

62757

L4904

This letter I find
 enclosed under of a sort
 of tractate on the
 Roman ~~and~~ duties
 of judges, ~~and~~ contains
 some very ~~unpleasant~~
 allusions to the Chief
 Justice.

Buteau has been
 already informed that
 if he wishes to
 address

The Capt
 Pentecost

Mr. Lander or any
one else, in private
and respectful terms
on the subject of his
confinement, he is not
liberty to do so, but
I cannot permit any
convicts to write letters
containing anything
expressions respecting
public institutions,
more especially when
such matter is quite
unrelated, as in this
instance, to a full
and clear statement
of

his case, and if
the grounds on which
he seeks further inquiry

W. Thompson
2 Oct '62

Prisoner informed
W. W. Mason
Super
of 10/62

1 G. V. Bateson

To Thomas Gader Esq: M. L. A.

62
10/23/50
L 4904

Sir,

In compliance with your request, I have the honor to wait upon you with statement of the case that has caused me to believe a prisoner of His Crown, under sentence of fifteen years, with three years in Irons, in the hope and expectation, that some of the Representatives of the People of this Colony, you will be pleased to inform yourself of the particulars, I am now about to place you in possession of: and further, that you will use the weight & influence of your personal and legislative position to cause justice to be done

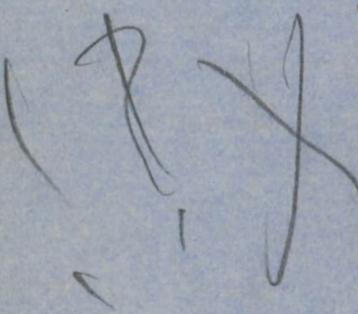
About the middle of September 1860, being at that time disengaged from any business or pursuit, I was residing in Town; endeavoring to get up a sheep boiling down establishment: & at this period became acquainted with a young man by name William Gardner, who, in the commencement of our acquaintance, informed me that he had recently arrived in the Colony by the Aldinga, that he was the son of a Glasgow merchant: & had been six years at sea, his age being at this time Twenty One; his appearance, manners & dress, which latter was always very good, fully corroborated his own description of himself; the pursuit which I have told you shall in a few days together with my own previous connection, caused me to be daily, during the whole time of my connection with Gardner at the office of the Squabbling Agents & at Kirk's Bazaar in Bourke St. West & Queen Streets: & observed that Gardner continually threw himself in my way; but as he was lodging at No. 199 Bourke St. W. the most Western house in Bourke St. I had no reason to suppose, until after the denouement of this matter, that there was any design in these meetings; whenever

Saw him, he always expressed very great anxiety
to obtain employment: & after he had become com-
paratively intimate with him, I told him what I
had intended myself, that I fully expected to accom-
lish my object, which, if I succeeded in so doing,
would enable me to give him employment; but, as
it was possible this might break down, I always
told him to do the best he could to find employment
for himself; after about 2 mos. almost daily intercourse
with Gardner, in this manner, on the evening of
Monday Nov: 17th, I had been to the Theatre Royal, on
coming out at the close of the performance, I looked
into the Albion Hotel, for the purpose of seeing a friend
staying there; as my friend was up in, I was very
surprised to see in the house: & on coming out, I met Gardner
at the door, who I believe had seen me enter the
house: & was waiting my exit; I accompanied him
as far as the Post Office, having a letter to be posted,
intending to proceed by Elizabeth St. to Cowroy's
Hotel, North Mellowm, where I was lodging: and
was in the act of taking leave of him, We both then
observed in the sky, the reflection of a large fire
in a westerly direction; Gardner at once urged
me to go to see where the fire was: I at first thought
demurred to doing so, telling him that fires were
very delusive, that it might be a long distance
off: & that though it was directly in the route of his
room, it was quite opposed to the direction in which
I was going; however, as he continued to press
me strongly, I consented to go to the top of the hill,
& when we arrived at the point where William St.
crosses Bourke St., We saw that it was a ship on
fire at Sandridge; as it afterwards proved the
"Arabia"; & when Gardner proposed that in order
to have a better view, We should go on to Petman's
Hill, a ship on fire being an object of interest, I
was contented; when we arrived on the hill
We found a concourse of people there; & We were

