

O O P Y.

Winnipeg, September 1st 1897.

The Honourable,
The Minister of Justice,
O t t a w a.

S i r;

Re Story Mountain Penitentiary Investigation.

I beg to forward herewith my report upon the charges submitted to me for investigation by Commission under the Great Seal dated February 9th, 1897, and received by me on March 9th last. I have already transmitted portions of this report from time to time for your perusal, and recently returned to the Department of Justice, Penitentiary Branch files No's 292, 1896 and 42, 1897, in which the various charges were set out. I have also reported on the various matters which came to my attention during the sittings of the Commission and on a number of general matters connected with the administration of the penitentiary.

I have the honour to be,

S i r,

Your obedient servant,

(sgd) F. C. Wade.

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Report on Political Charges contained in
file No. 42,1897, Penitentiary Branch,
Department of Justice, against Officers
and Guards connected with Stoney Mountain
Penitentiary.

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POLITICAL CHARGES AGAINST OFFICERS AND GUARDS
CONNECTED WITH STONEY MOUNTAIN PENITENTIARY.

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1. "Rev. A. W. Goulding, Protestant Chaplain and English Church Clergyman, son-in-law of Wm. Wagner, one of the late Swamp Land Commissioners, is a very violent partizan and the main organizer and worker for the Conservative party in this country for the last ten years. He took a very active part in the campaign in June last in favour of Hugh Armstrong the Conservative candidate for Selkirk County against Jno. A. Macdonell. He attended the meeting at Stonewall along with J. A. M. Aikins, Hugh Armstrong, Dr. Orton and others, when Mr S. J. Jackson the member here for the Local House was addressing the meeting in Mr Macdonell's interest Rev. Goulding interrupted him twice asking the chairman to compel Mr Jackson to desist from attacking Mr Aikins who spoke for Mr Armstrong. Mr Macdonell was himself present on that occasion and was a witness of this gentleman's behavior. He also took an active part in getting out the Conservative vote in Selkirk Co. who had votes in Winnipeg for Hugh John Macdonald; he drove into Winnipeg the day before election with Eli Lusignan, Trade Inspector, and A. Monseau, Guard, he voted in Winnipeg for Hugh John Macdonald. E. Lusignan went to Somerset station to vote for R. Rogers, Conservative Candidate; A Monseau went to Provercher to vote for La Riviere the Conservative candidate. Goulding's team was left in Winnipeg during election day to carry voters for Hugh John Macdonald. He came back on election day to vote for Armstrong the Conservative candidate. Harry Braitwaite of Stoney Mountain a voter in Lisgar can give evidence that

Goulding offered to pay his expenses if he would go to Lisgar to vote for R. Rogers against Richardson, Liberal candidate for Lisgar. Wires are being pulled in every direction, the object being to keep this gentleman solid in his position."

S. J. Jackson, M. P. P., who has represented Rockwood for the last fifteen years (214) states that Rev. Mr Goulding was an active worker for the Conservative candidate in the election of 1892 and has been an active worker on the same side ever since he became connected with the prison (215). The part taken by him at the Rockwood meeting is thus described by Mr McQuat, a resident of Stony Mountain:- As near as I can remember, when Mr Jackson got up to speak, you (Rev. Mr Goulding) arose and you said you did not believe the people came here tonight to hear local men speak, that we came here to hear the candidates; and there was an uproar and yells of 'sit down, sit down', and I did not hear anything more." (231). Mr. McQuat states further that at a meeting during the general election before the last he had to call Rev. Goulding to order " six or seven times." (232). Mr R. B. Sinclair, also a resident of Stony Mountain, describes the interruption at the Stonewall meeting; he seems to have considered it of a political nature and objected to it. (203-5). Mr. Jackson describes the nature of the interruption, which he thinks was uncalled for and simply an offensive display of partisanship on Rev. Mr. Goulding's part. (215). The Chaplain's explanation is that he had heard that a row would probably take place at the meeting and his object was simply

to have a quiet orderly meeting (219). So many instances of partisanship on Rev. Mr Goulding's part are to be found throughout the evidence, that I cannot accept his version of what occurred at the Stonewall meeting. I have no doubt that he was actuated by partisanship, and that his actions were uncalled for and offensive to many present at the meeting.

He drove the Deputy Warden and Guard Manseau into Winnipeg, not on the day before the election, but on the morning of the election. Instructor Lusignan was not one of the party. The Deputy Warden's visit had nothing to do with politics, and he was not a voter in Winnipeg or any other constituency. (Deputy Warden, p. 17). Neither did Guard Manseau vote or take any part in the election. (Manseau, p. p. 46-9). Rev. Mr Goulding's object in going to Winnipeg was to record his vote. He used his own team and gladstone, and not a team or vehicle belonging to the prison (74). He stabled his horse outside the City, went to the polls by the electric car, and afterwards returned to Stoney Mountain. His team was not left in Winnipeg to carry voters to the polls. (79). He voted for Mr Hugh John Macdonald in Winnipeg and for Mr Armstrong at Stoney Mountain, the other Conservative candidate. (Rev. Mr Goulding, p.961).

With reference to the Braithwaite charge, Henry Braithwaite stated that about the time of the last ~~election~~ Dominion election he got a letter stating that he was a voter at Clearwater in the electoral Division of Lisgar. He did not remember who the letter was from and destroyed it, he thinks the day after he received it (223-225). Subsequently he mentioned the letter to Mr Hewitt, the stationmaster, who

sent him up to Rev. Mr Goulding, (233). He was to go to Rev. Mr Goulding to see what he could do for him in connection with the letter and about going to Winnipeg. The Chaplain gave him " a note to go to the City", addressed to someone whose name he does not remember. (234). Braithwaite afterwards, on finding out that he could not go to the City, destroyed the letter without opening it or noting to whom it was addressed. (225). According to Mr Goulding, the contents of the letter were, that the bearer was the Mr Braithwaite whl had received the letter from Maurice Dunsford of Morden, that he was the man who had a vote at Clearwater, and that he was desirous of going there if possible (226). A question asked the witness by Mr Goulding (p. 226), would indicate that Braithwaite had been told to see Dunsford at the Leland Hotel, Winnipeg, and desired a letter of introduction to him. Mr Goulding knew that Mr Dunsford was the Conservative agent for Lisgar, but his letter was " simply to identify Mr Braithwaite." (227). Mr Hewitt says he sent Braithwaite to Goulding because Canon Rogers was a brother of R. Rogers, Conservative candidate for Lisgar and " I said perhaps Mr Goulding will know Mr Rogers and I wanted to sell a ticket to him, I didn't care who it came from.

Q. It was not because you thought Mr Goulding was taking any part in the election? A. No. I knew Canon Rogers had been out here and I knew he would know Mr Rogers and might suggest something." (755). As Winnipeg is over 13 miles from Stoney mountain and Clearwater is a long distance—Braithwaite says 134 miles—from Winnipeg, it is difficult to see what this suggestion might be, unless it had

something to do with transportation for Braithwaite. Besides voting for both Conservative candidates, and taking an active part in the political meetings, the Protestant Chaplain seems to have been organizing the Stony Mountain poll, as it was he who asked Mr Durden, the Warden's clerk, to act as poll clerk during the election (Durdan 158), and to have been communicating with the Conservative committee rooms in Winnipeg with regard to Guard Puigh's vote at Westbourne. (Durdan, p.p. 320-3). There can be no doubt on the evidence that Rev. Mr Goulding took a most active and partisan part in the Dominion elections of June, 1896, and was one of the chief organizers on behalf of the late Government of the campaign at Stony Mountain.

2. "Father Cloutier, Pts. R. Catholic Chaplain, has been a very active worker against the Greenway Government for the past five years. In 1888 Mr Jackson sitting member for the Legislature polled every R. Catholic vote in Rockwood, an Orangeman being the Conservative candidate and was elected by ninety-six of a majority, in 1892 the same Orangeman being his opponent Father Cloutier went to work with his Co-religionists and the result was Mr Jackson had one of a majority. Several voters told him that they were instructed by Father Cloutier to vote against him. In the campaign in June last at Stony Mountain Prison Chapel, fully attended by the public preached an election sermon strongly endorsing the Tupper candidate and advising all voters to vote against the Liberal candidates. He told Goulding, the Protestant Chaplain that Macdonnell, Liberal Candidate, was renegade

Catholic and not a man among the R. Catholics would support him. Goulding used this statement to the injury of Macdonnell."

I will deal first with the portion of this charge referring to the sermon.

This charge is denied by Rev. Father Cloutier, who states that in the sermon referred to he used no reference to any government, and that he did not charge his compatriots and coreligionists to vote against the Laurier candidates. (Rev. Cloutier, p. p. 167-8). The Warden denies having heard any such sermon, and states that he would certainly have brought the Chaplain to task had he heard it. (Warden, p. 818). The Protestant Chaplain states that he did not hear the sermon referred to at all. (Rev. Mr Goulding, p. 76). Guard Freeman was not in the Chapel but in the guards room when the sermon was preached. He heard nothing of a political nature. (Freeman, p. 107). Mr Power, Instructor Lusignan, Hospital Overseer Beaupre, and Guards Manseau and Gingras were also present. (Gingras, p. 52). All these witnesses were examined, but no one of them heard such a sermon preached. (Gingras, p. 524; Beaupre, p. p. 145 & 700; Power, p. 151. Manseau, p. 152). Something was said about men voting according to their consciences, (Gingras, p. 53), and about how children should be brought up. (Gingras, p. 54).

The only evidence to show that Rev Father Cloutier deprived Mr Jackson, M.P.P., of the Roman Catholic vote in Rockwood in 1892 is Mr Jackson's own testimony on page 217 of the evidence. This evidence, however, is mainly hearsay

in character, and is contradicted by Father Cloutier, who denies having instructed a voter or canvassed a vote in Rockwood in 1892. He did, however, canvass in St. Boniface in that year. (Rev. Cloutier, p. 168).

3. "Ben. F. Powers, Steward and Storekeeper is one of the 'Pets' of the late Sir John Thompson from Antigonish, N. S., and is one of the most offensive partizan talkers. His actions at Stony Mountain station evening of election was very violent and uncalled for, saying that the Liberals could not carry on Dominion affairs their men not being competent to carry on the affairs of the country. He is still declaiming against the Government and its settlement of the School Question, by his political pull he has been enabled to get a yearly increase of income of Fifty dollars whereas the statute says he shall get a yearly increase of only Thirty dollars."

According to Mr Lewis, Mr Power, the Steward about eleven o'clock at night when the returns were all in, said publicly that the Liberals could not run a government six months. (Lewis, p. p. 59; 70-1). He was also much excited over the return of Mr Dickey. (Mustard, p. 113). He denounced Clarke Wallace as a firebrand orangeman, unfit to be taken into Sir John Thompson's cabinet, and in the excitement of the moment his cane flew out of his hand. (Power, p. p. 118;119;148). Mr Sinclair's account of this incident is that he saw Power throw his hat and cane out of the station door when he heard Conservative being elected. (Sinclair, p. 201). There is no evidence that at the

station Power used violent partisan language towards Macdonell and Laurier. It does appear, however, that Power used most disrespectful language at Hughes' Hotel after leaving the station. Mr Neil Isbister on entering the bar room found Power talking to Mr Campbell, of Mr Whitehead's camp staff. He said that anyone who voted for the party, meaning the Liberal party, was a dirty s— of a b—, and that anybody who would vote for Mr Martin, meaning the Liberal candidate in Winnipeg, was a dirty s— of a b—. Guard Sutherland was with Power at the time, but did not make any protest against the language used by Power. (Isbister, p. 182). He would not be more than ten feet from Power at the time, but whether he heard what was said by Power or not, Isbister cannot say (165). Alexander Campbell, referred to by Isbister, heard him on the same occasion state that "anyone that would vote for Joe Martin was a s— of a b—", and that "he didn't give a damn for that s— of a b— Laurier, that he had a property in Antigonish, and if he lost his job, he could go back to that" (181). He also heard Power say "the Liberals would soon be out of power, that it would be only a year or so before they would be out of power again, or something to that effect" (182). When first questioned as to whether he had used the offensive expression with regard to Mr Martin, or any expression like it, Power denied that he had done so (147). Mr Hughes, the hotel-keeper, was afterwards called by Power. He did not remember the expression attributed to Power in connection with Mr Laurier, but recalled the expression made use of by Power against Mr Martin (242). Mr Hughes also thinks Guard Sutherland was present when the offensive

remark about Mr Martin was made (243). At a later stage Power made the following statement;- "I unfortunately may have used that term in reference to Mr Martin at that time in the heat of passion, as there was considerable excitement at the time and election matters going on, but I say most positively that I never applied it to the Liberal party or Mr Laurier. I may have used the word 'property' afterwards, but not on that subject." (Power, p. 728). Giards Freeman and Sutherland were also examined, but were unable to remember anything damaging to Mr Power, though they could recall the trivial incidents of the evening. (Freeman, p.p. 185-6; Sutherland, p. p. 188-9). There can be no doubt that Power made use of the expression attributed to him against Mr Martin. When first questioned on this charge, he denied most positively that he had said anything of the kind, but afterwards admitted that he might have done so. He persists in denying that he made use of the other expressions attributed to him, but it is difficult to believe that Mr Campbell made up his version of the conversation out of whole cloth. He is a respectable witness, and his evidence was given in a very satisfactory way, and in a manner that contrasted very favourably with that of Mr Power. I fell compelled to accept Mr Campbell's testimony as well as Mr Isbister's. In any case, when it is proved that such vile expressions have been used by an official in the heat of political passion, it can make very little difference whether they have been employed against Mr Laurier and Mr Martin, or Mr Martin alone. There is no evidence to show that Power is still declaiming against the settlement of the school question, nor that he got his

increase of salary by "his political pull." The only testimony on this last point is on page 117 of the evidence.

4. "Wall Inspector, David Farquhar left Stony Mountain day before election June last, went to Portage la Prairie to vote for Nat Boyd the Conservative candidate, got back to Stony Mountain in time to vote for Armstrong the Conservative candidate for Salkirk."

Instructor Farquhar was away from noon on the 22nd until 10 p. m. on the 23rd of June. (Deputy Warden, p. 24). He procured leave of absence from the Warden on June 22nd. The Warden did not ask him for what purpose he desired to leave. He voted for Boyd at ~~Portage~~ Portage la Prairie and for Armstrong on his return. (Farquhar, p.p. 34-6). He claims that the work on the wall went on all right during his absence and that the convicts were safely guarded. (Farquhar, p. p. 37-9). He had not asked for leave of absence for four or five months previously. (p. 29).

5. "W. R. Grahame, Farm Instructor, ~~Wary~~ of the Tories and lets people know it; was very active in last local and Dominion elections. Drove eight miles to vote against Maedonnell last June. At Stony Mountain on the eve of election was very demonstrative when news came of Hugh John Maedonald's election for Winnipeg. Evidence can be furnished if desired."

Instructor Grahame left the reserve about noon on

June 23rd and drove fourteen miles to Greenwood, intending to vote for Mr Armstrong, the Conservative candidate, but owing to the excitement, cannot swear how he marked his ballot. He returned to the reserve about six o'clock P. m. He did not apply for leave of absence, but spoke to the Warden, who allowed him to go for the afternoon. (Grahame, p. p. 85-8). In the evening he went to the C. P. R. station to hear the election returns. He states that he was in no way violent in his conduct and that he does not know of any conduct on his part that it would be the duty of the Warden to check. (Grahame, p. p. 87-8; 115; Sutherland, p. 105; Mustard, p. 113). On the night before the last Dominion election Mr James Isister, a resident of Story Mountain, was present at a political conversation between Mr Grahame and Mr McLean, a wellborer. Mr McLean is a Liberal, but Mr Grahame tried to talk him into voting for the Conservative party. The conversation was political in the main, and lasted about twenty minutes, and it appeared to Mr Isbister that Mr Grahame's object was to canvass votes for the Conservative party. The details of the conversation are given on page 264 of the evidence. (Isbister, 263-4-7).

6. "John Smith, Guard and Engineer, accompanied Surgeon Sutherland to canvass Andrew Gillies (Jr) for vote for Armstrong and for Hugh John Macdonald, the Conservative candidate for Selkirk and Winnipeg. See declaration re Surgeon Sutherland."

The finding on this charge is covered by the finding on charge 8 against Dr Sutherland.

7. "D. G. Sutherland, Guard, another of the gang, who is a very active and unscrupulous worker for the Conservative party in Selkirk. He is from Kildonan. About a week before election got leave of absence for four days, his avowed intention being to go into his home in Kildonan to work against Macdonnell the Liberal Candidate."

"Guard Sutherland was absent from 9 a.m. on the 3rd. of June on a pass issued to him. His leave was not for four days. (Warden, page 20, Exhibit D). He went to Winnipeg with his wife on June 3rd on private business, stayed there all night and visited his mother's house in Kildonan on the following day. He states that he did not canvass in Kildonan or anywhere else, either then or at any other time prior to the election, and that he did not attempt to influence any voters, and denies that he made any statement as to good work done by him in connection with the election. (Sutherland) P. p. 102-3). He was present at the station on the night of the election with the other prison officials. While there, according to the evidence of Mr J. O. Lewis, he said, "it would be a shame to elect Joe Martin, as he was a gambler, and either he or Mr Grahame I am not sure which, said Mr Martin had won \$700 from a poor bank clerk and he was losing his position, so he gave it back to him, or he gave it back to him as the clerk had lost his position. That was said to prove to me that Mr Martin was a gambler." These statements were made publicly

in the waiting room to the crowd standing about. (J. O. Lewis, p. 59). Sutherland states that he did not accuse Mr Martin of robbing anyone of money, but does not positively deny having made the statement attributed to him by Mr Lewis. (Sutherland, p. p. 104-5). His evidence in this and in other matters is unsatisfactory, and I have no hesitation in believing that Guard Sutherland attacked Mr Martin's private character publicly at the election on the night of the election. Guard Sutherland also stated that the liberals would not be in power at the end of five years. (Accountant Mustard, p. 113). He was also present with Power, the prison storekeeper, at the hotel on the night of the election when the latter made use of the vile expressions set out in the evidence (Isbister, p. 162), but denies having heard what was said. (Sutherland, p. 188).

