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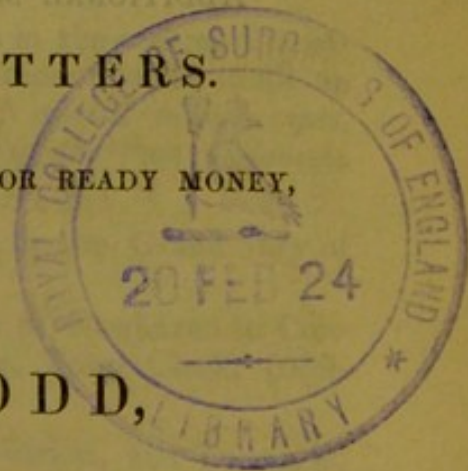
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Select Problems in Geometry.

History of the Druids.

Observations on Building and Planting.

Theory of the North Stars.

Practical Astronomy.

Tables of the Comets.

Poetical Astronomy.

Essay towards a complete Chronological Catalogue of Philosophers, Astronomers, and Mathematicians.

(15.)

NARRATIVE

OF THE

PROCEEDINGS

INSTITUTED IN THE

COURT OF COMMON PLEAS,

AGAINST

MR. THOMAS RODD,

FOR THE PURPOSE OF WRESTING FROM HIM A CERTAIN

MANUSCRIPT ROLL,

UNDER PRETENCE OF ITS BEING A DOCUMENT BELONGING TO THAT COURT,

And of the Trouble and Expence to which he has been put in defending
his Character and Property.

A most extensive collection of this nature was lately dispersed, having been kept together for some years after the decease of the owner. I allude to the Papers of Joshua Sharpe, Esq. Solicitor to the Board of Trade, which comprised many very valuable Papers addressed to him, in that capacity, of the highest importance as connected with the History of the American and West Indian colonies.

For careless keeping, I shall cite only one instance, noticing, by the way, that the Reports of the Commissioners of the Public Records abound with others.

“QUEEN ELIZABETH.—Many of the rolls of this reign were destroyed, or so injured as to become useless, in 1735, when the river rose, so that the tide overflowed into the dark corner room of the Treasury, in which the rolls of this reign were deposited.”—*Report of the Record Commission*, 1837, page 137. In the *Appendix* to the same Report, page 134, we are told “that many Records of other Courts have got into that of the Common Pleas.”

For sales or destruction by the officers, I shall cite that of the sale of the Documents from the Exchequer in the year 1838, when EIGHT TONS WEIGHT were sold to a fishmonger by order of the Government, at the rate of eight pounds per ton: some of these have since been re-purchased, and for a single Document sold among them, several pounds were lately paid by the Treasury, as compensation, of which more hereafter.

About the same time, the Documents in the Viceregal Court, Dublin, were sold for waste paper. Among them was the account of the expenditure of the secret service money; from which the fact was ascertained that the party who betrayed Lord Edward Fitzgerald was a different person from the one to whom that act of betrayal had always been attributed: this Document was subsequently re-purchased by the Government.

The Board of Ordnance has disposed of a great mass of its documents, but in what manner I am not aware.

The Corporation of Dover disposed of its Records, and subsequently obtained part of them back.

Three or four years ago, the Records in Dover Castle were thrown into a limekiln; and surely the Duke of Wellington, if cognizant of this circumstance, would never sanction such a proceeding as that which has been instituted against me.

I cite these few cases only, but I could multiply them ten-fold.

For Public Sales by Auction:—In the collection of Sir Mark Masterman Sykes, sold by Mr. Evans in the month of May 1824, appeared the following article: “Lot 1676, The original Report of the Convocation to Henry VIII, on the legality of his proposed Divorce from Anne of Cleves, subscribed with the autograph signatures of the Archbishops and all the Bishops and Clergy assembled in Convocation, manuscript upon vellum, dated July 9, 1540.” This was purchased for the Government, by the advice of Sir Robert Peel, for £215. Where it is now deposited I am unable to state.

In the year 1829 were sold, by Mr. Evans, the Library and Collection of Manuscripts belonging to Craven Ord, Esq., Master of the

Exchequer. Among the Manuscripts were many very valuable Documents from the Archives of the Exchequer. *This sale was perfectly well known to the Officers of the Record Office, and in particular to Sir Francis Palgrave; the naming of whom brings me to my own particular narrative.*

Sir Francis had been in the habit of coming to my shop for books ever since the year 1819, when he (being then Mr. Francis Cohen) was introduced to me by the late Francis Douce, Esq. As our conversation of late had frequently turned upon the sale of Documentary Manuscripts, he used to express his opinion thereon freely, that individuals had no right to possess them; that they all belonged to the Offices to which they related, and could be reclaimed by them; that, while in the hands of individuals, they were of no authority as matters of evidence, but became so again upon being deposited in court; that such as related to any estate could be seized by the person in possession of the estate. For all these opinions he also gave the sanction of Lord Langdale. As I possess no legal knowledge to oppose to his Lordship's dicta as delivered by Sir Francis Palgrave, I could only offer in reply the common-sense arguments, that, if such were the law, any person who could get possession of an estate, however unjustly, could seize the writings, and thus put it out of the power of the rightful owner to recover possession; that if there were any such right of claiming papers as having belonged to Public Offices, no public or private library was safe from invasion; and that they might as well claim the Manuscripts in the British Museum, as many of them had at one time belonged to some one or other public office. Sir Francis replied, "And so we have a right, and I do know not but what we shall do it."

I now come to the case of the Roll which is the subject of this narrative.