7
immediately joined by three men who continued
in conversation with us as long as we were on the
ground & whom we left still there when we came
away; finding it cold, I made 2 or 3 attempts to
come away which were resisted by Gardner, telling
me, that if I remained a little longer, we should
see the ship go down, as she seemed to be bent to
the water's edge: & that he would accompany me
part of my way home; when we did leave, he
actually did so, passing his own door, & at that
hour, accompanying me, three quarters of a mile
out of his own way, which distance he had to retrace
alone; When we reached the Post Office, he took
shock two; I then said to him, "do you think you will
be able to get admission to your own lodgings, because
if you think you cannot, you may come with me,
to the back door of the house in which I live & always
left open: & I can get in without disturbing any one"
to this he replied, "I am on very delicate ground
with my landlady, my credit is exhausted & perhaps
I had better incur her displeasure for knocking
her up than by stopping out all night;" on this we sepa-
rated; but I have no doubt, that from this incident
he learned, that by continuance, he could manage
to stay the night with me; The following day, I
was on my way to pay a visit at the house facing the
front of the Exhibition: & on my way met Gardner
whom I had so often seen him before in Bowbitch
West; he accompanied me to the door of the house
when I was about to call: & on the way, expressed
himself in very low spirits in consequence of his
inability to find employment; Believing that he
really was in the state he assumed & that I was
performing an act of disinterested kindness, I told
him not to give way to depression & asked him to
spend the evening with me: & We would go & see
the American children at the Princess's, on which
he said, "I shall indeed be very glad to do so, but if
I do, will you let me stay the night with you, for my

landlady was angry at my disturbing her last night & I cannot do so again - to this she never attended; I came, he remained with me, all night, rose at the usual time in the morning, went with me into the Bar the following morning remained there for some time reading the papers, but declined to stay breakfast on the ground that he had seen 2 advertisements, which he pointed out to me, which he thought he had better lose no time in looking after; on going away, he shook me by the hand, saying when shall I see you again shall I come tomorrow night? I misinterpreted supposing his remark applied to my arrangements for the boiling down establishment, having proposed you had better leave it to the latter end of the week: suppose you call upon me on Friday evening; he came accordingly on Friday & after sitting with me 10 minutes, we walked together in the direction of Gollingwood; now as I had made final arrangements for starting the boiling down concern, I was enabled to tell him this evening that I could set him to work on the following Monday, at which he professed to be overjoyed; when, in our walk, we were abreast of the Princess' Theatre, he said, "Would you not like to go and see the Children?" I said "I suppose that means that you would like to go," to which he responded, "Certainly should, if we go out to Fodderay on Monday it may be a long time before we are again in town." "Well said, I will go"; whereupon he said, "I suppose I can stay with you as before," to which I made no objection; we went to the theatre, & direct to the house in which I was staying on the conclusion of the performance, immediately on going in, after having some glass of ale at the Bar, he went to Bed; upon going to bed I was lying with my back towards the street preparing to go to sleep, when he made very determined