8. "Dr W. R. D. Sutherland, Surgeon of the Penitentiary took a very active part in the last campaign in June last both for Winnipeg and Selkirk County. See declaration attached. Ever since this gentleman got his appointment at Stony Mountain he has been an important factor in both local and Dominion contests and Liberals here have no use for him. An investigation into hospital management of this institution will show that political friends have influenced his reports about prisoners."

The declaration referred to states that on the night before the election in June last, Surgeon Sutherland along with Guard Smith, visited Andrew Gillies at his house at Stony Mountain and urged him to vote for Armstrong, the

Conservative candidate against Macdonell, the Liberal candidate, and also, that he wanted Gillies to go into Winnipeg and vote for Hugh John Macdonald, the Conservative candidate, against Martin, and pressed him very hard to do so, offering to drive him in himself if he would vote for Hugh John Macdonald. Gillies says, however, that he did not give him any satisfaction, but voted as he pleased for Macdonell and Martin, the Liberal candidates.

When called on this charge, Dr Sutherland denied that he had taken any part in the last Dominion campaign, or done any canvassing. (122). He could not say that he favoured either candidate, nor did he know either of the candidates in the Welkirk Electoral Division (122). He did not, he says, take an active part in the last local election; in fact since his appointment (1880) he thinks he attended only three political meetings, was never a member of a committee, and did no active work. (122). He was certain also, that he had done nothing in the way of canvassing or anything of the kind in or around Kildonan during the election of 1896. (123).

Furthermore, he denied having on the night before the election gone to the house of Andrew Gillies and having asked him to vote for Mr Armstrong. He did not even pay him a visit that evening (123). He had a conversation with Gillies, however, but this was quite accidental. Driving past Gillies' house he stopped at his yard fence and spoke to Mrs Gillies, who was in the yard, for a few minutes. Mrs. Gillies talked of going into Winnipeg next day, but was not sure as her husband had not returned from work. Surgeon Sutherland, and Guard Smith, who was with him, drove on, and

shortly afterwards on their return met Gillies on the road a little way from his home. According to Dr Sutherland, this conversation then occurred:- "I said to him;"Are you going to get a drive into town tomorrow ?; and he said; "I have a vote". I said;"Are you going to vote?"; and he said; "If I can get into town". The Doctor Proceeds;- "I did not know anything about the man's politics and I said Hugh John Macdonald has been a good friend to your Uncle Andrew Gillies, one of the penitentiary workman, and he might help you. I did not ask him to vote for Hugh John Macdonald, or urge him to go to town with me, but I said, I am driving in alone, and if Scott does not take you, I will give you a lift in, and you can vote as you please. He replied; "That is right;that is the beauty of the ballot'. We drove away and I have not seen the man since". (123-4). To the best of his knowledge, neither Armstrong's name nor Macdonell's name, nor the school question was mentioned in the conversation (124). He has some conversation with Mrs Gillies, telling her in fun if she had a vote, he would drive her in but would not take Gillies (124). The meeting of Gillies on the way back was a pure accident (124). This passage then occurs:-

"Q. You did not start out to see him ? A. No.
Q. That was an accident ? A. Yes, as far as meeting him is concerned. You asked me did I visit him at his house; that is my explanation of it; I don't know whether you would consider it a visit at his house or not." (125).

Guard Smith states that he was driving past the Doctor's quarters, when he saw the Doctor and picked him up (126). His story is the same as Dr Sutherland's in every particular.

He swears that he heard neither Macdonell's nor Armstrong's names mentioned, and thinks that Hugh John Macdonald's name was the only one spoken of. (128).

Mrs Gillies and her husband tell a different story. Mrs Gillies states that on the evening before the last Dominion election Dr Sutherland with Guard Smith drove up to her door and asked for her husband. Mr Gillies had not come home from the lime kiln at the time. She told the Doctor that he would not be back until seven o'clock, and the latter replied that he would take a drive and come back and see him, and that he wanted him to vote for Hugh John Macdonald. She does not remember him saying about Mr Armstrong at that time (238). She proceeds:- "He took a drive around for about half a mile and came back and remained fully an hour at the door as near as I can judge." (238-9). He remained sitting in his buggy and talked to her all the time, mostly about elections. He was very anxious that her husband should vote for Hugh John; he said he thought he ought to do so because his uncle was working at the prison." (239). She knew he came for her husband's vote, "because he came driving right up to the house." When asked if she heard anything that was said by the Doctor to her husband politically, she replied; "No, I did not; I had enough of him (Dr Sutherland) and I was sick of him." (239). This passage occurs in the evidence of Mrs Gillies:-

"Q. He said he returned by the same road shortly afterwards and met Gillies on the road near his house, what do you say about that ?

A. I say that is a direct lie. I say he came back and talked

to me for nearly an hour, and he did not see Andrew coming until I said; "There he is coming, because his back was towards him (240).

Q. He says it was a pure accident his meeting Mr Gillies on his way back ?

A. It was a pure accident sitting in the buggy waiting for him at the door. He was ^{so} afraid he would miss him that he asked me which way he would come, and I said through the back, and he said, if I drove around that way I would miss him, so that it must have been a very pure accident." (241).

Andrew Gillies says that when he saw the Doctor and Guard Smith they were outside his house sitting in their rig, waiting to see him. The Doctor asked him if he was going to vote for Hugh J. Macdonald, and if so he would drive him into town (254), and when leaving he said; "We are sure enough of your vote for Armstrong anyway." (235). The Doctor was very anxious that he should vote for Hugh J. Macdonald, and talked to him a long time about him. (235). His wife told him the Doctor had been waiting a terrible time and she was anxious for him to come home, "so as to get rid of them". (237). The Doctor stayed a long time talking to him; at least Gillies thought it was long as he was feeling hungry and wanted to get into supper and he didn't want to be bothered. (237).

Doctor Sutherland, recalled, reiterated his statement that he did not mention Mr Armstrong's name in conversation with Mr Gillies, and added:- "I swear that we were not away from our home more than an hour, so that we certainly could not have been at her place more than twenty minutes, that is both times." (7860).

Guard Smith, recalled by Doctor Sutherland, repeated his statement that he had not heard Mr Armstrong's name mentioned by Dr Sutherland and added:- "I don't think we were there^{that} along, I am almost positive about that, because I know we were not an hour gone altogether from the time we left here until we came back. We left here after looking up time and I had supper and fixed the horse". (768).

Mrs Gillies may have erred to some extent in her idea of the time Doctor Sutherland and Guard Smith waited to see her husband. In other respects, I believe her story is the true version of what occurred. Dr Sutherland's quarters are not situated on a portion of the reserve where they would ordinarily be passed by anyone taking an evening drive. But whether Dr Sutherland and Guard Smith met by accident or by arrangement, I cannot after having heard their testimony and that of the other witnesses, accept their statement that the meeting with Andrew Gillies was entirely accidental. Both Gillies and his wife agree that when the former returned home, Dr Sutherland and Guard Smith were waiting in the carriage in front of his house, waiting to see him. From Mrs Gillies' own statement and from her husband's recollection of what she said to him on his arrival, it is clear that they had been waiting a long time to see him. Mrs Gillies' statement that Doctor Sutherland wanted her husband to vote for Hugh John Macdonald, the Doctor's subsequent conversation as related by Gillies, and even his own admission as to the language used by him, show clearly that he canvassed Mr Gillies for his vote for the Conservative candidate in Winnipeg.

I can come to no other conclusion that that Dr Sutherland went to the house of Andrew Gillies and waited a long time for him there for the express purpose of canvassing him for his vote for Hugh John Macdonald, the Conservative candidate for Winnipeg, and that his evidence and that of Guard Smith to the effect that the meeting with Gillies was entirely accidental is not in accordance with the facts.

This finding covers charge 6 as well as the present charge.

No evidence was furnished me to show that Dr Sutherland's political friends have influenced his reports about prisoners.

9. "William Burke, Guard, got leave of absence for four days to go into another district, St. James in Selkirk Co., to work against Macdonnell the Liberal candidate. When he came back he boasted of the number of votes he had changed. A very loud talker on the evening of the election at Stony Mountain station on the announcement of H. J. Macdonald's election. Now he expects to be dismissed."

Guard William Bourke was on leave from 4 p. m. on June 16th to 8 p. m. on June 18th. (Deputy Warden., P. 21, & Exhibit G). He left Stony Mountain by train on the evening of the 16th and drove back on the evening of the 18th of June. He went to the Parish of St. James to purchase a horse. He states that he did not go there for the purpose of influencing the election, that he did no canvassing and made no statements on his return as to what

he had done in the way of canvassing. He further states that he had nothing to do with politics while away. He drove back on the horse he had bought, arriving before his leave had expired. He voted at Story Mountain on election day. (Bourke, P. p. 90-4). He was at the station when the election returns were being received on the night of the last Dominion election, but was not there when the announcement of Mr Hugh J. Macdonald's election was made.

In addition to the charges contained in this file, a charge was placed before me against Instructor Miller of the boot and shoe department of the prison. It was charged that he had always been a most active partisan, that he came from Ottawa in 1891 to personate in the interest of Mr Hugh John Macdonald and was for his services appointed to his present position; also, that in 1893, he came to Winnipeg and voted twice for Mr Colin H. Campbell, Conservative candidate, and informed Mr Morton and Mr Stevenson of this and boasted about it. Also that he no doubt took an active part in the last Winnipeg election. A further charge against Instructor Miller was that he was in the habit of using prison material to make boots for his friends.

John Morton, now shoemaker and tanner in a small way, formerly employed Miller as his foreman in above business, which he then managed on a somewhat large scale. Mr Morton states that during the election between Mr Joseph Martin and Mr Colin H. Campbell, Miller "was asked to go and vote, and he was away some time and when he came back he informed me that he had voted a good one, that he had voted in two places." That he had voted twice that day for the

Conservative candidate. (172). Mr Morton adds:-- "When he told me about voting twice; I rather reproached him for it; and I wondered at him telling me, he being my confidential man, and I never thought so much of him afterwards." (133-4). Mr Morton claims that he entertains no prejudice against Miller (173), but admits that Miller sued him for \$300 odd but he (Morton) got judgment in his favour for \$70 or \$80 and between \$200 and \$300 costs, no part of which has been paid. (174). David Stevenson, also shoemaker, recalls Mr Morton telling him that Miller had admitted having repeated, but thinks the election was between Mr Hugh J. Macdonald and Mr Isaac Campbell. He afterwards mentioned the matter to Miller with the result that; "He blushed in his face, and he said that Mr Morton did not need to blame him for that when he got the chance to do so, and he said he would do so again every time he got the chance." (175-6). Mr Stevenson alleges that Miller expressed a desire to make something out of the prison material " by providing the material and getting a percentage on it"....."he did not use the word 'boodle', but that is what I understood him to mean." (176). Stevenson reported this matter to Mr Metcalfe and claimed that it was wrong for the Conservative government to appoint such a man (176), and asked him to speak to Mr Hugh John Macdonald about it, but Metcalfe said it would be no use seeing Mr Macdonald, but promised to report the matter to Sir John Thompson (177). He also refers to a conversation with Miller which led him to believe that the latter was sent here immediately before the election between Mr Geath and Mr Hugh Sutherland in order to personate (177). He admits personal enmity between Miller

and himself, but denies that his mind is biased by it in giving evidence on this charge (176). Miller, he says, charged him before his customers last summer with committing an unmentionable crime. He would not believe Miller on oath, (178).

Instructor Miller denies that he came to Winnipeg for any purpose in connection with an election. He was in Winnipeg at the time of the Campbell-Martin election, but did not vote twice for Mr Campbell, nor did he tell anyone that he had repeated. (150). Morton, he says, is a great enemy of his, and has done him a great deal of harm (152). He has never made any boots or shoes for any friends outside his own family from prison material, and denies positively having personated at any election. (152).

Andrew Christie, called on behalf of Miller, has heard Morton continually making threats against Miller; does not believe Morton on oath &c., &c., b(807). He gives Miller a good character. (808).

Alex. Gordon, a very well known shoemaker and business man, called on Miller's behalf, also gives him a good character, speaks of Morton's drinking, and says he (Morton) must have been drunk when he said Miller was not to be believed on oath (812). He has a very poor opinion of Stevenson, the other witness against Miller (813).

Where the evidence is so conflicting it is difficult to reach a satisfactory conclusion. The personal enmity of both Morton and Stevenson towards Miller would make it dangerous to place implicit reliance on their testimony. For many other reasons apparent throughout this evidence, it would not be safe to find that the charges against

Instructor Miller have been proved. On the other hand, I am by no means prepared to find that they are groundless.

— 1 —

Report on political charges con-
tained in file No 44, 1897, Peni-
tentiary Branch, Department of
Justice, against W. A. G. Irons,
Warden of Stony Mountain
Penitentiary.

— 1 —

1. David Farguehan, Well Inspector, left Stoney Mountain on June 22nd for Winnipeg, took train for Portage la Prairie, voted for Boyd, got back on the 23rd and voted for Armstrong against Macdonald.

Instructor Farguehan was away from town on the 22nd until 10 P.M. on the 23rd June (Deputy, Warden p. 24) He presenced because of absence from the Warden on 22nd June. The Warden did not ask him for what purpose he desired to leave. He voted for Boyd at Portage la Prairie and for Armstrong on his return (Farguehan p. 34 b.) He claims that the work on the well went on all right during his absence and that the Cornicks were safely guarded (Farguehan p. 31 a) He had not asked for leave of absence for four or five months previously. (p. 29).

2. Jas. Mustard, accountant went into Winnipeg, voted for Hugh Macdonald, came back to Stoney Mountain and voted for Armstrong against Macdonald.

Accountant Mustard went away with Instructor Farguehan and returned with him, but was not at Portage la Prairie with him. (Farguehan p. 27) He went

to Winnipeg & voted for Mr J^o
Maurice, the Liberal Candidate,
& on returning to Stony Mountain
cast his vote for Mr Macdonell,
the Liberal Candidate for Settlement.
He has always been a Liberal
in politics. (Newstead p 111.)

3. "D Sutherland, Surgeon, voted
for Armstrong against Macdonell
only in the morning of Election Day,
drove into Winnipeg, voted for
H J Macdonell, & came back
next day."

D^r Sutherland's evidence on this
point is as follows: "I went
down (to the poll at Stony
Mountain)" and voted for
Armstrong & I went into the
City, but I had not vote for Mr
Macdonell; my name was
not on the list. I spent nearly
the whole day with a friend
sitting in the corner in the
Granville Hotel" (D^r Sutherland
p. 918).

4. "Rev A. W. Gontberg, Protestant
Chaplain, drove a party of officials
in to Winnipeg day before
election with one of the teams,
said team being used Election
day in Winnipeg to carry voters
for Hugh J Macdonell, he came
back to Stony Mountain &
voted against Macdonell"

The Protestant Chaplain drove the Deputy Warden & Guard Munnica into Winnipeg, not on the day before the election, but on the morning of the election.

The Deputy Warden's visit was for the purpose of seeing Inspector Munnica & not in any way connected with politics. He was not a voter in Winnipeg or any other constituency & his visit was nothing to do with politics (Deputy Warden p. 17). He had intended going in with Guard Ferguson, but finding that Rev Mr Goulding was going in joined Tucci (Deputy Warden p. 29). Guard Munnica accompanied in a private bus which he had not used & took no part in the election (Munnica p. 469).

Rev Mr Goulding's object in going to Winnipeg was to record his vote. He used his own team and Gladstone & not a team or vehicle belonging to the prison (Rev Mr Goulding p. 74).

He started his team outside the city, went to the polls by the electric car & afterwards returned to Stony Mountain. His team was not left in Winnipeg to carry voters to the polls (Rev Mr Goulding p. 79). He voted in Winnipeg for

Mr Hugh John Newdowald,
Conservator, 1st Stirling Mountain
for the Conservancy (1861).

5 "The Lesignau, Carpenter & Indentor,
went into Winnipeg, day before
Election with New Goodding, voted
for Robert Rogers at Somerset
Station & did not get back until
Thursday after election the 25th
June being away four days."

Inspector Lesignau did not
apply for leave of absence, but got
permission from the Warden
to go to vote. This may have
been two, three or four days before
the election. The Warden showed
him a letter from Mr Drummond
asking for his vote & gave him
permission to go. He did not
force him to go. He drove
into Winnipeg on Sunday
evening with New Father Clouting
& out with the New Mr Goodding.

His intention was to vote for
Mr Rogers, the Conservative Can-
didate. He voted at Somerset
in the Electoral Division of Lisgar
& returned to the prison on the
Thursday after the election.

The Warden did not ask him
to vote for Mr Rogers. He does
not think the Warden knew
how he was going to vote.
He

He claims to have left work
to be gone on with during his absence
& that it was allocated to. He
had three men in his charge
at the time. He never went
away before without making
some of absence. (Lowerman p.
10-31).

6. "A. Mansour, Guard, was
driven into Winnipeg by Rev
Goulding the day before election,
voted for Lawrence in St Boniface,
did not get back for four days"

On the morning of June
23rd Guard Mansour drove into
Winnipeg with the Deputy Warden
& the Protestant Chaplain, Rev.
Mr. Goulding, & returned to the
prison with the Deputy Warden
on the following Thursday,
June 25th. He received leave
of absence from the Deputy
Warden (Deputy Warden p. 10, 9)

His intention was to return the
same day but the Deputy Warden
ordered him to remain. He
was not on duty on the 23rd.

He had no vote at the Election,
did not know that his name
was on the St Boniface rolls
last, & did not vote for Mr. Lawrence.

He took no part in the Election.
He went to Winnipeg on
private

business, was away three days,
and four. (Manuscript pp. 46-9.)

7. "Mr. Guibance gave Instructions,
before an Election day 78 miles
to vote against Pseudonote, was
most violent in his conduct
at the Station & in no way
checked by the Wardens, Colonel
Drowne."

Instructions Guibance left the
reserve about noon on June
4th & drove 14 miles to Granwood,
intending to vote for Anstey,
the Conservatives succeeded to,
but owing to the excitement, cannot
swear how he marked his
ballot. He returned to the reserve
about 6 P.M. He did not apply
for leave of absence, but spoke to
the Warden, who allowed him
to go for the afternoon. (Evans
pp. 85-88). In the evening he
went to the C.P. Station to hear
the Election returns. He states that
he was in no way violent in his
conduct at the Station & that he
does not know of any conduct
on his part that it would be the
duty of the Warden to check.
(Guibance pp. 87, 88, 115. Substantiated,
p. 105. Stewart 112).

