of April, 1855, and again on the 7th of May, you gave orders for the official assignees' clerk to attend, in order that he might prove his balance-sheet, and again on some future day for the same purpose. We are here now in the month of July, 1857, and I have not yet had the good fortune to reap the fruits of that investigation, or that preparation of his balance-sheet. As solicitor to the assignees I have no means of investigating his accounts further than by an investigation of Laing and Campbell's books, and except relying on the correctness of the statement that the bankrupt made on the 23rd of March, that he owed Laing and Campbell eight thousand and odd pounds. This bankruptcy took place on the 14th of August, 1854; I inquired if Laing and Campbell were not in the habit of rendering accounts to the bankrupt, and I found they were his ordinary merchants at certain periods. Without carrying you back very far I hold in my hand accounts ren-

* Messrs Quilter and Ball's letter was placed in Mr Bagley's hands at the first examination.

dered of all their receipts, their payments, and their advances in the year 1853. It is headed Coles Brothers, in account with Laing and Campbell. It begins on January 1st, 1853, with a balance against Cole of 23,800*l.* In that year 1853, there was the transaction of the 54,000*l.*, of which you have heard so much. I find that the sums are credited here as in the ordinary course of business, interest is charged, credit given from proceeds of cochineal and a variety of things, and the balance brought down to 32,237*l.* 16s., as the debit against Cole, on the 20th of December, 1853. I have not learnt that any objections were ever made to this account by Cole before his bankruptcy. I traced that down to another account rendered on the 17th of March, 1856, before his bankruptcy. It begins of course by bringing forward very correctly the balance of 32,237*l.* at the close of 1853, and it contains other transactions, and brings down a debit on the one side of 38,336*l.*, and a credit on the other of 11,500*l.*, leaving a balance against Cole on the 17th of March, 1854, of 26,836*l.* It details various payments, and there are various receipts. On the credit side of the account are all these different goods put down—supposed to realise about 1,000*l.*—about 8,000*l.*—and about this, and that, and the other—a variety of sums, bringing down the balance to 11,885*l.* That sum was the amount proved on the 5th of September, 1854. That being so, I traced the next account down, and I found it was rendered on the 23rd of March, 1855. It happens to be dated the very day that the bankrupt was here on an adjourned examination. That account begins correctly enough, inasmuch as between the period of the 5th of September, 1854, and the 23rd of March, 1855, goods seemed to have been sold by Laing and Campbell. It professed to begin with the old balance rendered to Cole on the 17th of March, 1854, of 26,836*l.* It details the transactions down on the one side, and on the other brings down a balance of 7,169*l.* 19s. 5d. It seemed to me that unless there was something grossly wrong on the one side or the other we were getting very nearly to a correct balance. The only alteration which has taken place since then has been the disallowance of a sum improperly or irregularly charged for interest.

Mr Graham: Twice charged.

Mr Murray: Twice charged. That has been taken off the 7,169*l.*, and has brought it down to the sum mentioned in the dividend warrants and the list of creditors. I have thought it right on the part of the assignees to show your Honour that they have not been neglectful of their duty. They have done all they possibly could do; they have had the valuable assistance of Messrs Quilter, Ball, and Co., who have looked through the books with my humble assistance, and we can discover no error. It seems to me that if there was such a quantity of cochineal—13,000*l.* worth of cochineal—that some account could be given of it. Where was it?—let me see it? If the bankrupt had said, on the 23rd of March, 1855, I can show you by the books that I had 50,000*l.* worth of cochineal in the docks, I can show you that that was transferred or got into the possession of Laing and Campbell, and they have only accounted for 40,000*l.* worth of it, I could have understood it. I cannot understand the bankrupt coming here representing that his creditor has got 13,000*l.* or 14,000*l.* worth of cochineal more than he has accounted for. If he had it, he had it when? Before these accounts were rendered. There is no pretence that Laing and Campbell had 13,000*l.* or 14,000*l.* worth before rendering an account on the 2nd of December, 1853. He rendered his account up to that time, and got up to the 23rd of March, 1855. It was all before us

as far as I understand. He must have had the cochineal at the time or before the time when the 54,000*l.* was lent. If so, will the bankrupt give us the numbers, or where he got the cochineal from, because I should like to know that. *I should like to know where it all came from.* Show me where the bankrupt got it, and show me that it was handed over to somebody else, and I have some chance of tracing it. But if not, it seems to me the easiest thing in life to say, I put 20,000*l.* worth of cochineal in your hands, when I only put 10,000*l.* worth. If the bankrupt had been examined himself, or if his books would give us some information, I should be disposed to place some reliance on some such statements; but without his books, without a ledger, without any thing whatever on which I can put my hand and make out an account against Laing and Campbell, it is impossible for me, seeing their books, to come to the conclusion that the bankrupt's statement is correct. I find one man has kept no books at all, and I find another man has kept his books correct. I cannot find fault with Messrs Laing and Campbell. There is not one single item that I can lay my hand upon. I do not allude to the trifling thing of whether they ought to have had a commission, I take the broad principle—the object of this is to charge them not with 100*l.* or 200*l.*, but to say that you have got 13,000*l.* or 14,000*l.* worth of goods in your hands not accounted for, which you have put somewhere not in your books. If you have got that property, where is it? Unless Laing and Campbell, when they took possession of this 13,000*l.* or 14,000*l.* worth of spelter in March or in August, 1854, began to think it desirable to be rogues, and put away 14,000*l.* worth, not in their books, but to tell their clerks—it is a fact we have got 50,000*l.* worth of spelter, put 40,000*l.* worth in the books; and unless they went through all that machinery, and have got it somewhere where it cannot be found, it seems to me it is utterly impossible to come to the conclusion that Laing and Campbell are in any way chargeable on that ground. I have thought it right, having taken some pains about this, to state as far as I am concerned, and in justice to the creditors—Mr Laing is a stranger to me—but in justice to him and the other creditors' assignees, whom your Honour directed to look into this, *I may state that we have looked into it, and investigated it as much as we could, and have come to the conclusion that the account is right, and that the sum stated on which Mr Laing is entitled to dividend is his correct balance,* subject to those two or three remarks about commissions—that in point of fact the bankrupt has given no evidence whatever—that there is nothing on which I, as solicitor to the assignees, can make a single remark as against Laing and Campbell, or on which I think your Honour can judicially come to a conclusion that they have in any way sent in an improper proof.

Mr Bagley here rose to address his Honour.

Mr George: Mr Lawrance has left the Court under the impression that there would be no reply. Probably you will allow me to send for Mr Lawrance, who is only in the next room?

Mr Bagley: I quite agree with Mr Lawrance that this is a question of character, and I do not hesitate to say that if I am to be deprived of the right of reply under such circumstances, the person for whom I appear would be justly dissatisfied with the whole thing. Mr Lawrance has indulged in a number of observations which are wholly beside the question which I opened.

The Commissioner: I am much indebted to you for this paper, and I should be still more indebted to you if you confine your remarks to it.

I think this has simplified the matter very much, and I think, having so simplified it, it would be unadvisable to go into further perplexities.

