

Department of Justice

COMMISSIONER'S REPORT

ON

LATE ENGINEER, KINGSTON PENITENTIARY

Department of Justice.

COMMISSIONER'S REPORT ON CHARGES PREFERRED AGAINST JAMES DEVLIN, LATE ENGINEER OF KINGSTON PENITENTIARY.

To the Honourable DAVID MILLS,
Minister of Justice,
Ottawa.

SIR,—In conformity with the directions contained in the Commission issued to the undersigned by the Governor in Council, under the authority of chapter 114 of the Revised Statutes of Canada empowering him to investigate certain charges of conspiracy to defraud the revenue, preferred against James Devlin, late engineer of the Kingston Penitentiary, your Commissioner begs to submit the following report :—

After the receipt of a letter from the Deputy Minister of Justice transmitting the Commission and a copy of the charges, several weeks were occupied at Ottawa, Kingston and Montreal in examining departmental files and official correspondence, and in procuring books, accounts, vouchers and other evidence relating to the inquiry. The charges embrace a period extending from 1886 to 1894, and the difficulty of obtaining many of the original documents relating to the matters to be inquired into protracted the investigation much longer than was at first anticipated. The absence from the country of two witnesses also contributed to delay the proceedings; and it frequently happened that matters arose during the conduct of an examination which made an adjournment and further investigation absolutely necessary in the interest of a full and impartial inquiry.

In the course of the investigation sittings were held as follows :—

- At Kingston, January 20th and 21st, 1898.
- At Montreal, May 16th to 20th, 1898.
- At Kingston, May 21st to 25th, 1898.
- At Montreal, June 11th and 13th, 1898.
- At Ogdensburg, June 18th, 1898.
- At Ottawa, July 12th and 13th, 1898.
- At Ingersoll, July 14th, 1898.
- At London, July 14th, 1898.
- At Toronto, July 16th, 1898.
- At Ottawa, August 4th, 1898.

At the first sitting held at Kingston, Mr. Devlin was present with Mr. William Lount, Q. C., as his counsel, Mr. M. J. F. Quinn, Q. C., M. P., of Montreal, was also in attendance at this sitting but took no part in the proceedings. At the subsequent sittings at Kingston, Montreal and Ottawa (except the last at the latter city) Mr. Devlin was again present and had as counsel Mr. M. J. Morrison, of Quinn & Morrison, Montreal. Mr. Quinn also attended the first sitting at Montreal and in the course of the proceedings asked to be allowed as a member of Parliament interested in the administration of public justice to examine one of the witnesses. This request was granted and thereupon Mr. Quinn examined the witness who was giving evidence at the time. Although duly notified of the sittings at Ogdensburg, Ingersoll and London, Mr. Devlin did not attend any of them, nor was he represented by counsel. Upon the conclusion of the sitting at London, on the night of 14th July, 1898, it was found necessary to examine witnesses at Toronto and an adjournment was accordingly made to that city. Owing to Mr. Devlin's voluntary absence from the Ingersoll and London sittings, and as he was not represented by counsel, it was impossible to give him formal notice of the sitting at Toronto. However, the evidence taken at Ogdensburg was read over to Mr. Devlin and his counsel at the next sitting held thereafter, and a copy of the evidence and proceedings at Ingersoll, London and Toronto was furnished by the official steno-

grapher to Mr. Morrison, counsel for Mr. Devlin. At Mr. Morrison's request it was arranged to hold a sitting at Ottawa on 4th August, 1898, to receive Mr. Devlin's answer to the evidence taken at Ingersoll, London and Toronto. Mr. Devlin did not attend at Ottawa on the date mentioned nor did his counsel, but the latter sent a written communication containing Mr. Devlin's answer, and this is embodied in volume IV. of the Record. Thus Mr. Devlin has replied to all the evidence adduced in support of the charges.

The witnesses examined at Ogdensburg were sworn by Mr. Dennis B. Lucey, Notary Public. A certificate from the clerk of the court for St. Lawrence County, New York, showing Mr. Lucey's authority to administer oaths as a Notary Public, will be found with the papers returned to you herewith.

The investigation was formally opened in the inspector's office at Kingston Penitentiary on the morning of 20th January, 1898, by the reading aloud of the Commission and the charges.

The latter were as follows:—

"To James Devlin, of the city of Kingston, in the province of Ontario, engineer, and late engineer of the Kingston Penitentiary:—

"SIR,—You are hereby notified of the following charges against you of conspiring with sundry parties to defraud the Crown in connection with contracts given to them for goods furnished by them to the Kingston Penitentiary:—

"*First.*—That you conspired with one Frank Gormley of the city of Montreal to defraud the Crown to the extent of about \$60, in connection with the purchase of a Balata belt in December, 1894.

"*Second.*—That you further conspired with the said Frank Gormley to defraud the Crown to the extent of about \$400 in connection with the supplying of plumbers' fittings for the prison of isolation, from June, 1892, till April, 1893, by allowing the substitution of goods of less value than in the tender, by certifying to the delivery of more goods than was delivered, and generally agreeing to the changes in the specifications for the benefit of the contractor.

"*Third.*—That you further conspired with the said Frank Gormley to defraud the Crown to the extent of about \$800 in connection with the purchase in July, 1894, of two pumps, revolution counter and governor from Frank Gormley, the latter using the name of J. A. Rafter & Co. to your knowledge. That you allowed the substitution of goods and certified to the delivery as per contract.

"*Fourth.*—That you conspired with Garth & Co. of the city of Montreal or some one or more of the members of the said firm, to obtain for them free convict labour in connection with their contract for the heating of the Protestant chapel and dining hall, during November, 1886, such free convict labour not having been agreed upon under the contract.

"*Fifth.*—That you further conspired with the said Garth & Co., or some of the members of the said firm, to make changes in the specification for steam pipes and fittings for the new separate ward in December, 1891, by substituting wall coil stays for wall coil pipe stays, the reason for such changes being that the tender of said Garth & Co. for the goods as per original specification was too high.

"*Sixth.*—That you did further conspire with the said Garth & Co., or some of the members of the said firm, to defraud the Crown in connection with the substitution of 6-inch for 8-inch wrought iron pipe in July and August, 1892, by allowing them to charge 69 cents per foot for pipe instead of 66 cents as agreed on, and further by allowing them to charge freight while the pipes were to be delivered free at Kingston."

Prior to the calling of witnesses your Commissioner thought it proper to define the scope of the inquiry and the procedure to be followed, and he accordingly made the following statement:—

"Before proceeding further with this investigation I deem it advisable to place on record the position which I occupy as a Commissioner, and to emphasize the difference between the powers conferred upon me and those conferred on the Commissioners last year. The former Commissioners were authorized to make an investigation into the

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internal management of the penitentiary generally, and not as to specific facts or in connection with the doings of any individual. On the other hand I am instructed to investigate into six charges of conspiracy to defraud the revenue preferred against Mr. James Devlin, and into these charges it is my intention to make the fullest inquiry. A copy of the charges just read were sent to Mr. Devlin by the Deputy Minister of Justice on the 6th of November, 1897, and on the 16th of November, 1897, Mr. Devlin filed a written answer and defence, in which among other things he says :—

“That if the said answer in the opinion of the Honourable Minister of Justice be not sufficient, he is prepared to prove the allegations thereof by the testimony of himself and other witnesses at such time and place and before such tribunal as the Government may deem proper.

“The position taken by Mr. Devlin would imply that the evidence adduced by the Commissioners last year could be used against him and that he was required to combat such evidence and to enter at once upon his defence. However, it appears to me as well as to the Honourable the Minister of Justice, that it would not be fair to Mr. Devlin to place him in such a position, and, therefore, it is my intention to call all witnesses before me and to examine them in the presence of the accused and his counsel, so that the fullest opportunity may be given for cross-examination. I may add that it is also my intention to afford the accused the fullest opportunity to prove his innocence of the charges made against him.”

The course outlined in the foregoing statement was strictly adhered to, and the proceedings throughout were conducted as nearly as possible after the manner of a judicial inquiry. In order that Mr. Devlin might have the benefit of his written defence it was identified and filed as the first exhibit in the case, but in presenting his subsequent defence Mr. Devlin was not at any time restricted to the contents of this document as he was left at perfect liberty to cross-examine witnesses and put in such additional evidence as he and his counsel deemed proper. Care was taken also not to close the investigation until after Mr. Devlin had announced that he had no further evidence to offer.

In setting forth the subjoined result of the inquiry the charges are considered *seriatim*, and the opinions expressed with regard to them are based on a careful and exhaustive analysis of the whole case.

FINDINGS.

Charge 1.—That you conspired with one Frank Gormley of the city of Montreal, to defraud the Crown to the extent of about \$60 in connection with the purchase of a Balata belt in December, 1894.

On 20th May, 1894, Engineer Devlin sent a requisition to Storekeeper O'Donnell for a six ply endless Balata belt. Two days later, on 22nd May, O'Donnell forwarded to Frank Gormley of Montreal, an order for the six ply belt specified in Devlin's requisition. Nearly six months afterwards Gormley purchased a five ply Balata belt from Thomas Forrester of Montreal for \$117.05 and this belt was the one sent to the Kingston Penitentiary. Gormley's invoice is dated 2nd December, 1894, and purports to be for a six ply belt for which he charged the penitentiary \$178.76. This invoice is certified as correct by Devlin. The official voucher for the payment of \$178.76 for the belt is also dated 2nd December, 1894, and in it Gormley again represents the belt to be six ply.

In connection with this charge it may be said at the outset that the custom followed in purchasing goods for the engineer's department at Kingston Penitentiary as outlined in Devlin's written defence (Exhibit 1) is not disputed. That Devlin's only connection with the ordering of the Balata belt was to make out the requisition for it is a statement not so easily accepted. In fact it is refuted by the evidence of Storekeeper O'Donnell, who swore that Devlin told him to send Gormley the order for the belt, and furthermore that Devlin also told him the belt was of a superior quality and that Gormley had it in stock. This evidence of O'Donnell's was uncontradicted. It is a complete refutation of Devlin's further statement in Exhibit 1 that he did not induce the storekeeper to

send the order for the belt to any particular person. In his written defence Devlin also says that he had no knowledge of the price of the belt until after its delivery when he saw the price entered in the delivery book. This statement is not consistent with the oral testimony, as Devlin himself admitted that prior to the belt being ordered he had an interview with an agent for Balata belting and that the latter left him a catalogue or price list. Although Devlin claimed that Exhibit 130 was not the card or price list the agent gave him, he could not point out any difference between it and the catalogue or price list which he admitted had been in his possession and was handed over by him with other papers to the Kingston Penitentiary Commissioners. Exhibit 130 was procured from among the papers of the Kingston Penitentiary Commissioners and unless Devlin showed in what particular it differed from the card, the agent gave him his bare assertion that it is not the same card, is a statement devoid of credibility.

