

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

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

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

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

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

The charges in the said letter are as follows:—

"1. Notwithstanding that I petitioned to have my bankruptcy in the above-named petition [*i.e.*, petition of Harper and Co., 1st April, 1885] annulled, Mr. Latter proceeded to deal with my estate. He employed a solicitor and incurred costs, which Mr. Justice Johnston informed him ought not to have been incurred, and refused to allow." The order of Court [Exhibit Q] shows that these costs were not disallowed, but were ordered to be paid by the petitioning creditors.

"2. After the adjudication was annulled, on the 3rd June, 1885, on the ground that it was brought for the purpose of stifling my action against the Harpers, not, from the 3rd June, 1885, until after September 20th, 1885, did I get him to relinquish his hold on my estate. 3. I many times applied for information to Mr. Latter, but was refused same. 4. After I was adjudicated bankrupt on the 6th of August, 1886, by Mr. T. S. Weston, I made many applications to the Official Assignee for information as to matters in the first bankruptcy. This information I could not obtain. He told me as his reason that he had no records of the business; and it was only through the courtesy of Mr. Eyes, his chief clerk, that I eventually got access to the papers. By withholding this information the Official Assignee gave Mr. H. S. Austin the opportunity of extorting from me upwards of £150. 5. The Official Assignee admitted a claim for £5,138 of T. S. Weston, sole executor of Hyam Nathan, which was bad on the face of it, and not provable in bankruptcy. 6. He permitted one Haskins to alter his declaration of proof of debt nearly four months after adjudication, showing that his claim was £20 odd instead of £121 1s. 9d., as originally proved for. 7. He has allowed Mr. T. S. Weston, as trustee in Nathan's estate, to withhold my business books, although I have repeatedly applied for them, and asked to be allowed to inspect them." None of these charges require any comment. So far as they are material, they are fully disproved by the evidence of Mr. Latter and Mr. Eyes.

"8. He (Mr. Latter), on oath, on 21st or 29th March, 1887, denied having received from me a second statement of assets and liabilities in October, 1886. Mr. Fisher, his clerk, was sent to the office, at the suggestion of Mr. Holmes, to search for the document, and returned, saying it was not there. The following morning I called and copied the document, which had been there all the while." The document in question is Exhibit R. Mr. Latter and his clerks were quite right in not recognising it as a statement of assets and liabilities. At the same time Mr. Ell may perhaps have thought that it was such.

"9. On the same day—21st or 29th March, 1887—the Official Assignee stated in Court, in answer to Mr. Holmes, that there was no value in the estate, and that he formed that estimate from a private conversation he had with Mr. Leonard Harper. This statement would naturally mislead his Honour Mr. Justice Johnston. In face of this, Mr. Latter was well aware that, under a judgment by consent, £2,404 was paid into Court on the 10th June, 1885, which, with costs and accrued interest, had by that time amounted to upwards of £2,600, such sum being irrespective of the amount shown on my statement of assets and liabilities, filed by me on 15th September, 1886, and in October, 1886. That judgment was then and still is to the credit of the cause." Mr. Latter's evidence appears to me fully to answer this. He is corroborated by Mr. Harper as to the fact that they never had any conversation about Ell's affairs. He is still of opinion that there is no value in the estate; and, after fifteen months have elapsed since the bankruptcy, he surely ought to know.

"10. That it was mooted in April, 1885, between the defendant's solicitor, Mr. J. C. Martin, and the Official Assignee, to sell my actions at law against Harper and others, which would have prevented me from obtaining common justice." It is difficult to understand why this is brought as a charge against the Official Assignee. Nothing was done upon it, or could be done except by the creditors.