Mr Bagley: I should have been happy if the course pursued by the other side had not imposed on me the obligation of replying to some observations and statements which they made. I beg your Honour to observe that this is a question of character, and if you take Mr Lawrance's statements, I think there can be no doubt as to the side on which your judgment will be. It has been thought expedient, satisfactory, and convenient, all along to treat this as though it were an inquiry of Cole, the bankrupt; so far from that, in the month of June, 1856, Messrs Bailey Brothers, of Cornhill, booksellers of long standing, were put forward, with another creditor, under the Act of Parliament, to do whatever your Honour should think necessary to do with respect to the costs of this investigation, and to ask, as their undoubted right was, that that investigation should take place. Messrs Bailey Brothers, I again say, are now, as they were then, persons of the highest respectability and character. They were associated with a gentleman of the name of Sadgrove in the first instance. He became bankrupt, and it was suggested that it was desirable other persons should come in his place. Mr Pooley, a creditor, had proved for 2,500*l.*, and Messrs Sill and Mugins are creditors who proved for no less an amount than 11,054*l.*—the largest creditor now beyond all doubt on this estate. So late as the 12th of May, 1856, when the whole of the investigation was completed, and nothing was left but to bring the facts to your knowledge, Messrs Sill put on the proceedings their rights, undertaking that they, in conjunction with Messrs Bailey Brothers, would pay any costs that the Court might adjudge for investigating Laing and Campbell's account. So that I am here distinctly representing the largest creditor on this estate—the man who has the greatest of all interests in making the dividend as large as possible. I therefore ask you to consider the facts that are laid before you, and the examination on which those facts are founded.* My friend, Mr Lawrance, and he was followed by Mr Murray, said that the proof of 11,500*l.* was reduced to the sum at which it now stands of 6,000*l.*, because the securities which Mr Laing held were realised. My friend, Mr Murray, has repeated that after Mr Lawrance. Sir, it is an entire fallacy. Every shilling of the goods was realised on the 5th of September, when the large proof, that is now admitted cannot be substantiated, was made. They were all realised. The only unrealised goods were the goods sent to the East Indies, on which an advance of 1,900*l.* was made, and we are told that the account sales of those goods are not known up to this day. Whether that be so or not, on the other goods the amount of one shilling has not been realised from that day up to the present date.

Mr Lawrance: I am sorry to interrupt you.

Mr Bagley: I am sure you will, because you interrupted me the other day. Let me finish.

Mr Lawrance: I will not.

The Commissioner: When you make a statement, give me some evidence in support of it.

Mr Bagley: I am not going to let this case stand on assertions such as have been made on the other side. I am not going to follow the example set by my learned friend. It was unnecessary that I should interrupt him, because I felt that I should have the right of

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* See Letter of Messrs James and Shakespeare, *ante*, p. 13.

reply. It was unnecessary for him to interrupt me, because if I made misstatements he could set them right. Now I have stated, that after the 5th of September, when the proof for 11,000*l.* and odd was made, there were no goods of Cole's in the hands of Laing and Campbell that were realised. My friend has done me the justice more than once to say, that Mr Laing's examinations were taken fairly. I take no credit to myself for that. I should be very unfit to stand where I do if I could go to a room upstairs, and take a man's examination down unfairly. If I attempted such a thing there were persons present who would have set me right in a moment. On the 1st of July, in answer to my inquiry on that subject, Mr Laing stated, "our account was not made up or balanced on the 5th of September, 1854. There was no transaction with Cole after the 5th of September, 1854, and no entries in our books subsequent to that date, except as to the debits of the losses on the nitrate of soda, under date of the 31st of December, 1854, amounting together to 690*l.* 5s. 9d." I say there is not the slightest pretence for the suggestion. I have contradicted it twice or thrice in the course of these discussions. It would have been as easy to prove as any fact in the case. I say distinctly, that every security that Mr Laing had belonging to Cole, for which he has given credit to Cole, was realised on the 5th of September, except that portion of cochineal which has been sent to India, and which he says he has not yet realised, or he has not had account sales. But he has received an advance of 1,900*l.* Now that I hope will put an end to that statement, once and for ever.

Mr Lawrance: Although the goods have been sold, the account sales have not been rendered.

The Commissioner: I read this statement, as that there are certain accounts which are not finally rendered.

Mr Bagley: That is not the way the fact turns out. No one could believe that Mr Laing would have put to the end of that, "the accounts are to be taken as if they were realised," when in point of fact they were realised.

The Commissioner: Suppose he had added to the word "realised," "and adjusted," what then?

Mr Bagley: No difference at all.

The Commissioner: You ask me to conclude, that his accounts are all wrong, because there has been a reduction since this account was sent in.

Mr Bagley: Certainly not. I hope I am not capable of anything so unreasonable. I was going to say, that his account must stand on its merits. Credit was taken for Mr Laing being a person of such wonderful accuracy, and high honour. I say we come back to this statement, and I say there was no pretence that day for making that proof of 11,500*l.*, and that all the subterfuge, and all the expedients which have been since suggested as accounting for that, wholly and utterly fail. So much for that! No one in this Court is more convinced than I am, that this question is not to be decided on that, or many of the other *ad captandum* observations addressed to you by the other side. Suppose Mr Laing to have made the most unjust proof in the world in September, 1854, if he comes to-day and substantiates a proof for a certain amount less or more than that he ought to hold to that proof, still his conduct, I say, throws some light on that which has followed. It is quite true, as has been suggested both by Mr Lawrance and Mr Murray, that Mr Laing has produced

books, that we had an opportunity of looking into them, and he has not refused to answer any questions. Whatever merit arises from that statement I fully concur in, but what we find fault with is, that, when the books are produced they do not afford any record or any evidence that is of the least importance in this case, and if they afford evidence of suspicion, and more than suspicion, as resting on Mr Laing's conduct, it is his own fault.

Let me come to that which is the first point in that paper before your Honour—the omission of Mr Laing to give credit for an amount of cochineal, which he had had deposited with him, in respect of the loan of 54,000*l.* When I say the loan of 54,000*l.*, you will observe that in that document before you it is stated in this way—not with respect to the loan of 54,000*l.*, but to the advances made by him in the months of July and August 1853, and that was to get rid of any question as to those two subsequent transactions of the 22nd of August and the 27th of August, which showed the completion of the loan, and which, though they are comparatively small, it is necessary I should mention them. Mr Laing was asked what cochineal he credited in respect of that loan, and he has furnished a loan account with great particularity. It was produced on the 20th of July, signed by you on that day, giving, with great particularity, the details, the sales accounts, the number of bags, the ships, and the amounts, and this account for the net proceeds of 740 bags of cochineal, all of which have reference to this loan, is all that Mr Laing has ever given credit for as to the cochineal deposited in those months of July and August.

Mr Lawrance: That is a mistake; there is the St Petersburgh cochineal.

Mr Bagley: Mr Lawrance stated that twice over on the last occasion, and I answered him on that occasion. I read, from Mr Laing's own examination, a statement that he then made, that this account which I hold in my hand, coming from Mr Laing, contains an account of all the cochineal in reference to this loan, and it amounts to 740*l.* He is asked what he has given credit for, and here is an account containing 740 bags, and he says on his oath, that 740 bags are all that results to that loan. This account, he says, contains all the cochineal received from Cole, connected with the loan of 54,000*l.* "During the time that was running there was cochineal shipped" (reading down to the words) "separate account also."

Mr Woodburn: That was corrected afterwards.

Mr Bagley: I never heard of it. Now, then, it is said that Mr Laing has produced everything, and the other side has produced nothing; at this stage of the argument that is all for the advantage of Mr Laing. If Cole had kept proper books, and supplied his creditors with the means of obtaining information on this point, either the charge would have been abandoned against Mr Laing, or it would have been substantiated, and he could not have escaped from it for one moment as some others have. It is not because there is this absence of evidence on the other side that Mr Laing has been called on for examination, and I am asking you now, Sir, to judge of him by his own books of account, and his own sworn evidence. He cannot object to the means to which I go for information on this subject. You have there an account before you, showing the number of bags delivered by Cole to Mr Laing, at certain dates.

Mr Lawrance: You said you had not seen it in the evidence; it is in page 26.

Mr Bagley: What Mr Lawrance read the other day, I had my attention fully called to that the other day, but I found nothing then, nor do I find anything now, to indicate that 1,800*l.* for 60 bags sent to St Petersburgh had any reference to the 54,000*l.* loan, and I have Mr Laing's sworn oath that it does not. I have his account, furnished bag by bag.