The Roll in question is written in a small court-hand of the time, this character being peculiar to the Courts of Law, whence its name. Very many documents of this nature have been and are sold and destroyed yearly. I purchased it at a sale with other old parchments, and it lay on my counter when Sir Francis one day called in. He took it up, looked at it, and asked me "what it was"? I answered him, I did not know; but as there was the word "London" written in the margin, and it was filled with proper names, I took it to be some local tax-roll relating to the city. My ignorance in the matter may be laughed at; but what is to be said of that of Sir Francis Palgrave, Deputy-keeper of the Records, and receiver of many thousands of the public money for his assumed skill in and knowledge of them? Soon after Sir Francis's departure, or within a day or two, a person came in and desired to see the roll: when it was shewn to him, he could make no more out of it than could Sir Francis. To him succeeded another, and another, and it was quite evident to me what object was now in view; viz. the endeavouring to set up a claim to it. Accordingly I was not much surprised, when, some days after, I received the following letter:—

Public Record Office, Rolls House,
7th March, 1842.

Sir,

Mr. Cole, one of the Assistant Keepers of the Public Records, has reported that you have in your possession a Roll of the Court of Common Pleas, being the Roll of John Pitt, Filazer, Trinity Term, 23 Elizabeth, and which corresponds with the Plea Roll of the same year in Lord Langdale's custody.

Intrinsically the Roll is of no value, containing only entries of writs issued by the Filazer; but, as a portion of the series of the records of the court, it becomes of considerable importance; and I am, therefore, directed by his Lordship to give you notice, that you are not to part with the same, but to keep it in your custody until further measures are adopted concerning the same.

I have the honour to remain,

Sir,

Your obedient servant,

FRANCIS PALGRAVE.

Mr. Rodd, Great Newport Street.

Upon receipt of this letter, I locked up the Roll, to guard against any surprise of its being taken *vi et armis* during my absence from home, leaving word at the same time with my clerk that the price of the Roll was twenty-four shillings, and that, unless that sum were paid me, I would not give it up.

In order to shew that I, of all persons, perhaps, was and am the least obnoxious to the charge of illegally possessing or improperly destroying Public Records, it is right to mention more in detail the destruction and sale of the Documents of the Exchequer in the year 1838, and the measures which I took, so far as lay in my power, to put a stop thereto.

In the month of June of that year, my neighbour, Mr. Waller, a dealer in curiosities and autographs, shewed me a parcel of papers, several of them leaves torn out of books, others single documents, some of which bore signatures of eminent persons; and as several of them were evidently purposely mutilated, it struck me that they had been abstracted from some public office, or, if not, that they were being sold and destroyed in ignorance of their value. As in either case it was desirable that such shameful destruction of Records should be prevented, I took some of the papers with me to the Rev. Mr. Forshall, of the British Museum, in order that, if the matter were a case of secret abstraction, it might be made known to the proper authorities; or, if the papers were really thrown out of any public office, measures might be taken to secure them for the library of the Museum. At the request of Mr. Forshall I wrote him a letter, detailing the above circumstances: this letter he forwarded enclosed in one from himself to the Chancellor of the Exchequer. I shall give the two letters, with one from Mr. Arthur Eden in reply to a communication from the Chancellor of the Exchequer.

Letter from Mr. THOMAS RODD to the Reverend J. FORSHALL.

2, Great Newport Street,
26th June, 1838.

Sir,

I take the liberty of addressing you (in order that you may make it known in the proper quarter, and, as far so as possible, prevent further mischief) respecting

the destruction of the public documents of the Exchequer which is now going on, and which has recently come under my notice. The circumstance came to my knowledge from a number of the papers being offered to me for sale by Mr. Waller, dealer, of Great Newport Street, who has, I believe, purchased them of some person connected with the Exchequer.

The papers shewn to me were of the time of Elizabeth, James the First, and Charles the First, and were of various kinds, connected with the board of Exchequer; and all of them (except where purposely mutilated) bearing the signatures of persons of those periods.

As this destruction of the public documents and property of the country can only be carried on through the ignorance of the officers of the Exchequer, of the importance and value of them in a depository like the British Museum, where they would be accessible to the public, I trust that you will take steps for securing the remainder of these documents for that Institution, and to prevent a similar fate to the documents in the other courts of record.

I beg leave further to add, that not a moment of time is to be lost in the business.

I am, &c.

THOMAS RODD.

(Private.)

Letter from Rev. J. FORSHALL to the CHANCELLOR OF THE EXCHEQUER.

Dear Sir,

*British Museum,
26th June, 1838.*

I have just received the letter of which I send you a copy from a respectable and intelligent bookseller, Mr. Rodd, of Great Newport Street.

It is possible that the documents in question have been examined by competent persons, and that Mr. Rodd may be mistaken in supposing them to be of considerable interest and importance; but at the same time, knowing that the Records of the Exchequer cannot fail to afford information which in many instances it would be desirable to preserve, I feel it my duty to bring Mr. Rodd's statement under your notice.

I write to you because I am ignorant whom I ought rather to address, being assured that you will forgive the liberty, and send my letter to the proper functionary, if the matter appears to you to deserve any further consideration.

I have, &c.

J. FORSHALL, Secretary.

Letter from ARTHUR EDEN to the CHANCELLOR OF THE EXCHEQUER.

Sir,

*Office of Comptroller General Exchequer,
15th August, 1838.*

In reply to your letter of yesterday's date, with its enclosures from Messrs. Rodd and Forshall, I have to state that two reports have been made on the subject in question by Mr. Bulley, chief clerk in this office, and forwarded to the Treasury by the Comptroller General. Mr. Bulley was directed by a Treasury letter, dated 12th March, 1838, to examine in extra official hours the mass of papers deposited in the vaults of Somerset House, belonging to the Exchequer. The greatest care has been taken in the examination. Those papers which were considered worthless were sold to Mr. Jay by a contract recognized by the Treasury; of course, care was especially taken to tear through the signatures as described by Mr. Rodd.

I have further to state, for the information of the Chancellor of the Exchequer, that the papers rejected were only orders for payments, old warrants, and old receipts, and that every document bearing the description of a record has been carefully preserved.

I remain, &c.,

ARTHUR EDEN,

Assistant Comptroller.