It was established that Devlin had a knowledge of the quality and price of the belt and where to procure it before he made out the requisition for it which is filed as Exhibit 2. Some time in 1894—the exact date was not ascertained, but it was evidently before the belt was ordered—Devlin had an interview at the penitentiary with A. R. Forrester, traveller for Thomas Forrester of Montreal regarding the purchase of a Balata belt for use in the penitentiary. There is no doubt that it was from A. R. Forrester Devlin received the catalogue or price list which contains in addition to quotations for different sizes of belts the information that Thomas Forrester of 298 St. James Street, Montreal, is the sole agent for Dick's Balata Belting. Despite his knowledge of this latter fact, and his oft repeated assertion that the penitentiary officials had instructions to buy from Canadian agents whenever possible, Devlin told O'Donnell to send the order for the belt to Gormley—a man who was not the agent and who Devlin himself admitted never carried any stock. When the belt arrived at the penitentiary, Devlin made no attempt to find out the number of plies in it, although it was proved he could have done so, nor did he ascertain if in other respects it corresponded with the original requisition and order. In the absence of any examination whatever he certified the account for the belt to be correct. He endeavoured to show that this certificate was put on merely to oblige O'Donnell and to indicate simply that the belt had been received, but this explanation cannot be accepted in the face of the untruth he told O'Donnell in the first place, and in view of his own knowledge before the belt was ordered. Clearly he must accept the consequences of his act in certifying the account. His manifest bad faith in attempting to repudiate his own signature on the account is additional evidence of the duplicity which characterized his conduct in securing the order for Gormley.

Gormley's evidence regarding this charge was very unsatisfactory. Beyond remembering that he bought a Balata belt from Forrester and sent it to the penitentiary he could not recall any other details of the transaction except in a hazy and indefinite way. Although served with a subpoena to produce all papers he did not produce a single one, and when pressed about his default in this regard he admitted that he had made no effort to get any of the papers. He sought to explain the absence of Forrester's account by stating that Commissioner Fraser of the Kingston Penitentiary Commission got all his papers and that Forrester's bill was amongst them; but this and similar statements by himself and Devlin were proved to be without foundation when Mr. Fraser subsequently gave evidence and handed over all papers in his possession to your Commissioner. These papers were carefully examined but none of Gormley's missing documents was found amongst them. Neither Gormley nor any of the other witnesses could give a satisfactory explanation of the delay that ensued between the issue of the order—May 22nd, 1894—and the purchase of the belt—December 2nd, 1894. The facts elicited show that while a 6 ply belt was ordered it was only a 5 ply belt that Gormley supplied, and that he received \$178.76 for a belt that cost him only \$117.05. Evidence was given in behalf of the accused that Gormley's profit was not an unusual one, but such testimony was not pertinent to the issue in so far as it was intended as an answer to the charge made against Devlin. Had he, instead of misleading O'Donnell, told him the truth about the agent for the belt, the order would have gone to Forrester instead of Gormley and the penitentiary would have received the benefit of the discounts allowed Gormley by Forrester. In fact the penitentiary might have secured the belt at a lower price than Gormley did as A. R. Forrester testified that at

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the time it was bought they had "all kinds of prices" and "would allow almost anything" in the way of discounts so as to secure an order.

While Devlin's conduct is in the highest degree reprehensible and open to the gravest suspicion it must be said that the direct evidence does not completely sustain the charge as laid. There is no proof of any communication or intercourse between Gormley and Devlin, but the bad faith of both as disclosed in their evidence, the failure to produce books and papers bearing on the matter, and the fact that Gormley made \$61.71 out of the purchase and sale, are strong elements from which to deduce the inference that there was some understanding between them. They are the only men to say whether there was a conspiracy or not, and they both deny its existence; but when the transaction originated in a lie and its further stages show that a belt differing from the one ordered and of less value was actually supplied, and that the invoice accompanying the belt contained a false description of it which was certified as correct by Devlin, and when, in addition, it is recalled that this dishonest course of dealing enured to the benefit of one of the principals connected with it there is ample justification for inferring that a conspiracy to defraud the revenue did in fact exist.

Charge 2.—That you further conspired with the said Frank Gormley to defraud the Crown to the extent of about \$400 in connection with the supplying of plumbers fittings for the prison of isolation from June, 1892, till April, 1893.

(a.) By allowing the substitution of goods of less value than in the tender.

(b.) By certifying to the delivery of more goods than was delivered.

(c.) And generally agreeing to changes in the specification for the benefit of the contractor.

On 21st June, 1892, Warden Lavell wrote to Inspector J. G. Moylan inclosing a proposal from the engineer to furnish certain material required for the prison of isolation at an approximate cost of \$4,000.

On 7th July, 1892, Mr. Moylan advised the warden that the Minister of Justice had approved of the expenditure for the material as proposed by the engineer. The inspector added: "In asking tenders for material required you will be good enough to include amongst those who may be invited to make offers, Mr. Frank Gormley of Montreal, (107 St. James Street) whom the Minister has been spoken to by a member of Parliament."

On 14th July, 1892, Storekeeper O'Donnell wrote to Gormley sending him a detailed specification and asking him to quote prices on form below—the letter and specification being contained on a double sheet of foolscap paper. A red ink memo on the letter says: "We would like a reply to this in two days after receipt."

It is evident that the other firms were also invited to tender, for, on 16th July, 1892, Garth & Company of Montreal, wrote to O'Donnell stating that the J. L. Mott Iron Works of New York, from whom they had asked prices for some of the goods required, did not make the "detached cisterns" mentioned in the specification, and that they would furnish instead the cistern plate 306G, in Mott's catalogue. They also suggested substituting No. 3 Unitas closet for No. 2 Unitas, as being heavier and more suitable for the work and a cheaper closet as well. At the same time Garth & Company wrote Devlin inclosing him a copy of their letter to O'Donnell and asked his help in the matter.

After the time limited for receiving prices had expired, and after the receipt of Garth & Co.'s letter, O'Donnell, on the 19th of July, 1892, again wrote to Gormley asking,—“What increase to the total would be caused supposing we should substitute No. 11 cistern plate 306G for detached service boxes, thus dispensing with 7 automatic cisterns plate 172—also Unitas unfinished brass trap instead of Cuddels, having strainer fitting &c., as called for in list sent out?”

On 20th July, 1892, Gormley wrote to O'Donnell on the back of the specification agreeing to furnish the goods specified therein for \$3,370 or as amended by O'Donnell's letter of 19th July, for \$3,612. It will be noticed by reference to Gormley's letter that there has been an alteration of the words comprising the first part of the offer.

On 23rd July, 1892, Warden Lavell transmitted to Inspector Moylan who was then in Kingston the following tenders, viz:—

Garth & Co., Montreal	\$4,443 70
McKelvy & Birch, Kingston	3,617 45
Frank Gormley, Montreal	3,612 00

The warden added: "Any of these houses are presumably competent to carry out their engagements. Gormley's tender is not itemized. I suppose it may be inferred he is ready to fill the tender in accordance with the specifications."

Mr. Moylan sent forward the papers to the Minister of Justice with the following recommendation:—"I recommend that the tender of Frank Gormley, Montreal, be accepted being the lowest. The work which he has done here is satisfactory." This was approved by the Minister of Justice.

On 29th July, 1892, Mr. H. B. S. Lane for the inspector notified Warden Lavell that Gormley's tender of \$3,612 had been accepted, and at the same time returned all the tenders. Although searched for, none of the other tenders can be found.

There is nothing of record to show that Gormley was notified that his tender had been accepted, but it is apparent that there was some correspondence with him as in a letter dated 17th October, 1892, Acting Warden Sullivan thus writes to Gormley:—"Your note of the 14th inst. to hand *re* water closets. We have decided on the Tornado. You will please forward as soon as possible."

This note of Gormley's of 14th October, 1892, cannot be found nor is there any record of its receipt in the register at the warden's office, nor is the letter of Acting Warden Sullivan copied in the warden's letter-book.

On 14th October, 1892, Gormley bought from Jordan & Locker, of Montreal, seven No. 3 Tornado closets at \$6.50 each and these were sent to the penitentiary. It will be noticed that the day on which Gormley bought these seven Tornado closets corresponds with the date of his note to Sullivan which brought the latter's reply of 17th October, 1892. Prior to this purchase in October, Gormley had bought from Jordan & Locker, on 26th September, 1892, one No. 3 Unitas closet for \$9, and, subsequently on 9th December of the same year, he purchased from them ten crates containing 119 No. 3 Tornado closets at \$6.50 each.

On 5th November, 1892, Warden Lavell wrote Gormley and inclosed "memo. of engineer" containing final corrected list as "per contract." This list was not produced nor could a copy be found, and thus it is impossible to say what it contained.

On 21st November, 1892, Gormley wrote to the warden acknowledging receipt of the letter of the 5th of November, which he states was handed him by Mr. Devlin, and adds that he has ordered the necessary changes with the exception of the brass tubing substituted for lead pipe. For this change he asks \$107 extra.

On 26th November, 1892, the warden wrote the inspector saying the engineer had recommended brass tubing instead of lead pipe and stating the increase in cost to be \$107, and on 6th December, H. B. S. Lane, for the inspector advised the warden that the Minister of Justice approved of the change and sanctioned the additional expenditure. The warden wrote Gormley accordingly on the 7th of December, 1892.

An attempt was made by Gormley to enter free of duty the goods bought by him from Jordan & Locker and by the latter imported from England in connection with this contract. On 9th December, 1892, Mr. H. B. S. Lane for the inspector wrote Warden Lavell inclosing an account for £178 11s 3d for goods imported by Messrs. Jordan & Locker for Mr. Gormley,—“in order that you may pass free entry for the goods if according to Mr. Gormley's contract.” Warden Lavell replied on 10th December, 1892, that there was no understanding express or implied as to free entry. On 12th December, Mr. Lane telegraphed Warden Lavell that the Minister had decided that Gormley must pay duty.

Gormley purchased the fittings for this contract from the J. L. Mott Iron Works of New York. Their invoices are dated respectively 6th and 7th March, 1893, and show that 117 sets of fittings were bought by Gormley, and it was proved that these were the only fittings sent to the penitentiary. Gormley did not render the department any detailed account of goods supplied but claimed a bulk sum of \$3,612 and \$107 extra for the brass tubing. Both of these amounts were paid to him.

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The prison of isolation that Gormley contracted to fit up contains 114 cells and 3 store-rooms, and in each of these a closet was placed, so that in all there are 117 closets in the building.

(a.) It was established in evidence that Devlin prepared the specification for this contract. The first item of the specification calls for 120 heavy white plain pattern No. 2 Unitas closets with bowls of Twyford's Staffordshire English Pottery. There is nothing to show why Devlin selected a No. 2 Unitas closet in preference to others, nor did he give any explanation of the matter himself. In a box left by him in the engineer's office there was found a catalogue of sanitary earthenware and appliances manufactured by Thomas W. Twyford of Staffordshire, England, and it is reasonable to assume that it was from this catalogue that Devlin got the material on which he based his selection of the closet. The catalogue was issued in April, 1889, and is filed as Exhibit 25. At page 44 of the catalogue the prices of Unitas closets are quoted,—No. 2 being given as \$10.20 each and No. 3, \$8.50 each. At page 48 the price of Tornado closets is shown to be \$6.50 each.