Now, I was going to show you what proof there is that those bags were deposited, that is the first thing. In the first place, there are, on the 8th of July, 76 bags, you will have borne in mind. I have no doubt that the advances in respect of this loan, which is described as the 54,000*l.* loan, commenced on the 8th of July, and there was, on that day, 11,000*l.* in cash, and 2,000*l.* in bills advanced by Mr Laing, 2,000*l.* worth of bills being given to Cole Brothers, at four months. That is the only instance in which the deposit note has been preserved, and therefore the figures now, as far as I stated them, are unquestionable. That amount of 13,000*l.* was advanced on that day, and that it was advanced in respect of spelter and cochineal is unquestionable on the face of the account itself. It is a remarkable exception to the rule where a deposit note has been kept. The fact that there was cochineal deposited on that day, which appears on the face of the note, would not prove the quantity deposited on that day. That is quite clear, but we have some proof of that, because we know what proportion of the advance of 13,000*l.* was cash and bills; and we have the fact that there was 2,000*l.* bills. and 11,000*l.* cash; and you have Mr Laing's statement that all the bills advanced in the months of July and August were covered by cochineal deposits. I will read from his examination of the 29th of July, in which he says,—"The loan, by way of bills, in the months of July and August, &c. &c." (reading down to the words) "in our day-books." There is a loan of 2,000*l.* in July, secured by deposit of cochineal, being, as my friend has given himself the estimate, at 30*l.* a bag as the value of the cochineal. I gave you what we understand to be the rate of advance—26*l.* a bag, and you will find at 26*l.* a bag, 2,000*l.* would make 76 bags.

The next items of that account, is the 29th of July, and on that day I say that Mr Laing had 153 bags of cochineal. How do we prove it? In the paucity of evidence there is some little, and this document was produced on the 1st of August, 1856, and shown to Mr Laing, which he states to be in the handwriting of his clerk, Mr Woodburn, and I find it is obviously a portion of account having reference to this loan, that is to say, the 54,000*l.* It is in this way there is spelter and tin over one column, and cochineal over another, and there are the dates at which advances were made, and the amount of those advances opposite the 29th of July, the day we are now talking of. I find this 10,000*l.* indicating an advance of 10,000*l.* on that day—spelter and tin, 6,090*l.*, cochineal, 4,000*l.* Now the 4,000*l.* there is no doubt about, whatever there may be about anything else, because here we have in plain writing, 4,000*l.* advanced on cochineal that day, being part of the advance of 10,000*l.*, the other 6,000*l.* being covered by deposits of spelter and tin. Putting the 4,000*l.* cochineal at the same rate as before, at 26*l.* a bag as the rate of advance, it would be 153 bags. There is no doubt about that. Fifty-three bags were deposited on that day.

Now I come to the next, the 30th of July, and on the 30th of July, in the same document, I find the advances are described as cash, 7,000*l.*, bills, 5,750*l.*, and in reference to the cash of 7,000*l.*, we have spelter and tin, 700*l.* cochineal. So far, therefore, there

could be no doubt on that. There was 6,310*l.* odd advanced on that day, covered by deposits, and 6,310*l.* calculated in the same way as all the others, makes 243 bags of cochineal admitted, on that day, as I say, to have been delivered. As I have already told you, on that same day there are two advances—one is an advance of cash, and another by bills. The account goes on—the 30th of July, 5,750*l.*, cochineal, 5,750*l.*, the whole of the bills being covered by cochineal. The account goes on further than that, that is the last date, but that was not the last of the advances. There was an advance of part of this 54,000*l.* on the 6th of August, and as to that, it was an advance of 6,000*l.*, and we debit to Mr Laing on that day 229 bags of cochineal. How do we attribute it? I have evidence that cannot be disputed on that, the evidence of Mr Laing himself, that 6,000*l.* was advanced by bills on that day. He has already told us, that all the bills were covered by cochineal, but we have this a little more specific from him, for he says in his examination, taken on the 24th of July, 1856, "There was an advance of 6,000*l.* by acceptance on the 6th of August, 1853. My day-books show that that advance was made on a deposit of cochineal, but there is no entry of the quantity or value." I think, therefore, that as to that, one cannot have better or more satisfactory evidence.

Now then we come to the item of July, when we attribute to him 95 bags, and I say, as I opened this case, that with respect to the 95 bags, there is no other affidavit than the affidavit of Cole. In that affidavit, as I have already stated, Cole states, that on that particular day he got those 95 bags from persons whom he names, and he deposited with them for an advance of 2,250*l.* I have no other evidence to corroborate that statement. I mentioned that distinctly on the first occasion, when Mr Lawrance, of course, as it was his duty to do, shook his head and sneered at the idea of Cole stating anything that should be correct, but the result of this may show, that Cole is capable sometimes of stating what is correct, and that other people are very capable of stating what is untrue. Cole has not a very friendly feeling towards Mr Laing, because Mr Laing was the person who prosecuted him, and succeeded in convicting him of obtaining from Mr Laing 10,000*l.* by fraudulent warrants, whereas we find, that Mr Laing has no such claim on Cole as 10,000*l.*, so that it may be extremely true, that there is no friendly feeling from Cole towards Mr Laing, and there may be some foundation for the absence of that evidence. You must take Cole's evidence, such as it is. If it is not corroborated by facts, perhaps you will say it ought not to be admitted, but I need not tell you that in courts of justice where men's lives, and everything else are concerned, the evidence of persons convicted is taken and relied upon.

Mr Murray: Will your Honour allow me to retire? I shall only have to ask you for the costs which the assignees have been put to.

The Commissioner: That certainly will stand over. I shall be able to state any general impression of the case to-day: but I cannot go into the details, neither shall I go into the question of costs.

Mr Bagley: That being in August, the last day when there was any advance made as part of the 54,000*l.*, this takes place on the 22nd of August—warrants for tin in respect of some portions of the loan were deposited, and on that day, it seems, Cole wanted that tin, and he exchanged it for warrants for cochineal. Mr Laing says in his examination, "There was a deposit of cochineal on 22nd of August,

1853, by the bankrupt, that was deposited as a security for tin, and not for a present advance of money. The tin was given up to the bankrupt; it was 56 tons, 14cwt. 3qrs. 24lbs. The cochineal, I cannot tell what, was deposited in substitution for the tin. I think the 56 tons 14cwt. 3qrs. 24lbs. produced, marked with the letter F." Now we have a document, mark C, dated 22nd of August, 1853, in the official assignees' possession after that, and the only object of it is to indicate the number of bags that were deposited that day. Of that I think no person can entertain the least doubt, because there is 1,650*l.* which he was to pay, which is indicated there, and which he was to pay with the cochineal he deposited to make up for the tin which he withdrew: 105 bags of cochineal was what he deposited on that day as indicated by that list (handing a paper to his Honour).

Mr Lawrance: What is that?

Mr Bagley: A machine copy of his letter. We have the fact beyond all doubt, that there was a deposit of cochineal that day, in exchange for the tin, and the only question between us is the amount. That letter is handed to the official manager at the time of the bankruptcy, before any of the questions had arisen, and indicates 105 bags of cochineal, and it also indicates the payment of 1,650*l.* for the tin that was withdrawn. That is an admitted payment by the bankrupt. Mr Laing gives him credit for it, and no doubt he paid 1,650*l.* on that day. Therefore, if that is not all but conclusive evidence that the 105 bags were deposited, I do not know what can be.

That brings me down to the 27th of August, 1853, when there was another loan of 1,650*l.* Mr Laing admits that that was a deposit of cochineal, but he says it was part of the loan of 54,000*l.* I think it is quite clear he is wrong about that. He handed his cheque to the bankrupt on that day, the 27th of August, and on that day Cole Brothers deposited with him a portion of this cochineal. Calculating 1,650*l.* as deposited on that day, we find 63 bags represented. We find in the account 1,600*l.* debited on the one side to Cole, and on another side credited; and as I went over the account, I asked Mr Laing his explanation of that, and he gave me an explanation which seemed to be perfectly satisfactory. He said—"The cochineal we got in substitution of the tin, was valued less by about 1,650*l.*, we only gave up one of the warrants, that is one of the tin warrants; I do not know what the value of the cochineal given in substitution was. I cannot tell the number of bags substituted, we received a cheque from the bankrupt for 1,650*l.* on 23rd of August, 1853, and that was the difference betweeen the value of the tin, and the cochineal deposited with us. In the accounts furnished to the assignee, we have given credit for that sum of 1,650*l.* The account now produced shows it; that account was furnished to official assignee about 14th April, 1856, it is the whole account of our transactions with the bankrupt during the year 1853, and shows a balance then due of 32,024*l.* 6s. 3d. The account now produced, marked H, is an account furnished by us to the bankrupt, 20th December, 1853; that account is headed, 'Cole Brothers, in account with Laing and Campbell, and Co., outstanding accounts, 1853, interest to 31st December.' That account does not show the cochineal deposited in substitution for the tin, August, 1853; that would merge in the 740 bags, nor does it show the cheque for 1,650*l.* The cochineal deposited in August, merged in the 740 bags, because the tin was a part of the deposit to cover the loan of 54,000*l.* In the balance carried in 1854, it is stated, that balance is founded on