Here, then, is evidence of every wish and endeavour on my part to save the Records of the country from destruction or surreptitious abstraction. Several of those papers which, according to Mr. Arthur Eden, "were considered worthless," have been sold by public auction for fifteen shillings and a pound each: and the officers of the British Museum have considered some of them worth purchasing for their library. The Government itself has *bought* back more than one of them, and is still pursuing arbitrary measures to get others back, after having sold them. I resume my narrative.

From the letter addressed to me by Sir Francis Palgrave, it appears that Mr. Henry Cole was the person upon whose information it was written: his name appears again in the following letter which I soon after received from Lord Langdale:—

To Mr. THOMAS RODD.

Sir,

I hereby demand of you, and require you to deliver up to Mr. Henry Cole, the bearer of this notice, who is fully authorised by me to receive the same on my behalf, a certain original Record of her Majesty's Court of Common Pleas, which is now in your possession contrary to law, that is to say, a certain Roll of her Majesty's said Court of Common Pleas, being the Roll of John Pitt, Filazer of Trinity Term, in the twenty-third year of the reign of her late Majesty Queen Elizabeth, in order that the same may be placed under my charge, care, and superintendence as Master of the Rolls, in the name and on the behalf of her present Majesty, according to the form of a certain Statute made and passed in that behalf, in the first and second year of the reign of her present Majesty, intituled "An Act for keeping safely the Public Records;" and I hereby further give you notice, that in case of your refusing or neglecting to deliver up the said Roll to the said Mr. Henry Cole, as is by me above required of you, an application will be made forthwith to her Majesty's Court of Common Pleas to compel you to deliver up the said Record of the said Court into my custody and possession in due form of law. (Signed)

LANGDALE,
Master of the Rolls.

This letter was delivered to me personally by the aforesaid Mr. Cole, and to him I gave a verbal answer, that my price for the document was 24*s.*, and that unless that sum were paid me, I would not give it up. At the same time I said to him, you know that I have another document in my possession of great curiosity, and for which I paid a large sum: were I to give up to you the one demanded by Lord Langdale, you would be coming for that: his answer was, "Perhaps I should."

I must request the particular attention of the reader to that part of Lord Langdale's letter in which he "demands and requires" me to give up the Roll according to the form of the statute intituled, An Act for keeping safely the Public Records. That act constitutes the Master of the Rolls, Keeper of the Records, wherever they may be; *but it nowhere empowers him to seize Records*, the clause conveying such power having been withdrawn when the Bill itself was in Committee of the House of Commons; and that I am correct in stating no such power is vested in him, by the act referred to, is evident from

the Report of the Committee of the House of Lords appointed to inquire into the destruction and sale of the Exchequer Documents, 1840, in which they recommend that the Books and Documents be marked with a stamp peculiar to the department; "and that a legal right of recovering Documents so stamped should be created by enactment." It is plain, therefore, that the Lords recognized no such power in any existing act. Viewing the case, therefore, in this light, feeling that I had become possessed of the Document fairly, and that Sir Francis Palgrave and his party were trying to intimidate me, and that if I were to give way to them in this instance, it would be made a handle and precedent for further aggression on myself and others; and that other public and private offices were prepared to act in a similar manner, so as to seize any book or papers they chose to set up a claim to, should the present claim be established, I determined to resist it.

Upon my refusal to deliver up the Roll, the Attorney General moved the Court against me, Thursday, June 2. I subjoin the order of the Court to the affidavit of Mr. Cole, upon which it was based.

In the Matter of THOMAS RODD.

Affidavit of HENRY COLE, of Carlton Ride, Westminster, County of Middlesex, one of the Assistant Keepers of the First Class of the Public Records, Sworn 1st June, 1842:—

Saith, that on or about the 3d March, 1842, deponent saw in the possession of Thomas Rodd, of Great Newport Street, in the Parish of St. Martin in the Fields, Bookseller, a certain ancient record and original roll, being the roll, as appeared to deponent, and as deponent believes, of one of the Filazers of her Majesty's Court of Common Pleas, belonging to the said Court, that is to say, the remembrance roll of John Pitt, Filazer of the said Court, of Trinity Term, in the twenty-third year of the reign of her late Majesty Queen Elizabeth, containing, as deponent believes, entries or remembrances of the writs issued in actions commenced in the said Court of Common Pleas, in which the venue was laid in London and Middlesex during the said term.

Saith, that by a certain act of parliament made and passed in the first year of her present Majesty, intituled "An act to abolish certain offices in the superior courts of common law, and to make provision for a more effective and uniform establishment of officers in those courts, the office of Filazer in the said Court of Common Pleas was abolished; and it was enacted that the records, books, and documents of and concerning the duties and business of said office should, on or before 1st January, 1838, be delivered by the officer having the custody of same into the custody and possession of the Masters of said Court appointed, or to be appointed, under and by virtue of said act to be by them kept and preserved.

Saith, that by another act of parliament, made and passed in the 1st and 2d year of her present Majesty, intituled "An act for keeping safely the public records," it was enacted among other things, that the records belonging to the Court of Common Pleas, in whatsoever office or place they might be deposited at the time of the passing of said act, should, from the passing of said act, be under the charge and superintendence of the Master of the Rolls for the time being, in the name and on the behalf of her Majesty, her heirs and successors; and that the Master of the Rolls should, by warrant under his hand, from time to time, appoint a fit person to attend said courts, and in his name to receive and take charge of all the records of which the charge and superintendence were thereby vested in him; and the Chief Judge of the Court to which the same should belong, upon sight of the warrant of the person thereby appointed to take charge of the

records then to be delivered from that Court into the custody of the Master of the Rolls, should give the necessary orders to the proper officer of the Court for the delivery thereof.