In the course of his examination O'Donnell swore that he was told by Devlin to invite Gormley to tender. As already stated the specification sent Gormley called for a No. 2 Unitas closet, and this is the closet Gormley agreed to supply. He did not do so, nor did he even send a sample closet of this kind to the penitentiary. However, a sample No. 3 Unitas closet, was sent and it is evident that it was forwarded as a result of certain correspondence from Garth & Co., to Devlin and O'Donnell. As previously mentioned when Garth & Co. received O'Donnell's invitation to tender they at once wrote to the J. L. Mott Iron Works of New York, for "best prices of cisterns and basins" and, upon receipt of a telegram in a reply, they sent O'Donnell the letter of 16th July, 1892, containing the terms of the telegram relating to the cisterns and this suggestion: "We think it would be advisable to use No. 3 Unitas closet, as they are a great deal heavier, and more suitable for penitentiary and factory use, the cost will be 50 cents each less No. 3, page 44. We send you Twyford's catalogue by mail." On the 18th July, 1892, Garth & Co., wrote to Devlin inclosing him a copy of this letter to O'Donnell as well as a copy of their tender, and adding: "You might get him to use No. 3 Unitas closet instead of No. 2 as specified."

Devlin was very emphatic in asserting that he took no action whatever regarding this letter from Garth & Co. In view of what happened it is extremely difficult to believe this statement. O'Donnell had kept the letter received by him from Garth & Co. for two days without doing anything in reference to the suggestions it contained, but the very day that Devlin received his letter from the same firm—that is on 19th July, 1892, O'Donnell wrote to Gormley suggesting certain changes and asking what the increased price for these changes would be. When questioned about this letter O'Donnell stated it was sent to Gormley on the strength of a memorandum furnished by Devlin. This memorandum was not produced and in its absence O'Donnell's letter based upon it must furnish the clue to its contents. A comparison of O'Donnell's letter to Gormley, with Garth & Co.'s letter to O'Donnell, establishes that the last mentioned letter is the source from which the suggested changes were taken; and as Devlin had a copy of Garth's letter in his possession when he gave O'Donnell the memorandum it is clear that the contents of this memorandum were substantially the same as those of Garth's letter. This becomes all the more apparent when it is found that certain technical terms used by Garth & Co., are repeated by O'Donnell in his letter to Gormley.

But these are not the only facts that tell against Devlin's statement. He is refuted by himself as he testified that the first change from closet asked for in the specification was suggested by him on account of Garth's letter to O'Donnell, and he admitted that the changes proposed in O'Donnell's letter to Gormley are the same as those mentioned in Garth's correspondence. Now as Devlin inspired O'Donnell's letter to Gormley, and as it is similar in purport to the copy of the letter sent Devlin by Garth & Co., it is impossible to conceive how Devlin can expect any person familiar with these circumstances to believe him when he says he took no action after receiving Garth & Co.'s communication.

There is no evidence to show that Devlin or O'Donnell said anything to Gormley about substituting a No. 3 for a No. 2 Unitas closet as suggested by Garth & Co., but

the fact remains that Gormley sent a sample No. 3 Unitas closet to Kingston Penitentiary on 26th September, 1892. Prior to the date at which Devlin prepared the specification, the soil pipes for the closets had been placed in position. After the No. 3 Unitas closet arrived at the penitentiary it was fitted to one of these pipes, cell No. 3, in the prison of isolation. The horn or outlet of the closet was too large for the pipe and the defence alleges it was for this reason that a No. 3 Tornado closet was substituted for the contract closet. If the No. 3 Unitas closet was the one called for by the contract, and a test demonstrated it to be unsuitable, this might be a good reason for selecting the No. 3 Tornado closet, but when the contract expressly stipulated that a No. 2 Unitas was to be supplied, the reason given for the change is no reason at all. Besides Devlin himself swears that there never was a No. 2 Unitas closet sent to the penitentiary.

Referring to the soil pipes in the prison of isolation, Devlin in his written defence says that they were put in place by Mr. Adams, an officer of the penitentiary, and that they were smaller than the standard pipe, and on that account could not be connected with the "Unitas closet." Devlin refutes this assertion by the evidence of W. G. Simmons, a witness called by him, who testified that the standard soil pipe is a 4-inch one. According to the evidence of James Adams the soil pipes in the prison of isolation were larger than standard pipes and could be connected with a No. 2 Unitas closet without the slightest difficulty. The interior diameter of the soil pipe is $4\frac{3}{8}$ inches, while the exterior diameter of the horn or outlet of a No. 2 Unitas closet is only $4\frac{1}{4}$ inches, thus allowing ample space for the connection to be made. The outlet of the No. 3 Tornado closet has an exterior diameter of $4\frac{1}{4}$ inches also, so that in this respect it corresponds with the No. 2 Unitas.

A test after the contract was awarded should not have been necessary as it ought to have been ascertained before tenders were invited which closet would fit the soil pipes then in place in the building; but if a test were necessary the question that naturally suggests itself is why was a No. 2 Unitas not fitted to the pipes? There is no answer to this question, and it is an extraordinary fact that neither Devlin nor Gormley gave any explanation whatever as to why the very first item of the specification was thus deliberately ignored. If a dozen different closets had been tested and the outlets were found to be too large or too small, that would have been no reason for departing from the specification so long as it was not known whether a No. 2 Unitas would fit or not.

None of the parties concerned seem to have troubled themselves about the closet called for in the specification, and the substitution of the cheap No. 3 Tornado for the more expensive No. 2 Unitas is absolutely indefensible. The closets Gormley should have supplied cost about \$11 each, while those that were substituted cost only \$6.50 each, and it is with the latter that the building was fitted up contrary to the specification and contract.

It was demonstrated by a test during the progress of the inquiry that the outlet of a No. 2 Unitas closet has the same diameter as that of a No. 3 Tornado, and as the defence allege that the latter closet was selected because it fitted the soil pipes it is clear that the No. 2 Unitas would have been just as suitable in point of size. It is true that evidence was given regarding a change that had been made by the English manufacturers in the size of closet horns or outlets, but the date at which this change was made could not be determined and consequently it does not help Devlin in any way.

In his written defence as well as in his evidence, Devlin tried to prove that the substitution of a No. 3 Tornado closet for the one specified in the contract was approved of, if not actually decided upon, by Warden Lavell. The warden, however, would not admit that he had authorized the change directly or indirectly, and the attempt to fix him with responsibility utterly failed when he pointed out that the change was made during his two months leave of absence, from 1st September to 1st November, 1892, and that he had neither been consulted nor had he given any instructions regarding the change prior to his going away. It is also significant that the sample No. 3 Unitas closet and the first shipment of the No. 3 Tornadoes were sent to the penitentiary by Gormley during the two months the warden was absent. The dates of these two shipments have an important bearing on the evidence given by Devlin and Skelly

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regarding an alleged test in cell No. 3 in the prison of isolation, made, it was stated, before the warden went away. It was this test, the defence claimed that revealed the fact that the No. 3 Unitas closet was too large for the soil pipe, and it was asserted that the warden was present when it was made and that he thereupon selected the No. 3 Tornado closet as the one to put in the building, because of its outlet fitting the pipe. The warden denied that he was present at any such test and his denial is corroborated by the fact that the closets with which the alleged test was made were shipped on 26th September and 14th October, 1892, respectively, and that both of these dates fall within the time that he was absent from the penitentiary on his two months' vacation. A further corroboration of the warden's testimony is the fact that the selection was made before his return on 1st November, 1892, as Acting Warden Sullivan on 14th October, 1892, wrote to Gormley advising him that they had decided on the Tornado.

Apart from Sullivan's letter of 17th October, 1892, there is nothing to show when the change from the contract closet to the cheap No. 3 Tornado was decided upon. This letter does not give any indication as to how the decision to make the change was reached nor do the witnesses help to clear up the matter. In his written defence Devlin alleges it was the warden who made the change and that he did so because the soil pipes were too small to permit of connection with the Unitas closet. These statements were refuted by the evidence, as it was shown that the Deputy warden made the change, and that he did so without there ever having been a No. 2 Unitas closet at the penitentiary to test whether it would fit or not, although that was the one called for by the contract.

Devlin in preparing the specification proves that he knew the No. 2 Unitas closet was white in colour, and as the No. 3 Unitas is cane colour there was no possibility of mistaking one for the other. Moreover, he was the person responsible for the proper conduct of the work and it was therefore his duty to see that the closet mentioned in his own specification was sent up to be tested. Having regard to all the evidence bearing upon this branch of the inquiry it must be said that no justification was shown for the change in closets.

Devlin's statement regarding the change of closets having thus been proved to be without foundation it is difficult to avoid the conclusion that the responsibility for substituting the cheaper closet for the more expensive one rests upon Devlin himself. He was in charge of the work,—familiar with its details and active in having them carried out, and the fact that he made no effort to procure the closet contracted for, coupled with the silence of himself and Gormley upon the subject, are features that reflect most seriously upon the conduct of both engineer and contractor. Then when it is recalled that the change was made during the warden's absence, and that the acting warden disclaimed all responsibility for it, there is only other man who could have authorized it, and that man is Devlin. There is no direct positive proof that he did so, although ex-Deputy Warden Sullivan testified that Devlin spoke to him at one time about closets being too small or too large; but in view of all the circumstances it is impossible to believe that any other official had anything to do with the substitution.

From the catalogues in his possession at the time he made out the specification, Devlin must have known the prices of the different kinds of closets, and therefore his dishonesty is made manifest when he stood by and allowed Gormley to be paid for a No. 3 Tornado closet at the same rate as if he had supplied No. 2 Unitas closets when there was a difference in price of \$4.50 upon each closet. A portion of Devlin's written defence is evidently intended as a cloak for such actions, as he says it was no part of his duty to negotiate with Gormley for a reduction in the contract price. Apart from the cynical disregard shown by Devlin for the obligations of his office as a position of public trust, he does not establish that it was not his duty to see that in this instance the price charged was fair and just. It was he who prepared the estimate for this work and none of his superior officers knew anything about the prices except as he may have informed them; and it is safe to say that when a \$6.50 closet was substituted for an \$11 one, Devlin's superiors were ignorant of the difference in price. For him to remain silent under these circumstances and allow Gormley to be paid the full contract price is as deliberate an act of malfeasance as any public official could be guilty of.

Before dismissing this branch of the inquiry it is material to consider Devlin's final testimony regarding the number of changes made in the contract. He enumerated many of these changes and speaking with reference to the ones he mentioned, and to others which he did not specify, he said that while the substituted articles were in some cases of less value than those mentioned in the contract they were an improvement on the goods originally called for, and that by reason of their use he had secured a better class of work and more modern equipment, on the other hand when, on his recommendation, after a personal interview with Gormley, brass tubing was substituted for lead pipe \$107 extra was allowed. Apart from the improvement due to the use of brass tubing no opinion can be expressed as to the benefits which Devlin claimed were the result of the other changes, for the reason that Devlin's statement is a mere general assertion and there is no other evidence bearing upon that particular feature of the contract. Assuming then that what Devlin said as to efficiency was true, he is open to censure for withholding from the warden his knowledge as to the decrease in cost occasioned by these changes, and, as in the case of the closets, permitting Gormley through his default in duty, to reap a profit to which he was not entitled. When Devlin's attention was drawn to the fact that the contractor was paid his original price plus the cost of the brass tubing, Devlin intimated that it was only after the inquiry commenced that he became aware of such payments having been made, and referring to Gormley he said:—"His account was never presented to me for certificate or anything of the kind." This statement, so far as the evidence is concerned is true only if limited to Gormley's account for the original contract, because Devlin certified both the account and the invoice rendered by Gormley for the \$107 extra in connection with the brass tubing. It is extremely suggestive that Devlin should certify his friend's account for the only item that entailed extra cost, while he allowed to pass unheeded or deliberately winked at the items that lessened the cost and which should have been deducted from the amount of Gormley's tender.