8. "W. Brooke, Guard, went to go

8th January 20 miles away to work
I wrote for Armstrong & openly
boasted on his return of the
number of votes he had changed
& the good work he had done for
Armstrong against Macdonell?

Edward William Bourke was in
leave from 4 P.M. on June 16th
to 8 P.M. on June 18th (Dep. Standard
p. 71) and Estabrook C). He left
Stirling Barracks by train on the
evening of the 16th & drove back
on the evening of the 18th June.

He went to the North of St
James to purchase a horse. He
states that he did not do this
for the purpose of influencing
the election, that he did not
campaign & made no state-
ments on his return as to what
he had done in the way of cam-
paigning. He further states that
he had nothing to do with politics
at all. He drove back on
the horse he had bought, arriving
before his leave had expired.

He voted at Stirling Barracks
on Election day. (Bourke pp. 90-4).

J. Donald & J. Sutherland, Juniors,
got to me of absence for 6 days
went to Mitcham to work for
Armstrong & boasted on his

return of the good work so com-
pleted by him among his friends,

At the Station on the evening
of the Election day attacked Pearson's
private character, not checked
by Brown, the Warden?

Ernest Sutherland was absent
from 6 A.M. on the 3rd of June
on a pass issued to him. His
leave was not for four days.
(Warden p. 20 & Exhibit D) He
went to Winnipeg with his wife
on June 3rd on private business,
stayed there all night & visited
his mother's house in Redman
on the following day. He states
that he did not canvass in
Redman or anywhere else,
either then or at any time prior
to the Election. & that he did not
attempt to influence any voters.
& does not think he made any
statement as to good work done
by him in connection with the
Election (Sutherland pp. 103-31)

He was present at the Station
on the night of the Election with
the other prison officials. While
there, according to the evidence
of Mr. O'Hara, he said "it
would be wrong to elect Joe
Murphy, as he was a gambler,
& either he or Mr. Graham

I am not sure which, and Mr
Merritt had over \$700. from a
poor bank clerk. He was
losing his position, so he gave it
back to him or he gave it back
to him as the clerk had lost his
position. That was said to
prove to me that Mr. Merritt
was a gambler. These state
records were made probably
in the winter of 1850 to the
Grand Jury in about 1850
(p. 59) Merritt ^{thence} does not say
that the Warden was present at
this trial (Lewis p. 59) Sutherland
is certain that the Warden did
not bear him attack Mr. Merritt's
private character. He states he
did not accuse Mr. Merritt of
robbing anyone of money, but
did not probably, may having
made the statement attributed
to him by Mr. Lewis (Sutherland
p. 104) This evidence in this
& in other matters, is unsatisfactory
& I have no hesitation in
believing that Edward Sutherland
attacked Mr. Merritt's private
character publicly at the trial
in the night of the Election. Edward
Sutherland also stated that the
liberators would cast him in prison
at the end of five years (accountant
Newland p. 113) He was also

present with Power, the prison
Door-keeper, at the hotel on the
night of the election, where the
latter made use of the vile
expressions set out in the evidence,
(Gibson p. 162) but denies having
heard what was said (Sutherland,
p. 188.

16th Father Clontier, of the Catholic
Chaplain, preached a most
outrageous sermon before election
in the prison chapel (which is
open to & attended by the surround-
ing public) In his sermon
he charged all his congregants
& Co-religionists to vote against
the lawless candidate Jerome,
Goldring & Edward Freeman,
also the Guards on duty, heard
the sermon Jerome adjoining
room :-

This charge is denied by Rev
Father Clontier, who states that
in the sermon referred to he
made no reference to any govern-
ment, & that he did not charge
his congregants & Co-religionists
to vote against the lawless
candidate. (Rev Clontier pp. 167-8)

The Murders denies having
heard any such sermon & states
that he certainly would have

brought the Chaplain to task
but he heard it (Ward p 818.)

The Protestant Chaplain states
that he did not hear the sermon
referred to at all (Rev Mr
Goulding p 76, Guard Freeman
was not in the Chapel, but in
the Guards room when the
sermon was preached. The
word nothing of a political nature
~~Chaplain.~~ (Freeman p 107)

Mr Power, Instructor Kingman,
Hospital Overseer Beupre &
Guards Messian & Engas
were who present (Engas p 54)

all these witnesses were present
but no one of them heard such a
sermon preached (Engas p 54
Beupre p. 115 & 708, Power
p 151, Garrison p 152. Something
was said about men - nothing
amounting to their conversion.
Engas p 53) & about two
children should be brought
up (Engas p 54) on going to
the prison. ^{Rev} W. Goulding was
informed by Guard Freeman
that Rev Father Cloutier was
giving them bad counsel,
or something like that.

Rev Goulding p 761 What
Freeman did say was that
"Father Cloutier was giving
them bad their morning"

"all he meant was that he was
preaching rather loudly &
gesticulating with his hands"
Freeman p. 106) The Warden
was not in the Chapel at any
time during the sermon: he
was in the Quakers room when
the sermon could have been
heard through the open windows
& the open windows of the
Chapel. He entered the Gards
room, looked at the watch &
went out again (Freeman
p. 107 &) There is no evidence
that the sermon changed was
preached, nor is there anything
to show that the Warden could
have heard it for more than
a moment, even if it had been
preached.

11. "Mr. Gardner, Warden's Clerk,
was asked by Justice to take the
charge of the Story Committee
with as Deputy Returning Officer,
but untoward circumstances
outside of his duties prevented
him. He was sent to the
North the day of the Stone wall
meeting to obtain four Amshurst
a few copies of the voters lists
for use of Staff Macdonell was
present in the Car:

Mr. Gardner was not asked by

by the warden either directly or indirectly to take charge of the Story Mountain poll, nor was he sent to the City Station to obtain copies of the voters lists.

He was asked by the Rev. Mr. Goulding, the Protestant Chaplain, to act as poll clerk, but refused.

He went to the City Station to obtain copies of the voters lists, but did so entirely of his own motion (Dundee pp. 158-9)

12. "Ben J. Power, Steward & Store Keeper, in James' presence at the Station on night of election, in presence of a large crowd used most violent partisan language towards McGehegan and Laurier. He applied the best abuse epithets in the presence of Warden, who, the audience will show regarded their actions with approval."

According to Mr. Lewis, Mr. Power, the Steward, about 11 o'clock at night when the returns were all in, said publicly that the Liberal Govt. not run a government six months. (Lewis pp. 59-70-71) he was also much excited over the return of Mr. Dickey (Munstead p. 113) He

denounced Edw. Wallace as
a firebrand Orange man, and
to be taken into Sir John Thompson's
custody & in the excitement
of the moment his cane flew
out of his hand (Power pp. 118,
119 & 148) Mr Sinclair's account
of this incident is that he
saw Power throw his hat &
came out of the Station door
when he heard Constitution
being elected. (Sinclair p. 201)
Power did not see the Warden
there when his stick flew out
of his hand (Power p. 120).

There is no evidence that at
the Station Power used violent
partisan language towards
Armedonell Thomson, nor is there
any evidence that the Warden
heard what Power had said, or
that he regarded his actions with
approval.

13 " G. F. Freeman, Guard, upon
the night of election at railway
Station, read the returns to the
crowd, in expressing uncomplimentary
& sarcastic remarks about the
successful Liberal candidates,
and "checked by Power".

It appears that on the night
of the last Durham election a large
number of the prison officials

went down to the C.P.R. Station, which is about a mile distant from the prison, to hear the election returns. Among those who were there were the warden, the Protestant Chaplain, Rev W. J. Goulding, the Accountant Mr. Purstland, the Stewart Mr. James, Hospital Overseer Simpson, Minister Tom Ferguson & Ex-chaplain and Guard, Mr. McLean. (Evidence p. 11) Mr. Lewis (Lewis p. 57-8) also gives address of McLean (Evidence p. 97.) Also Warden's Clerk, Wm. Durden (Durden p. 159) also Guard E. Brunke (Brunner p. 266) Some of the villagers from Stony Mountain & the Constabulary were also present. According to Mr. Lewis, a few liberals of the Constabulary were present (58) Guard McLean thinks there were about as many villagers there as officials. (104)

A subscription had been raised to pay the C.P.R. for a separate set of returns at the Station & officials & villagers were present to hear the news. Mr. Lewis states that the guards were in uniform at the time (64) Some of the men were in uniform, apparently, and some were not (Evidence p. 87, 91, 103, 137, 144, 160, 220) As the Election returns were handed out

by the Station master they were
read by Guards Peacock & Salmon
& Mr Stewart of the village. Mr
Seward complains that while
Guard Peacock read the returns
the officials he called ^{names} to him &
were not checked by their superior
officers & also that they were
having great fun at his expense, as
only a few liberals were present.

He does not remember anything
offensive having occurred while
the Warden was present (Nov pp. 58-9)

Some offensive statements made
by other guards, but not in the
presence of the Warden one dealt
with elsewhere in connection with
the names of Stansford, Power, Jackson,
Graham & Edward Sutherland.

Guard Peacock advised that a
good deal of abuse was let loose
from his pronunciation of
French names in reading the
returns from Linc. but denies
having made any complimentary
remarks about ^{any} candidate
or sarcastic remarks of any kind.
(95-6) Accountant Mustard who
voted Liberal to the in Warrington &
Sellers, in answer to the question
whether Peacock took advantage
of the reading of the returns to be
sarcastic said "well he is out with
here and in reading out the

returns, the French names bothered him, but there was nothing more said that I heard excepting just Chaff. (113) Guard Subison, who also read the returns a portion of the time, tells the same story. (137) So also Mr. Borden, Warden, Clark. (159) Mr. Spradley who has lived fourteen years at Stony Mountain, is a liberal in politics, & noticed that the officers were petulant over the return of the, were reluctant to concede it, but their actions were not oppressive to him (202)

14. "W. H. Sheard, Plumber, outside Staff, was drawn to Manning to vote for Hugh J. MacDonald."

Sheard was a member of the outside Staff of the Penitentiary on June 23rd. He did not leave the Penitentiary reserve on that day, nor did he cast a vote for any candidate. At no time prior to the Elections did he take any interest in them (Sheard pp. 109-110)

15. (11) "A. J. Irvine, Warden, allowed the Penitentiary to be used as the centre of political partisan activity (2) The general officers were actively employed & allowed to devote their time & interests for the

Conservative Candidate Co, Armstrong.
(b) Their officers were also through
John Macdonald's Committee to
get the non-resident City vote
& provide coverance for same
from Macdonald (4) He suspended
work at the Parliament on Election
day, that all might participate
in Election."

In the purpose of dealing
with the charge in this paragraph
I have numbered them (1) (2) (3)
(4) with reference to ^{sub-}Charge (1) it is
well known that when the
present Member took over the
Story & Macdonald's Parliamentary
hered it with a staff of Con-
servative officials (I think p 204)

The Jackson M.P., who has
known the present since 1878,
states that up to the time that
the present Member took charge
as that the Forts had charge,
it was dangerous for any man
to mention that he was of
liberal proclivities to any member
of the Staff. He made that charge
in the Manitoba Legislature
in 1888 & the officials have since
been disfranchised in Provincial
politics. They still however, he says
exert a good deal of influence
throughout the country & the
Staff is practically the same.

The general impression in the
country is that the political side
"has not changed very much since the
present Warden took charge".

S. J. Jackson M.P. (186-7-9). John
Wellcut, a resident of Stoney
Murmurain for 20 years, always
considered the whole staff that he
was personally acquainted with
reporters of the late government,
"with the exception of one or two
that "he "did not know exactly
how their feelings were" & figured
upon only two liberal votes
from the Prison but Dominion
election (228-229). The late
Warden Bedford no doubt
exercised a vast amount of
political influence throughout
his position as Warden, but Mr
Wellcut "has never known the
present Warden use any influence
any way" at Stoney Murmurain (228)

Mr Wellcut is an old liberal
in politics - Apart from his
allowing officials away on leave
to vote at the last Dominion
election, which charge is fully
dealt with elsewhere & under charge
of & from what occurred at the
railway station on the night of
the election - also dealt with else-
where - I have failed to find any
evidence whatever in support

of the statement that the Warden
allowed the penitentiary to be
dealt with as the center of political
jurisdiction activity.

With reference to not charge
(a) there is no evidence that
the officials were actively employed
by the Warden or by anyone else
to assist the Conservative Candidate.

What they were allowed to
do appears in the analysis of
Charge 17.

There is no evidence to support
Charge (B)

not charge (C) refers more
particularly to the fact that on the
~~election~~ day of the Election the
convicts were brought in from
their work rooms than was usual
at other times, & the explanation
is that this step became necessary
because so many of the officials
had been advised to leave of absence
in order that they might vote.

owing to the peculiar position
of this prison on the top of the hill
known as Stony mountain,
with a quarry & timber bluffs
extending off to the right over
bordering the lower lands, with
open fields & bluffs to the left,
& the absence of a surrounding
wall, unusual precautions have
to be taken with convicts, especially

cuts in the afternoon or towards evening. Should we escape we could manage to tie in our cables with the wharf, lay a line across, or in the worst case after a night's effort, it would not be the most difficult matter for him to escape across the international boundary before the officers could intercept him. As the no escapes have occurred during the term of the present Warden, they did occur formerly & it is very probable that just described. For this reason the Deputy Warden states, the officers are instructed to bring in their men if a fog or a storm springs up quickly. He would also bring them in in case of danger from any confinement on the reserve. (Dep. Warden p. 32)

In the diary kept by the Warden's Clerk, Mr. Purden, this entry is printed "were brought in at 4 AM owing to number of Officers away to day". The words "4 AM" should have been "4 PM". In explanation of this entry Mr. Purden says - "I don't know what they were brought in for that reason - as I say I saw the men brought in, & I concluded that it was owing

to the number of officers being
away. There was no other
reason that I could see because
it was a fine day. This
passage also occurs in ~~the~~ his
evidence.

Q It has been stated that they
were brought in on account of
kenns passing backward & forward
with electors in rather an excited
condition. A Well I did not
see any cause in that way.
I don't know. A There was
this only a suggestion of yours
that that was the reason why
they were brought in. A Yes
also the following:

Q Did you ever see the contracts
brought in because people were
passing in the vicinity making
a noise or acting in an excited
way? A Not that I can
remember. (Darden pp. 334-5)

It seems that on Election Day
a gang was building a fence
alongside of the road in charge
of Guard MacFarlane, another
in charge of Edward Bourke
was working at the barthen & other
gangs were employed at the
stable and elsewhere. There were
seven men in the MacFarlane's
gang, there is no reason to believe
that any of the gang were employed

large. The mounted guard were
on duty as well. During the
work several teams passed
up from the polling place at
the hole & some of the occupants
of these conveyances were
interviewed & making a wise
Mr Parlance (p. 154) The Warden
wrote to Mr Parlance in the
middle of the afternoon you
thought he would take the
men right in on account
of this noise, but he did not do
so, & the order was not given
to do it until he knew first
& so on. (Mr Parlance p. 154)

Mr Darden also says: "My house
is 5 o'clock & when I was going
out of course I saw the convict's
coming in." Darden (p. 335)

Mr Parlance had a military guard
in his gang annual (154) & this
was intended to take the gang in
at once in case of danger.
(155) - Mr G W Butler, Barren, N.
Hampshire, voted at the Polling booth
in the village on June 23rd. & early
in the afternoon met the Warden
on the Prison grounds & had a con-
versation with him. Of this he says:
"If I remember rightly, the
Warden explained to me at the time
that he was particularly on the
alert that day as they were so

many people passing and stopping
by this road I speaking to the land
to be overwatchful - that he
would have to call them in
certain to day as a matter of
precaution, as they were so many
people going to & from the road?

This is the particular sus-
pensive of operations on Election
day disclosed by the evidence.

16 No charge.

17 "Ten Officers were away from
the Prud'ary out of the bounds
of the County on Election, some of
whom required 4 days to get home,
forgetful of the fact that these men
are custodians of some of the most
damning of evidence criminal - by
order of the Warden?

The Officers absent from the
prison on election day were
the Deputy Warden, Surgeon Sutherland,
Chaplain Ewaldig, Accountant
Mustard, Instructor Langan and
Sergeants Miller and Buchanan &
Sergeants McCreary & Young
(Deputy Warden p 22) The Deputy
Warden left the prison for
Warmpy on the morning of
Tuesday, June 22nd & returned on
the following Thursday, June 24th

His visit had nothing to do with
elections. In fact he had no vote
in Winnipeg (Dep. Warden p 17)
it was in response to a telegram
from Mr. Maylan, C. C. C. C. C. C.
Inspector, asking him to come
of see him at Winnipeg. He
showed this telegram to the
Warden & asked for leave which
was granted (Dep. Warden p 34)

Chaplain Goodring's object in
going to Winnipeg was to
record his vote (Rev. Goodring
p. 94) He voted for Mr. W. J. John
Macdonald, Conservative Candidate
in Winnipeg, & on his return
voted for Mr. A. M. S. S. S. S. S.
Conservative Candidate in
Saskatoon (Rev. Goodring p 96)

accountant Mustard went
away & returned with Inspector
Fargher (Fargher p 37) He
was away therefore, from noon
on the 22nd until 10 p. m. on the
23rd of June (Dep. Warden p 24)

He voted for the Liberal Candidate
in Winnipeg & Saskatoon (Mustard p 4)

Inspector Ferguson went
away on Sunday June 21st on
"fact that was his own time
& was not to be marked against
him? He was absent on
the 22nd, 23rd and 24th & until after
1 o'clock on the 25th (Dep. Warden p. 23)

His leave was verbal. (Warden p 23)

The Warden showed him a letter asking for his vote & gave him permission to go. His object was to vote for Rogers, Conservatives, & he voted at Somerset, with the constituency of Lesgar. The Warden did not ask him to vote for Rogers. He does not think the Warden knew how he was going to vote. (Luzigneaup p. 40)

Instructor Marguher was away from noon on the 22nd until the 23rd of June (Dep Warden p 24) he procured leave of absence from the warden on June 22nd

The latter did not ask him for what purpose he desired leave.