Saith, that by a certain warrant bearing date on or about 10th July, 1840, signed and countersigned in such manner as the act directs by the Right Honourable Henry Baron Langdale, Master of the Rolls, and the Right Honourable Charles Christopher Baron Cottenham, then Lord Chancellor, in pursuance of the last-mentioned act, all the records or rolls of said Court of Common Pleas, of more than twenty years date, in the treasury of said Court, including all the records of the abolished office of the Filazer, deposited in the said treasury, or any other of the repositories in the said warrant mentioned or referred to, or wheresoever they might be, were delivered by the Chief Justice of said Court to Sir Francis Palgrave, Knight, the Deputy Keeper of the Public Records, empowered by said warrant to receive the same; and that under and by virtue of said warrant, said Sir Francis Palgrave received the same for and on behalf of said Master of the Rolls; and that the Common or Plea Roll of the same term and year as the Remembrance Roll before mentioned that is to say, of Trinity Term, in the twenty-third year of the reign of Queen Elizabeth, is now in the custody and possession of said Master of the Rolls; and that the respective names of the plaintiffs and defendants on said Common or Plea Roll, and on said Remembrance Roll in the possession of said Thomas Rodd, and the referential numbers from said Remembrance Roll to said Common or Plea Roll agree together, so far as deponent has been able by examination thereof to ascertain; and that he verily believes the same would, upon a more minute examination, be found to agree throughout, but that said Remembrance Roll above-mentioned is not to be found among said Records, but is wholly missing, and deponent believes the same now to be in the possession of said Thomas Rodd.

Saith, that he did on the 21st May instant personally demand of the said Thomas Rodd, and require him to deliver up to deponent said Remembrance Roll, by reading to said Thomas Rodd the written demand and notice hereto annexed, signed by said Lord Langdale, Master of the Rolls, and leaving with him a true copy thereof, and shewing to him the original demand and notice.

Saith, that he was authorized by said Lord Langdale to make such demand of said Thomas Rodd, and to receive said Remembrance Roll on behalf of said Lord Langdale; and that said Thomas Rodd thereupon refused to deliver said Roll to deponent without payment for the same; and that the said Thomas Rodd still refuses to deliver the same as aforesaid.

IN THE COMMON PLEAS.

*Trinity Term, in the fifth year of
the Reign of Queen Victoria.*

In the Matter of THOMAS RODD.

Thursday, 2d June. Upon reading the affidavit of Henry Cole, and the paper writing thereto annexed, and upon hearing the Attorney General on behalf of the crown, It is ordered, that Thomas Rodd in the said affidavit named, upon notice of this rule to be given to him, shall shew cause to this Court on Monday next, why he should not forthwith deliver up to the Right Honourable Henry Lord Langdale, the Master of the Rolls; or to the said Mr. Henry Cole, one of the Assistant Keepers of the First Class of Public Records, appointed under the statute 1 and 2 Victoria, chapter 94, the Record of this Court in the said affidavit mentioned.

On the motion of the }
Attorney General. }

BY THE COURT.

In this order I was called upon for my answer by the following Monday. In the interim a notice of the case appeared among the proceedings of the Court of Common Pleas, in *The Times* Newspaper, and was calculated to do, and did me an injury at the time, as it gave

an impression to those who were unacquainted with the circumstances of the case that I possessed Documents illegally obtained.

Being called upon in this peremptory manner, I immediately drew up a statement of my case, and of what had been going on for the last three years with regard to the sale of the Records of the Exchequer, and submitted it to Messrs. Parkes and Preston, my Solicitors; and as they considered my case sufficiently good to stand upon, especially by reason of what I had done to make known the destruction of the Records of the Exchequer, they employed Counsel to shew cause on my behalf against the rule. On the motion of Sir Thos. Wilde, who appeared upon this occasion for the Attorney General, the rule was enlarged until the next term, by which I was put to additional expense. At the commencement of the next term my affidavit in answer to that of Mr. Henry Cole was put in, and is as follows:—

IN THE COMMON PLEAS.

In the Matter of THOMAS RODD.

Affidavit of THOMAS RODD, formerly of No. 2, but now of No. 9, Great Newport Street, in the Parish of St. Anne's, Soho, in the County of Middlesex, Bookseller and Dealer in Old Books and Manuscripts:—

Saith, that he hath for the last twenty years and upwards carried on a very extensive business as a dealer in ancient books and manuscripts, at No. 2, Great Newport Street aforesaid. That deponent has, during the aforesaid period, sold many rare and curious works to the British Museum and other public institutions of this country, and has invariably afforded all information in his power relating to such documents. That deponent is in the constant practice of attending sales of ancient books and documents both public and private, and generally makes large purchases at such sales.

Saith that the document which deponent is called upon by the rule of this honourable Court to deliver up to Mr. Henry Cole on behalf of the Master of the Rolls, and therein stated to be one of the Records of this Court, came into defendant's possession some time in the year 1841, having been purchased by deponent, along with other old parchment documents, at a sale by public auction; but deponent is unable to recollect the date and particulars of such sale, as such documents are mostly sold in lots which do not specify the contents thereof, and are included with several other miscellaneous documents.

Saith that he was altogether unacquainted with the nature and contents of said document, this deponent being himself unable to read the same from the peculiar hand in which it is written. That said document has been exposed in deponent's shop for public sale ever since the same came into deponent's possession as aforesaid. That it was seen on several occasions by Sir Francis Palgrave, Deputy Keeper of the Public Records. That the said Francis Palgrave, being also unable to read the said document, enquired of this deponent what it was. That this deponent thereupon answered he could not tell, but that he believed it to relate to the local taxes of the city of London, and which statement this deponent did then believe to be true.

Saith that he had no information when he purchased the said document that any rolls of the Court of Common Pleas had been lost or abstracted from their proper place of deposit; and that until the said Mr. Henry Cole informed him that it was a Filazer's Roll of the Court of Common Pleas, he did not know, nor had he any reason to suppose that it was or ever had been one of the rolls or records of the said Court, or of any officer thereof.

Saith that the said Sir Francis Palgrave sent several persons from time to time to deponent's shop to inspect said document, and that to all such persons the same was freely shewn by deponent. That one of said persons, namely, Mr. Henry

Cole, as deponent believes, stated the said document to be a Filazer's Roll of the Court of Common Pleas.