(b.) Now with reference to the second part of the charge—that of certifying to the delivery of more goods than were delivered—it may be proper to recall that the prison of isolation contains 117 closets and fittings. Such being the case it is difficult to understand why Devlin made a requisition for 120 closets and 120 sets of fittings. There is no explanation given but the fact remains that he did so. A reason offered by himself was that the 3 extra closets and sets of fittings were specified so as to provide for breakages. This explanation might apply to the closet bowls which were to be of pottery, but it could not apply to the fittings which are of iron or metal. Devlin in his written defence states that he certified to the delivery of 120 closets and 120 sets of fittings and when it was pointed out to him that the building contained only 117 closets he said that the extra sets were placed elsewhere in the penitentiary. Asked to indicate the places where they were put up he could not do so. A tour of the buildings was made and while a number of closets and fittings were found similar to those in the prison of isolation, Devlin could not establish when they were set up, nor would he say that they formed part of the shipment for the prison of isolation. For the latter building only 117 closets and sets of fittings were required, and when Devlin stated that 120 were received the onus was upon him of showing where they were placed. This he failed to do, and his failure is not surprising when his own requisitions were produced showing that he had asked that No. 3 Tornado closets be supplied to the institution at different dates subsequent to the fitting up of the prison of isolation. A further refutation of Devlin's statement that 120 closets and sets of fittings were received is furnished by Gormley's invoices which show that he imported only 117 sets.

In connection with this part of the charge Devlin made a very characteristic and reckless statement which illustrates much of his general line of defence. In explaining why he certified Gormley's account, Devlin at page 4 of his written defence says:—"That the closets, &c., sent by Mr. Gormley as samples and which he shipped from Montreal, formed no part of the 117 imported by him, and which are represented by the import account, but were included in his account for the total number supplied, and hence the seeming discrepancy between the import invoice and the account furnished by the said Frank Gormley." This statement was repeated by Devlin on oath, but when confronted with one of his own requisitions "covering over contract and samples sent"

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(that is an over plus of goods remaining in the penitentiary which it was decided should be kept) he admitted that he was mistaken and that the sample closet sent by Gormley was the one mentioned in this requisition and therefore was not included in Gormley's final account. This is but one of many such statements made apparently on the assumption that if asserted boldly they would secure a measure of belief to which they would not otherwise be entitled.

The extract quoted in the preceding paragraph forms the basis of Devlin's reason for certifying to Gormley's account as he says "in good faith." The good faith of the action may be judged by the refutation contained in Devlin's own requisition. It is true that Gormley sent 127 closet bowls to the penitentiary and it might be said that in this particular at least he fulfilled his contract and that there was nothing wrong in Devlin certifying to 126 being received when 127 were actually sent. To this it may be answered that there is nothing to show that the extra pieces of the 127 sent, were not included in some of Devlin's subsequent requisitions for the same kind of closets used in other parts of the penitentiary just as he requisitioned for the sample No. 3 Unitas closet after it had remained in the penitentiary for many months. Whatever doubt exists on this score there can be none whatever regarding the fittings. Only 117 sets were required and as that is the exact number bought by Gormley it is idle to pretend that any more went to the penitentiary. Devlin is involved in a maze of contradictions regarding his certificate, as at one stage in his examination he swore that he never certified to the delivery of the goods in Gormley's contract, while in his written defence he says he did certify to their delivery and that his certificate was attached upon receiving the reports of the assistant storekeeper, whom Devlin alleges did the checking of the goods. Now, O'Donnell swears that he checked the goods and that after he had done so he went to the engineer and inquired if they were all in, and the engineer answered they were. In view of Devlin's contradictory and untruthful assertions and of the light thrown upon the matter by O'Donnell there can be no doubt that while Devlin did not perform the physical act of attaching his certificate he induced O'Donnell by a false statement to certify to the delivery of more goods than were actually delivered.

(c.) Now with reference to the third part of the charge it may be pointed out that the change from lead pipe to brass tubing is not such a substitution as would justify the conclusion that it was improper on the part of the engineer to recommend it. True it was a change in the specification and it enured to the benefit of the contractor; but it was clearly an improvement upon what was first proposed and on that account was a benefit to the institution also. There is no evidence to show that the extra price allowed Gormley was not a reasonable price and the only significant feature of this change is that the price was not mentioned until after Devlin and Gormley met in Montreal. But there were other changes agreed to by the engineer which were not so clearly for the benefit of the penitentiary. There was a change, for instance, from the cisterns first proposed and it is quite evident that the engineer made this change as a result of the suggestions in Garth's letter inclosing him the copy of their letter to O'Donnell. Whether this change was either necessary or beneficial is a matter for expert opinion. Devlin enumerated a number of other changes that were made in the specification, some of which he admits would lessen the price, and although such was the case, Gormley was paid the amount of his original contract. In other words there was only one change that increased the price and for this Gormley was paid extra; while in the cases of the changes that lessened the price no deduction was made from the amount of the original contract. Devlin's only justification for his inaction with regard to the amount paid to Gormley is his stock excuse that it was no part of his duty to attend to the price, but in view of his superintendence of this contract, and his consequent knowledge of the value of material and supplies it is impossible to justify his conduct on any such ground as he mentions.

By reason of the substitution of No. 3 Tornado for the No. 2 Unitas closet, Gormley made a profit of \$540. Then he was paid for 3 sets of fittings that he did not supply, and the amount that he thus received coupled with the lessening of the cost by reason of the several changes, netted him a further profit, the exact amount of which it is impossible to determine. As in the case of the first charge no direct intercourse could be traced between Devlin and Gormley—except the meeting in

Montreal in November, 1892. Their evidence, however, is most unsatisfactory. They chose to be evasive or silent when nothing short of a full and frank explanation would establish the honesty of their actions; and no matter from what point of view their testimony is regarded the impression it creates is distinctly unfavourable to both of them.

Charge 3.—That you further conspired with the said Frank Gormley to defraud the Crown to the extent of about \$800.

(a.) In connection with the purchase in July, 1894, of 2 pumps, revolution-counter and governor from Frank Gormley, the latter using the name of J. A. Rafter & Co. to your knowledge.

(b.) That you allowed the substitution of goods and certified to the delivery as per contract.

(a.) In connection with this charge it is necessary at the outset to determine Devlin's knowledge of pumps, especially those made by the Stilwell-Bierce and Smith Vaile Company. The evidence establishes that in 1893 Devlin was in Chicago at the World's Fair. While there he claimed that he consulted a relative of his wife's, whom he states was an engineer, as to the best make of pumps, and that he also examined the different pumps on exhibition. The conclusion reached by him at the time was that the Smith-Vaile Company's pumps possessed advantages over all the others and it is quite evident that Devlin made up his mind to recommend their make of pumps whenever any should be required at the penitentiary. On 1st May, 1894, he wrote the warden (Exhibit 110), and asked to be allowed "to examine the Smith-Vaile High Service Compound in the town of Ingersoll, Ontario, likewise the nearest Fairbanks & Co. Duplex Compound. From information obtained after careful inquiry I am of the opinion that our selection should be from either of these makers." It is important to consider whether or not this request was made in good faith. Devlin cannot state where he got the information that there was a Smith-Vaile pump in use in Ingersoll. He contents himself with saying,—"Somebody told me so," but without having been informed where it was Devlin states he inferred it was in connection "with the water works." There is no doubt that Devlin's letter of 1st May, 1894, was given to the warden for another purpose than that stated therein, and this other purpose is disclosed by the evidence. In the year mentioned Devlin was one of the principal members of the Ontario Association of Stationary Engineers. On 22nd February, 1894, he attended a meeting of the board of the association in Toronto and moved a resolution that the annual meeting in London, Ontario, be held on the first Monday after the 24th of May which was adopted. At the same board meeting he moved a second resolution which was also adopted fixing a per diem allowance for the members of \$4 for each meeting attended. Although his travelling expenses and per diem allowance were thus provided for, he seems not to have been satisfied, and he accordingly planned the pretended trip to Ingersoll so as to secure payment of the same expenses from the Government as well. It is questionable whether he ever went to Ingersoll at all as his recollection of the trip is very hazy. He could not say how long he was there nor could he give the names of the hotels he stopped at, although he claimed to have had meals at two of them. When he gave details as to the surroundings of the water works his description was so inaccurate that it became evident he had never visited the pumping station. However, it was shown that he was in London, Ontario, on the night of 26th May, 1894, where he had a room and breakfast at the Grigg House, for which he paid \$1. It is likely that the rest of the time he remained in London he spent with a friend, the late Thomas Power, to whom reference is made in Devlin's evidence. Having started out with the false representations already mentioned it is not surprising that Devlin followed them up with forgery and ended by defrauding the Crown.

Attached to the account for expenses are four vouchers, two of which purport to apply to the Ingersoll-London trip and two to the Ogdensburg trip, hereinafter referred to. One purporting to be a receipt for \$5 from the Daly House, Ingersoll, is for 2 days board at \$2.50 per day. It is written on a sheet of hotel letter paper and is signed "G. L. Thompson per A." Mr. Thompson and his two clerks were examined and established that Devlin was not registered at the Daly House from 26th May to 30th May, 1894, that being the period of his absence from the penitentiary, and that

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there was no entry in the cash book of any payment by Devlin during that time. All the parties denied the signature to the voucher and while they could not recognize the handwriting they proved it was not in the writing of any one having authority to receive money or give receipts. It was also proved that the rate of board at the Daly House was only \$1.50 per day. Devlin asserted that he sent the money to his friend, Thomas Pow of London, to pay his hotel account at Ingersoll after he got back to Kingston. Such an explanation is too absurd to be believed and shows to what straits Devlin was put when he made it. While he swore that he was at two hotels in Ingersoll, yet he only produced a pretended voucher from one of them and this voucher was proved beyond doubt to be forged.

Another charge in the expense account was "cab-hire at Ingersoll to visit pumps situated out of town, two trips at \$2.50 each—\$5." Devlin admitted it only took him part of an hour to drive to the water works. It having been ascertained that there was only one cab driver in Ingersoll in 1894, viz., Geo. Matheson, he was examined and testified that he did not drive any one to the water works at the period named by Devlin, and that the regular fare was only from \$1 to \$1.50 for the round trip. Although the account showed the charge was for cab-hire, and your Commissioner would have been justified in ceasing to make further inquiries once he had examined the cab driver, yet he did not confine his investigation of the matter to the evidence of this witness but went further and endeavoured to ascertain who were the livery stable keepers in Ingersoll in 1894. It was found that they were all out of business and their successors did not have any of the old books covering the period in question. This, it is submitted is a complete answer to the objection filed by Devlin's counsel that the Commissioner "was guilty of great negligence in not taking the evidence of all the livery stable keepers." Devlin was notified that the examination would take place at Ingersoll, and it was his duty to furnish the names of any witnesses who could throw light upon any part of his account, and it may be fairly assumed that the reason he did not do so, was that he knew his account was a fraudulent one, and that there was no witness who could divest it of that character.

John Goble, the man who was in charge of the Ingersoll water works in 1894, testified that Devlin never was there to see the pumps, and Geo. Duncan, the superintendent, proved that Devlin never made any inquiry about the pumps from him. A personal inspection of the pumping station at Ingersoll, clearly disproved Devlin's statement that it was a marshy, muddy place, the nearest marsh or swamp being nearly a mile away. It appears from all these facts that Devlin was not at Ingersoll at all, and the pretended payments were merely a blind to cover up his trip to London so that he might attend the meeting of the Ontario Association of Stationary Engineers.