the credit given for the sum of 1,650*l.* In the account for 1853, I not only credit the 1,650*l.*, but I also debit him with the like sum; the reason is, that on 27th August, 1853, I made an advance of 1,650*l.* to the bankrupt by cheque, to cover which he deposited with me certain warrants, fresh securities, cochineal. I do not know the number of bags. The two transactions of the bankrupt giving me a cheque, and I handed him a cheque for 1,650*l.*, had no connection with each other, except that the sum was similar in amount. This advance of 1,650*l.* on the 27th of August, was part of the loan of 54,000*l.* There is an entry in our ledger on the 27th of August, 1,650*l.* to the bankrupt; there is nothing to indicate it was part of the 54,000*l.* The advance of 54,000*l.* was complete on the 9th of August; the goods deposited to cover the loan of 1,650*l.*, formed part of 740 bags of cochineal, for the produce of which I have given credit as against the 54,000*l.* loan. I have no list of the goods deposited by the bankrupt's clerk, on the loan of 1,650*l.* I never had a list from the bankrupt of the goods so deposited. The bankrupt brought the warrants at the same time he got the cheque; we gave a cheque in exchange for the warrants. We never gave a cheque without the warrants. I cannot say the number of bags I got in exchange for the 1,600*l.*" There we have an express admission, that he deposited on that loan of 1,650*l.* certain warrants, fresh securities for cochineal. He does not know the number of bags. It is a remarkable circumstance here, that Mr Laing all through never knew the number of bags. On no one occasion has he been able to give us the number of bags, and therefore we are driven to that which he himself has given us, as the only mode of calculation, namely, the amount of the advance. There is an advance of 1,650*l.* on the 27th of August, and the number of bags would be 63. It has never been suggested, that there was anything but the cochineal.

The Commissioner: How do you get at 63 by conjecture and estimate?

Mr Bagley: In this way,—that the 1,650*l.* is the amount advanced, and the number of bags not being specified in Mr Laing's statement, we come to it in this way, which he says is the only way, by the amount of the advance. In his examination he gives us these data to go upon. He says, I never advance within 6d. or 8d. within the market price. We know the market price. We know that beyond all doubt, because it is in the prices current.

The Commissioner: You say 63 are conjectural, founded on a calculation of the market price?

Mr Lawrance: We never advance the market price. The market price is no indication at all.

The Commissioner: Are the figures 63 to be found anywhere, or is the number 63 a conjecture arrived at by the amount of advance in the market price of the day? Do you say that is what he must have deposited, considering the amount of loan and the price?

Mr Bagley: Just so—added to that in the documents we find that the advance is at the rate of 3s. 3d. per hundred. I do not say that I could show you any document in Mr Laing's handwriting showing 63 bags deposited on that day. On the contrary, he tells me that though he advanced 1,650*l.* that day, and he had that 1,650*l.* secured by cochineal, he does not know the number of bags. I say if you had it secured by cochineal this must have been the number of bags.

The Commissioner: You do not know the number?

Mr Bagley: Except by calculation. He has given us the data on

which we can calculate it fairly and satisfactorily; because he says he would not advance within 6d. or 8d. in the pound of the market value to leave a margin. We know the market value of that day: deduct 6d. or 8d. in the pound, and then you have the amount at which the cochineal was deposited. I say that 740 bags are all that Messrs Laing and Co. have given Cole credit for, and there must have been a greater number for which they have not given credit. Strike away, if you will, the 85 bags imported by the evidence of Cole: strike away, if you will, the 63 bags, and if you do that, you will leave a number of bags sufficient to overturn Mr Laing's proof, and turn him into a debtor to this estate, instead of being a creditor.

We have had it put to us,—what had Mr Laing to gain in this case? Sir, I attribute to him, on the part of those who have entrusted me with their interests here,—that he had to gain the putting money in his pocket, and that he has done that—that when he made that first proof he had to gain the position of assignee; which if this had been conducted as the great majority of cases, would have prevented those most irregular transactions with Cole's property from having been investigated. Nobody who has sat in this Court as long as you have, Sir, but must have seen—though you do not see so much behind the scenes as we do—how much depends on the activity of assignees in ferreting out anything that is wrong. Mr Laing had all that benefit here up to a very considerable point. He made himself assignee by showing that he was the largest creditor, and he went to the world with all that prestige which people have in this country who are very eager in hunting down great delinquents. Now, the question is, whether he is to keep this money in his pocket, and to get more money out of this estate?

Mr Laing's conduct with respect to the cochineal I think has some light thrown upon it by his conduct with respect to other transactions which have been brought before the Court. Mr Lawrance said you must take a broad and liberal view; and that this was not like the case where a man had been guilty of a breach of contract or improper dealing. I find great fault with Mr Laing for the mode in which he dealt with that property, at a time when he knew the bankrupt was in difficulties. Undoubtedly he had a right, as Mr Lawrance stated, to sell the spelter and the coloured cochineal at prompt day, but before prompt day came, he sold every shilling's-worth of it. My friend, Mr Lawrance, assumed that the bankrupt was in custody when he sold. The bankrupt had not stopped payment, but Mr Laing, who had been told by the bankrupt himself at the commencement of June, that rumours were abroad about these fictitious warrants—what does he do? He takes care of himself, without any regard whatever to the interests of Cole or those who might afterwards come in Cole's place. I am instructed that it was the sale of that spelter, all of which was sold before Cole stopped payment, and was telegraphed to Hamburgh, that caused Cole's stoppage. We have the dates when the sales were made, and every pound of the spelter was sold before Cole was made bankrupt. I say it was sold before the prompt day, and every pound of it without his orders or his directions; and the person who did that comes here and says—now let me prove against his estate, giving me credit for what I lost upon that unauthorised sale, without his consent, express or implied. My friend put it, that he was in a position that he could consent to nothing: but nobody sought to get his authority. His authority was not wanted, and these things were sold.

Amongst other things it was thought necessary to mix up Davidson and Gordon's name. They had nothing whatever to do in this transaction—not the least in the world—and now the transaction disclosed, does not disclose their names at all.

Now the way I put that is this: here was property avowedly in the hands of Mr Laing that did not belong to him. It was the property of Cole, and up to the day when Mr Laing was bound to pay for that property, Mr Laing had no more right to deal with it than he had to deal with any other man's property. He deals with it, and Mr Laing was wrong when he said that no loss was incurred by the sale. Mr Lawrance now says upon that, that if it should turn out that there is any loss upon that, it is to be taken off the proof: I am instructed that if Mr Laing would give up that spelter this day to the assignees, the creditors whom I represent would gladly pay him the amount of his advance and interest on that amount from that day to this.

Then there was the matter of the nitrate of soda, and certainly I think anything more discreditable to Mr Laing than his conduct in that I never heard—discreditable in attempting to charge Cole with the loss by the result of that. My friend's statement was a misapprehension altogether. The complaint was not that that was sold to Fischel. It was debited to Fischel, and credited to Cole in the books of the day, when Mr Laing made his proof here. But what did he do? Finding the account was to be diminished by some other omissions, he thinks it must be added to by putting those two sums on the other side.

We do not object to the sale to Fischel or to any of these parties. All we object to is a loss being charged to this estate. When was that loss? Why, long after the bankruptcy. Long after Mr Laing had become assignee; long after he had dealt in every possible way with those goods in the names of other parties; because when he sold in August he never for a moment mentioned Cole's name. He sends Fischel these notes, and he sends him these notes stating that the goods were sold by their order, and for their account. He puts their names on his own books, and by-and-by, long after the bankruptcy, when this Mr Ouchterlony and he have some arrangement about their transactions, Mr Ouchterlony pays him 200*l.*, and he himself, Mr Laing, the assignee, representing the creditors, takes a composition from Mr Ouchterlony on this alleged re-sale of this nitrate, without ever mentioning it to his co-assignees, or to the official assignee, and we do not find in the account that that 100*l.* is credited to Cole.