Saith that he shortly after received a letter from said Sir Francis Palgrave, warning deponent not to sell the said roll, but without stating any reason why this deponent was not to sell his own property, so acquired by him as aforesaid at a sale by public auction. That this deponent then received a second letter, left at his shop during his absence from home, requiring him to give up the said roll to the bearer of the said letter. That this deponent did not see the bearer of the said letter, but left word with his shopman in answer thereto that the price of said document was 24s., and that if that sum was paid the same would be given up. That deponent then received a letter from Lord Langdale desiring him to give up said document to Mr. Henry Cole on his Lordship's behalf, as Keeper of the Records in virtue of the Act of Parliament 1st & 2d Victoria, cap. 94, and stating therein that said document was a Filazer's Roll belonging to this Court. That deponent being conscious that he had bought the said document in question fairly and openly in the way of his trade and business as aforesaid, did decline to give it up to the said Henry Cole, conceiving that he was quite justified in doing so.

Saith, that it is notorious that many Records have been accidentally lost, or purposely sold by order of government, as the Exchequer Records in the year 1838, of which no less than some eight tons weight were sold by contract, as appears by a Report of a Select Committee of the House of Lords appointed to enquire into the destruction and sale of Exchequer Documents, and published in the year 1840. That deponent has been informed, and believes, since this rule was obtained, that the Records of other Courts were intermixed with and sold along with the said Exchequer Records, by the order aforesaid.

Saith, that having seen in the year 1838 some of the papers sold from the Exchequer by order of the government, and supposing at the time that such documents were embezzled, deponent took great pains and trouble to make it known to the proper authority, in order to put a stop to such embezzlement; and accordingly wrote a letter, dated 26th June, 1838, to the Rev. J. Forshall, informing him thereof, as appears from the Report of the House of Lords before referred to, p. 4; but as deponent ascertained that the sale thereof was in pursuance of an order of government, he has from time to time purchased several lots of them at public sales, to which they were sent by persons who had bought them of the original contractor.

Saith, that for very many years past Public Records of various kinds have been common articles of public and private sale, and when such sales were public the government has received the amount of auction duty thereon; that at the sale of the Library of Craven Ord, Esq., in the year 1829, various valuable Records were sold thereat, without interruption or claim by government, the sale thereof being perfectly well known, as deponent has been informed, and believes, at the time to the Commissioners of the Public Records, and in particular to Sir Francis Palgrave.

Saith, that there are existing in many public and private depositories, such as those of the British Museum and Bodleian Libraries, the Collection of Sir Thos. Phillipps, Bart., and others, various valuable Records.

Saith, that since the rule in this measure was granted by this Honourable Court, this deponent has made enquiries respecting the nature and form of the Filazers' Rolls of this Court; and has been informed, and believes it to be true, that such Rolls were in the nature of private references, kept by the Filazers in the office for their own convenience, and that such of them as are still in existence are entitled and purport upon the face of them to be the Remembrance Rolls of the Filazers of the Court of Common Pleas by whom they were drawn up.

Saith, that there is no entry, mark, or memorandum upon the Document to shew that it is, or ever was, a Remembrance Roll of this Court.

Saith, that he refused to deliver up the said Document required of him, because he considered himself arbitrarily called upon to do so, and that he was only asserting his clear and lawful right to what he had *bona fide* and openly purchased, and was entitled to sell.

Sir Thomas Wilde, feeling himself overwhelmed by the facts stated in my affidavit, surrendered the case on the last day of the Term. I

subjoin a report of what took place from the notes of the short-hand writer.

*Court of Common Pleas, Westminster,
25th November, 1842.*

In re RODD.

Before Lord Chief Justice TINDAL, Mr. Justice COLTMAN, Mr. Justice ERSKINE,
and Mr. Justice MAULE.

Sir Thomas Wilde.—My Lords, in the last term a rule was obtained by the Attorney General, calling upon a gentleman of the name of Rodd to shew cause why he should not bring into Court a certain Roll in his possession. The affidavits refer to this Roll as a Filazer's Roll. It appears that it is a Roll in which there are certain entries, made from term to term, of the capiases as they are issued, for the use of the Filazer. The supposed object of the Roll is to keep the amount of the capiases so issued, in order that there may be a check made against the originals issued by the Filazer. There is very considerable difficulty in ascertaining precisely the character of this Roll. It does not appear to be of very much importance in its effect. The defendant, who is a perfectly respectable person, appears to have possessed himself of this innocently, and, according to my judgment, it is not a case in which the crown should press upon your Lordships to come to any decision upon the character of the Roll. I think it is too uncertain, and, under the circumstances, I shall consent to this rule being discharged.

The Lord Chief Justice.—You appear for the Attorney General?

Sir Thomas Wilde.—Yes, my Lord.

The Lord Chief Justice.—You consent that the rule should be discharged?

Sir Thomas Wilde.—Yes, my Lord.

Mr. Serjeant Shee.—My Lord, we can have no objection to the rule being discharged.

The Lord Chief Justice.—Very well; let it be so.

I pause here for the purpose of making a few observations on the three points of Sir Thomas Wilde.

It appears he does not press the case to a decision because I am an innocent holder. Did any one ever charge me with having stolen it, or purchasing it knowing it to be stolen? If my having become possessed of it innocently is fair ground for my being allowed to keep it, why did not the Attorney General ascertain this in the first instance? Instead of doing this, neither Sir Francis Palgrave nor any other person put a single question to me as to how I became possessed of it, or where it came from, but a peremptory order was sent to me by Lord Langdale to deliver it up, without his even knowing at the time that it was mine.

Secondly, If there was a doubt of its being a Record of the Court at all, why not in the first instance have sent a proper Officer of the Court to examine it?

Thirdly, As Sir Thomas Wilde had never seen the Roll itself, how did the doubt arise in his mind?