The voucher of the Grigg House, London, is on the letter paper of that hotel. The charge is for 3 days at \$2.50 per day, or \$7.50 in all. The hotel clerk produced the books showing that Devlin stopped at the Grigg House only for one-half day for which he paid \$1 and that the rates for board at the hotel were only \$2 per day, and were so advertised. The clerk also proved that the voucher was not in the handwriting of himself or Mr. Horsman, the proprietor, nor in that of any one whose writing he could recognize. The evidence, therefore, establishes that this voucher is another forgery. Devlin pretends to have made this payment himself but he stated that the receipt for it was subsequently procured by Mr. Power to whom he sent the money to pay the hotel at Ingersoll. Devlin swore at first that he did not remember going anywhere else when on the Ingersoll trip, but he subsequently said he went to London, Ont., merely to fill in time, and not on any particular business. Upon looking at the first page of his statement of expenses, he said:—"I do not charge there for going to London, but I may have gone, I cannot recollect." Afterwards on seeing the Grigg House voucher attached to the account he changed his position and said:—"I must have gone to see some pump, but I do not recollect." Then when his attention was called to the charge for 3 days board at London he naively stated:—"I would imagine that I had a certain amount of latitude allowed me which, after submitting the circumstances to the warden and the account for expenses, I thought quite justified in charging for. If he had objected to my trip to London and my expenses there, it would have been certainly my loss." This attempt to justify a charge because he subsequently obtained the approval, as he

claims, of the warden, though there is no proof of such approval—is but a sample of his idea of right and wrong. It is quite certain that had he informed the warden that he went to London to fill in time or to attend the meeting of The Ontario Association of Stationary Engineers, that the expenses for such a trip would have been struck out of his account, and that in addition he would have received a reprimand from his superior officer. The account as prepared by Devlin professes to be for expenses to Ingersoll and Ogdensburg to examine pumps. As has been pointed out the real reason of his trip to London was to attend the annual meeting of the Stationary Engineers. The officials of that association were examined and proved that Devlin was at the annual meeting in 1894 and took an active part in the proceedings, moving several resolutions and forming one of the committee on railroad fares and per diem allowance. The report of the committee fixed Devlin's remuneration for his attendance at \$13.50, while the treasurer testified that he paid him \$19.50 on 28th May, 1894, but he could not account for the difference between the two amounts. Devlin in his evidence says he did not see any pumps at all on this trip, for the good reason that he was not looking for pumps, as he falsely represented. He therefore obtained from the penitentiary \$36.55 for alleged expenses incurred on the pretended trip to Ingersoll, by means of fraud and misrepresentation and by the production of forged vouchers.

On Devlin's return to Kingston he reported to the warden that he had examined the pump for water tower service at Ingersoll, and that he desired to see one in operation at the new asylum a few miles below Ogdensburg, N.Y. This report was contained in a letter from Warden Lavell to Inspector J. G. Moylan, dated 29th May, 1894, (Exhibit 114). This is another false statement as Devlin testified that he did not see any pump in operation in Ingersoll, and therefore his report must have been intended to provide for a further absence from the penitentiary. It is at about this juncture that Frank Gormley first appears in connection with the pumps, as it was established that on 30th May, 1894, he telegraphed to the Stilwell-Bierce Co., for the price for a pump 10 x 16 x 9 x 12. There is nothing in the evidence or documents filed to show where Gormley got the information on which to base his request for a quotation from the company, but there was only one source from which it would emanate and that was from the engineer. There must, therefore, have been a meeting between Devlin and Gormley, or a letter from the former to the latter, upon Devlin's return from the Ingersoll trip. The request of the engineer to visit Ogdensburg was acceded to by the Department of Justice, and the warden authorized the trip by letter dated 6th June, 1894 (Exhibit 134). It appears by Devlin's expense account that he had been at Ogdensburg prior to the permission being granted, as the dates defining his stay are from 30th May to 4th June, 1894. Devlin attempted to explain this peculiar state of affairs by saying that the date of the warden's letter may have been wrongly stated, or that the warden had probably anticipated the reply from the department and allowed him to go in advance of its receipt. This is mere conjecture and cannot be accepted, as the warden in his letter to the inspector shows that although favourable to the engineer's going he would not assume responsibility for the trip without authority from the department. However, the point to be considered at present is did Devlin make this trip to Ogdensburg in the interest of the penitentiary? As at Ingersoll the movements of Devlin cannot be traced. In his evidence he stated some one must have told him a pump was there, but he cannot designate who did so. He says he went to the State Asylum at Ogdensburg and saw a pump there, and was told it was not of the Stilwell-Bierce make. For this reason he did not pay any attention to it. He further stated that he was only a day or a day and a half in Ogdensburg. He only swears to one visit to the asylum and John Hollingsworth, who claims to have been with him at the time, also swears to having been only once at the asylum with Devlin, but he cannot fix the date. Devlin in his account for expenses at Ogdensburg charges as paid:—

Seymour House, Ogdensburg, 4 days at \$3	\$12 00
H. Chatterton, 3 trips to asylum at \$5 \$15 00

The evidence of the Seymour House clerks as well as the hotel books, show that Devlin was not registered there from 30th May to 4th June, 1894, and that there is no

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entry in the cash book of the payment of any money by him; that the pretended voucher is made out on a sheet of letter paper of the hotel and not on one of the bill heads used by them in rendering board accounts; that the writing on the account is not the handwriting of the late F. J. Tallman or any of his employees, and that the signature "F. J. G. Tallman" is not in the writing of any one connected with the hotel who had a right to receive cash and give receipts. There is, therefore, conclusive proof of a third forged receipt being produced by Devlin in support of his expense account. Then Chatterton, the livery stable keeper, who kept his own books, swore that Devlin never hired a cab or other vehicle at his stable and did not pay \$15 for three trips to the asylum; that the usual price for a trip to the asylum was \$1.50 to \$2; that the receipt was not signed by the witness and that he had no one in his employ who was entitled to receive money and give receipts for same. This receipt is therefore the fourth document of its kind that was forged and attached to the expense account.

As soon as Devlin learned that evidence was to be taken at Ogdensburg he went to Prescott and had an interview with John Hollingsworth. The outcome of this interview was that Hollingsworth crossed over to Ogdensburg to interrogate Chatterton, the livery stable keeper. The latter testified that after some conversation Hollingsworth told him that he was not to know anything about this man,—the reference being to Devlin. Hollingsworth admitted that Devlin told him the Commissioner was to take evidence at Ogdensburg, and that being in Ogdensburg he merely asked Chatterton if he had any charges in his books against Devlin. There can be no doubt that Hollingsworth's motive in seeing Chatterton was an improper one, and the whole incident does not conduce to the belief that Devlin merely went to Prescott to see Hollingsworth on ordinary business as he pretends.

Mr. Morrison, counsel for Devlin, moved to have rejected from the record all the evidence taken at Ogdensburg, London, Ingersoll and Toronto on the ground of its irrelevancy, as he claimed it did not relate to the charges served on his client. The objection was overruled because the evidence in question was quite relevant to the charge now under consideration. If the inception of the order for the pumps was fraudulent, and Devlin made representations that he had examined pumping machinery at different places, when as a matter of fact the contrary is proved, surely such false representations are an element of the conspiracy, and it was quite within the scope of the inquiry to see if the pretended visits had been made or not. In this connection it may be mentioned that in his written defence Devlin makes no reference whatever to the alleged trips to Ingersoll or Ogdensburg and for very obvious reasons the document is also silent regarding his trip to London.

Devlin's recommendation to purchase the Stilwell-Bierce and Smith-Vaile Company pump is contained in his letter of 11th June, 1894 (Exhibit 117), in which he says: "I have examined the steam pumping engines near the town of Ingersoll, Ontario, and other places and have concluded to recommend the Stilwell-Bierce duplex compound and Fairbanks-Morse receiver and condenser." The evidence of the different hotel-keepers and clerks at Ingersoll and Ogdensburg proves that he never was at either of the places he specially asked permission to visit, and it also establishes the falsity of the statement in his recommendation that it was on account of an examination made at these places that he had come to his decision regarding the make of pumps to be selected. Devlin's own evidence also disproved the same statement as he testified he did not examine the pumps at Ingersoll or Ogdensburg.

While there is no direct evidence as to when and where the intercourse between Devlin and Gormley first began in connection with this contract, there is an admission that they met in Montreal. Devlin says that there was only one meeting between them, when Gormley told him that Rafter was the agent for the pumps but that he was out of town, and Devlin alleges that he then left particulars with Gormley to get prices from Rafter and that he only gave him one size for a pump, and did not afterwards make any change in the size. Gormley admitted that he had a meeting with Devlin in Montreal, but he could not say when or in what place. The written evidence discloses at least three interviews or communications between Gormley and Devlin. On 30th May, 1894, Gormley as already stated, telegraphed the Stilwell-Bierce Company for their price for a pump 10 x 16 x 9 x 12, as shown in Exhibit 56. It is important to

note that this is the date at which Devlin claims to have been in Ogdensburg, and as he was the only one who could give the size of the pump required it can fairly be assumed that Gormley had either met or heard from Devlin on that date. Gormley would not admit he had received the letter (Exhibit 56), although he admitted that the contents thereof would indicate that the Stilwell-Bierce Company had answered his communication. Gormley also tried to insinuate that the pump referred to was not connected in any way with the one eventually ordered for the penitentiary. However, when his own letter of 6th June, 1894 (Exhibit 21), to the Stilwell-Bierce Company was produced, acknowledging receipt of a letter from the company dated 1st June, 1894 (Exhibit 56), confirming their quotation by telegram, and when his attention was drawn to the sentence "I have been out of town since Friday procuring fuller details about pump" he was forced to admit that he did not know of any place except the penitentiary for which a pump was required. He was unable to say where he went to get this fuller information or from whom he procured it. As Devlin was the only person who could give the information there is every reason to believe that he and Gormley had a meeting between Friday, 1st June, 1894, and 5th June, 1894, and that they then completed arrangements about the contract.

Permission was given Devlin by the warden on 6th June, 1894, to go to Ogdensburg, and five days subsequently, that is on 11th June, 1894, he reported on his pretended visits and stated that the agent at Montreal of the Stilwell-Bierce Company had informed him the price for the pumps would be \$2,260. On 9th June, 1894, which fell on Saturday, Gormley had received a telegram from the Stilwell-Bierce Company in reply to his letter of 6th June, 1894, giving him the prices of the large pump and receiver. The reference in Devlin's letter of 11th June, 1894, to what an agent told him indicates the third interview or communication between Devlin and Gormley. It was claimed in Devlin's behalf that Gormley was a favoured contractor of the department, and that he was to be given all the work possible, yet in this matter the name of a third party was used, viz., "J. A. Rafter & Co." Devlin's written defence in which he says "that neither directly nor indirectly did he have any communication with Gormley or Rafter & Co., as to the price to be charged for the pumps" is completely contradicted by his letter to the warden of 11th June, 1894, in which he states the agent informed him the price would be \$2,260.