Mr Lawrance: Oh, yes.

Mr Bagley: As the account now stands; but until it was looked into, and probed, and got out of Mr Laing that he had that 100*l.* in his pocket, it was not known to anybody connected with this estate until the 29th of July, 1856, and when he got it from Ouchterlony is not very clear; but it is perfectly clear that he did it all himself after he was assigned, and he made no communication whatever of that transaction to anybody until July 29th.

Then there is the sum of 187*l.*, I think you have on your desk the account in which that sum is charged, and you will observe that that account is an account bearing date the 1st of May, 1854, and furnished to Cole in May, 1854.

Then there is this money which he says was returned to him. This payment which he says he made to them was so far back as December, 1854, after Cole's bankruptcy. He charges Cole

with that 187*l.* as paid to the lenders for renewals of the loan, because that loan of 54,000*l.* was reduced to 18,700*l.*, and it was upon that renewal that he charges that sum. He said most positively that every part of it was paid, and no part was returned.

Mr Lawrance: He corrects that immediately.

Mr Bagley: I have read it.

Mr Lawrance: Read the portion in which he corrects it.

Mr Bagley: He said that one day; and when he comes again he corrects it. What does his last examination prove? That he never paid a shilling of that. He says "part of it was money which he would have paid to the lenders if the whole loan had come from them; but inasmuch as I myself became a lender of 6,000*l.*, I charged that as if it was paid to the lenders." Is that consistent with the habits of respectable brokers in the City of London? Is it consistent with his own document of 1854? According to his present statement he never paid a shilling to anybody. The payment was in December, 1854, though he charges Cole with it in May; and he states now it was not a payment of 187*l.*, but part of it, and he says the lenders gave it back in consideration of his losses by Cole. This is the way in which we say he has been guarding himself and putting money into his own pocket—perhaps honestly; but by representing that he is a great sufferer by the frauds of Cole. Whatever else may be said in this case, I think it will be quite clear that Mr Laing is not a very great sufferer by his transactions with Cole. He took precious good care having the first intelligence from Cole. He began on the 30th of June selling off all these securities, and having sold every one of them before the bankruptcy, he comes here, on that bankruptcy, and does not give credit for the sales—not even for the 1,900*l.* advanced on cochineal sent to India, and which he had in his pocket since the 2nd of July. My friend observed that Mr Laing need not have given credit for the 1,900*l.* His story is this: Cole told me I might send it to India; I did; and on the very day I shipped it, I received an advance of 1,900*l.*; and he instructed his advocate to say that he might keep that money in his pocket, and not give his principal credit for the 1,900*l.* This really is the case.

I fear that we have trespassed too long on your patience, but let me at once say that nothing can be more erroneous than the suggestion that this is a vindictive or a malicious investigation. The fact that it is an investigation promoted by the creditor most deeply interested, is a sufficient refutation of that statement.

Mr Murray produced before you the file, and he said the bankrupt himself, on the 3rd of March, 1855, was called upon to furnish accounts; that if he did not, he would be adjourned *sine die*. He does furnish an account, in which he states the debt of Laing and Campbell at 8,000*l.*, contingent upon the goods held realising cost. Cole at that time had no accounts but those which Laing and Campbell had furnished. He could not tell whether Laing had realised or not, but he says the account is contingent on their being realised, and what they will produce. But early in 1855, he drew Mr Graham's attention to it, and Mr Graham writes a letter which I read to you on the last day of the 11th of April, 1855, and he accompanied the letter by this document, signed by Mr Graham, calling upon Laing and Company to give an explanation of the goods lodged with them in respect of those various loans, giving the date of the loans, and the advances. Had that enquiry been properly answered, there probably never would

have been any necessity for this investigation. Now up to the present day it has never been answered, and indeed Mr Laing's evidence is, that it cannot be satisfactorily answered, because he has not the means in his hands of doing so—that he never kept the deposit notes, nor the list of the deposits; he destroyed some of them.

Mr Laing: I admit nothing of the sort.

Mr Bagley: You say they were destroyed. "The deposit notes we received from the bankrupt are destroyed." The man who has had the means of giving information, states that he destroyed it.

The Commissioner: He does not say he destroyed them.

Mr Bagley: They were destroyed—*qui facit per alium facit per se.* —Mr Murray says that no objection was made by Cole as to the amount. How could he? Cole could only know what goods they had sold by their own account of them. They did not give him any accounts, but as to the particular items which they had sold. I did not then, and I do not now say, that the things that were sold, were not sold at their fair value. The ground of objection is—you do not give us an account of all you had—of all the goods you received. It would be impossible for him in December, 1853, to have said, you have not given me credit for all the cochineal. The loan was still pending, and therefore it was impossible for him to have demanded an account of what they had sold, but the complaint is, you have not given us an account of what you have got. We had not the means of objecting at that time. I say that there is sufficient evidence before you, Sir, beyond all doubt, not for reducing this proof, but I say it should be expunged altogether, because there is almost conclusive testimony before you, that Mr Laing has not accounted for all the property he has received.

Mr Lawrance: Allow me to read one portion of the examination about the destroyed lists. He says, "I have not the slightest idea how many deposit notes were destroyed. I think they were put with waste paper. I produce a deposit note dated, 8th July, 1853, marked D, this refers to a list annexed. I cannot find the list. I have searched for it. I cannot tell whether it is destroyed. If destroyed it was not done wilfully. We attach no value to it. In the course of my business, such a list is not necessary to be kept. Lists of that kind are not preserved in the course of my business. Without that list, I have an idea of what the goods deposited were." With respect to the warrants they were securities, and we may want them again; but they will be given to Mr Graham if his Honour orders us to do so.*

The Commissioner: It will be impossible for me to go into the figures of this case at present, and before I could do so it would be necessary that I should have copies of all these documents. The case is very intricate. The transactions appear to have been complicated, and I must say, I still think some of them were irregular. I was very much struck indeed by the allegation, that there were no lists of the goods deposited; that has been in some degree explained, and it is said, that in the course of business it would be impossible. I know a great many years ago, I was very much struck by hearing a statement of the manner in which bill brokers take parcels of bills to make advances without having a list of them. I confess I was then a good deal younger in this Court than I am now, and I did not believe it at

* These were the forged warrants.

first. I was afterwards satisfied it was true, and I am now convinced that it is not only true, but common.

Here the material point on which the first part of this case must turn is this—on the one side there are books very regularly kept—openly kept books, in which if there were falsifications all the clerks in the establishment must have been privy to them. There is no mode of accounting for the fraud imputed, but to suppose this—that Mr Laing took the warrants, put them into his pocket, never allowed them to go into the accounts, and that he has some way or other since then sold this cochineal. All that I cannot believe. Further, from the mode in which Mr Laing has given his evidence, corroborated by his book-keeper at his side. I cannot believe that there is any wilful misstatement. On the other hand, the bankrupt, who is the principal party in giving this information, stands in this position—that while those who adopt the bankrupt's account impute to Laing and Campbell (I must observe not Laing only, but there must be a partner in the fraud), that they did not keep proper books, and did not keep lists of this property—what has the bankrupt? Where are his books? Where are his vouchers? Where are his documents? Where is even the proof that he ever had these things to deposit to this extent? Where did he get them? There must have been other transactions at the same period with other persons, by which these goods might have been accounted for. I consider, therefore, that the first part of this case is most exceedingly unsatisfactory, and one on which I doubt very much that I shall ever be able to come to a final conclusion, further than this, that there must have been in the mode of keeping the accounts irregularity on the one side, and possibly more than irregularity on the other, because Laing and Campbell may have made errors in their books.

The second item is about the unauthorised sale of the spelter. Now I cannot understand, that it is intended that a sum should be charged against Laing and Campbell, in the nature of damages. If it should turn out that the spelter would have sold on the 3rd of August, for more than he has been credited for, the bankrupt's estate is entitled to it; because certainly, although there was good moral reason for doing it, yet legally it was not justifiable.