He voted for Boyd at Portage la Prairie & for Armstrong on his return (Marguher p. 34-6).

Instructor Miller was absent on June 23rd from 7:30 a.m. till 10 p.m. (Dep Warden p 24) He drove into Winnipeg with his wife & voted for Hugh McDonald.

He put in a pass to get leave of absence. It was approved as usual. (Miller p 131).

Instructor Graham left the mine about noon on election day & returned about 6 in the evening. He drove 14 miles to Greenwood to vote for Armstrong

Conservative Candidate. He did not apply for leave of absence but spoke to the Warden, who allowed him to go for the afternoon. Gougham pp. 85-86.

Guard Hurren was drove into Newmoy the morning of Election Day & returned on Thursday June 25th having been away three days. He was not in duty on the 23rd His intention was to return to the prison on election day, but he was kept over by order of the Deputy Warden. Leave of absence was given him by the Deputy Warden. He took no part in the Election / Dep. Warden pp. 18, 19 Curran pp. 46-9.

Guard Grogan went into Newmoy on the evening of June 22 & came back on the evening of Election Day June 23.

The Deputy Warden asked him if he would drive him in & he offered to do so, as he wanted to go to town. The Deputy informed the Warden of this & the latter said it would be all right.

Deputy Warden pp. 21 & 23 Grogan pp. 50.

He had a vote in St. Bernards but must be on business as well. Grogan pp. 30-21

It appears then that the

officers were absent from the prison on or about Election day. Instructor Fitzhugh was absent during the afternoon of Election day. The Chaplain, the Singers & Instructor Miller were absent during the day of Election only. Guard Briggs was absent from the evening of June 22nd to the evening of June 23rd.

Accountant Mustard & Instructor Fitzhugh were absent a day & a half from noon on the 22nd till 10 p.m. of the 23rd Election day.

The Deputy Warden and Guard Minns were absent from the morning of June 23rd until Thursday June 25th, nearly three days. Instructor Swinson left on Sunday the 21st of June and did not return until after noon on the 25th. If as he says, Sunday was his non day, he was absent from duty on the 22, 23, 24 & part of the 25th of June. So far as the warden's responsibility is concerned, Guard Minns' absence should be counted as one day, his leave having been for Election day only.

The charge is that these officers were sent away "by order of the Warden". This charge forms one of the particulars of

the general charge that officials were "sent all over the Province last June about Election time charged to vote for government candidates."

Of these two Officers about on Election day, two, the Deputy Warden & Michael Munnice did not vote & took no part in the Election. The account that Mr Mustard supported the Liberal Candidates in Winnipeg & Sisseton. The Surgeon, Protestant Chaplain, Instructor Harrison & Surgeon, Miller & Guahame & Guard Ingram were undoubtedly absent in connection with the election & for the purpose of recording their votes for temporary candidates. Were there officials sent away "by order of the Warden" charged to vote for government candidates?

Instructors Guahame & Surgeon did not acquiesce in the Warden's purpose for which they wanted leave. (Guahame p 86 Surgeon p 35)

There is no evidence that any official was sent to vote & certainly it is not shown that any one was charged to vote for a government candidate. The Warden gave Instructor Harrison a letter from a Mr Sanford asking for his vote & gave him permission

to go away for the purpose. He did not ask him for his vote however, and Hunsman does not think he knows how he was going to vote (Hunsman p. 40-41.) He claims most absolutely that he sent away a night official on Election day with instructions to vote (p. 817) He made no suggestions to anyone as to voting at any time prior to the election. (p. 840) nor did he discuss politics with any of the officials. (p. 840) The officials did not tell him what they were going away for on Election day but he had a very good idea (841) at the same time he did not send any of them away for the purpose of voting (841)

Although these officials were not sent away for the purpose of voting the fact remains that an unusual number of officials was allowed to be absent on election day. The Deputy Warden who has held his position since September 1895 - does not remember so great a number ever having been away at any one time before.

Five or six is the greatest number he can recollect having been absent on any ^{one} occasion.

some on leave - Deputy Warden
p. 27

It is charged that the Warden incurred very serious suit by allowing so many appreciable to be away from their posts at one time, especially as these were "custodians of some of the most daring of the Western criminals". Eighty prisoners constituted the Commit strength for the month of June (Dep. Warden p. 27). An analysis of the crimes for which they were sentenced will be found in the Warden's evidence p. 28. That side are serving out sentences for murder, some for manslaughter, two for attempt to murder, 1 for arson, two for housebreaking, some of them having been brought from British Columbia - apparently inadequate, the necessity for increasing care and vigilance.

On the other hand it will be noted that the absence of the Protestant Chaplain & Surgeon & accountant could not affect the General strength of the Deputy Warden's duties would be performed easily enough by the Warden and Chief Keeper - A comparison between the names of those absent with the names

on the officers pay list & that it
will show that whole four out
of the five instructions were absent
only two out of the twelve guards
were away from the prison
at one time. Those who
remained on duty on June
23rd were the Warden, Warden
Clark, Steward, Hospital over-
seer, Engineer & Instructor
Smith, Chief Keeper, two out
of twelve guards, Mrs. Ellis &
during the morning Instructor
Graham. To put in in
another way, the guard or
police strength may be said to
consist of the Chief Keeper, the five
Instructors, the twelve guards
perhaps Mr. Ellis, sixteen in all,
& if these six were absent & Instructor
Graham was absent for half
the day only.

The Warden's conduct towards
the staff remaining in the
prison must be considered
in this connection. He says
"I paraded them & cautioned
them & told them as govern-
ment servants they had no
right to meddle with politics;
they could go to the poll & vote if
they wished to but it was during
their dinner hours & that
they were not to go in a

body, but some might go before
dinner & some after & they were
not to stop there & talk to anyone,
but to vote & come straight back
again. I took them out of
the conservatory window & they
went & came back in a most
orderly like manner (817) What
occurred in this parade is fully
set out in the evidence of Guard
Wm Burwick (93) Edward Freeman
(100) and Guard Johnson (135) Their
evidence corroborates the statement
of the warden in every particular.

18. "The telephone in his (the
warden's) office was in constant
use communicating with Hugh
& Theodore the Committee room,
Winnipeg, in getting the vote
out from Story Macmillan &
Macmillan to Winnipeg &
getting the Winnipeg vote out
to Story Macmillan."

The location is about 13
~~miles from Winnipeg connecting~~
with the Winnipeg system. No
evidence has been adduced
that might substantiate this
charge. The warden was
afraid the telephone might
be used for political purposes,
during the election & gave orders
that it was not to be used

(Ward 09
6518

Mr Durdan, his clerk, in whose office the telephone is, remembers it being used by the Hon Mr Goudy to speak to the Conservative Committee room at Warrington. The conversation was political & had to do with General Sirgus vote at Warrington (Durdan pp. 320, 323.) The Deputy Warden also appears to have got the Sirgus to telephone him the result of the Warrington Election. (Durdan pp. 27, 28.) Mr Durdan heard that the Warden had directed that it should not be used for political purposes. Guard Freeman witnesses the telephone during Mr Durdan's absence remembers one occasion when Mr Green was using it for political purposes & adds, "I think Col Green interfered & he gave me orders that the telephone was not to be used during the elections for that purpose." So far as he knows it was not used for political purposes. The Warden's order was given a day or two before the Elections. (Palmer pp. 98, 99.)

The Surgeon, Dr Sutherland, was frequently told by the Warden that he disliked anyone using the telephone for

political purposes. See in
New Morning Guard Freeman
& Choking Man (D)
Sutherland p. 175).

19. "His (the murderer's) own
action at the Station on the night
of election displayed an intense
partisan interest, putting us
back whatever upon the
wisdom & worthy conduct of his
subordinates.

His charge was already
well partially documented under
chase 13 - Mr Lewis thinks the
murderer went to the Station
between 4 1/2 past 8 & 9 o'clock, remained
an hour or more & a half
(69) & left about 10 o'clock (60)

He was not there when the
news of the Warrumpes Election
came in (see p 69) The
Inspector, Captain, Rev^d Mr
Gordwin & later that he went
to the Station about 4 1/2 past 9
o'clock, the murderer going with him.
(60) Surgeon Sutherland states
that the murderer returned from
the Station between 8 & 9 o'clock or
about 9 o'clock (61) Mr Lewis
remembers statements of an
effusive kind being made
at the Station on the night of the
election, but cannot recall

whether the Warden was there
at the time or not (57) "The
Colonel Warden & Mr Goulding
were there & when a name
would come, they would say -
there goes one for the Govern-
ment, there goes another for
the Government (Lewis p 69)

The Rev Mr Goulding states
that the Warden did not
convey a partisan spirit any
more than at any other
time (140) By this he means
that he does not consider the
Warden an active partisan.

(141) Furthermore, in his
opinion, nothing occurred
during their presence there
which the Warden should
have objected to (142) He was as
much delighted over the return
of Mr G. as he was over any-
thing else & remarked that
he was a splendid man (143)

The Conservative Ministers did
not seem to make any difference
to him (144) Mr Sinclair,
Liberal, did not notice the
Warden making any remarks.

He noticed that the Guards
were present and made quite
a noise when Government
supporters were returned.

This conduct was not

offensive to him. There were
not many offenses in any case.

He heard no rough language
(204) at the beginning. The
meeting was horridous (201)
There was a general deal of
excitement when Tom Hugh J.
Macdonald was elected, but
the warden warned there then
(202) p. 401-405. Hector
Prison went to the Station about
8 o'clock & returned about 11 (207)

There was some cheering &
shouting. He heard no offensive
remarks about Liberals (207)

It was not a noisy meeting
for the election night, however, &
he did not see any reason for
interference on the part of the
Warden (205) He cannot say
that the warden was there
when the hurrahing was done
(200) Mr Stewart reached the
Station about 7 or 8 o'clock & left
Calverley 10 o'clock. The officials
were not very noisy while he
was there. He heard no
cheering by officials & no
offensive remarks (220)

He did not hear the Warden
express any anxiety as to the
result. The Sentinel has
since made several remarks
to the Warden which would

indicate that the Guards were
greatly disappointed over the
result. (74) The Stewart is
Sutherland, a Merchant & a
Liberal.

The Swire in leaving
heard Col Bruce tell Guard
Stewart to let him know
"if things took a turn for the
better, or something to that
effect" but will not say that
these were exactly the words
(70) but for joining
with the words and use
"for this or later returns".

When pressed in this point the
following passage occurs:-
"I did not say more favour-
able returns indicating that
we were very much disappointed
at the returns that had come?
It. I could not swear to
that. I know it was, if there
were any later returns."
(140)

20. "He (the witness) formally
announced in favour of
Armstrong against Macdonald
& the Hunter party - a detached
declaration numbered A

This declaration, Exhibit B
referred to is made by Mr.

At Lewis, Municipality of Stoney
Mountain School. It is not
that previous to the election in
June last the Warden caused
Mackay to retract his vote
& influence against Macdonald,
the Liberal candidate for
Schools & Fisheries of
Stoney Mountain, the Conservative
candidate, saying that the
Country would be worse off
as Premier a man who was
with a Frenchman & a
Mexican Catholic & pointed
out to him the danger of
placing the School question
in such hands.

Mr Lewis' first conversation
with the Warden occurred in
the Home of Rev Mr Fording,
the Protestant Chaplain, in
the month of April, about the
time Parliament was dis-
solving at Ottawa & the
Dominion Commissioners
on the School question had
gone back. Mr Lewis at this
time was supporting the Liberal
party, but he does not know
whether the Warden knew
his political bias or not.
The other Mr King was known
to the Warden, however, as
he had taken some part

in the recent elections on the
School question (55-56). The
of the New York Society had been
discussing the School question
& the advisability of getting
it settled & Mr Lewis had
declared that "Mr Laurier
could settle the question if
he had an opportunity" and
the Canadian answer was
that this country would
never endorse a French candidate
as Premier. These are
the only words that Mr
Lewis can remember; he
cannot recall the words
that followed, but the tenor
of them, he says, was "that
a Catholic leader & Catholic
candidate could not be
connected with the School question."

Mr Newcomb, he adds,
was at that time the liberal
candidate for Catholic (56)

This statement that you
could not trust a Catholic
with the School question
was Mr Lewis' own, first
started by Wendell Brown
& afterwards became a
wall to cry throughout the
whole country. Anything
further with regard to the
conversations he cannot

remember (57) the claims to
have had a further conver-
sation with the warden at
New York, some in August,
and that was after the
election, it will be dealt with
further on (60).

on cross examination he
claims that the words made
use of by the witness were
"This country would never
embrace a Frenchman and a
Catholic as Premier." (70)

His lordship stated that
at the evening in question Mr
Laurier had called at my home
the previous evening and called
several times on political questions
other matters for minutes
when the warden called. The
conversation was continued
in the course of it Mr Laurier
asked me questions like this;
Well, sir, what do you
think about the elections?
I answered him like that; and
Mr Laurier replied that he was
not much of a politician &
not interested in these matters, but
that he did not think Mr Laurier
would be elected on the ground
of his being a Frenchman or
a French Canadian, the
only reason, but I

cannot mean that, a Roman
Catholic (76) What he under-
stood the worden to mean
was "that his apprehensions,
if he had any at all, were that
he was afraid that the ultra
Protestant plotting would
work against him on account of
his being a French Comendary."
(78) He has no recollection
of the worden saying that
it was unsafe to leave the
School question in the hands
of a Catholic Member or Catholic
Clergy, or any thing of that
kind (83) & likewise recollects
positively that he ever heard
the worden mention the Lewis
or anyone else (735)

Rev. Mr. Goulding then
proceeded to state that the
declaration referred to was not
substantially correct when he
was confronted with a Certificate
in his own handwriting (Exhibit
D) furnished S J Foxhall
M.P. on Feb. 16th last in
which he stated that he had
seen the affidavit (declaration)
of J. O. Lewis, marked it
with reference to a conversation
with the worden & that the
same was substantially
correct (Rev. Goulding 79)

A good deal of evidence was
obtained by Rev. Mr. Gaudin
& Mr. Jackson, the one seeking
to show that he was persecuted
by Jackson to give this declara-
tion & did not know exactly
the law for which it was
to be used, the other claiming
that it was given voluntarily
with this intention of condoning.

The fact stands out clear
enough that Rev. Mr. Gaudin
feared that certain charges
were to be made against
himself through Mr. Jackson, &
sought to escape by shifting
the attack upon his superior
officer. The Warden. Rev.
Gaudin pp. 80, 81, 82, 83, 84
Jackson 212, 213, 214, 218.

The Warden's statement
is as follows: "I happened
to go into Mr. Gaudin's home
one evening. I had only met
him twice before that, so
that I hardly knew him.

He called me, the meeting
before the Election, what I
thought of Mr. Laurier's chances.

I spoke to him as if I was
one of his party. I told him the
only thing I was afraid of was that
his being a French Canadian,
I did not know how he would

every in Saturo or something
like that" (735) He adds "I never
mentioned the school question &
did not take any interest in
politics. It is as false as it
possibly can be" (737) Further,
as to the statement that the
Warden said the country did
not endorse a French Canadian,
he says: "I never made such
a statement, & I will take my
solemn oath of that. I remember
saying once I was afraid that
that would go against G. L.
Laurier in Upper Canada. I
spoke as if I was a supporter
of the government & said that
I was afraid that ~~me~~ ~~me~~ of
his being a French Canadian
I did not think he stood such
a good chance in Ontario. I
was talking in the private
house of the Chaplain &
thought I was talking to
respectable gentlemen (737)

He adds "I don't think the
school question was mentioned"
(737) as to the statement,
that he encouraged Mr Lewis
he says: "I never conversed a
man in my life. I might
say, & yet he swears that I
encouraged him." (737. 819. 828)

Further on the Warden says:

" I will swear positively that I never mentioned the school question in that sense & I never mentioned the school question in that sense & I never said that this country would not endorse a French Canadian as a Premier. I did say that a Catholic Premier could not be trusted with the school question - and I might mention that I did not know the names of the two candidates that were running in the Selkirk District & I have not met them to this day & I do not know them by sight." (p. 29).

It will be observed that while Madewie swears positively to nothing else here that the witness stated that this country would never endorse a French Canadian Premier & seeks only to recall the terror of the further commutation, the witness himself is positive that the country he referred to was Ontario, the witness swears positively that he said nothing of the school question. Now Mr Goulding's evidence is to the same effect. It will be observed, too, that while

with the Warden & Mr. Gooding
deny in the most absolute way
the charge of carrying Mr.
Lewis down - repeat it in his
evidence.

In my opinion this charge
is without foundation. The
most cautious official is likely
to let fall a remark which
though intended to be the
purest speculation, can be
construed as a partisan
utterance. In this case
only a perpetual imagination,
it seems to me, could con-
clude that the Warden's state-
ment was an effort in the
direction of carrying a
vote. It will be noted, too,
that the entire charge is based
on a private conversation of
a purely social nature in
a private home. It is perhaps
unwarranted my province to
comment on this, but it
seems very heavy and desirable
that private conversations
such as these should be
made the basis of political
charges.

Warden had a further
conversation with the Warden
after the election in August.
Of this Mr. Lewis says: "The

5
Harden said he knew 1771
Dobell well in fact he
could not say Government
had would give him a
certain portion. Material
re recall of this further
conversation (60) at the same
conversation the warden said
he knew Mr. G. & spoke of
him in terms of respect (71)
New York Publishing does not
remember the August
conversation at all (76) He
has always seen the
warden speak in a most
friendly way of Mr. Laurier.
However, on one occasion
was asked to visit Mr. Laurier
with him at Winnipeg (77)
at the same time he thinks
that if anything had been
said slightly of Mr. Laurier
or any of his Ministers, he
thinks he would have
remembered it. (98)

The
Warden's version of this con-
versation is as follows:-

"After the election he asked me
in the same place what I
thought of Mr. Laurier and
I told him I thought he
had a very fine lot of men
around him. And I knew
a good many of them

and since were very clever
men & I told him where I
knew Sir Henry Joly. Mr
Doyle and Mr Joly's friends,
that Sir Joly was a clever
man & had a clever family;
that he had two sons who
had good positions in the Royal
Engineers, & he asked me what
the Royal Engineers were. I
was astonished at his not
knowing that & I explained
it to him. I am a Com-
missioned Officer & I think
from my training I would
not speak of Ministers of the
Crown in that way, no matter
what my ideas would be.