The explanation given by Gormley and Devlin as to the introduction of the name of J. A. Rafter & Co., is quite unique. Devlin says he had consulted with the warden as to pumps and had recommended the purchase of one of the Stilwell-Bierce Company's make. The warden, he asserts, then asked him if they were made in Canada and on his replying in the negative, the warden inquired if there was a Canadian agent, and as he did not know he told him he would endeavour to find out in Montreal. After this, Devlin, says he went to Montreal and asked Gormley, who told him he would make inquiries, and that subsequently Gormley informed him the agent was Rafter who was then out of town. On this account, Devlin, as before mentioned, says he left particulars with Gormley to give to Rafter who was to send a price forward to the warden and also to himself. Gormley says he met Devlin in Montreal and talked over pumps. He added:—

"I suggested that I might be able to supply that—that I knew a man who could supply it." It is evident that the assertions of both Devlin and Gormley are untrue. Devlin's letter of 11th June, 1894, to Warden Lavell (Exhibit 117), states "the firm's agent at Montreal informed me they would send on to you their offer in writing ere this." Then, the warden in writing to Inspector Moylan on 15th June, 1894, inclosing the Rafter tender says:—"The engineer states this is in accordance with arrangements with Rafter & Co." As Devlin never met Rafter, according to his own testimony, and that of Gormley and Rafter as well, there is here strong evidence of an understanding between him and Gormley to use the name of Rafter & Co. in connection with this tender. The tender is dated 13th June, 1894 (Exhibit 52), and is written on letter paper with this printed heading,—"John A. Rafter & Co., sole agents for the Stilwell-Bierce Co. Engineers, founders and machinists, steam pumps, hydraulic machinery, flour and oil mill machinery, Victor Turbines." Rafter testified that this letter paper was not his, that he never authorized the printing of it, and that all he had to do with

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the tender was to sign his name, and that he never had any business transactions with the Stilwell-Bierce Company. Gormley stated that it was he who had the letter heads printed with John A. Rafter & Co.'s name on them, but he could not remember when or where the printing was done, and he admitted that he could not specify any other business on which the paper was used except in connection with the pump tender. The only reason he gave for using the letter heads was that he and Rafter had business dealings before, but he stated that he never used Rafter's name before in connection with Government contracts. He further admitted that he was the actual tenderer. It is quite evident that the use of this paper as well as the use of Rafter's name was part of the conspiracy between Gormley and Devlin, and was intended to indicate to the warden as well as to the Department of Justice that the tender was being sent in by the direct representatives of the Stilwell-Bierce Company, and that there would be no use of inquiring elsewhere for the pumps in question. Thus the final link in the chain of conspiracy was completed. The first link is Devlin's letter of 1st May, 1894, saying he considered the Stilwell-Bierce or the Fairbanks-Morse pumps should be used, and asking permission to see these pumps in operation at Ingersoll and subsequently at Ogdensburg. The second link is his report of 11th June, 1894, recommending the Stilwell-Bierce pumps after pretended examinations at Ingersoll and elsewhere. The third and final link as already stated, was the sending of tender on letter paper with a false heading thereon.

As Devlin arranged the amount of the tender and recommended its acceptance, it is essential to see what his knowledge was as to whether the sum stated was a fair price or otherwise. As previously mentioned, Devlin was at the World's Fair in 1893 and saw the Stilwell-Bierce Company's pumps, and, as he says, asked the representative of the firm to send him one of their catalogues. This was done on 5th September, 1893, when the company's Chicago agent sent a catalogue and price list accompanied by a letter (Exhibit 47) in which he says: "We will be pleased to figure with you when you are in the market for anything in our line," thus indicating that the prices in the list were merely *pro forma*. Then on 20th February, 1894, Devlin, through his son, wrote to the Stilwell-Bierce Company asking the price for a sewerage pump. The price quoted by the company was \$300 while the catalogue price was \$440, or a discount of over 30 per cent off the list price. A further evidence of his knowledge of discounts is furnished by Thomas Driver, customs appraiser at Kingston. When the pumps were sent to Kingston and entered at the customs-house, Mr. Driver considered they were entered too low and went out to the penitentiary where Devlin furnished him with a catalogue and price list, and at the same time declared there was a large discount off the list. Devlin himself admitted that he told Driver there was a discount on the quotations in the company's catalogue, and it is thus evident that from the data in his possession he knew perfectly well that the price mentioned in Rafter's tender was an exorbitant one. His recommendation of the purchase under such circumstances was tantamount to a fraud upon the Crown and formed a fitting close to a transaction that from its inception was based upon false representations and deceit practised by Devlin and Gormley upon the warden and the officials of the Department of Justice.

(b.) The charge of substituting goods in connection with this contract relates to the Stilwell Bierce Receiver and Condenser supplied in place of the Fairbanks-Morse & Company Receiver and Condenser recommended by Devlin. When Devlin made this recommendation he had the catalogues of both companies, and there must have been some superiority in construction or operation that led him to select the Fairbanks-Morse pattern. The only reason that he gave for allowing the change was that he afterwards found that the Stilwell-Bierce Company made the same receiver and condenser as the Fairbanks-Morse Company. A comparison of the two pumps upon the data supplied by the catalogues does not bear out Devlin's statement, as, while they correspond in other respects, it is shown that the Fairbanks-Morse Pump will drain 10,000 square feet of heating surface more than the Stilwell-Bierce pump. To determine accurately the relative merits of the two pumps and thus test Devlin's statement it would be necessary to have expert evidence, and in the absence of such evidence no opinion can be expressed upon the truth of the assertion. Indeed the inclination would be to accept it as true were it not for an answer made by Devlin to his own counsel.

He first said the Stilwell-Bierce pump was exactly the same as the Fairbanks-Morse pump—but he immediately added,—“It must be the same, or made from the same pattern,—the same in construction and height.” This raises a very strong suspicion that Devlin knew he was not telling the truth. If his first statement were true why does he qualify it by implying a doubt? The last part of his answer taken in its literal acceptance is evidently incorrect as a comparison of the two pumps discloses that they are not made from the same patterns and they are certainly not of the same height. If Devlin meant something else than what his words imply, and spoke in a technical or ambiguous sense there can be nothing further said about the matter.

That part of the charge alleging that Devlin certified to the delivery of the goods as per contract was not sustained. It fact it did not appear that the delivery of the goods was certified at all

The actual cost of the pump, the receiver and condenser, and the revolution counter and governor as per invoice	
was	\$908 00
To this add duty at 27½ amounting to.....	249 70
And add also estimated freight.....	42 30

So that the net-cost to Gormley was

\$1,200 00

The penitentiary paid Gormley through John A. Rafter & Co., the sum of \$2,260 so that his net profit on this single transaction was \$1,060.

Both Devlin and Gormley denied the charge of conspiracy, and as in the case of the two former charges there was no direct proof of an illegal compact between them. At one stage of the inquiry Devlin mentioned that if he thought Gormley was playing the game he was, he would not have had any conversation with him. This somewhat belated display of virtue at Gormley's expense would have been more creditable to Devlin if it had influenced his conduct before he projected the bogus trip to Ingersoll. It did not appear that any payment was made by Gormley to Devlin and there was no advantage or benefit derived by Devlin from their relations so far as the evidence discloses. However, the bad faith of both is apparent even from a cursory reading of their testimony. Devlin's evidence regarding his financial affairs was far from satisfactory. He declined to give any explanation as to how the large sums of money deposited by him in the banks were acquired further than a general statement that “he got all his money honestly.” To accept this statement as true, a different standard would have to be employed from that by which his general conduct must be judged.

Charge 4.—That you conspired with Garth & Co., of the city of Montreal, or some one or more of the members of the said firm—

(a.) To obtain for them free convict labour in connection with their contract for the heating of the Protestant chapel and dining hall during November, 1886, such free convict labour not having been agreed upon under the contract.

On 11th August, 1886, Garth & Co., of Montreal sent a tender to the late John Bowes in his lifetime superintending architect of the Public Works Department, undertaking to fit up the steam heating in the Protestant chapel and dining-room of the Kingston Penitentiary, for the sum of \$1,414.25.

This tender does not appear to have been accepted by the department for some weeks afterwards, and in the meantime some correspondence took place between Mr. Devlin, Mr. Bowes and Garth & Co.

On 23rd August, 1886, Mr. Devlin wrote to Mr. Bowes urging that the contract be given to Garth & Co. On 25th September, 1886, Devlin again wrote to Mr. Bowes pressing for a decision as to the contract, and on the same day he also wrote to J. H. Garth, one of the members of the firm of Garth & Co., asking if he had heard anything more about the heating work, and informing Garth that he had written to Mr. Bowes.

On 17th September, 1886, Devlin wrote two letters to J. H. Garth—the first stating that he had received a letter from Mr. Bowes notifying him that the contract

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had been awarded to Garth & Co., and the second one being an acknowledgment of a letter received from J. H. Garth and inclosing him Mr. Bowes's letter.

It would appear that some additional correspondence passed between Garth & Company and Devlin, but unfortunately there are ten pages out of Devlin's letter book that would apparently contain the copies of any letters sent by him to Garth & Company about this time, and as the latter did not produce any correspondence received from Devlin there is nothing to indicate the purport of such further letters as may have been exchanged between them.

A few days prior to 30th October, 1886, Devlin received a telegram from Garth & Company saying they were ready to go on with the work and were sending up their man. Devlin thereupon informed the warden who stated he would not recognize Garth's man, nor furnish convict labour unless he received proper instructions. Devlin then wired Garth not to send the man and he would be in Montreal on the following Monday when he would call and explain. On 30th October, 1886, Devlin wrote to Mr. Bowes as follows:—"I beg to inform you that on Thursday last I received a telegram from Messrs. Garth & Company, stating they were ready to go on with a contract awarded them by the Public Works Department to construct heating apparatus in the Protestant chapel and dining hall of this place, and would send their man that evening, upon informing the warden of this he told me he would not recognize Messrs. Garth's man, nor allow any convict help whatever unless he received proper instructions. I know that when Mr. Garth was here calculating before he tendered he presumed he would get all the convict help he needed, so I thought it but fair to telegraph him not to send man for the present. I told him I would be in Montreal on Monday and would call and explain, in the meantime I consider it my duty to inform you of the facts, that steps may be taken to have the work proceeded with as soon as possible."

There is no proof of Devlin's going to Montreal but on the 10th of November, 1886, Mr. Bowes, who was then at the penitentiary, wrote the warden a letter which is copied in Devlin's letter book. The following is the letter in question:—"Mr. John Cowan, the steamfitter sent by Mr. Garth to do the steamfitting required for the heating of the dining hall and Protestant chapel has arrived, and is ready to proceed with the work. Please to afford him the assistance he may require in the form of convict labour as provided by contract."

On the same day Devlin wrote to John H. Garth as follows:—"Your man Mr. Cowan is here and all is satisfactorily settled. Mr. Bowes was here when he arrived. He is to go on changing the coils or condensers, as you call them at once. The convict help matter has been settled satisfactorily so all will go well. Please attend to Mr. Cowan's demands for material promptly."

About this time Garth & Company had two Government contracts in hand, one being at Stony Mountain Prison, and the other the heating contract at Kingston Penitentiary. In connection with the former they paid for the convict labour at the rate of fifty cents per day, while for the latter they got the convict labour free.

(a.) The letter sent by Garth & Company to Mr. Bowes on 11th August, 1886, is their tender for this work. It contains all the terms of the contract but makes no reference whatever to convict labour. Henry W. Garth testified that no agreement was made with him as to convict labour, and John H. Garth the other member of the firm, stated it was not understood they were to have free convict labour for this contract.