My thanks are due to Mr. Serjeant Shee, who had taken a brief for me on this occasion, for the consideration and care with which he had studied my case, and the zeal he manifested in my behalf. I cannot, however, but regret that he did not call the attention of the Court to the harsh and arbitrary nature of the proceedings

against me, and to the expense incurred in my defence, my Solicitors' bill being £50..4s..10d.!!! By this abandonment, at the eleventh hour, of a prosecution which they virtually admit was unjustly instituted against me, I was completely defeated in my principal object of defence; viz. to establish the right of individuals to possess Records, and to buy and sell them when such Records have been sold by the Public Offices, or cannot be shewn to have been feloniously abstracted.

In my resistance to this unjust and preposterous prosecution I incurred considerable expense, which I have no means of recovering against the Government, *as the Crown never pays costs*; and, feeling therefore that the law had inflicted upon me an injustice which it declares itself incompetent to redress, I forthwith memorialized the Treasury for compensation.

TO THE RT. HON. THE LORDS OF HER MAJESTY'S TREASURY.

The Memorial of THOMAS RODD, formerly of No. 2 but now of No. 9, Great Newport Street, in the parish of St. Anne's, Soho, in the County of Middlesex, Bookseller, and Dealer in Old Books and Manuscripts:—

SHEWETH,

That your memorialist has for the last twenty years past carried on an extensive business as a Dealer in Ancient Books and Manuscripts, at No. 2, Great Newport Street aforesaid.

That your memorialist has, during the aforesaid period, sold many rare and curious works to the British Museum, to the Public Libraries in Oxford, Cambridge, and Edinburgh, and to other public institutions in this country.

That your memorialist is in the constant practice of attending sales of ancient books and documents, both public and private, and generally makes extensive purchases at such sales.

That in the year 1841 your memorialist purchased at a sale by public auction, along with other manuscript documents, an ancient parchment document or roll, which your memorialist then supposed to relate to the local taxes of the City of London, and which was subsequently exposed for sale in your memorialist's shop at the price of twenty-four shillings.

That your memorialist was altogether unacquainted with the real nature and contents of the said roll, being unable to read the same, from the very peculiar hand in which it was written.

That the said roll was seen by Sir Francis Palgrave, Deputy Keeper of the Public Records, at the shop of your memorialist.

That the said Sir Francis Palgrave being also unable to read the said roll, sent persons from time to time to your memorialist's shop to inspect the said roll, to all of whom the said roll was voluntarily produced and shewn by your memorialist.

That on the 7th of March last your memorialist received a letter from Sir Francis Palgrave, informing your memorialist that the roll in question was a Filazer's roll of the Court of Common Pleas, and warning your memorialist not to part with the said roll.

That a copy of the letter of the said Sir Francis Palgrave is set forth in the appendix to this memorial, and from which it is observable that the said roll is admitted to be intrinsically of no value; and an opinion was also expressed by Lord Chief Justice Tindal, in a letter published in the appendix to the Report of the Record Commissioners, page , that such class of documents was valueless.

That your memorialist received a second letter from Sir Francis Palgrave, which was left at your memorialist's shop during his absence from home, requiring your memorialist to give up the said roll to the bearer of the letter.

That your memorialist did not see the bearer of the letter, but left directions with his shopman in answer thereto, that the price of the said roll was £1.4s., and that if that sum was paid the roll would be given up.

That your memorialist subsequently received a letter from the Master of the Rolls, desiring him to give up the said roll to Mr. Henry Cole, on his Lordship's behalf, as Keeper of the Records, in virtue of the act of parliament of the 1st and 2d years of the reign of Queen Victoria, chapter 94, and stating therein that the said roll was a Filazer's roll belonging to the Court of Common Pleas.

That your memorialist being conscious that he had bought the roll in question fairly and openly in the way of his trade and business as aforesaid, did decline to give up the said roll to the said Henry Cole, conceiving that he was quite justified in so refusing.

That on the 3d of June last your memorialist was served with a Rule of the Court of Common Pleas, moved by the Attorney General on behalf of the crown (a copy of which will be found in the Appendix), calling upon your memorialist to shew cause why he should not forthwith deliver up the roll in question to the Master of the Rolls, or to the said Mr. Henry Cole, one of the Assistant Keepers of the First Class of Public Records, appointed under the Statute of 1st and 2d Victoria, chapter 94.

That the solicitors in support of the said rule were Messrs. Maule and Boucher, your Lordships' solicitors.

That the said rule was obtained upon the unsupported affidavit of the said Henry Cole, one of the Assistant Keepers of Records, which affidavit is set forth in the Appendix.

That upon reference to the Statute of the 1st and 2d Victoria, under which it was contended the Court of Common Pleas had jurisdiction to act in the matter of the said rule, your memorialist and his counsel could find nothing whatever in the said act to warrant or justify the proceedings adopted by the crown against your memorialist, the said act being applicable exclusively to records in the proper custody of the officers connected with the different courts.

That your memorialist being, therefore, at a loss to understand why he should be compelled in the arbitrary and novel manner adopted towards him to deliver up the said roll, so acquired by him as aforesaid (it not being alleged that it had been improperly obtained by him), your memorialist was advised by counsel to shew cause against the said rule, and accordingly your memorialist instructed his solicitors to take the necessary steps for so doing.

That your memorialist instructed counsel to shew cause against the said rule, in Trinity Term last, in obedience to the terms of the said rule, but the same was enlarged, upon the application of the crown, till the 8th day of Michaelmas Term last.

That upon subsequent investigation, your memorialist became satisfied that not only was the Act of Parliament relied upon by the Attorney General inapplicable to the case, but that the roll in question was not, in fact, a *record* of the Court of Common Pleas at all, being simply a private memorandum of writs issued by a Filazer of the said Court.

That under these circumstances your memorialist caused an affidavit to be filed in Michaelmas Term last, in opposition to the said rule (a copy of which will be found in the Appendix), setting forth the facts which had come to your memorialist's knowledge respecting the said roll.

That the said rule subsequently stood for argument during the whole of last Michaelmas Term, but was not brought on till the last day of the said Term, when Sir Thomas Wilde, on behalf of the crown, intimated to the Court his intention of abandoning the further prosecution of the said rule, and the same was accordingly abandoned and discharged.