These men, not only being
Ministers of the Crown were
personal friends of mine &
it would be a nice thing to
be read by these people (4/36)

on the same page. But
Mr Gortaleigh states that he
can remember the Warden's
allusion to Sir Joly's boys but
that he cannot recall any
statement reflecting on Mr
Doyle (736). Further on the
Warden says "I certainly
never told him that Mr
Doyle would accept any
position in any government

I will mean to that most
positively (527) The passage
follows

Q Did you say to Lewis this:
"Must you know Mr Dobell
well in Quebec & that he
would join any govern-
ment that would give him
a cabinet position?"

A. No, most decidedly. I
cannot imagine what put
such things into the man's
head. (529)

Although the above conver-
sation is not referred to in the
charge under consideration I
have thought it best to examine
it as if it were part of the
charges against the evidence
of McKewen that the evidence
and the language attributed
to him with regard to Mr
DoBell, there is the most
positive denial of the words
supported by the evidence of
Mr McLaughlin, who thinks
that if anything had been
said slightly of McKewen
or any of his ministers, he
would have reprimanded it.

Under the circumstances
I cannot find that the charge
has been sustained by the
evidence. The remarks

previously made with regard
to the inadvisability of basing
political charges on private
conversations apply to this
connection as well. With
regard generally to the charges
of patronage against the
Wardens, Edward Smith says
that he never knew him to
take any political action
or show any political leaning,
& that six weeks a day or two
before the election, he had a
discussion with Edward Freeman
as to whether the Warden
was Liberal or Conservative
and whether could arrive at any
conclusion (128, 127.) On the
night of election, however, he
judged "from the way he
seemed to take the returns
coming in" that he was a
Conservative (129)

The evidence of the residents
of Stuyvesant in respect to
more satisfactory in this
part. His Sinclair it will
be remembered, never knew
the Warden take an active
part in politics (204) & Mr McQuay
a resident for 20 years "never
knew the present Warden
to use any influence any
way since he came here"

(to Henry Merritt) 229.

Mr Sinclair & Mr McQuibb
are supporters of the Liberal
party.

After making the allowance
for the words & considering
the conduct in his former
the fact remains that on the
night of the election he con-
ducted by his presence a
considerable meeting of the
officials of the prison - some
of them in uniform - whose
participation was distinctly
displayed, & caused by his
own actions - to Edward Smith
at least - in part, predilec-
tions (Edward Smith p 129)

In my opinion, in allowing
two officials of the prison -
Guards Freeman & Falcon,
in road election returns to
his crowd assembled at the
election, & in permitting so
considerable a gathering
of officials to give vent to
their partisan feelings in
public & in his presence,
the Warden did not show
sound judgment. Nor
can his action on and about
election day in allowing
so many officials to leave
the prison for Winnipeg.

and other points to vote be
entirely explained away.

The Member admits that
"he had a very good idea"
what they were going away
for (SUI) but adds: "I may
say I was in every upward
position. I did not know
which was liberal or con-
servative & I was afraid if
I stopped one man it might
be said I stopped him for
a purpose" (SUI) The position
may have been, and no
doubt was, an upward one.

Had the Member prevented
his husband, for instance,
from going to vote, one
of the present charges might
have been that he forced a
Liberal to remain on duty
while allowing Conservatives
to go freely to the polls. On
the other hand, it may be
very properly argued that
the duty of a public officer
is to control outward situations
rather than be controlled
by them. The fact that
no unusual number of
officials was allowed to
leave the reserve at election
time for periods of a day
or more, whether it included

inadequacy or not on the part of the Warden, does point to laxity of administration. The regulation providing for appeals about themselves on leave is clear & unambiguous; it provides as follows:—

256. No officer shall absent himself at any time except on sickness, without ^{having} first obtained leave from the Warden or return application in writing, recommended by the Deputy Warden, for such leave, unless he needs as many days, before-hand as possible?

In the present instance the Warden himself has shown (26) that only two passes in written applications were issued to officials who were absent on June 23rd, for the case of the rest leave, when given, was verbally asked for and verbally granted.

No particular effort seems to have been made to carry out the Regulation relating to leave of absence.

THE PURCELL CASE.
 OOO

Report on Charge No. 1 of the charges against
Warden Irvine's administration of Stony Mountain
Penitentiary, fyle No. 42, 1897, and on the charges
contained in fyle No. 292, 1896, Department of Justice,
Penitentiary Branch, concerning convict No. 44, Purcell.

THE PURCELL CASE.

"Lee Purcell, Lethbridge, convict No. 44 lay a most serious charge against Warden Irvine through his solicitor, Pitblado of Winnipeg of illegally depriving him of his liberty for 19 days, see particulars attached Marked B."

The details of this charge are fully set out in file No. 292, 1896, Department of Justice, Penitentiary Branch, subject; Complaint of ex-convict Lee Purcell that he was detained in Manitoba Penitentiary beyond the expiration of his sentence.

The following is from the entry in the convict ledger at page 14 with regard to Purcell :-

"No. 44; Thomas Purcell. Male, 3 year's term. Received March 8th, 1894. Discharged September 11th, 1896. Whence received, Lethbridge. Age on date of receipt, 64 years and 4 months. Height, 5 feet 7 inches. Hair grey. Trade, farmer. Crime, manslaughter. When sentenced, 19th February, 1894. Convicted by Judge McLeod at Supreme Court. Delivered here by Sheriff Campbell." (Evidence, p. 245).

As Purcell's term of three years included one leap year, its full length would be 1096 days. As he was released on September 11th, 1896, he served only 936 days, or two years and 206 days. The portion of his term remitted amounted to 160 days. (Durden, p. 318 & Exhibit 0).

If Purcell had not been deprived of a portion of his remission he certainly would have been due for discharge from the penitentiary at an earlier date than September 11th.

The provisions for remissions are contained in section

55 of the Penitentiary Act and are correctly summarized by Mr Durden, Warden's Clerk, in his evidence as follows:-

"When a convict comes in at first for six months he gets no remission, that is from the date of his sentence, not from the date he is received here. After that he gets five days per month until he has a total of thirty. When he has reached the total of thirty, then he begins with seven and a half days per month until he has a total of 120 days; and the remainder of his sentence he then gets ten days per month." (245-6).

A set of rules relating to remission, and made in accordance with the provisions of section 55, has been in existence since May 8th, 1890. These rules were issued as a circular letter to all the penitentiaries. (Durden. P. 319, Exhibit K). Rule 6 provides as follows:-

"6. At the end of every month, the Warden shall award the remission time gained or lost by each convict, in conformity with the Act and with the record and returns of the responsible officers, unless guided by other reliable information to the contrary."

Commenting on this rule, Mr Durden says:-

"The rules....state that the remission is to be given at the end of a month, not at any time in the month, and the rule that has existed ever since I have been here is that the remission is given on the last day of the month. We often find that a man had five or ten days, or seven and a half days due him, but he does not require them all to put him out, or he may require none of them. In this particular case, Purcell would have been due ten days remission which would have been of no use to him. There has never been any

question raised here. It does not seem to be justice, but that is the rule according to the official letter." (319).

In accordance with the Act and the rules Mr Durden has prepared a calculation (Exhibit L), showing the number of days remission to which Purcell would have been entitled if he had not been deprived of any of it, the number of days of remission actually received, and the amount of remission lost. From this statement it will be seen that Purcell was allowed 160 days remission. If the day of his discharge had fallen on the first day of September, the number of days remission in his case would have been 182, but as it fell on August 30th, and before the end of the month remission for August could not be allowed under the rule. As it was, he was entitled to 172 days remission under the Act and Rule 6. A practice prevails in the penitentiary." That is a man's time expires on a non-train day, you let him out on the day previous to that, when the train is going out." (Durden, p. 325). As August 30th., when Purcell was due for discharge was a Sunday and Saturday the 29th., was a non-train day, Purcell, according to Mr Durden's reckoning, was due for discharge on Friday, August 28th. As he was not discharged until September 11th., 1896, he lost fourteen days at the most, or twelve days at the least. Exhibit L also shows that twenty-two days were taken from him for being marked "indifferent" as to industry. As the 160 days remission allowed included ten days actually allowed for August, he lost the difference between 22 and 10 days, or twelve days altogether, or fourteen days altogether, according to the practice of

allowing convicts to leave on the train day previous to the expiry of their term. He does not appear to have lost 19 days as stated in the charge and in the Warden's letter of September, 30th, 1896. The Warden, I understand, assumed that Mr Pitblado's letter was right as to the number of days lost and simply took his figures from it. (876).

The 22 days remission were lost, as appears by Exhibit L. during the period from January to July, 1896, both months inclusive, as follows:- January 3/4 day, February 1/4 day, March, April, May and June, 5 days each, and July 1 day. These days were lost to Purcell through his being marked "indifferent" as to industry.

The entries in the Deputy Warden's conduct and remission book show that Purcell was marked "indifferent" as to industry eleven times in January and six times in February, 1896. (Mr Durden, p. 250). In March, as the guards reports returned his industry as good, Mr Durden marked him for full remission of 10 days, but afterwards changed this to half remission, or five days. This was done, he says, by the Warden's order. He went into the Deputy Warden's Office and started to mark Purcell "indifferent" all the way through, but instead of that, simply changed the 10 to 5, and put a marginal note in the column for remarks, that this was done by the Warden's order, signing it with his own name. (251). The Warden, he says, told him to enter Purcell "half remission notwithstanding how the guards marked him" (252). In April he is marked "indifferent" every day. Up to and including the 12th of April he was marked "good" in the industry column, but that was subsequently changed to "indifferent" by the writing of "i" in red ink

over the "g" originally there. For the balance of April he is marked "indifferent" as to industry every day in red ink. In May and June, he is marked "indifferent" as to industry for every day. In July he is marked "indifferent" up to and including the 6th of the month. In August he is marked "good" all through. In September he is marked "good" up to the entry of his discharge on September 11th 1896.

Guard Gingras was one of the guards who had Purcell under his charge. Up to January 20th, 1896, he marked him in industry "good", but after that he frequently marked him "indifferent" (279). About the 20th of January the Warden told him it was ridiculous marking No. 44 "good" as he had gone into the chapels and found him doing nothing, and even asleep (239). He then told the Warden he would mark No. 44 "indifferent". After that he watched him more carefully (279), and kept on marking him "indifferent".

This passage occurs:--

"Q. Did you change your marking of this convict because you sufficiently noticed his change of industry, or was it because the Warden had told you ?

A. Well I could not say it was exactly because the Warden told me to check him, but I went in there myself several times and found the place not cleaned." (281). An examination of Gingras' evidence will show that he changed his markings very largely because of the Warden's direction. (278-285).

Guard Eddles had charge of No. 44 all February except the first ten days, and marked his industry "good", during

the portion of the month he was with him. He also had him in March and his conduct and industry were good. He had him under his charge again in June, and marked him "good" up to June 12th, when he made this memorandum in his book:- "The Warden has instructed me not to allow any industry for No. 44 this month." (338). This marking was contrary to his ^{own} opinion as he found him good all the time, at that time and after that time". (338). After the 12th of June he "just marked 'indifferent' then; it is simply for the entry of the official book that I put it there." (338). The Warden said something to him at one time about finding No. 44 asleep, and on June 12th., told him not to allow him any industry for that month, the month of June. (339). He marked him "good" for industry for the first ten days of June, and was not instructed to do otherwise for that period (342).

Guard William Bourke had No. 44 under his charge on March 10th, 1896, when he marked him "good". On the 18th., and 19th. of May he has him marked "indifferent" in his guard book. The reason for this marking was as follows:- "The Warden came into the hall of the hospital some time during the day, and he stated to me that he had been in the chapels and found this man asleep, and not to allow him any industry. He also stated that he had found him in that condition several times previously". (271-2). This was on the 18th. of March. On the 19th. of March, he marked him "indifferent" again, because, he says, "I understood the direction from the Warden was that I was to mark him indifferent while I was there." (273). During the time No. 44 was in his charge he personally saw no reason for marking

him "indifferent".

Guard Manseau on the 15th., 18th., 28., 29th. and 30th. of May had No.44 under his charge and marked him "good" as to industry for every day he was with him. He is marked " indifferent " for these days in the conduct and remission book (287). He had him also in charge on the 2nd 3rd and 4th of July, when he again marked him " good ". Manseau received no instructions from the Warden as to how No. 44 should be marked (288). On the 6th or 7th of July, however, the Warden remarked that the place was not kept very clean where 44 was working. The chapels there was his work. I told him that I had spoken to the man and he complained about his eyesight and he could not see much. I then told the Warden I would be glad to have another man, that I did not think this man could perform the work properly, not because the work was too hard, but because of his eyesight; and he was taken and put outside and another man was given to me. After the 7th I did not have him any more." (287). During the three years of his sentence Purcell, Manseau says, was most of the time in his charge. (286). As to his work, he says; "As far as I was concerned I considered his work was good, not that the work was well performed, though. He never showed any unwillingness to do anything I told him to do." (289).

Keeper William Abbott had No. 44 in charge on the 7th., 20th., 24th. and 25th of July, and on the 6th., 15th., 17th., 18th., 19th., 20th., 31st., 24th., and 25th of August, 1896. He always marked his conduct and industry good, and never had any cause to complain (311). The Warden did not direct him to mark him "indifferent". (314).

Guard Addison had him in charge about the time he first came to the prison, or very soon afterwards, for about nine months. After that he saw him only occasionally, and for a short period at a time. His conduct was always "good" and his industry "as good as could be expected for man of his age." (308).

The above are all the guards who had No. 44 in charge as far as the Warden's clerk can remember. (Durden, 246-7).

The Deputy Warden attributes the changes in the industry markings of Purcell to orders received from the Warden. Mr Durden told him that No. 44 was marked "indifferent" for May under the Warden's orders. The same applies to April. For the first thirteen days in April he had been marked "good" in the Deputy Warden's book, but that was changed by order of the Warden or his clerk, Mr Durden—at least so he was informed by his own clerk. The orders were that no matter how the guards books were marked, No. 44's industry was to be stopped. (57).

The convict clerk, Haffield, appears to have told the Warden's clerk also that in changing the markings he was complying with orders received from the Warden. Mr Durden says:— "I went to direct him to do so, but the convict stated that the Warden had already directed him". (331).

The evidence of both these witnesses, it will be observed, is hearsay in character.

There can be no question that the Warden has power to change the amount of remission allowed a convict by a guard. Rule 6 of the Rules relating to remission time (Exhibit K), provides that:—

"6. At the end of every month the Warden shall award the remission time gained or lost by each convict, in conformity with the Act and with the record and returns of the responsible officers, unless guided by other reliable information to the contrary." Regulation 325 also provides that:—

" 325. The remission of sentence authorized by the statute shall for every month be such as the Warden may determine according to the good conduct and industry of the convict."

The charge in this case is that the Warden was actuated by some strong prejudice against Purcell, and in support of this a number of statements are made. These statements can, perhaps, best be gathered from the letters by Mr Pitblado, Purcell's Counsel, to the Department;

1. "I am informed that during the whole of his imprisonment no crime report was ever made against this man, and that the reports made in regard to his conduct from time to time have been such as would entitle him to the regular remission of sentence provided for by the Penitentiary Act, and by the rules and regulations made thereunder." (Letter September 14th, 1896).

Purcell was once crime reported (255) but it is not material to this issue, as he was deprived of remission for lack of industry, and not for bad conduct.

2. "He expected accordingly to be released on that day but to his great surprise he was not released, and no reason was given to him for his being further detained in the penitentiary." (Same letter).

The Warden's evidence is directly opposed to this. He says he warned Purcell very fully that if he did not attend to his work his remission could be stopped. In the chappels

he told him the work was not hard and his remission would be stopped if it was not attended to. (820). Again, he says, "I told him a number of times that if he did not try to do the work I would have to stop his remission." (871). Guard William Bourke thinks he told Purcell of the Warden's orders to mark him "indifferent". (875). See the Warden's evidence further on this point at pages 826 and 872. In July Purcell wrote a letter to a friend at Lethbridge stating that he would be home about August 20th. Mr Durden called the Warden's attention to this, and the latter said he would have the convict brought before him. From this Mr Durden infers that Purcell had not been told previously that his remission was being stopped (256-7).

With the direct and positive evidence of the Warden to the contrary and the evidence of Guard Bourke before me, I must conclude that No. 44 well knew that his remission was being stopped.

"He informs me that on the day on which he should have been liberated, he asked to see the Warden to know the cause of his further detention, and to ascertain when he would be let out, but the Warden would not see him in regard to the matter." (Same letter).

Mr Durden, Warden's clerk, states that about the middle of August No. 44 put in a request sheet asking to see the Warden with regard to the date of his discharge, but that he was not brought up for four or five days afterwards. He afterwards saw him brought up. The Warden and Deputy Warden were present, and Guard Freeman at the door. The Warden informed him afterwards that he told No. 44 that he

was not sure of the date of his discharge, but would consult him (Durden). He consulted Mr Durden and the question came up as to remission for July and August (257). Durden stated to the Warden that No. 44 was due for discharge on September 11th, but if given only half remission for July and August, his discharge would be some days later. The Warden then told him to mark him "good" for those months, which was done (258). The date on which Purcell came before the Warden was August 19th, 1896. (260).

The Deputy Warden says the request sheet was dated August 15th. When No. 44 came up he wanted to know when his time would expire and the Warden said he would see or let him know (354). The following is the Warden's evidence on this point:-

"Q. Mr Durden says that the requisition sheet for an interview with Purcell was on your table unattended to for several days; what have you to say to that ?

"A. Well, I think it is a very extraordinary thing that Mr Durden would make a memorandum of that in his diary and that he did not remind me that I should see this man. He was my clerk, and instead of helping me, he was trying to injure me.

Q. Was there any reason for your leaving Purcell's requisition sheet unattended to for many days ?

A. No. There are probably requisition sheets waiting for me now.

Q. In any event, a requisition sheet asking simply to discuss a question of remission is not one that requires immediate attention ?

A. I generally attend to them at once.

Q. If that requisition sheet was left over it was simply an oversight ?

A. It must have been an oversight. Probably the man could not be got just then. A dozen things might have happened that would have prevented it being attended to at once.