It was established by the evidence of John H. Garth and Téléphore Latourelle, the foreman who had charge of the work, that convict labour was employed upon the contract. The number of convicts who were thus employed could not be definitely ascertained. Latourelle testified that as a general thing he had one or two convicts working with him and that there might have been two others engaged in breaking holes to let the pipes go through the walls. Neither was it ascertained what profit was made by Garth & Company through their being supplied with this free convict labour, as, owing to the length of time that has elapsed since the work was done, no records could be found containing this information.

That Devlin was instrumental in getting the free convict labour for Garth & Company there can be no doubt. His letter to Bowes of 30th October, 1886, was the first

step made by him in that direction and the terms of that letter indicate how far he was prepared to go in order to secure for Garth & Company a favour to which they were not entitled under their contract. He stated a deliberate untruth when he wrote: "I know that when Mr. Garth was here calculating before he tendered he presumed he would get all the convict help he needed," because both of the Garths testified that they did not act upon any such presumption nor did free convict labour enter into their calculations when they were making up their tender. Devlin was thus more solicitous about the matter than the contractors themselves. As a result of Devlin's letter and owing to his influence with Bowes the latter was beguiled into writing the letter of 10th November, 1886, in which he authorized the warden to furnish Garth's man with convict labour "as provided by contract" although nothing of the kind is mentioned in the contract. The fact that this letter from Bowes to the warden is copied in Devlin's letter book is a circumstance that indicates how closely Devlin supervised Bowes's action. Devlin's intimate connection with the matter is finally established by his letter to John H. Garth written on the same day as Bowes wrote to the warden and containing this significant sentence: "The convict help matter has been settled satisfactorily so all will go well." It cannot be pretended that it was any part of Devlin's duty to have made himself so officious about the convict labour, and in view of the testimony given by both members of the Garth firm and of the written evidence already referred to there is no doubt that Devlin voluntarily interfered in a matter that did not concern him, simply for the purpose of benefiting the contractors.

It did not appear that Garth & Company ever requested Devlin's assistance to obtain free convict labour for them nor was there any proof adduced that he received any pecuniary reward for having done so. The general intimacy between him and the Garths and a possible return for his kindness is referred to later on in the report.

Charge 5.—That you further conspired with the said Garth & Co., or some of the members of the said firm,

(a.) To make changes in the specifications for steam pipes and fittings for the new separate ward in December, 1891, by substituting wall coil stays for wall coil pipe stays,

(b.) The reason for such change being that the tender of said Garth & Co., for the goods as per original specification was too high.

In the beginning of December, 1891, the warden instructed Devlin to make out a requisition for the material and fittings required to equip the new separate ward (prison of isolation) with a water and steam heating service. Devlin did so, and on 7th December, 1891, Garth & Company and other dealers were invited to tender. The list of fittings sent to each firm contained an item calling for "25 dozen 3 pipe wall coil stay."

On 11th December, 1891, Garth & Company sent their tender to Storekeeper O'Donnell and referring to the wall coil stays said: "Inclosed you will find out of new pattern pipe stay which we think will answer your purpose better than the ordinary hook plates, this stay does away with any woodwork on the walls and the weight of coils falls on the floor instead of the walls; we have sent you a sample by express."

On 30th December, 1891, Storekeeper O'Donnell wrote to Garth & Company asking to be informed "by return the cost of 25 dozen wall pipe stays same as sample sent us by you." The reply to this letter was not produced.

On 31st December, 1891, Devlin wrote to H. W. Garth as follows:—

"Private and confidential.

"DEAR SIR:—Your tender was some \$300 over the lowest, therefore, the only thing I could do was to have the wall coil stays struck out and you will be asked to give a price for them, if so refer to your catalogue and send on one as giving your price. They tell me also your tender was for Canadian pipe therefore I could say nothing."

On 4th January, 1892, Devlin wrote to the warden as follows:—"Re tenders for supplying pipe and fittings for the new separate ward. It would seem best to leave out the item of wall coil stay pipes altogether as I found when in Montreal that an improvement had been made in this particular fitting of which I was not aware when I called for the old style, it is manufactured by the firm of Chas. Garth & Co., and instead of requiring 25 dozen pipe castings and 17 dozen wall plates there will only be required

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about 17 dozen of the combination fittings mentioned. I have not gone over the tenders or correspondence but I should judge from what you read to me there is some misunderstanding, in fact whilst the pipe might be proper material for hardware men's competition, I think it were better to deal with plumbing and steamfitting firms for the fittings, otherwise we might get culls, and we could not have much certainty of getting everything as we require. Hardware men as a rule do not deal in such goods, therefore in my opinion, it were better to ask for new tenders. Plumbing and steamfitting firms to compete for both pipe and fittings. Hardware firms for pipe only to be either American or English, the latter preferred, and the sample of each fitting accompanying the tenders, thus we shall know the pattern and style of fittings we must expect."

On 26th January, 1892, the warden forwarded to the inspector all the tenders received for the fittings as per the original specifications, and also sent him the correspondence relating to the engineer's suggestion that instead of the wall coil stays first asked for the patent stays made by Garth & Co. should be procured. On 6th February 1892, Devlin made out a requisition for seventeen dozen of the latter stays, and on the same date Storekeeper O'Donnell sent Garth & Co. the order for them. Meanwhile the rest of the work had been awarded to another tenderer.

If Devlin's letter to H. W. Garth of 31st December, 1891, were an ordinary business letter, written without any ulterior motive it is not conceivable that Devlin would have marked it "Private and Confidential." That it is not an ordinary business letter, is evident from its phraseology. There is the intrinsic evidence of Devlin's anxiety that Garth & Co. should get the whole contract, and when that was found to be impossible that he did the next best thing for his friends by getting the wall coil stays struck out so that they might secure this part of the contract by a separate tender. There is also the further evidence in this letter that he wished Garth & Co. to get the highest price possible for their patent stays as he advises them to refer to their catalogue and to send on one as giving their price.

In forming an opinion regarding the honesty of Devlin's motive in having the wall coil stays struck out of the original specification it is necessary to take into account the probable date at which he became aware of the patent stay manufactured by Garth & Co. It was proved that this stay had been in use since the year 1889. Devlin was in the habit of going to Montreal frequently, and when there, he usually called at Garth & Co.'s place of business, and H. W. Garth was of opinion that he and Devlin had talked about the patent stays before the tender was sent in and that Devlin had been shown one of them. On further examination Mr. Garth was not certain about the matter, and he stated he did not know whether he and Devlin spoke about the pipe stays, nor did he know whether one was shown to Devlin. His final answer was: "It was just the general run of business we talked about at the time. He might have seen the pipe stays, or he might not have seen them." This reply leaves the matter undetermined so far as Garth is concerned. Devlin did not fix the date of the interview mentioned by Garth and it is impossible to say whether it was before or after tenders were invited on the 7th of December, 1891.

That an interview took place is clear, but the date and purport of the conversation are in doubt. However, apart from what Devlin may have learned at Montreal it was proved that one of the patent stays and an illustrated price list were received at the penitentiary on 12th December, 1891. Now it is a peculiar circumstance that if Devlin discovered the superiority of the patent stay after he made out his specification that he said nothing about it until he learned that Garth & Co. were not going to receive the contract for the whole of the fittings. Even then he seems to have concealed his knowledge until he had thought out a plan of action, for while he wrote H. W. Garth the "private and confidential" letter on 31st December, 1891, telling him, that owing to the firm's tender being too high the only thing he could do was to have the wall coil stays struck out and that the firm would be asked for a new price, he did not inform the warden about his preference for the patent stay until 4th January, 1892, when he wrote suggesting that it should be substituted for the fittings first mentioned. Why Devlin should write to Garth a private and confidential letter before communicating with the warden is not clear unless it was to prepare the way for what followed. There is nothing to negative the presumption that Devlin knew of the patent stay earlier than

he pretends they did, but while the exact date when he first saw it is in doubt, it is evident from his letter to Garth that it was some time before the amounts of the tenders were made public, and therefore early enough to have told the warden about it before it was known whom was the lowest tenderer. However, he did not chose to do this, and his letter plainly indicates, that he had the stays struck out of the original specification for no other purpose than to benefit Garth & Co.

Another feature of this matter that requires to be mentioned is that when Devlin requisitioned for seventeen dozen or 204 pipe stays he asked for 87 more than the number required for the work to be done in the prison of isolation. There were only 117 pipe stays used in the building so that the 120 first sent were ample for the requirements. Devlin explained that the pipe stays are distinguished by numbers and that when these numbers have reference to a difference in the height of the rest, or hole, for the pipes in each stay, and he offered as a probable reason for getting a second consignment of seven dozen stays that the latter might have been required for the purpose of selecting from among them a sufficient number of stays so graduated that when in place the steam pipes would have the proper fall each way. He did not say that this was the actual reason for getting them, and he could not truthfully have done so for his plausible explanation is not borne out by the letter he wrote to Garth & Co., on 16th May, 1892, in which speaking of the additional seven dozen pipe stays that he requests them to forward he says to send one dozen No. 6 and the other six dozen to be ordinary sizes. It is quite clear that in the first place he asked for a greater number than were required as he should not have requisitioned for more than the ten dozen first sent and it was evidently his duty to have specified the different kinds required to erect all the coils and secure the proper out-flow and return of the steam in the pipes.

Whatever fault may be found with Devlin for his conduct in regard to this contract it is only fair to him to state that the fitting supplied by Garth & Company is much superior to the one originally called for, and that the work done is of a more durable character on account of the patent stay having been used in its construction.

Charge 6.—That you did further conspire with the said Garth & Co., or some of the members of the said firm to defraud the Crown in connection with the substitution of 6-inch for 8-inch wrought iron pipe in July and August, 1892.

(a.) By allowing them to charge 69 cents per foot for pipe instead of 66 cents as agreed on.

(b.) And further by allowing them to charge freight while the pipes were to be delivered free at Kingston.

On 9th May, 1892, Devlin wrote to H. W. Garth as follows:—"I am authorized to inquire if you will take in exchange a quantity of 8-inch wrought iron second hand pipe for a similar quantity of new pipe of a smaller size, allowing what may be considered a fair valuation."

On 11th May, 1892, Garth & Co., sent Devlin the following letter in reply:—"In answer to your inquiry *re* 8 inch wrought iron pipe, second hand we will take it back from you and furnish 6-inch pipe of same at 66 cents per foot. Hoping to hear from you again."

On the same day they wrote Devlin a second letter as follows:—

"Private.

"In sending the old 8-inch pipe back, charge us with long lengths and put in the pieces as scrap and all old fittings, we will pay the freight to here. If the inclosed will not suit, please let me know."

An explanation was sought regarding what was meant by the words "the inclosed" in the last sentence of this letter but nothing satisfactory was elicited. H. W. Garth said he did not know what they meant and Devlin was silent about the matter. There can be no doubt that the first letter containing the offer of 66 cents was the inclosure in the second. It does not appear that Devlin sent any reply to Garth, but on 19th May, 1892, he wrote to Warden Lavell as follows: "To complete alteration of main steam pipe in the underground ducts, I propose taking out the 8-inch pipe which is altogether too large and out of all proportion to our requirements, replacing it by a 6-inch pipe which can be permanently covered. This 8-inch old wrought iron pipe could only be sold here for scrap, therefore in accordance with your instructions I wrote

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Messrs. Garth & Co., Montreal, asking if they would take 8-inch pipe in exchange for new 6-inch pipe allowing a reasonable price therefor. Their proposal is to furnish 320 feet, the quantity required of new 6-inch pipe in exchange for the same number of feet of our 8-inch pipe at 69 cents per foot, they to pay freight here on new pipe and also from here to Montreal on the old. As wrought iron 6-inch heavy pipe is worth about \$1.25 per foot, I think the offer a remarkably good one."