The loss on the re-sale of the soda is precisely in the same position. The market had fallen, and there was good reason that Laing and Campbell should hasten to realise it as soon as possible.

The sale of the nitrate to Ouchterlony is comparatively a trifling matter. It certainly would have been infinitely better if Mr Laing had consulted his co-assignees before he came to any arrangement. It is a matter so trifling, that I can scarcely justify the supposing that there was any intended fraud.

The overcharge of the commission must depend very much on what the view of the lenders was. If it was true that this amount was payable to the lenders on the 1st of May, 1854, but that subsequently the lenders returned it, it will rest with them to say, whether they intended that return as a benefit to Laing and Campbell, or as a bonus to Cole. The small difference of 40*l*., though it might not appear a most regular transaction, seems to me to be justifiable by the circumstances, if as to that portion Laing and Campbell were bound to pay the lenders.

I believe I have gone through these matters shortly; I must, I am sorry to say, look through these very complicated accounts, principally

with the view of seeing whether the opposing creditors were justified in their attempt to expunge this proof. My opinion is strongly that they will fail as to a great portion; but if *bona fide* they have caused this investigation, then it is possible they may be allowed their costs; but I think it exceedingly improbable, because, as to the greater portion of the debt, it has been given up long ago, and as soon as it was given up, if anything turned on that difference, then the opposing creditors ought to have withdrawn from that opposition.

I am sorry to observe that a good deal of unnecessary acrimony has been imported into the matter. I think as a matter of moral conduct there is no reason to impute any fraud to Laing and Campbell.

If you will let me have copies of these accounts, I must spend a portion of my vacation in looking through them.

Mr Bagley: There will be no order drawn up with reference to your opinion to-day.

The Commissioner: No.

The following certificate of the market value of spelter in August, 1854, was made by the undersigned after the Court had risen. It shows that the bankrupt's estate benefited by Messrs Laing and Campbell selling the spelter at the time they did, the spelter having realised 20*l.* 5s. to 22*l.* 10s.

London, July 16, 1857.

We, the undersigned, certify that the market value of spelter on the 3rd of August, 1854, was £20 5s. per ton.

James & Shakespeare, Metal Brokers.

Ja. Herz, Merchant, Importer of Spelter.

On the 1st of September, 1857, Mr Commissioner Fonblanque delivered judgment as far as regarded THE PROOF OF MESSRS LAING AND CAMPBELL, which, he pronounced, OUGHT TO STAND. In doing so he confined himself to the following observations:—

MR COMMISSIONER FONBLANQUE: I have no more to say than that this is a case which I cannot understand; and if anybody tells me that they can understand it, I shall be very much surprised at their intelligence. But as the matter stands, with books on the one side, and the case of the other side being unsupported by papers and books, I HAVE NO HESITATION IN SAYING THAT THE PROOF OUGHT TO STAND. I will give a more formal judgment, if you wish it; but it is my impression that I cannot disturb the proof without evidence. I must say, however, that Messrs Laing and Campbell, by omitting to detail the deposits, are not quite so regular as they might have been. You may take my judgment, that it is to stand as reduced, and the question of costs will stand over.

The Commissioner's final adjudication took place on the 13th of November, 1857. The question before the Court was, whether Messrs Laing and Campbell were entitled to their costs out of the estate. Mr Bagley, in opposition to their claim for costs, was again heard at great length, but his speech was for the most part a repetition of what he had previously stated on the 2nd of July, and which has been reported in full. The reply of Mr Lawrance, on the part of Messrs Laing and Campbell, went also into matters already discussed, but upon one point, which had been made a ground of objection against Mr Laing, viz., his position as trade assignee to Cole's estate,—he entered into the following clear and satisfactory explanation:—

Let us see what was Mr Laing's position, and I disclaim any wrong intention as to being assignee either as against himself or any other person, not only at that time, but in all subsequent proceedings. Although there was a contested choice, and two lists were proposed, I do not know where they are, but they ought to be on the file of the Court. Mr Laing's name was in both lists, from his being a large creditor, and from his mercantile experience, and the result was that Cole was prosecuted. Mr Laing was considered by all to be a proper person to be assignee, and his name was in both lists—whether for 11,000*l.*, or 7,000*l.*, or nothing, he would have been assignee. Nobody had said that his position had interposed any difficulty as to investigating the account. Mr Laing had his duty as assignee, and as a merchant of the city of London, and instituted a prosecution against

the bankrupt for issuing forged and fraudulent warrants, in respect of which Mr Laing's debt partly consisted. The securities turned out to be worthless. The bankrupt was convicted and sentenced to four years' imprisonment in Newgate, and it was not until after that conviction, and the bankrupt had undergone some portion of his imprisonment, that Sadgrove, an upholsterer, of Finsbury, and another creditor, Bailey, whose debts did not together amount to 100*l*., instituted these proceedings, and when the creditors applied, the Court directed, I think, at the instance of the assignees, that there should be an inquiry, and Messrs Quilter, Ball, and Co. were engaged in the investigation, but they said they could see no objection to Mr Laing's account. The amount was subject to investigation, because the goods had not been realised, and nothing had been paid—in fact, there was no dividend until the value had been ascertained. If my friend's clients had come in before Mr Laing's proof had been reduced from 11,000*l*. to 6,000*l*., it would have been a *primâ facie* case, and the creditors would have said that; but who can say that the reduction was caused by the proceedings of the creditors, or in consequence of any pressure. Not so; the reduction was made months before to the amount at which it now stands, which was ascertained before my friend's clients interfered, and it has not been altered or displaced in the smallest degree. When we are talking of the parties who instituted these proceedings, we find that one of them was a creditor for 50*l*. and one for 30*l*. It is idle to affirm that this was a *bonâ fide* inquiry on the part of creditors. The idea is ridiculous: there is no doubt it was pursued on behalf of or at the instance of the bankrupt. What person in his senses would proceed in an inquiry of this kind who is a creditor for only 20*l*. No doubt it was to gratify some person behind the scenes, in consequence of the trial and conviction of that arch-offender, Cole. I assume that Mr Laing had been appointed assignee improperly, and that he improperly used the power he had. The creditors' course was to apply to the solicitor of the assignees, and point out the anomalous position in which they stood to the general body of creditors, or to apply to the Court to proceed to a new choice, and that Mr Laing be displaced; or, failing in that, then the Court would have directed an inspector to be appointed. That course was not taken, but many months had elapsed before anything was thought of. The last of Mr Laing's transactions were in August 1854, and then he became bankrupt; in September Mr Laing proved his debt, and in 1855 the reduction was made from 11,000*l*. to 7,000*l*., and no step was taken on behalf of any creditor to impeach Mr Laing's proof until April 1856.

Mr Bagley had laid great stress on the fact of Mr Laing being an assignee, but this position—as Mr Lawrance observed—*he must have occupied under any circumstances*, his name having been placed not only on the list of Messrs Linklater, but on that of Mr Seweil, who *personally canvassed Messrs Laing and Campbell* in the first instance, in the hope of being appointed Attorney to the estate. Being disappointed in this expectation, he then made an attempt to oppose their claim.

Mr Murray also testified as he had previously done, to the perfect accuracy of Messrs Laing and Campbell's accounts, and their voluntary reduction of their claim upon Cole's estate, which reduction was not taken up as a charge against Messrs Laing and Campbell until Messrs Preston and Webb came into the matter. Mr Murray being a perfectly disinterested party, we give his remarks in full.

Mr Murray: I understand the question is, whether we should bear costs — whether we should bear the expenses of this investigation. At the choice of assignees we had nothing to do with that. The choice was made without my knowledge, and I then became solicitor to the assignees, and I discovered that Mr Laing's proof was admitted, subject to investigation. There were a great many meetings, and Messrs Quilter, Ball, and Co. were appointed accountants to investigate the case, and under my own direction, and under my own personal exertion the proof was gone through. I do not say that the proof was reduced by the books, but it was reduced voluntarily to the amount of 6,919*l.* 19s. 7d., and a little subsequent investigation reduced it to 6,874*l.*, the amount at which it now stands. The official assignee had investigated these accounts, and the bankrupt had been up several times. I went through the account myself with the assignees and Quilter, Ball, and Co. until somewhere about May 1856, when Messrs Preston and Webb came into the matter. The first intimation is on the 12th May 1856, the dividend having been declared previously. The proof had been reduced, and it was after the dividend order had been made when the following letter was received (copy produced).