Q. At all events, it was not done through any ill-feeling on your part ?

A. Certainly not.

Q. And it was Mr Durden's duty to have reminded you of it, if you did overlook it ?

A. Yes.

Q. Instead of entering it in his diary he should have jogged your memory?

A. Yes (825).

Later on the Warden says that on Mr Durden informing him when Purcell would be due for discharge he "went through the chappels and told the man; and the man went away perfectly satisfied on the train until he met this gentleman on the train, and that started it." (872), The gentleman here referred to is Mr J. O. Lewis.

The entry in Mr Durden's diary, referred to by the Warden is dated August 19th, 1896 and is as follows:—

"No. 44, Purcell, was before the Warden re the date of his discharge. With full remission he would have been discharged today, but owing to remission lost, he will not be for discharge until about the 11th of September." (260). According to Mr Durden's own calculation (Exhibit L) No. 44 could not in any way be due for discharge until August 30th, 1896.

Mr Durden tells me that this was but a rough calculation made by himself. As, however, the Warden had repeatedly warned No. 44 that he was losing his remission, Mr Durden's memorandum is not of so much importance. The discharge day, as Mr Durden points out above, was September 19th., and a few days delay in telling the convict when he would be due for discharge was not a serious matter.

It cannot then be said that No. 44 asked to see the Warden on the day on which he should have been discharged. Nor can it be contended that the Warden refused to see him.

4. "There appears to have been no reason why he should have been thus detained for three weeks longer than the time when he would ordinarily have been liberated." (Same letter).

The time of detention was about two weeks, not three weeks. The Warden says he deprived him of his remission because he was not industrious and did not earn it.

Guard Gingras went into the chapels several times and found the place not cleaned (281). Although Guard Manseau considered his work good, he did not consider it well performed.

(289). Guard Addison qualifies his opinion by stating it to be "as good as could be expected from a man of his age." (306). Guard Beaupre found the chapels "not as clean as they should have been", while No. 44 was in charge.

(370). The Warden says that if he ordered No. 44 to be marked indifferent for the first ten days in June, his industry must have been indifferent (822). He did not attend to his duties, nor did he attend to his work at all. The Warden says:-- "I constantly went into the chapels and

found him sitting in a pew, and twice, I think, but I would not swear to the number of time—but I think a couple of times—I went into the chapel and found him asleep." (820).

844). Later on he says:— " I went in there pretty often when he was there because I constantly found him asleep and not working." (871). "All he had to do was to dust the chapels, and when he did not do his work, I stopped his remission, the same as I would any other prisoner. Guard Manseau told me that he did not do his work and asked to have his moved out." (871). The Deputy Warden saw No. 44 every day while he was at the prison. He says:— " I could not say his industry was very good; he could have done a good deal more to earn his industry that what he did".I have seen him a good many times when I considered he was earning no time." (358). See further the evidence of the Deputy Warden at page 371.

5. " It has been suggested that one reason for the Warden's acting in this way towards this man, was because this man whom he killed was a personal friend of the Warden's."

The Warden admits that he knew David Acres, the man killed by Purcell. He was a trader in former years. He had not seen him for years previous to Purcell's confinement. He was no more a friend of his "than any other trader or man of that class in the country. He was a man whom I always looked upon as a respectable man." Being asked; "Was he on any particular terms of friendship with you?" He replied; "Not more than any other man. I was pretty friendly with all men living in the Northwest in that line of business." (819).

There is nothing in the evidence to indicate that the above suggestion was warranted by the facts.

6. "I understand that the Warden has expressed himself to some parties to the effect that this man's sentence was not long enough." (Same letter).

Mr Durden appears to have thought that Purcell received a very short sentence for his crime—three years for manslaughter—and gathered the impression from something said by the Warden that he too thought he had been lightly dealt with (258). Guard Miller professes to remember something of the same nature being said by the Warden. (377). The Warden was asked if he had made such a statement to Guard Eddles, and denied it most emphatically, adding that he was not in the habit of talking to guards in that way. (821).

It does not seem to me that the matter is material. The remark that three years imprisonment was a short sentence for manslaughter would at once suggest itself to anyone. To quote it is going far to look for indications for prejudice.

"Purcell states that upon his being dismissed on September 11th he was only paid \$10.00 in cash, although it is usual for dismissed convicts, who have a long distance to go, to be paid the sum of \$20.00." (Same letter).

In answer to this charge Accountant Mustard files Exhibit p. which he has compared with the prison books and found to be correct (422). From this it appears that Purcell received a gratuity of \$10.00 and a ticket to Lethbridge. In the fiscal year 1895-6 it appears that No. 10 received \$6.00 and a ticket to Lethbridge; No. 17 \$10.00 and a ticket to the same place; No. 21, \$10.00 and a ticket

to Lethbridge; No. 35 \$5. and a ticket to the same place; and No's 3, 56, 63 and 71, \$5 each and a ticket to Lethbridge. In this period from 1st July, 1896 to April 21st 1897, No. 55 received \$20 and a ticket to Lethbridge; No. 53, a ticket to Lethbridge and \$10; and Purcell \$10 and a similar ticket.

All the above are Indians except No. 55 and Purcell, No. 44. Exhibit P. contains the names of a number of white convicts from western points. No. 25 received a ticket to Grenfell, but no gratuity; No. 42 a ticket to Maple Creek, and \$10; No. 31, a ticket to Calgary and \$10; No. 8, a ticket to Prince Albert, and \$15, and a Chinaman, No. 76, a ticket to Regina and \$15. The above facts simply show how baseless this portion of the charge is.

The Warden says:-- "I knew he had a home to go to and had stock in the Northwest, and his ticket was a long distance, to Lethbridge, which would cost the Government a good deal, and I thought \$10 would certainly be enough to pay his expenses on the road there." (827).

This explanation would seem to be quite satisfactory. What Purcell appears to have stated to Mr Pitblado was entirely without foundation.

8. "When purcell first went to the penitentiary he was put at work scrubbing the basement and did much work for about nine months. This work, is considered one of the hardest tasks in the penitentiary and is usually given to young men." (Mr Pitblado's letter November 9th, 1896).

Giard Addison, who had charge of Purcell in the basement, says his work while there consisted of "sweeping, dusting, polishing up the brass work and scrubbing once

and a while". The scrubbing was done "probably twice a week". "He did not do much scrubbing, because on wet days I would endeavour to get some prisoners to assist. I helped him out in that respect as much as I could." He did not consider the work hard "because if it was scrubbing day, he might take his time to it; I never hurried him with it, and a man could do all the scrubbing in the basement in two hours any day. In fact the basement work is only half a day's work for a man or smart boy." (Guard Addison, 307).

In the same letter Mr Pitblado says he is instructed that the labour given Purcell in the chapels, and on the farm was unusually heavy for a man of his age. A great deal of evidence was taken on this point and all the guards who had charge of Purcell from time to time were examined. The evidence on this point is too voluminous to analyze out in detail. It will be found on the following pages:- 276-8-9-80; 285-9; 291-3-4-5-6-7; 300-2-5-7-10-11-12; 337, 341-3-4; 372.

After considering all the testimony and making a personal examination of the basement, halls, chapels and other places where Purcell worked, it is impossible to find that the labour allotted to Purcell was in any way excessive.

9. "I am advised that this is the only instance on record in the penitentiary where the officers were ordered to make an entry in regard to conduct or industry other than such as they would make of their own accord." (Same letter).

Guard Farquhar in June and July marked convict No. 73 not good as to industry nearly every day "by direct order from the Warden." He thinks he would have been forced to

mark No. 73 indifferent in any case as he was not earning his remission. (364-8). Convict Hill was in September 1895 deprived of remission for lack of industry by direct order of the Warden to Guard McFarlane. (Deputy Warden, 356). In the case of No. 73 referred to by Mr Farquhar, the books show that for at least seven days in June "G" was written and scratched out and "I" substituted in the industry column. Also in all July, and August he was marked indifferent. (Deputy Warden, 303). Guard McFarlane remembers being directed to mark Nos 6, 68 and 73 indifferent as to industry. He marked 73 and 68 indifferent. The order as to No. 6 was afterwards changed. There was good reason for marking 73 and 68 indifferent. The Warden never instructed him to mark indifferent a man who was doing his work well (770). The Warden mentions another case, that of convict Hower. On complaint of the Carpenter Instructor that Hower would not do his work, the Warden ordered that his remission be stopped. (837).

It appears from the evidence, therefore, that several convicts besides Purcell have been marked indifferent by order of the Warden. In the cases just cited, the guards appear to have agreed with the Warden's view. His views may have been correct in the Purcell case as well as in the others. That is a subject for further consideration.

The other statements in Mr Pitblado's letters are pretty well covered by what has been given before.

Other charges of a somewhat similar nature were brought forward during the investigation. For instance:-

10. No other Warden had interfered with the guards' marking before.

On this Mr Durden who has been employed at the prison for ten years next November, says the practice of the late Mr Bedson, if he saw a man idling, was to bring him up on a crime report and reprimand the guard for not marking him indifferent. As to the proper method of procedure, however, he refuses to express an opinion. (270). Guard Manseau does not remember anything of the kind taking place, but he was only under Mr Foster before the term of the present Warden (289). Guard Sutherland, who has been employed at the prison for ten years last December, does not remember a case where the Warden or Deputy Warden marked a prisoner's industry different from what the guards reported it (299). He has heard of industry being stopped on a crime report, but not on an industry report, because he would not know whether his reports as to industry were interfered with or not. (301). Guard Eddles was never instructed by any Warden during his twelve years employment to mark anyone indifferent (338). What he means is, that he was never instructed to take away remission in the way adopted in the Purcell case (340). If Warden Bedson say anything wrong with a convict, he would speak to the officer or send him a memorandum, or put something in the night order book or tell the officer to crime the man (340). According to Mr Durden, Warden's clerk, Mr Bedson dealt with questions of remissions in a most irregular way. He would sometimes take away more remission than he had any right to take away, and restore it all again at the end of a convict's term. Sometimes he would take away ten days when he had no right to take away more than five. In one case twenty-four days were taken away and were afterwards restored without any

authority from the Department. Incidents like this led to the passage of the rules as to remission (Exhibit K). Since these rules were enacted, Mr Durden says, they have been strictly adhered to (322).

As these rules were not adopted until May 1890, it is hardly fair to compare the actions of the present Warden with regard to remission with those of former Wardens who had not the rules to go by. In fact, I see no ground for comparisons at all in this connection. The action of Warden Bedson, referred to by Mr Durden, are probably a sufficient indication that the present Warden would not suffer from any comparison that might be made.

11. Purcell was not brought before the Warden previously to being marked indifferent.

Mr Durden, Warden's clerk, is authority for the statement that it is not usual to mark a man indifferent for more than three or four days at a time without bringing him before the Warden; if they are "marked indifferent for a few days, they are crime reported and brought before the Warden." (322; 325).

In answer to this the Warden says;- "if he continued I would have him crimed and have him up before me and I would put him on bread and water. If stopping his remission has no effect upon a man, I take some other means of punishing him." (873).

In the case of convict Horner the Warden found that he thought his remission could only be stopped on a crime report, but he explained to him that "he had to earn his remission, and if he did not work well, of course his remission would be stopped." (838).

In the Purcell case, he says:- "I warned him over and over again if he did not work I would stop his remission; he was an elderly man and I did not care about putting him on bread and water or putting him in the penal cells, and I told him his remission would be stopped, and when he was put outside, he worked well." (847).

The foregoing appears to be a sufficient answer to statement No. 11.

12. Other old men were given much easier work.

Some evidence on this point will be found on pages 291-5-6. Conlan, who was 63 or 64 years of age, had scrubbing to do and also other men fifty years of age. Purcell preferred keeping the work he had in hand to exchanging for any other. (Manseau, p. 296). No 8, about the same age as Purcell, was hospital and stable, orderly.

The finding on this is largely covered by the finding on statement No. 7. There is no reason for believing that No. 44 was allotted work heavier than allotted to other old men in the prison. At any rate, the work given him was not too heavy to perform.

13. On his discharge there was delay in furnishing him with his liberty suit and boots, and the Warden suggested that brogans would be good enough for him instead of the usual discharge boots.

The evidence does not support this statement. (See pages 374-5-6-8; 382-3; 824-7 and Exhibit Q).

14. Certain remarks said to have been made by the Warden are quoted as showing an animus on his part towards Purcell.

Guard Eddles says that on one occasion when the Warden told him to take away Purcell's remission, he

objected on the ground that the convict was "an old man", but the Warden replied, "Old man; he shot a devilish good man." (339). Guard Manseau heard him say that No. 44 was "an old lazy man, or something like that." (775). Guard Miller states that the Warden on one occasion told him that No. 44 was "an old rascal", and that on several occasions he said that his sentence was not long enough, or something to that effect, and that once he said that Purcell had "killed a friend of his". (377).

The Warden denies most positively ever having said to Eddles that No. 44 "had shot a devilish good man." (821). He denies also having said anything to Miller that would indicate ill-feeling towards Purcell. He had been told by convict Murray, formerly a mounted policeman that he believed that Purcell had shot another man who was missed in the Territories, and that he was a very bad character and adds:-
 Q. I don't know whether I told the guards of that, but I may have and for that reason they might have thought I was a little prejudiced, but I was not." (845). This passage is from the Warden's evidence:-

Q. Did you tell any guard that he was an old rascal ?

A. I don't think so, but I could not swear to that.

Q. You did not tell any guard that he did not get enough ?

A. No, I don't believe I did.

Q. Did you tell a guard that he had killed a better man ?

A. Oh, no, I never said that. I might have told some officer that the man he killed was a very decent man, but I don't think there was any harm in that if I did."

This passage also occurs:-

Q. If any change was directed by you was it done through malice or spite on your part ? A. No.

Q. Simply because the man was not earning his remission ?

A. Yes; I have had too much experience in handling men to show the slightest favour to any man." (823).

Even if all the remarks attributed to the Warden had been made, it does not seem to me that much importance would attach to them except as slight surface indications of some underlying prejudice. Throughout the investigation, however, I have noticed a strong personal animus on the part of Guards Miller and Eddles towards the Warden. When I came to discuss the complaints made by Guards, it will be found that the principal complainants are Miller and Eddles. The unreasonable nature of some of the complaints is really remarkable. Eddles actually treasures hard feelings towards the Warden because he did not furnish him with one of the bedsteads not in use in the prison (264). Miller's quarrel with the Warden is partly over a kitchen stove (660). Eddles feels deeply aggrieved because he has been fined \$20, (645), and so on. I have had occasion to comment on Miller's evidence in connection with the political charges.

When either of these witnesses is contradicted by the Warden, I have no hesitation in accepting the latter's testimony. I cannot find that the Warden made use of any expressions which would necessarily indicate a feeling of spite towards Purcell.

There can be no question of the importance of allowing remission time when it is properly earned and withholding it when it is not. A convict thinks continually of the day

when he will be due for discharge and is anxious to hasten it by every means in his power. For this reason, "remission" is one of the most powerful aids to discipline. It is as important to refuse remission at the proper time as it is to grant it. As the Warden says:- "in a gang of men if there is a lazy man and he gets the same credit as the others do, it has a very bad effect. This report that I have put in will show that there has been a good effect upon the convicts and has reduced the number of crime reports." (838). The statement referred to - Exhibit 55--shows that while the number of convicts has increased since 1893, the number of punishments awarded has ^{steadily} ~~increased~~ decreased. In 1893, there 116 punishments, in 1894, 94, in 1895, 85, and in 1896, 62. Similarly the number deprived of remission fell from 46 in 1893 to 7 in 1894, 16 in 1895 and 12 in 1896.

I have failed to discover any evidence that could reasonably be held to show that the Warden was actuated by prejudice of any kind in depriving Purcell of his remission. Not only do the various statements made in support of the charge fail of justification when examined into, but it stands to reason that if the Warden had been actuated by any feeling of spite towards Purcell, it would have manifested itself at an earlier period of his imprisonment. He would not have treated him kindly from his entrance in the prison in 1894, till January, 1896, and then suddenly have adopted an entirely different course. Keeper Abbott, who has been connected with the prison for about sixteen years, ^{under} and various Wardens, states that Colonel Irvine is in the habit of visiting the gangs at work oftener than any previous Warden. He certainly is indefatigable in this

respect, both as to day and night visits, as I will have occasion to show elsewhere. His duties, as anyone familiar with the prison must know, would require him to pass very frequently through the hall adjoining the chapels, when many opportunities of observing Purcell would occur. There is sufficient evidence to corroborate that of the Warden that No. 44's work was often not properly done. It is true that some of the guards considered his work done as well as could be expected. It may be that the Warden's standard of efficiency in convict labour is more exacting than that of his guards. The difficulties attendant upon any effort to review the decision of any official in a matter of discipline are obvious enough, and especially so when more than a year has elapsed and all the evidence cannot be obtained. The Warden has a clear right to deprive any convict of his remission. He would not have a right to mark a convict "indifferent" during a future week or month, and he most positively denies having done so. He may, he says, have told Guard Eddles to stop Purcell's remission if he "did not work well", but that is all (822). Any other order would be unreasonable and improbable.

I find that there is no evidence that the Warden was actuated by ill-feeling towards Purcell, and that it has not been proved that Purcell was unjustly deprived of his remission.

Purcell's own actions, both while in the prison and when leaving it in themselves indicate that he had not much to complain of. His guards were examined one by one to see if he had complained of the work or of anything else while

in the prison. He did not complain to Guard Manseau, (287-298), nor to Guard Sutherland, who had charge of him on the farm, (299), nor to Guard Addison, who had charge of him in the basement (309), nor to Keeper Abbott, who had charge of him while working in the garden, (311-313), nor to Guard Eddles, under whose charge he was in the chapels, (345) nor to Farm Instructor Grahame, with whom he worked at the stables (373).

His medical sheet contains this statement made by the Surgeon— "No complaints to make in regard to treatment while here." (826). His answers in the convict discharge ledger to the questions asked every convict on leaving the prison contain no complaint of any kind.

Question 9 is as follows:-

"9. Is the conduct of the officers and others employed in the institution humane and kind towards the prisoners?"

Purcell's answer to this is:—"Yes, they have to me."

Question 10 is as follows:-

"10. Do you think that under all circumstances things go on as well as possible in the penitentiary?"

His answer to this is:—"Yes." (826 and Exhibit 59).