That Sir Thomas Wilde in addressing the Court on the abandonment of the rule, said, "The Roll in question does not appear to be of very much importance in its effect; the defendant, who is a perfectly respectable person, appears to have possessed himself of it innocently, and, according to my judgment, it is not a case in which the crown should press upon your lordships to come to any decision upon the character of the Roll: I think it is too uncertain."—*See short hand note in the Appendix.*

That in the usual course of the practice of the Court where a rule has been

obtained by a party who afterwards abandons it, the party shewing cause against the said rule is entitled to his costs occasioned by the rule; but where the crown is concerned, the Courts will not grant costs, however wrongfully the subject may have been brought into Court.

That in consequence of the said proceedings your memorialist has incurred a bill of costs to his Solicitors amounting to £50.4s.10d., besides having suffered great personal inconvenience and injury to his business during the pending of the said rule, being also under an implied imputation of having purchased and retained stolen property, which was the only ground upon which the Court of Common Pleas could possibly have had jurisdiction.

That your memorialist, in declining to deliver up the said Roll when requested by the Master of the Rolls, did so, because he considered himself arbitrarily called upon to deliver it up; and because he believed and was advised that he was only asserting his clear and lawful right to what he had *bona fide* and openly purchased, and was entitled to retain and sell.

That it is notorious that many Records have been accidentally lost or sold by order of the Government, as the Exchequer Records in the year 1838, of which no less than some tons weight were sold by contract, as appears by a Report of a Select Committee of the House of Lords, appointed to "enquire into the destruction and sale of the Exchequer Documents, and published in the year 1840." That your memorialist has been informed and believes that the Records of other Courts were mixed up and sold along with the said Exchequer Records.

That your memorialist has, at various times, been confidentially employed to purchase books and documents on commission for the British Museum, and other public institutions; and your memorialist has also on several occasions given information to the proper authorities, when he deemed any Books or Manuscript Documents offered to private or public sale had improperly come into the market.

That in particular your memorialist having seen, in the year 1838, some of the papers sold from the Exchequer by order of the Government, and supposing at that time that such documents were embezzled, your memorialist took great pains and trouble to make it known to the proper authority, in order to put a stop to such embezzlement, and accordingly wrote a letter, dated the 25th of June, 1838, to the Rev. J. Forshall, informing him thereof, as appears from the Report of the House of Lords before referred to, page 4; but as your memorialist subsequently ascertained that the sale thereof was in pursuance of an order of government, he has from time to time purchased several lots of them at public sales, to which they were sent by persons who had bought them of the original contractor.

That for many years past public records of various kinds have been common articles of public and private sale. That at the sale of the library of Craven Ord, Esq., in the year 1829, various valuable records were sold thereat without interruption or claim by Government, the sale thereof being perfectly well known, as your memorialist has been informed and believes, at the time to the Commissioners of the Public Records, and in particular to the said Sir Francis Palgrave.

That there are existing in many public and private depositories, such as those of the British Museum and Bodleian libraries, the Collection of Sir Thomas Phillipps, Baronet, and others, various valuable records.

That, under all the circumstances of this case, your memorialist humbly submits, that, having been harshly and arbitrarily dealt with, in being dragged into a court of law without any justifiable cause, and exposed to great personal inconvenience and costs, your memorialist is entitled to your Lordships' protection, and to the payment of the costs incurred by your memorialist.

Your memorialist, therefore, humbly prays your Lordships to take his case into your Lordships' consideration, and to direct that the amount of the costs incurred by your memorialist, in shewing cause against the said rule, may be re-imbursed to your memorialist.

And your MEMORIALIST will ever Pray.

I regret that, having mislaid the answer of the Lords of the Trea-

sury, I am unable to give it: it was a mere dry formal answer, to the effect that their Lordships saw nothing in my case to depart from the usual practice; consequently, I have to pay my own costs.

But if my expenses were £50.4s.10d., it is to be inferred that the Government had a like bill to pay; since it is hardly to be supposed that the Attorney General, Sir Thomas Wilde, or Messrs. Maule and Boucher, however great they may consider the honour of serving the Crown, will on that account forego their charges. I know not how these gentlemen may be paid, whether by a salary or by fees; but the various persons employed in taking these affidavits and writing them out, would not work, even for the crown, for nothing, any more than they would for a private individual.

The Lords of the Treasury in refusing to repay me may have conformed to the usual practice; yet I cannot but think they have been acted upon by some secret and underhand influence, as I find that other persons have been paid for Records seized by the Record Officers, as appears from the following statement:—

On the 15th of March, 1843, a sale of Autograph Letters and Documents took place at Mr. Fletcher's Rooms, Piccadilly. The day previous I had called at the rooms to see some of the autographs. Among other articles advertised was the following: "Lot 133, Pell Records: Roll of the Receipts of the Office of the Exchequer, from the 17th of April to the 18th of September, A.D. 1453 (31st Henry VI.)"

What this article really was I know not, but Mr. Devon, whom I met at the rooms, told me it was not what it was described to be, but a much more curious and important article. Whatever it was, it can be proved upon oath of the proprietor, Mr. Waller, *to have been one of those Documents purchased by him of Mr. Jay, the contractor for the Documents sold by the Exchequer, in 1838, at the rate of eight pounds the ton weight, and by the latter to have come to him among those Documents.*

On the morning of sale the auctioneer was served with a notice not to sell this article. When he came to it, therefore, in the order of catalogue, he stated the circumstance, and declined, in consequence, to put it up. My advice to him was to pay no attention to the notice, but to proceed with the sale; and at the same time I said, "I here publicly bid you twenty guineas for it;" and then turning to Mr. Waller, who was present, I advised him by no means to consent to its being given up unless that sum were paid to him, and to give notice to Mr. Fletcher that he should expect that amount for it from him in case of his giving it up to any other person than himself, or a person to his order. Mr. Waller called on me at my house soon after, and talked over the subject with me. He expressed his unwillingness to resist the claim, on the ground of the expense he would be put to, and on a subsequent occasion he intimated that hints were thrown out that he would be paid for it. This, as I afterwards learnt from him, he was; and at the same time he was paid for a parcel,

which (partly under promise of payment, and partly under fear from the demand being made upon him under the shape of an order signed by Lord Chief Justice Tindal, and served by a Police Officer), he had suffered the officers of the Record Commission to take from his shop in or about the year 1836. These payments, however, were not made to him upon any bills for goods sold, but, as he himself told me, it was expressed to him "in consideration of giving them up."