Mr Bagley: I do not know anything about this letter. We have had no notice about it.

Mr Murray: It was written by the partner of Mr Webb.

Mr Webb: Before the partnership.

Mr Murray: Yes; Mr Preston was a clerk at the time. The letter is one sent from myself to Mr Graham:

"London street, May 13, 1856.

"Dear Sir,

"*Re* Cole.

"On the other side I send you copy letter I have this morning received from Mr Preston, solicitor to Mr Cole, with a copy of my reply. If you think the bankrupt's attendance is necessary on any point, please let me know; but as the bankrupt is now undergoing his sentence, I do not think it right upon any light grounds to apply to the Commissioner for his attendance at the Court—and certainly not until we have exhausted all other modes of obtaining information.

"I remain, dear Sir,

"Yours truly,

"William Murray.

"G. J. Graham, Esq.,
"Official Assignee,
"Coleman street."

"9 Carey street, Lincoln's Inn, London,
"12th May, 1856.

"W. Murray, Esq.,
"London street.

"Dear Sir,

"*Re* COLE.

"I have applied to Mr Graham on behalf of the bankrupt in this matter, to have a day fixed for the bankrupt and all other parties to be examined in the investigation which, in justice to the bankrupt and his estate, ought to be proceeded with as to the claims of Messrs Laing and Campbell and other parties, now standing over for information. I have also requested that I may, on behalf of the bankrupt, be present at all meetings when the disputed accounts are gone into, and shall be obliged by your informing me if, on behalf of the assignees, you concur in a meeting to be held for the proposed examinations, and if I may expect to receive notice from you enabling me to attend.

"Yours truly,
"JOHN H. PRESTON."

Well, Sir, that is on the 13th of May, and the matter then goes on until the 14th of May, when another letter of a similar nature is sent. After that nothing further took place until he called upon me the day before the meeting, on the 19th of June, when he said he was instructed to conduct the investigation on the part of the creditors. On the part of the assignees we were ousted at once, and I think it a great deal too much that two creditors should conduct an investigation of this sort without telling us what were the grounds, the matter being taken out of the hands of the official assignee, the trade assignees, and the solicitor to the assignees, and then come and say we are to pay all the costs of it. We are to bear our own expenses, and we are also to pay the expenses of having this investigation for a long time, ending in nothing. I need not tell you that, on the part of the estate, I should not consider it my duty to consent to any such application. A gentleman from Liverpool takes upon himself the responsibility of costs, and I am told he is a very respectable person; but he has no knowledge of this case. It was neither more nor less than the application of the bankrupt, for the creditors know nothing about the case, and rush into it without reference to the wishes of either the trade assignees or official assignee. Was he not put in is the question, for not the slightest examination was taken. I confess it appeared to me that the majority of these examinations were giving the bankrupt a sort of field-day from his quarters at the other end of the town. I could not discover any utility at all in his presence. If you had made an order for the payment of the dividend upon the proof as it stood at 6,800*l.*, and the creditors having prevented Mr Laing from doing so, we are now told you must pay our own expenses. I do not think gentlemen should come upon us in this way when we were willing to relieve them. When creditors put themselves forward without at first attempting to get the information sought for, and then come and ask the assignees to pay their costs when their investigation ends in nothing, there is no pretence that any creditor should lose a farthing of his dividend because these gentlemen were pleased to have an investigation of this sort. The costs will amount to several hundred pounds, and what have the creditors done that they should sustain any loss. The assignees are just

in the same position. We are to pay our own costs and their costs, because they have made a speculation and have failed in it. My application is, not that we should pay any costs, but that the failing creditors should pay the costs incurred.

Mr Bagley having replied, the Commissioner delivered the following judgment:

The Commissioner: The question of costs is within a much more narrow compass than would at first sight appear. As a general rule, where creditors interpose to expunge or reduce a proof, they are liable to costs if they fail. Otherwise a creditor who has proved would be in this unfortunate position, that he would be subject to great costs and considerable vexation by persons who would be under no responsibility, either as to their commencing or continuing their inquiries. So also the Court has frequently laid it down as a rule, that wherever any individual creditors or any individual creditor interposed and takes out of the hands of the creditors their functions, he must do so under liability to costs. Now, in the present case there was some reason for an independent creditor (supposing he had been otherwise justified) in taking upon himself to investigate these accounts separately from the assignees, because the accounting party, Mr Laing, was himself an assignee. I think that this was in some degree a sufficient reason for their instituting the inquiry; but then another question arises—Did they continue that inquiry longer than they ought to have done? Mr Bagley said very emphatically not for an hour. I do not admit that. My opinion is that there was reason for commencing the inquiry, the reason being that wherever assignees' accounts are disputed, or not perfectly clear, it is competent for creditors to investigate them, there being obviously the belief that Messrs Laing and Campbell had proved for a much larger sum than they ultimately proved to be entitled to. But it was very soon clear to me—and I assume to myself no extraordinary powers of foresight in having done so—it appeared very clear to me at a very early point that the inquiry could not result in anything very beneficial to the estate, beyond the reduction which, it appears, was not due to the inquiry; for the only grounds of impeachment appear to have come from the bankrupt, who appeared to have suggested the most extravagant pretensions, not only as to reducing the proof, but as to bringing in Messrs Laing and Campbell as debtors. I am at a loss to find anything that could have instigated these creditors, except that it came from the bankrupt himself: there is not one tittle that is not derived from the bankrupt's information or from the examination of Mr Laing. That examination, in the latter part of it, assumed to me entirely the appearance of what may be termed a fishing examination—nothing founded upon previous knowledge of the facts, but calculated, as it were, to throw in a hook by chance and pick out something. It being my opinion, therefore, that the examination, although there was some reason for commencing it, was not justified in its continuance; and, being unable to fix any exact proportion of costs, I must take an arbitrary measure and say that up to the third examination the inquiry was justifiable, but by the end of the third examination I think it ought to have been apparent to these creditors, if they acted upon their own impressions, and not at the instigation of the

bankrupt, that it was incumbent upon them to hold their hands, for they had gone far enough to perceive that they were not justified in going forward with the examination, or further harassing Mr Laing. My judgment, therefore, upon the question of costs, is, that the opposing creditors shall pay to the estate the costs of this investigation, allowing them to set off the costs of the three first meetings. The trade assignees will of course have their own costs; but I say nothing about the costs of Mr Laing, but that he must bear his own costs, in consequence of his imprudence in proving for a larger sum than he was entitled to. I do not think he did this from any ill motive of putting money into his own pocket. He committed, I consider, an irregularity, and I think a considerable irregularity, in not having preserved the particulars of the deposits. If he had done so, this investigation would have occupied probably two or three hours only, instead of two or three years. It is in consequence of that fault that he must pay his own costs.

Mr LAWRANCE: The assignees are entitled to their own costs. The Commissioner proposes that the creditors should pay them. The assignees will primarily get them out of the estate.

The COMMISSIONER: One point (I have already mentioned it in my judgment) with the opposing creditor is, that they must have known at a very early period of the proceedings that they could not contest the evidence the bankrupt Cole could give against the evidence of Mr Laing and Mr Laing's book-keeeper and his books generally, with the single defect of not having vouchers for the deposits. Against these three they had only to place the bankrupt, and it is impossible to say that, taking that alone, any jury (I am obliged to stand both as judge and jury) would have decided in their favour. If any order is necessary, the order will be for the proof to be reduced to the present amount. Twenty-one days will be allowed for consideration as to appeal.

Before this Address is brought to a close, one or two brief remarks on the points most insisted on by the counsel for Cole are necessary.

They relate to the alleged deficiency in the sale of the cochineal,—to the destruction of the deposit notes,—and to the amount of Messrs Laing and Campbell's original claim on Cole's estate.