"He allowed during his term of office unlawful use of convict labour including guards time, the unlawful use of Government tools and implements, teams connected with the penitentiary for work in no way pertaining to the penitentiary. See particulars attached marked G."

The particulars refer mostly to D. D. Burke, the late Deputy Warden, who is now, I believe, an official of the British Columbia Penitentiary.

The first particular under this charge is as follows:--

"Colonel Irvine allowed D. D. Burke the use of prison farm machinery to work his own farm."

The only occasion which the Warden can recall when Burke sought to use prison machinery for his farm was on the 18th of September, 1894, when he noticed a convict taking some farm implements out of the place where they were stored, and sent a memorandum to know who was taking them away, and got a reply that it was Mr Burke's man. He saw this about six o'clock in the morning and he immediately wrote Mr Burke asking him if he knew anything about these farm implements having been taken to his farm. Mr Burke's reply was; "I gave permission to have the implements taken". To this the Warden replied; "You have no right to give permission to anybody, especially when the Warden is present, to take any Government property off the ~~farm~~ reserve. Be good enough to let me know what implements have been taken, and you just have them returned at once. I hope this will not occur again." The implement in this case was returned.

(p. 365 and Exhibits 21, 22 and 23). The farm referred

to is about two miles distant from the penitentiary. The Warden was not aware of any convict labour being used by Burke in harvesting his crop on his farm. No convicts went off the reserve to work there. No farm teams were, to his knowledge, ever used on Burke's farm (667).

Hospital Overseer Beaupre produced Exhibit 26, a series of memoranda made by him in September, 1894, from which it appears that on the 6th of September, 1894, he saw the son of the Deputy Warden going to the farm with one of the Government wagons. On the 9th he saw the Deputy Warden driving with one of the Government horses and rig. On the 10th he saw him coming back from the farm with one of the Government mowers, and he saw one of the rake's in the Deputy's yard. On the 18th the Deputy returned from the farm with one of the Government mowers, and he was told it had been broken.

Although Beaupre took care to make these memoranda at the time, he did not complain to the Warden, and does not know that he saw any of these irregularities occur. (696-7-8 and Exhibit 26).

The second particular is as follows:- "The officers and convicts were employed in getting hay for D. D. Burke's cattle and for stock kept on the Government reserve during the winter; that the convicts with guards allowed to not only cut hay for D. D. Burke's own private use, but to sell it."

For the first couple of years after taking charge of the penitentiary the Warden allowed the officers to have hay cut upon the repayment plan; that is, hay was cut for them and sold to them. The Warden says:- "It gave us a lot

of trouble delivering this hay, and I stopped it, and we only cut now what we actually require for our stables." In this way, of course, the officers and convicts would be employed in cutting hay that ultimately was turned over to Burke. The Warden thinks that all hay cut for him by convict labour was paid for by him. One year there was more hay than was required and the officers asked if they could cut the hay. The Warden applied to Ottawa and the permission was given by the Department to the officers to cut the hay, paying 15 cts a load for it standing. (p. 667 and Exhibit 24). The Warden thinks that upon that occasion Mr Burke used the prison machine, but his own horses, and that the other officials used their own horses and implements. The Warden does not remember Mr Burke having cut hay on a penitentiary claim for sale. He says;-- "Certainly, if I had heard of such a thing, I would have dismissed him on the spot, or suspended him." (669).

The next particular is:-- "That the convicts and guards were allowed to deliver hay to one James O'Donohoe, hotel keeper at Stoney Mountain, and he Burke received consideration for the same."

The following passage is from the evidence on this point:-- Q. Were you aware that penitentiary teams were used to deliver hay to one James O'Donohoe ?
"A. No. I secured three quarter sections for hay privileges and the whole three quarter sections were covered with water, and we could not get any hay, and Mr Burke said Mr O'Donohoe would let us cut hay on his place if we would give him two or three loads, which we did. That is the only hay

I know of being delivered to Mr O'Donohoe". . . . If he had heard of Burke selling hay to O'Donohoe, he would, as pointed out before, have "dismissed him on the spot, or suspended him." (669).

The next particular is :—"That D. D. Burke was permitted by Colonel Irvine to use convict labour, two and three convicts at a time, to raise garden stuff for sale for his own personal and private gain."

The Warden did not know that Burke was using convict labour for the purpose of making a profit in his garden, nor did he ever purchase any garden stuff from him. (670).

When the Warden, ^{had the garden} known as the " Warden's garden " he gave a bushel of potatoes or two to some of the guards as the prison potatoes were running short, and Mr Burke asked him why he did not sell them, and said that Mr Bedson had sold them. The Warden replied that the suggestion was very extraordinary and that he would not do such a think. He did not know until this investigation took place that Mr Burke had sold vegetables from his garden raised by convict labour. (6709).

It is charged that Deputy Warden Burke made a practice of using convict labour to raise vegetables in his garden which he afterwards sold to officials of the prison. Guard Sutherland has seen convicts employed in Burke's garden a great deal; sometime three or four at a time. (682). Hospital Overseer Beaupre has seen four or five convicts at a time working in Burke's garden. Guard Eddles saw four or five convicts working there sometimes. Guard W. Bourke has had charge of six or seven men digging Burke's garden at one time. (701).

5. Instructor Miller has seen as many as twelve convicts and an officer digging Burke's garden. Instructor Lusignan has noted six convicts with a guard sometimes for a day or two working in the Burke garden. Instructor Miller thinks that there were two officers with the twelve convicts working in the garden at one time. The Warden had gone to Winnipeg, and it was after he had gone that they were put in there.

Deputy Warden Burke is said to have carried on quite a trade with the officers of the prison in vegetables produced by convict labour. Mr Beaupre's wife bought corn, turnips and other vegetables at various times. (687). Guard Eddles' family were in the habit of buying regularly from the Deputy Warden. Instructor Miller bought potatoes, turnips, cabbages " and anything that would grow in a garden", (692).

The Deputy Warden also, it is said supplied the hotel kept by O'Donohoe with vegetables. On one occasion he sent a double load of potatoes into Winnipeg. Instructor Lusignan was also a customer of Mr Burke's (705).

As pointed out before, there is no evidence that the Warden knew that any of the products of this convict labour were being used for sale, or that the convict labour used in Mr Burke's garden was for any other purpose than to cultivate it for his own use, which would be permissible under the regulations.

This exhausts the particulars of charge No. 2.

Instructor Miller complains that for months at a time the Deputy Warden had the use

6. of the best sewing machine in the shop, which greatly inconvenienced him. He did not report, the matter to the Warden however. Also, that when Mr Shead was Tailor Instructor, the Deputy Warden had work done which was undercharged. He had a tent made in the tailor shop, " two men working on it for a week and one man finished it the next week; used thread, copper rivets and tape outside the canvas it was made of, and the total cost was \$1.50." He also saw convict No. 22 bring material over from Burke's house and have shirts cut out there and made, and they were then taken out without going through the store. W. Bourke was ordered by the late Deputy Warden to move his house from the Moylan property near the penitentiary to his farm two miles away.

To do this he used the ox teams of the penitentiary and some convicts who went all the way to the farm with him and returned. He does not know that the Warden knew of this being done (701-2). Instructor Grahame says this occurred in November or December 1894 or 1895, and he entered up the oxen in his time book as moving a house for the Deputy Warden from Mr Moylan's lot. The Deputy Warden ordered him to let Mr Bourke have two yoke of oxen and two convicts for the purpose. He did not mention the matter to the Warden.

The Warden's account of this transaction is that he never heard of these convicts going to the Deputy Warden's farm until he was told so by Guard W. Bourke during this investigation. He does not remember allowing him the use of convict labour. As to the oxen the Deputy Warden started to move the house with a couple of labourers and got stuck. It was in the winter time and the oxen were doing nothing. Bourke asked if he would be allowed the use of the

oxen to start the building and get it under way. Some time afterwards the Warden learned that he had taken the oxen to the farm, but never knew before the investigation that he took the convicts there also. (704: 710).

Instructor Lusignan furnishes a number of particulars showing that Deputy Warden Burke used convict labour and prison materials for improper purposes (See Exhibit 38).

The first item in the Exhibit is one month's convict labour in 1894. This labour was employed in boarding and tarpapering a shed for Burke's quarters for the purpose of wintering his cattle in it. He had about 25 or 30 head of cattle. Sometimes the Instructor supplied a convict to do the labour. All his orders in 1894 for convict labour were from the Deputy Warden. He used about one month's convict labour in 1895. That was done fixing up a second shed and turning it into a stable. In that case he got convict No. 43 from the hospital. This stable was also for cattle. The Instructor does not remember who gave the order to furnish the convict. He got an order from the Warden in 1895 to give Burke some more lumber. After Mr Burke went away these buildings were taken down and a good portion of the lumber was used in the piggery. In July, 1893, material was supplied to Burke and used in the piggery which was built for himself and his own private business. It was done on the verbal order of the Deputy Warden. The Instructor knew it was wrong to furnish him with material and spoke to the Warden the next day about it, and is not sure whether he gave him permission to furnish it or not, but thinks he did. The material consisted of fence pickets. In July, 1893, Lusignan also furnished Guard Sutherland with shelving,

nd ls and lumber for making milk shelves at his quarters. He thinks too this was reported to the Warden; it was done at the same time as the piggery. In August 1893, and September and October 1894 material and labour were furnished D. D. Burke. Exhibit 38 also shows that a number of tools were supplied the Deputy Warden for the use of convict No. 45. Some of them were used at his quarters and some on his farm. In the same Exhibit the Instructor gives instances of implements used on Burke's farm and convict labour employed on his private behalf. On page 4 of Exhibit 38, the Instructor points out that about 400 fence pickets were used by the Deputy Warden; that they were nearly as good as new pickets, and he notified the Warden about it, but received no answer. In 1895, two wagon loads of old lumber were taken away from the carpenter shop to the Deputy Warden's place to build a hen house. Prison wagons were damaged by being used to draw barb wire from Winnipeg to Burke's farm, and so on. The Instructor did not receive orders for the work done in the usual way; it was ordered direct by the Deputy Warden. He could not charge anything as being done on the repayment system. He attaches to Exhibit No. 38 a number of orders sent in to him by the Deputy Warden. (730-4 and Exhibit 38).

Overseer Beaupre remembers a mower, horse rake, a wagon and a boiler belonging to the penitentiary being used at Deputy Warden Burke's farm.

Guard Eddles saw one of the brass lanterns belonging to the prison at Burke's place, and an iron bedstead that he thinks belonged to the penitentiary.

Guard Miller thinks the Deputy Warden used the mowing

9.

machine every year for cutting hay and penitentiary tools in the cultivation of his garden. He did not report anything of this to the Warden.

Instructor Lusignan says that Burke kept his farm stock in three stables which were all penitentiary property. He saw a mower, hay rake and wagon going to his farm. On one occasion, Instructor Grahame remarked to him that Mr Burke's farm and the penitentiary farm were pretty well mixed together. (705). When asked if he had been inconvenienced by Mr Burke borrowing prison spades, lanterns, wheelbarrows &c., from the farm, Mr Grahame said he had not. Colonel Irvine thereupon stated that Mr Grahame had reported to him that Mr Burke was continually sending him orders to let him have these things and he wanted to know what to do about it. The Warden told him not to let him have anything unless he got an order from him, and that was the cause of the first friction between the Warden and Mr Burke, and Mr Burke was annoyed at Mr Grahame as well. Mr Grahame stated that Mr Burke was in the habit of sending down for oats without a requisition, and that all the oats he returned were about 20 or 30 bushels, which were found to be dirty. (677).

Mr Durden filed a report (Exhibit 33) containing a list of ~~xxxx~~ articles borrowed by Deputy Warden Burke from the penitentiary stables and not returned. The report was made on August 1st, 1895, and included one monkey wrench, one currycomb, one mower, three hay forks, three whiffletrees and two cleavices. He also produced and filed Exhibit 34, a copy of all the correspondence regarding the dispute between Deputy Warden Burke and Instructor Grahame in June

1895.

I would also call attention to Mr Durden's complaint against the late Deputy Warden, which is dated September, 19th, 1894, and filed as Exhibit 19. It appears that Mr Durden on September 18th carried a message from the Warden, to the Deputy Warden. The latter doubted that the message had been sent and treated Mr Durden in a bullying way, and swore at him in the hearing of Instructor Farquhar and the convicts working on the wall. Mr Durden complained to the Warden, but nothing was done. Mr Durden makes a number of further complaints, which may be found on pages 639 to 642, both inclusive, and claims that he was in no way protected by the Warden from the Deputy Warden. The Warden says that so far as he knows he paid attention to all Lusignan's complaints. There were so many irregularities, however, that he cannot remember as to that. He thinks there were none brought to his notice that he did not endeavour to correct.

It appears, also, that while Deputy Warden Burke was at the penitentiary, he took an active and aggressive part in politics on behalf of the Conservative party.

As I have not had an opportunity of hearing any defence Mr Burke may have to offer to the evidence against him, I can come to no conclusion on the charges made. At the same time, the charges are so numerous and specific that in my opinion, he should be called upon to answer them.

No. 3.

"He has used fuel and light for his own particular use in violation of orders issued by the Department in 1893, which expressly took away all fuel and light privileges from the officers and guards."

No. evidence has been adduced before me to support this charge.

CONTRACT WITH OXFORD MANUFACTURING COMPANY.

4.

"He is and has been cognizant of the fact that the contract with the Oxford Manufacturing Company has been renewed from year to year for eight years at the old prices, that the quality of cloth for uniforms, overcoats &c., is not equal to that specified in the contract; that the officers have protested against the use of this inferior serge cloth for their uniforms; that the cloth supplied for prisoners clothes is shoddy, yet Irvine has quietly submitted to these impositions on the public, thus showing that he has no interest in keeping down expenses, but conspires with his party to rob the public and work in the interests of his political friends."

When the Warden came to Stony Mountain Penitentiary in the fall of 1892 he found that the cloth for the prison was being got from the Oxford Manufacturing Company. He believes it was being purchased under contract, but does not know when the contract was made (500). It is usual to have a call for tenders for penitentiary supplies. He does not know how the contract was let in this case. Tenders were not called for in this case to his knowledge. He does not know why this was the case. He did not consider it part of his duty to see that tenders were called for in this case. He was acting under orders from Ottawa. He did not know that cloth was being supplied from year to year under the same old contract, nor did he know anything about the contract. His orders were to requisition for what he wanted, and he did so. (501-2).

On taking charge, he examined the cloth supplied. although not a very good judge of cloth, he has had some experience with uniforms for soldiers. He knew that the cloth had to come up to a certain weight, but never saw any agreement except as to weight. Goods coming in are inspected by the Storekeeper, whose business it is to report whether they come up to the standard or not. In February 1895, the Storekeeper reported as follows:- "February 25th 1895. I beg to report that the serge received from the Oxford Manufacturing Company ^{weighs} only 9 1/4 ounces per yard instead of 10 ounces as called for by invoice." The invoice referred to was dated March 7th, 1895, and included three pieces of 10 ounce super navy, 90 lbs. at 65 cents, \$58.50. The Warden at once wrote objecting that the cloth did not come up to weight (50I). From the time he took charge, on November 1st 1892 until the Storekeeper's report of February 1895, he does not remember any of the men complaining directly to him of the quality of the cloth, but the general opinion was that the stuff for the officer's uniforms was not very good. This was not in 1892. The officers had not received any uniforms for a year before the Warden's arrival. The issue was away behind, and the present year is the first in which they have caught up. After Mr Power reported against the cloth in February 1895, the Warden telegraphed the company to send superior cloth, which would cost only five cents more per yard, thinking that "if the Department would not pay it, the officers would pay the extra themselves." On March 11th 1895, (see Exhibit 13). the Warden wrote the Inspector complaining that he was obliged to condemn the second grade or common serge as too inferior for making into uniforms and

as below contract weight. In the course of the letter he says:- "I would add that the common serge, last year, in many cases, did not last more than half the summer, and it is impossible for the officers to present a neat and respectable appearance unless their uniforms are made of a better material--one that will wear better and also keep its colour better." He also stated that he had wired the Oxford Company for 90 yards of the superior grade, and offered to pay the difference in cost himself or charge it to the officers. (Letter March 11th, 1895; Exhibit 13). On March 15th Mr Lane, for the Inspector, wrote the Warden approving of his action under the circumstances, and directing that the increased cost be charged to the prison in the regular way, but adding, "the present instance is not to be considered a precedent." (Letter March 15th., 1895, Exhibit 13). That was the first written complaint made by the Warden. He thinks he must have complained verbally to Mr Moylan or Mr Stewart since. Last Winter the officers complained about their great coats. On January 7th., the Warden requisitioned the Inspector for 25 yards of Irish freize, but the requisition was refused (505). On January 18th 1895 the Warden wrote the Inspector, pointing out that since he took charge he had always procured this material for officers overcoats; the last was got on requisition of March 26th 1896, approved by the Inspector, and that all the staff with the exception of three had been supplied with their overcoats, and 25 yards were necessary to complete that issue, and asked that his requisition be approved of; he also added that the Oxford freize had been tried at the prison for officers overcoats, and had proved

a failure, lasting only one winter and affording little protection from the cold, and that since that time, the Oxford cloth had only been used for convict discharge suits (505-6; and letter of January 18th, Exhibit 13). In due course he received a reply from the Inspector, dated January 27th, 1897, as follows:- "even admitting that the Oxford freize is not so satisfactory as the imported article, we must remember that the article is in contract and that we have no authority to purchase it elsewhere while the contract runs." With reference to the approval of the former requisition, he adds:- I always trust to the Warden's statement that the articles are not under contract." (506, and letter of January 27th, Exhibit 13). The Warden, however, had not stated that the Irish freize was not under contract. He never saw the contract, but simply requisitioned for the needed articles. He says; " That freize, I may say, I understood had been condemned by the acting Warden before I came here, and I believe it was he that arranged for getting it at the Hudson's Bay; and when I came here, I sent down a requisition in the usual way to Ottawa and got it from the Hudson's Bay Company." (506). The 25 yards of Irish freize was not purchased, and two of the men were compelled to get along as well as they could with the Oxford cloth. These are the only two occasions on which the Warden remembers having complained to the Inspector about the quality of the cloth supplied. He does not know whether the present contract with the Oxford company includes freize or not. He does not know what is in the contract at all. No freize is purchased at present, as over coats are issued but once in three years. He is still

required to get the cloth for officers uniforms from the Oxford Company although he has complained of its unsuitability. As to the quality of the goods furnished by the Oxford Company, he thinks the convicts clothing has been generally satisfactory, but the cloth for officers uniforms certainly has not (507). The serge now used for officers uniforms is not the same as that complained of in the letter of January 1897. A superior serge was got from the Company which, the Warden thinks, is satisfactory. (508).