And now I would put a few questions to the Lords of the Treasury :

1. What was the sum paid to Messrs. Maule and Boucher for moving the Court of Common Pleas against me?

2. What sum has been paid out of the Treasury for recovering back Records sold from the Exchequer in the year 1838?

3. Whether they have authority to make payments out of the public money for such a purpose. Is this power vested solely in themselves, or have they first to submit the matter to the Privy Council?

4. By whose advice was Mr. Waller *paid*, whilst I was proceeded against?

5. Why could not the same fund out of which Mr. Waller's consideration was paid have repaid the damage done to me?

It would be desirable also to know out of what funds these monies are paid.

My Lords of the Treasury may treat these questions coming from me with contempt, but there is a place where they dare not refuse to answer them; and although I am not in a capacity to put these questions to them in that place, it is to be hoped that some person who is, will take up the matter, and insist upon categorical answers.

It may be asked me, WHY, when I knew what power I was contending against, and the hopelessness there was of my obtaining any reimbursement of my expenses, I did not give up the roll in question. I have anticipated this by stating, as is truly the case, that I felt the doing so was only to provoke fresh aggression, not only on myself, but others, and I felt, therefore, I was fighting a public question. I may further state, that my Solicitors, Messrs. Parkes and Preston, and my Counsel, Mr. Serjeant Shee, Mr. Serjeant Channell, and Mr. Fry, some of whom I am happy to number among my personal friends, would never have suffered me to incur such expenses, had they have considered my cause an unsafe one.

Another question may be asked, Why I have suffered the matter to rest thus long, without sooner bringing it before the public attention? To this I answer, that my daily avocations are an incessant demand upon my time, and that the subject is one that I cannot recur to without pain.

I am sensible that my Narrative will interest but few persons; that it will be considered as a solitary case, and one not likely to occur again. Such, however, is not the fact, for at this very time the same parties are still pursuing the same course, arbitrarily seizing whatever they choose to call Records; and although they do, it is true, in some in-

stances pay for them, yet the mode in which it is done is unjust to the owner, since it is an arbitrary price fixed by themselves. Neither are the two things at all reconcileable, since, if they have a right to seize, they are not bound to pay—and the Public has certainly a right to inquire into the expenditure of the Record funds, since they are voted out of the public money.

Let me state another view of the case. Supposing this Roll upon my death had been put up for auction, and the same parties had claimed it, what would have been the consequence? My executors, in ignorance of the manner in which I had become possessed of it, not daring to resist the claim, and not feeling themselves entitled to put my estate to the expense of defending it, would, in all probability, have given it up; thus my estate would have been robbed, and I should have had a slur upon my memory. It will be said that I am putting an extreme case: my answer is, SUCH A CASE HAS HAPPENED.

Another hardship results from the peculiar form adopted in prosecuting these claims, viz. in the name of the Crown, by a summary process, and on *ex parte* affidavits. The truth is, that the instigators of the proceedings do not dare to let any case come before a jury, since they would themselves be liable to be placed in the witness-box.

I have again to repeat, what I have already shewn, that no person is more anxious to save the public Records of the country from embezzlement and destruction than myself. Whenever the Record Keepers have reason to suppose that Public Documents have surreptitiously come into the possession of any parties, they may apply to a magistrate for redress, and follow the property if they can prove it to be theirs; but whenever they have to deal with a "perfectly respectable person," they should, I submit, first of all apply to him in a proper manner, and through the proper officers; and if he should then refuse to deliver up what they consider a public document, they should then proceed to establish their right by action of trover, or some other form of action in which the defendant may maintain his character and property on equal terms, and not be dragged into court by a summary process on *ex parte* affidavits to answer a complaint in which a triumphant refutation still leaves him a loser of money and of time, for which he can procure no redress or satisfaction. The appeal to the jury is the only constitutional, just, and honourable course of proceeding.

It remains now to be seen whether the Government of the country will continue these anomalous proceedings; and whether honourable men, like Lord Langdale and Lord Chief Justice Tindal, will suffer themselves or their courts to be made the tools of a deputy officer, reckless of the expense to which he subjects the Government, or entails on those who oppose his proceedings, and regardless of the obloquy to which he exposes the Master of the Rolls, his master, by prosecuting claims to documents, of whose name, or nature, or use he was ignorant, which claims the law-advisers of the crown, better informed than himself, find it prudent to abandon; and,

lastly, by paying lavishly out of funds, I have full right to assume, destined for other purposes, for Documents which he considers Records, but which the Government itself, acting by the advice of the Comptroller of the Exchequer, sold to a fishmonger as waste paper. I appeal to Parliament and the people. Will the one grant, and the other sanction, the vote for £10,000, which will, I presume, be moved for, as usual, in the forthcoming session, to be placed at the disposal of the Master of the Rolls, and his Deputy, Sir Francis Palgrave?

Upwards of £500,000 have been voted to Record Commissions; yet, during the existence of these very Commissions for the "PRESERVATION" of Records, we have shewn that money has been lavishly paid for their *destruction*. Had it been even desirable to part with those Exchequer Records or Documents for which some £70 were obtained from a fishmonger, on "a contract approved by the Lords of the Treasury," after £400 had been spent on the mutilation of them; and had they been sold by public auction, I have no hesitation in saying, from my long experience in such matters, that the sum produced would have been nearer £7000 than £70. Of the loss occasioned thereby to History and Biography, I leave others to judge.

THOMAS RODD.

9, Great Newport Street, Feb. 1, 1845.