As to the first of these questions, it must be repeated, that the whole of the cochineal received from Cole was sold before the end of 1853, and the account sales furnished immediately afterwards—six months before any doubt arose respecting the bankrupt's position, or any knowledge arrived at by Messrs Laing and Campbell of the existence of the

false warrants. During the long interval from January 1854 to May 1856,—a period of more than two years,—not a question was raised, either with regard to the correctness of the account sales or a deficiency in the cochineal deposited by the bankrupt, by Cole himself or by any other person interested in the estate; nor, setting these facts aside, is it at all probable that a person in Cole's position, pressed as he was by Messrs Overend, Gurney, and Co., would have allowed so large an unavailable amount to remain in the hands of any one.

It must be borne in mind that the challenge respecting the deficiency in cochineal was made *two years and a half after the cochineal had been sold!* Can it, then, be wondered at that, after this great lapse of time, Messrs Laing and Campbell should not have preserved a quantity of worthless papers connected with transactions which had so long been closed? The Commissioner observed upon the absence of these papers, but without attaching due weight to the information given him,—*that there is not a house in London in the habit of preserving similar documents.*

With regard to the original claim of Messrs Laing and Campbell upon Cole's estate, it has been clearly shown that it was not in the first instance an absolute but only an approximate claim made in the amount it set forth, *at the instance of Messrs Linklater and Co., at that time the attorneys to the bankrupt,* and that its reduction to the figure at which it subsequently stood was the voluntary act of Messrs Laing and Campbell, influenced by no external pressure, but solely by the knowledge which they subsequently acquired of the actual state of their account.

It is also of the utmost importance to remember that the bankrupt Cole himself, in handing Mr Murray a list of his creditors on the 23rd of March, 1855, set down Messrs Laing and Campbell's claim upon his estate at the sum of

8,273*l.* 16s. 11d.; exceeding Messrs Laing and Campbell's own statement of the account by about 1,500*l.**

The motives of the parties who instigated this long-protracted examination into claims, the accuracy of which there existed no real ground for questioning, cannot be better shown than by extracting from the 'Times' newspaper of the 10th of June, 1856, the *exposé* there given.

(*From the* Times *City Article of June 10th*, 1856.)

Mr Seton Laing, whose firm of Laing and Campbell sustained a heavy loss from the delinquencies of Joseph Windle Cole and Davidson and Gordon, has discharged a duty to the mercantile community by publishing a history of the entire case. As assignee to Cole's estate, he had opportunities of unravelling many circumstances that would never otherwise have been exposed, and the narrative now given will engage the attention of every commercial reader, not only by the magnitude of the amounts involved—the total of the fictitious warrants circulated by the three bankrupts, having been 518,000*l.*—but also, as regards Davidson and Gordon, by the remarkable interest of the incidents connected with their flight and capture. But for the determination of Messrs Laing and Campbell, and of Mr J. R. Beard, of Manchester, who had likewise been defrauded of a large amount, the whole affair would not only have been hushed up, but there would have been every probability of these criminals again, in the course of a few years, figuring as the heroes of some new system of financial villany. From the first moment of detection down to their recent trial at the Central Criminal Court, the effort on almost all sides appears to have been to screen them, and the disregard of labour, danger, and expense with which Mr Beard tracked them, in the face of all the obstacles thrown in his way, presents a singular instance of indomitable perseverance. The inertness of the Mansion-house officers, the venality of the Belgian and Swiss police, the apathetic haughtiness of the British functionaries at Naples, the ultimate straining of judicial scruples on every technical plea, and, finally, the resolution of the City Solicitor not to carry forward an independent prosecution, con-

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* Extract from Mr Murray's statement in Court, July 2, 1857.

"From the 6th of December his (Cole's) examination was adjourned till the 29th of June, and on the 26th of January, 1855, it was again adjourned till the 23rd of March, 1855, and on that day the bankrupt furnished his account. That was the first time I had any opportunity of ascertaining the amount of the debt of any of the creditors, and the amount of anything like the assets of the bankrupt's estate. *On turning to that account I find that Laing and Campbell were returned by the bankrupt as creditors in the sum of* 8,273*l.* 16s. 11d.—with this remark—'this balance is contingent on the goods held realising cost.'"

stituted a series of advantages for the culprits such as, if foreseen, might have deterred any one at the outset from attempting to bring them to justice. Lord Clarendon, however, and Sir Peter Laurie appear to have been exceptions, and to have strenuously desired to assist the creditors as much as possible. A main object of Mr Laing's work is to put upon record the position occupied throughout the affair by Messrs Overend, Gurney, and Co. That it is one which admits of no justification the public are already aware. Upon that point the Recorder, the City Solicitor, and the examining magistrate appear all to coincide, and, if less has been publicly said about it than was deserved, the reason may be found partly in consideration of the peculiar circumstances which prevailed in the Money-Market when the lapse occurred, partly from a knowledge of the penalty already paid for it in the loss of 120,000*l*., and partly from the universal respect and even affection created by the beneficent life of the senior partner of the house—a life which terminated last Thursday, the very day of the issue of the present work. It is, moreover, to be remarked that the habitual tone of the commercial public towards all great insolvents is such as to encourage the most deplorable laxity. The instant a failure is announced, provided it be of sufficient magnitude, all the creditors are anxious to put the best colour upon it, and when the surplus which is at first invariably predicted dwindles to a compromise of a few shillings in the pound, all the sympathy is still with the broken speculator, even though it may have been demonstrated that he has been living for years upon the money of other people. If a banker be among the creditors, he is only too happy to be allowed quietly to write off the loss and hear no more of it. But for the universal prevalence of this feeling no persons of any position would have dared to take the step adopted by some of the leading houses of Liverpool at the time of the failure of Mr Oliver, when they absolutely denounced, by a placard on 'Change, the warning given to the public as to the true state of his affairs, with which they themselves must at the time have been perfectly acquainted. Neither would either any respectable barrister or solicitor have promulgated such statements as those reported on Friday in the Vice-Chancellor's Court—namely, that the conduct of the directors of the Cheltenham and Gloucestershire Joint-Stock Bank, in declaring a dividend out of pretended profits, when they had reason to apprehend the whole capital of the Bank had been swept away, was most wise and judicious. The punishment of Sir John Paul, who betrayed himself through a want of legal acuteness, is looked upon as a great vindication of the determination of society in such matters; but, if society will tolerate a state of the law which gives perfect impunity, as in the case of the Westminster Improvement Commission, the Aberdeen Bank, and a multitude of other instances, to those who are shrewd and wealthy enough to avail themselves of its anomalies, they must take their own share of blame, not only for the actual offences thus stimulated, but also for the general decline of that scrupulousness and mutual good faith which has been the characteristic of English men of business.

In conclusion:—It would have been much more satisfac-

tory to Messrs Laing and Campbell if Mr Commissioner Fonblanque had possessed a better knowledge of the figures in this case. Had he been fully aware of what the accounts signified, he could not have failed to be impressed with the precise and conclusive statements of Messrs Quilter and Ball, the well-known accountants, and of Mr Murray, the experienced attorney to the estate, all of whom EXPRESSED THEIR CONVICTION THAT NO POSSIBLE REASON EXISTED FOR QUESTIONING THEIR CORRECTNESS.

If Messrs Laing and Campbell had not resolved at once to punish Cole, after rejecting in the most absolute manner the sum which was offered by his solicitor, Mr Digby, there is little doubt that he would have been allowed to resume his swindling career, most probably under the continued patronage of the same house which had so faithfully concealed his gigantic frauds from the public.

As the representative of public opinion on a matter of so much importance to the public as commercial integrity, the annexed summary of the proceedings in Bankruptcy which have chiefly occupied these pages is given in the 'Times'' Money Article of Nov. 14, 1857:

At the Court of Bankruptcy yesterday Mr Commissioner Fonblanque gave judgment on a long pending investigation into a proof against the estate of J. Windle Cole, a bankrupt, by Messrs Laing and Campbell, for 6,874*l*. The proof was upheld. *The decision removes from Messrs Laing and Campbell any imputation of having wronged, or intended to wrong, other creditors of the estate.*

See Times

18th 20. 21. & 23rd Decr 1858

Defence of the Bankrupts before
Goulburn 23rd Decr 1858 in
papers of 24th.

Judgment 5th June 1859