A circular, dated Ottawa, July 27th, 1894, was received from the Penitentiary Branch of the Department of Justice stating the contract prices with the Oxford Company. (508; Exhibit 13). The Warden does not remember getting a similar circular for last year, or for any year since 1894. The only other circular of prices was for 1891-2, before his time. (508 and Exhibit 13). On January 23rd, 1898, the Warden wrote the Inspector, enclosing a requisition on the Oxford Company for summer serge for uniforms, and stating that he had not received notice of the renewal of their contract for that year. (511, Exhibit 13). Mr Durden also remembers no price list being received since 1894 (509).

To obtain as far as possible a correct idea of the relations between the Government and the Penitentiary with regard to the Oxford Company's contract, I had Mr Durden prepare a copy of the various communications which he filed (Exhibit 13) with a resume of what the correspondence shows. The resume is set out on pages 602-5 of the evidence.

On August 15th, 1889, a contract had been entered into between Wright Brothers of Winnipeg and Warden Bedson by

with the farmer agreed to furnish the prison from July 1st, 1860, to June 30th, 1861 with the following dry goods in such quantities as shall here be needed or required at the following prices:--

Flour, white, per barrel,	47 1/2
Stoff, dark,	47 1/2
Wool, white, 10 lb.	22
Wool, black,	22
Wool, brown,	22
Flannel, white, corded	60
Factory cotton,	7 1/2
.. ..	9 1/2
.. ..	6
.. ..	11
Crack,	8
Tea,	14
Coal,	13
Silica,	18 7/8
.. ..	10 7/8
Wool,	51
Wool,
Black,	3, 20
Wool,	14 1/2
Wool,	41.
Wool,
Wool,	2, 10
Wool,	1, 25.
Wool,	5, 15.
Wool,
Wool,

Sheeting, coarse, per yd.	18
Blankets, white, per pair,	3,20
Cod lines, per doz.	6,00.
Cotton, white, 1/2	10 1/2

After this contract had been closed, Mr. Wright laid in a stock of dry goods to meet the wants of the prison. He ordered quite a considerable quantity of dark stuff and several hundred yards of convict flannel and blue uniform cloth for officers. (712). A good deal of the stuff was subsequently called for (713), but quite an amount of the stuff ordered remained unsaleable on his hands (714). He repeatedly in subsequent years tried to get the warden to take the things off his hands, representing that they were not saleable to any other customer, but the goods were not taken. When the contract was entered into he was aware, of course, that the goods might or might not be called for at the option of the Storekeeper; but at the same time, he was assured by the Tailor Instructor and Mr. McEwan, the Accountant, that they would be wanted. (715)

Mr. Wright also complains that the last year he had a contract with the penitentiary for tan duck, of which he bought two or three hundred yards in anticipation, which the Storekeeper subsequently refused to take and said he should have supplied dark duck, although the contract which he signed called for tan duck. (714). He attributes the action of the Storekeeper to his refusing to become his bondman when he was appointed to his position. Another complaint is, that two or three years ago he contracted for Irish freize and blue uniform and laid in a stock (see

These goods were bought. After the contract was awarded to him and after he had received assurance that they would both be wanted the coming year, Mr. Shand, the Prison Inspector, assured him that they would be required, so purchase these articles, he procured supplies at the prison, which he took to the TULU Country and watched. Subsequently he sold these goods, after carrying them some two years, for less than they cost. (717). He was afterwards told that the reason for refusing his cloth was that a contract had been made with some mills in the Maritime Provinces, from whom similar goods were procured. He complained to Mr. Hudson, Mr. Foster and the present Warden of the treatment he had received, and tried to get the goods taken over at a considerable reduction on the contract price. (719).

Early in the fiscal year 1889-90, after the usual contracts had been awarded, a change in the clothing material for the convicts was contemplated, and Warden Hudson was instructed not to purchase any more material for summer uniforms for the convicts, but to send a requisition to Ottawa of what he would require. (Letter of November 14th, 1889, Exhibit 12). The contract for the winter cloth for the convicts which would have been purchased from the contractors, Wright Brothers, for 1889-90, for use in the fall and winter of 1889-90, together with the flannel for convicts, was later on taken away from Wright Brothers and given to the Oxford Manufacturing Company. (Letter December 23rd, 1889, Exhibit 13).

That this change increased the cost of material to the prison will be evident on comparing the prices of the

Brothers' contracts with the prices given for the new material mentioned in the letter of December 22nd, 1898, which are as follows:-

Summer uniforms for convicts, per yard,	55 cts.
Winter	60 cts.

In the beginning of 1899, it was proposed to have three different kinds of clothing to classify the convicts according to their conduct. This required the issue of extra clothing. (MS; letter April 22nd., 1899, and July 12th., 1899, and Vernon Hudson's memorandum estimating the number of suits required, Exhibit 18.) It further appears from the correspondence that in 1899 491 yards of cloth were received from the Oxford Manufacturing Company through error, but the goods were directed to be taken into stock. (MS; letter from acting Warden McDonnell December 18th., 1899 and reply of December 22nd., 1899, Exhibit 18th.)

In 1898, acting Warden, G. L. Foster, was directed to order from the Oxford Manufacturing Company the balance of cloth and blankets which had been previously estimated for by the former acting Warden, Mr. McDonnell. (MS; letter January 16th., 1898, Exhibit 18.) It also appears that the blankets then ordered were not required and lay in stock until it was found necessary to dispose of them to the officers to save them being destroyed by rot. (MS; letter from Warden Irvine, November 21st., 1898 and reply of December 2nd., 1898, Exhibit 18.) The balance of the correspondence in this matter is by Mr. Irvine:-

• That the contracts with this company were managed directly by the Department, price lists, only, being from time to time submitted to the Assistant

been received. The prices given in letter of December 23rd, 1890, and list of prices for fiscal years 1891-2; 1892-3; 1893-4; and letter of July 27th., 1894.

That no special notice of renewal (if any) was given the Warden for his guidance, as to prices and material, for fiscal year 1894-5. (See Warden Irvine's letter dated January 24th., 1894).

That in the first instance officers were not provided with any better material than allowed to convicts, (See prices in letter dated Ottawa April. 1890--officers and convicts winter cloth being each 80 cents per yard, and the summer cloth standing at only 65 cents respectively).

That in cases of blankets,annel, crease for officers and convict clothing, the prices were considerably advanced in price list dated July 27th. 1894, as compared with that for fiscal year 1893-4, covered by letter dated Ottawa, June 9th., 1893.

That in 1891 the Minister approved of a better grade of material for superior officers (See letters dated Ottawa, January 7th., 1891 and February 8th. 1891).

Complaint was made by late Warden Benson of the character of the convict material, as unsuitable for convict uniforms by reason of its similarity to ordinary civilian clothing (See letters dated Manitoba Penitentiary, April 9th. 1890 and April 24th., 1891).

That Warden G. E. Foster, found the convict cloth worn enough for winter wear and recommended overalls in addition to trousers, for convicts employed outside, (See his letter dated September 20th. 1892 and Departmental correspondence dated Ottawa, 1892).

That the present pattern found the officers' serge unsatisfactory and of an inferior quality. (See letter dated March 11th, 1897 and reply thereto dated March 15th, 1898, and also his letter dated May 27th, 1897.

That by reason of the Warden's action, in connection with the serge condemned, a better material was supplied for officers' wear for that year, but intimation was given that it was not to be adopted as a precedent for obtaining a better grade of serge in future. (See letter dated March 15th, 1897.

That the present pattern found the freize for officers overcasts unsatisfactory. (See his letter dated January 18, 1897 and reply dated January 27th, 1897).

That sometime in 1896, a contract extending over a period of two years, had been made with the Oxford Manufacturing Company. (See letter dated Ottawa, February 22nd, 1897).

That the aforesaid contract has since been limited to the current fiscal year. (See Departmental letter of February 22nd, 1897).

Taylor Inspector Miller complains that in taking on the tailoring department, he found large amounts of new kinds of goods on hand, more than would last a reasonable time. . . . 103 yards of Oxford gray flannel, in two years there was used 100 yards, at this rate of consumption, it would last five years and a half more. On the 2nd. of July there was in stock of bowtie checked waist 287 1/2 yards and on this day 219 3/4 yards more was received. at the same time. This present year, it will last two years

There were no truly instances of a malicious character in connection with the dealings between the Penitentiary Board of the Department of Justice and the Oxford Manufacturing Company, that I considered it advisable to obtain the opinions of the officers of the Penitentiary as to the ~~quality of the~~ supplies of their contracts between the company and the prison.

Guard Sutherland finds the summer serge nice and cool, but one suit does not last the summer out. It gets faded in about two months. The winter serge "is very cold, the wind blows right through it. The overcoat is not warm enough for the winter time when we are out on the surroundings."

Guard Bourke finds the winter coats "not sufficient for a man to stand the exposure, neither the overcoat or the uniform. The summer coats previous to the last issue did not stand at all. The serge is quite useless for winter wear." (5811).

Guard Sutherland says the summer uniforms will fade in two or three days. The winter uniforms are too light for men exposed for four hours without getting warm. The freize overcoats are easily penetrated by the wind, and are not sufficient protection. (5811).

Guard Higgins finds that the summer uniforms change their color, shrink and do not last. The winter uniforms and freize overcoats are not warm enough for the purpose. (549-1).

Guard Miles wore serge for years at sea in the navy service. He finds that the summer uniforms after a short

through the winter uniforms and freize overcoats. He says, "They are not worn except for out here when you are on the right on the hill; it is a fur coat that you ought to have. The police in town that are under shelter have a freize overcoat with a fur lining, and then we cannot work to get our blood circulated, but we are standing around." (542).

Guard Frosman says, "The freize supplied by the Oxford Manufacturing Company, if a man had no other protection, he could not stand outside half an hour." (549).

Guard Puigh complains both of the summer and winter uniforms and the freize overcoats. Of the latter he says, "Some of these coats will weight from 10 up to as high as 16 lbs., which is too much for a man to carry eight and a half to nine hours a day; and the wind, after he has been out a couple of hours, blows right through, showing that the material is too open." (551).

Guard Edwin Bourke says the wind blows through the winter uniform like a sieve. (563).

Guard Insinger says the color of the summer uniform will not stand, and that the winter uniform is not good. (565).

Instructor Farquhar finds the summer serge fade very fast, and the dark serge goods are very rapidly destroyed by mortar and are unsuitable for a mason. (567).

Tailor Instructor Miller says the light summer serge "is of a coarse quality, and the dye is not good and will not stand. If you take a new coat and wear it out in a shower it will look ready the next day. The winter serge is also unsuitable."

summer and winter serge and freize overcoats. (576).

Instructor Smith gives the same evidence as the rest, (576).

Resident Overseer Beatty says the so-called freize is really stuff, (576).

2 out of the officers also complain of the caps. Guard Miller objects to the small caps as it only covers half the head and is very uncomfortable in hot weather. (543)

Guard Freeman thinks that the last service of caps is not suitable for four years. (520).

Guard Paugh finds that the caps are not warm; they are very hard on the head, causing headache. They are not suitable for a man who has to stand outside on guard when it is 25 below zero, and so on.

See pages 518, 543, 558-9; 593-4; 570-7.

The evidence was taken with regard to the value of the materials furnished by the Oxford Manufacturing Company, samples of which are returned herewith marked as Exhibits 20 A, 21, 22 A inclusive.

ESR. Robinson, who has carried on a tailoring business in Winnipeg for 15 years and bought cloth goods largely both here and in the Old Country before coming here, says the summer serge, Exhibit 20 A, is not worth 50 cents a yard and that he could supply very much superior goods, double its width, at \$1.00 a yard. This serge, he says, "will not hold its color, it is not at all suitable for officers uniforms. Exhibit 21 A, the winter serge, he says, "is totally unfit for winter uniforms in any climate; in a climate it would be poisonous, and there is not enough in it to make it warm enough for any winter work."

can see the shoddy sticking right out of it. Exhibit 26 A, however flannel, 36 in 36-inch goods, is not out of the way as to value. If it is the goods, it can be bought for from 27 to 45 cents a yard. It is sold to the penitentiary for 50 cents a yard. Exhibit 25 A, discharge overcoat, shown sold to the prison at 75 cents per yard, is, in Mr. Garrison's opinion, worth more than 90 cents a yard. He says, "a poor imitation of Irish freize. It is shoddy goods of the cheapest kind I ever saw. It is not worth wearing in any weather; there is no warmth in it; it certainly will not turn the wind. A very cheap tweed at 45 cents a yard would be very much more comfortable."

Exhibit 27 A, is shoddy, made of shoddy, and is not worth more than 25 cents a yard. The price paid by the prison is 35 cents per yard. Exhibit 27 B, is not worth more than 50 cents a yard. Its contract price is 80 cents. Exhibit 28 A, is, Mr. Garrison says, chiefly composed of shoddy and is very inferior quality, and not worth more than 40 cents a yard. The price paid for it is 50 cents.

In giving these prices, Mr. Garrison refers to the prison as would supply the goods for himself after buying them from the factory. He concludes: "If the person who furnishes clothes for the penitentiary is at all in touch with the business, he must know that he paid too much for them. If he does not know better, he is not fit for his position." 722-23.

Mr. Apollis Bright, before referred to, has been nearly twenty years in the dry goods business, and considers a good deal more than it is worth is being paid

stuff at 45 cents per yard which is very much better in quality and is of a greater width. It is not worth more than 40 cents per yard. Exhibit 25 A (price 25 cts. a yard) is not worth more than 20 or 25 cents. He concludes: "I don't wish to give my evidence of whether they are shoddy or not, but I went over them, and in most cases I could supply these goods at from ten to fifteen per cent lower than the contract prices here." (721-1).

Taylor Instructor Miller considers that Exhibit 20 A, convict winter uniform wears well and keeps its color, and that 50 cents a yard for it is a fair price. Exhibit 22 A, guards summer serge (price 80 cents), is inferior goods, as is also the winter serge. Exhibit 24 A, convict flannel (price 20 cents), is not worth more than 40 cents; he thinks it could be bought retail for 35 cents. A suit of this convict flannel costs about \$3.00, while an ordinary suit of underwear can be bought for \$1.00; a suit of this convict flannel though, will wear as long as three suits of the cheaper woolen goods. Exhibits 26 A, 27A, and 28 A, he considers all shoddy, and that Exhibit 28 A contains more shoddy than all the others. (571-2-3).

Mr. McArthur, who has been a buyer of dry goods in connection with Stewart Sons & Company, a very large whole sale firm, for a number of years, gives the following evidence on the various samples of cloth.

Exhibit 20 A, he considers good stock, worth about 42 1/2 ct.

Exhibit 21 A, good stock, worth 40 cents per yard.

Exhibit 22 A, he considers low.

Exhibit 24 A, good solid stock, worth 40 ¢ per yard.
Exhibit 25 A, good solid stock, worth 55 ¢ per yard.
Exhibit 26 A, poor stock, worth 32 1/2 ¢ per yard.
Exhibit 27 A, medium stock, worth 47 1/2 ¢ per yard.
Exhibit 28 A, very bad, worth 22 1/2 ¢ per yard.
Exhibit 29 A, medium, worth 40 ¢ per yard.

These figures and opinions are contained on two pages at the end of the book of exhibits returned.

Mr. H. J. Whittle, a wholesale dry goods merchant of nearly twenty years' experience, says that a much heavier article than Exhibit 20 A, could be purchased for the same money and would give better satisfaction as regards warmth. He says the same with regard to Exhibit 21 A. He cannot see any shoddy in Exhibit 22 A. 22 A is worth 50 ¢ a yard, but a better material for a lower price could be obtained. A warmer article than Exhibit 23 A, Irish froise, could be purchased for 60 ¢ a yard. Although Exhibit 23 A is marked at 55 ¢ a yard, a better and heavier wool could be furnished for 50 ¢ a yard. Exhibit 24 A is good value at 40 ¢ a yard. Exhibit 25 A is the worst piece of stock in the lot and contains shoddy. It is worth 45 ¢ a yard. Exhibit 26 A is not bad value.

Mr. Whittle produced at my request, a piece of cloth similar to Exhibit 28 A, with respect to which he said:--
"This is good and heavy with a little touch of shoddy in it but it will wear well and stand the wind. We sell it in warehouse at 4 months subject to discount at 45 ¢ a yard."

was given with regard to the material supplied by the Oxford Manufacturing Company and the evidence bearing on the charge. As far as the Warden is concerned, it will seem that there is no evidence to support the allegations against him in charge 4. He appears to have protested against the purchase of material objected to by the officials and to have done all that could reasonably be expected in that connection. It seems unfortunate that a charge of this kind should have been couched in such violent language and launched against the Warden without better evidence to sustain it. The evidence would indicate that from time to time the penitentiary was overloaded with material from the Oxford Manufacturing Company. There can be no doubt that some of this, in fact a good deal of the cloth supplied in suits and in for the purposes of the prison and of a very inferior quality. At any rate, the evidence of the officials and experts suggest that the wise question of the cloth contract should be overhauled and a strong effort made to improve a good many of the lines of goods now being purchased. From conversations with woolen manufacturers outside of the evidence taken, I cannot but conclude that the prices paid to the Oxford Manufacturing Company have been in many cases excessive, and a very great saving can be effected.

It may not be out of the way in this connection to mention that all the materials necessary for clothing can be obtained from jobbers in Winnipeg at very much cheaper prices than those that have been paid in the past. There are also woolen mills in the Province which are excellent

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if asked to tender, make provision for heating those charged for the police are being searched.

I would recommend that for outside duty the guards be furnished with some species of fur coat, or fur-lined coat as the exposure during the cold weather on Story Mountain absolutely requires some such protection. (550-7).

I also desire to call attention to the complaints of the officials with regard to ~~their~~ uniforms. (550-4).