As will be observed Garth & Co.'s letter, written on 11th May, offers to furnish the pipe at 66 cents per foot, while Devlin's letter written eight days afterwards quotes the price for the pipe at 69 cents per foot. This letter was sent to the warden and up to the time of its receipt he evidently did not have any knowledge about the price. It will also be observed, that Devlin's letter, in addition to falsifying the price, also falsifies Garth & Co.'s proposal regarding freight, as they agreed to pay it one way only, while Devlin represents to the warden that their proposal is to pay it both ways.

On 30th May, 1892, the warden wrote to Inspector Moylan inclosing him Devlin's letter of 19th May, and stating among other things that he had asked Devlin to ascertain on what terms the exchange could be made. He also added: "I have to assume from his statement that the change would be beneficial." It is thus evident that the warden's knowledge of the price was obtained from Devlin, and that in all matters pertaining to this change he relied on the representations made to him by Devlin.

On 1st June, 1892, Devlin again wrote the warden urging that the change be made on 6th June, the department asked the warden for an estimate of the cost. The warden requested Devlin to prepare an estimate and upon receiving it from the engineer he sent a letter on 10th June, 1892, to the inspector saying that he had been advised that the cost would probably be \$250.

There is nothing on record to show the authorization of the department for the exchange of pipe, but on 14th July, 1892, Devlin made out the following requisition:—

320 feet 6-inch wrought iron pipe.
2 " 6 " expansion joints.
4 " 6 " elbows.

"The pipe to be obtained from Messrs. Garth, Montreal, in exchange for a similar quantity of old 8-inch pipe by paying 69 cents per foot as per their offer."

JAMES DEVLIN, *Engineer.*

This requisition also falsified Garth's offer by again quoting the price at 69 cents per foot instead of 66 cents as contained in the original letter.

On the same day as the requisition was issued Storekeeper O'Donnell sent Garth & Co., the order for the pipe at 69 cents per foot, the freight to be paid by Garth & Co.

The pipes were forwarded to Kingston on 15th July and 2nd August, 1892, respectively. Garth & Company's invoice is dated 2nd August, 1892, and in it the pipe is charged for at the rate of 69 cents per foot and the department is also charged with the freight. This invoice is certified as correct by Devlin, although he must have known it was false in two particulars—that is with regard to the price per foot, and the freight.

(a) H. W. Garth could not explain how the price came to be changed from their original offer of 66 cents to 69 cents and supposed that the invoice clerk must have copied the figures from O'Donnell's order when he was making out the account. He also stated that if he had seen the account before it was rendered he would not have allowed it to go with the price inserted at 69 cents. O'Donnell testified that he wrote to Garth & Company on the strength of the requisition received from Devlin. The requisition as has been mentioned misquoted Garth's letter and thus O'Donnell was misled in stating the terms of the offer both with regard to the price of the pipe and the freight. In his written defence Devlin says: "The warden deemed it advisable to have Garth & Company pay all the freight in connection with the exchange and allowed three cents extra, (making it 69 cents) to cover the freight charges on the 6-inch pipe from Montreal to Kingston." Now the warden when examined would not subscribe to this version of the matter at all. In fact he was emphatic in saying that he did not know

anything about it, and the attempt to fasten upon him the responsibility for the change was an utter failure. It has also to be remarked that if Devlin's story were true it is a singular thing that Garth & Company were left in ignorance of the warden's alleged decision in the matter when they were the persons affected by the change. The facts are altogether against Devlin. He alone is responsible for the change but the evidence, except as hereinafter mentioned, does not disclose why he made it.

(b.) The absurdity of the reason given by Devlin for the change in price is made manifest when it is further examined in connection with the charge for freight. According to him Garth & Company got the extra 3 cents per foot so that they would pay all the freight. Now the invoice submitted by Garth & Company and certified by Devlin shows that the firm actually paid none of the freight as it was charged back against the department and afterwards refunded to Garth & Company. O'Donnell testified that he thought some one told him to put the words "freight to be paid by you" in his letter to Garth & Company; then he stated that he might have done it to make "as safe a bargain as he could" but he finally admitted that he could not recall any conversation with anybody about the freight. He was led to say that the engineer had nothing to do with freight but he added "we paid the freight here." In this instance, however, according to Devlin they were not to pay any freight and, as he alleges, for a reason that shows he intervened about the matter with the warden. It is thus evident that O'Donnell's statement has only a limited application. There can be no question that Devlin misled the storekeeper as well as the warden and thus secured for Garth & Co. an advance upon their original price together with the amount paid both ways for freight. The storekeeper was also asked to define the meaning of Devlin's certificate on an account and he said that it meant merely that the goods on the face of the bill were correct as ordered, and that Devlin had received them. This may have been all that Devlin's certificate should have meant in a technical sense, and according to the rules of the penitentiary defining the duties of the respective officers, but it is not the meaning that can be attached to it in this case in view either of Devlin's general practice or of his manipulations in this particular instance. If Devlin were a man who attended strictly to his duty, the storekeeper's definition might be apt enough, but as Devlin constantly exceeded his duty when his friends were in question, the actual, and not the theoretical, effect of his actions is the only one that can be considered. Moreover, the storekeeper was as clay in his hands and he moulded him to his various schemes without any suspicion on O'Donnell's part. From the evidence adduced the conviction is irresistible that Devlin knew the freight was an improper charge when he certified the account as correct.

The only question that remains to be considered is why did Devlin manifest such constant zeal in behalf of Garth & Company. The evidence does not furnish a conclusive answer but it supplies some facts that seriously compromise Devlin and the members of the Garth firm.

During the progress of the heating work at the Protestant chapel and dining hall in the penitentiary, Garth & Company placed a hot water boiler and fittings in Devlin's house at a cost of \$182.90, and at different times afterwards he got from them a buggy top and trimmings, a bath boiler and other minor articles for which he alleged that he paid John H. Garth about \$46. So far as the evidence discloses none of the goods supplied Devlin by Garth & Company were ever charged in their books to his account and there is no entry in their books of the payments alleged to have been made by Devlin. Omissions such as these could not be accidental in the course of a business like that carried on by Garth & Company. Their bookkeeper it was proved was a competent man and they had every confidence in him. When Mr. Noxon of the Kingston Penitentiary Commission visited their establishment in December, 1896, he examined their cash book covering the period from 1886 to the date of his visit and found no trace of any payment by Devlin for the goods supplied him by the firm. This cash book has since disappeared and both members of the Garth firm professed their inability to account for its disappearance. In addition to this exceptional state of affairs it must be said that the circumstances surrounding the alleged payment of the account for \$182 are very suspicious. Devlin says he paid the amount by the hands of Conductor Robinson of the Grand Trunk Railway, who has since died, and in proof of the payment

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there was produced the letter that he sent with Mr. Robinson to Montreal which runs as follows:—

“ KINGSTON, 13th February, '87

(1).....	\$100 00
(1).....	50 00
(3).....	10 00
(1).....	2 00

“ DEAR SIR,—I send you per bearer my friend Mr. Robinson, conductor G.T.R. the sum of one hundred and eighty-two dollars amount of your account which you will please return receipted for heating job done in my house. Everything works very well, but like Mr. Cowan I think it would have been better if I put in a new furnace, however, it may turn out all right. Mr. Robinson would like to look at your conductors, lanterns. Kindly favour him and oblige,

“ Yours truly

“ (Sd.) JAMES DEVLIN.

“ J. H. GARTH, Esq.,
“ Montreal.”

It is peculiar that this letter was not copied in Devlin's letter book as at the time it was written he seems to have copied all kinds of letters, both private and official. Another strange feature of the affair is that the receipt for the pretended payment was not given to Mr. Robinson, the messenger who was supposed to have brought the money, but was contained in a letter sent to Kingston on 15th February, 1887, with Latourelle, Garth's foreman. The letter entrusted to Latourelle is as follows: “ This will be handed to you by Joseph Latourelle, who goes up to take Jno. Cowan's place, and we have sent with him H. Allen to help him through with the work. Our reasons for our doing so is that Latourelle's wife is very sick and may be called back at any moment and the other man can carry on the work during his absence, give them all the help they may require and oblige,

“ Yours truly

“ (Sd.) GARTH & Co., R.M.G.

“ We have also inclosed your account returned to you receipted for work done at your residence, which accept our thanks for the amount. Hoping to hear from you again soon and be favoured with your commands.”

Robinson would have been a material witness in connection with this matter but as stated, he died some years ago. Devlin pretends to have sent bills in payment of this account, and as 13th February, 1887, fell on Sunday it would be scarcely possible for him to have got bills of the denomination of \$50 and \$100 on that day, although he suggests that he might have got them from a friend.

There is a still stranger circumstance connected with this alleged payment and that is that the account which Garth & Company are supposed to have rendered Devlin and which was returned receipted bears a date three days after the date of Devlin's letter inclosing the money for its payment.

In view of all the circumstances, and particularly the fact that Garth & Company's books contain no entry of the payment it is impossible to resist the conviction that the goods never were paid for.

The \$46 said to have been paid to Garth & Company by Devlin for a second account, was it is alleged handed in cash to Jno. H. Garth in the presence of a witness. It was stated that the money was paid over by Jno. H. Garth to the firm's bookkeeper who it appears is also dead. It was impossible to verify these statements as there is no

entry in Garth's books of this money having been paid to them. However, it is not such an improbable story as the first one, and there is a bare possibility that Jno. H. Garth may have received some money and not handed it over to the bookkeeper as he asserts he did. But the fact remains that the goods for which this payment is said to have been made were not charged against Devlin in Garth & Company's books nor do these books contain any record or entry of any money having been received by Devlin. Neither was it shown that any account had ever been rendered to Devlin or that the \$46 said to have been paid was the value of the goods supplied him. While the statements made regarding this payment are very unsatisfactory and without confirmation of any kind there is the shadow of a possibility that some money may have been paid to Jno. H. Garth. This, however, is so slight that it does not conduce to a belief in its probability when viewed in the light of the surrounding circumstances.

During the inquiry attention was directed to the fact that the engineer's recommendations regarding his department were not in all cases acted upon by his superior officers. The evidence referring to this fact was apparently elicited in order that the inference might be drawn that when the engineer's advice was disregarded it would be unfair to hold him responsible for the consequences that resulted from a contrary course being followed. Such a deduction is quite proper as a matter of general principle, but it has no bearing on the subject of the investigation as it was not pretended that Devlin's advice or recommendations were ever opposed in connection with any of the contracts or purchases covered by the charges.

An observation that may be made in conclusion is that it was no less remarkable than unfortunate that so many persons with whom Devlin alleged he had dealings that came within the scope of the inquiry, should have died prior to the investigation. Their evidence would have been most material in clearing up several matters regarding which it was absolutely necessary for Devlin to adduce testimony in order to sustain an important part of his defence.

All of which is respectfully submitted.

CHARLES MURPHY,

Commissioner.

OTAWA, 29th December, 1898.