efforts to draw me into conversation; & professed
 both excess of joy & gratitude at what I had
 done for him; seeing that his manner was forced
 & unnatural I attempted to put a stop to his
 conversation; at length his object was rendered
 entirely unmistakable by his saying "Are you
 you very fond of me? come, only say you'll give
 me something to do; & you may do with me whatever
 you like" - as this was accompanied by intona-
 tion of voice & manner that shew'd of all disguise
 as to what was meant to be conveyed: and as
 the room was very light by reason of a sheet lamp
 being burn^d in front of the window; while I was ponder-
 ing on what course I should take, I rose up partially
 & was resting for an instant on my elbow: & while
 in this position Gardner suddenly caught me
 in his arms & drew me forcibly, face to face on
 his own person; & by a loud call brought in two
 detectives who forced in the door & in a moment
 were at the bedside; on their entering the room,
 at once said "I recognize you as two detective officers
 the trap into which I have fallen is perfectly clear
 to me; & they you will at once examine my person
 & the bed; the attitude in which you found me,
 was not in voluntarily but by force"; my person
 they found in a complete state of repose: & on first
 going minutely over the bed clothes one by one, they
 found no blemish; but on going over them still
 more minutely a second time, they discovered
 beneath where Gardner lay, a minute damp
 spot, that could be covered by the tip of a finger;
 this has been sworn to as semen; which from its
 minuteness I believe to have been an involuntary
 spontaneous excretion from the person of Gardner
 consequent on nervous excitation. The result of
 the unholy conspiracy in which he was engaged;
 this is an accurate & precise statement of facts
 and upon this foundation, the following super-
 structure has been raised



As a copy of the depositions will no doubt meet
your eye, I would especially direct your attention
to the evidence of perjury & change of plan of
the conspirators contained on the face of
them; It will be seen that there were 2 days
examination, on the first of which Gardner
although by admission he had then had several
days communication with the detectives, alleged
nothing against me that would have carried
his conviction; at the close of the first day's
proceedings, he had stated all that he then
intended to state with respect to the occur-
rence of the Tuesday night & when the sleep-
break of, he was committed by the sitting
magistrates to take his trial also; but, instead
of his being sent as in the ordinary course to the
common goal, he was detained in the custody
of the detectives, who had access to the depositions
& by whose influence & tuition, when they had
learned that the Medical testimony would fail
to establish the charge for Friday the 15th they
to go back & charge it the capital offence as
having been committed on the Tuesday previous,
but I desire emphatically to call your attention
to this point. I have been convicted of having
perpetrated this offence on Tuesday 13th & not on
Friday 16th the day on which the indictment
charges me with having committed it, now it is
not entirely irreconcilable with truth, that the
detectives should have taken the prosecutor
for medical examination on Saturday morning
17th Nov: the day following the night, on which they
admit the offence did not take place: & they fail
because I was then examined on the Wednesday
the day following that on which it is now stated
it was committed, although it was proved
in evidence that the prosecutor was in commu-
nication with the detectives immediately after leaving

on Wednesday — In the deposition
 Gardner commences his evidence with the
 night of Monday Nov: 12th. The night of the fire
 now it must be understood that the witness
 is no youth of tender years, but, not only a person
 who had fully reached man's estate, but, one
 unusually strong by birth, in spirit, any superior
 in physical strength; — He says & such the
 prisoner at a late hour, he walked me up
 one street & down another, until, I found myself
 at the Exhibition; He then took me on to Baitland
 Hill, where he hugged me & kissed me, said
 how much he loved me: & asked me if we
 could not make ourselves very comfortable
 all night upon the Hill; but notwithstanding
 these gross & unmistakable overtures had they
 ever taken place, he admitted on cross exam-
 that he voluntarily accompanied me at two
 in the morning the distance I have spoken of
 of his own way: & occupied the same bed with
 me on the following night: that while we were
 on the hill we were surrounded by people & were
 actually in conversation with the three men
 before named; he also admits all that I have
 named as to his remaining the entire night, & going
 away under the circumstances stated; The evidence
 of the two detectives agrees with any statement
 with one only important deviation; in accordance
 with the usual practice of these men to supply from
 their practiced imaginations any link that
 may be wanting in the evidence, they mutually
 agree in swearing that while confined in a
 clothes press, which press was situated in a
 corridor separated from the room in which
 Gardner & I were, by a solid stone wall & that
 Nick, that they heard me say to him, "Let me do it
 I won't hurt you". The door of the press & the door of
 the bedroom being both closed; now if such language

In the deposition
 24904

as this were used with the intention imputed,
it is not reasonable to suppose that it would
have been spoken in a loud tone of voice, & def.
any person to examine the premises & ascertain
ing the relative positions of speaker & listener
to come to the conclusion that the detectives could
have heard any thing without the speaker, were
making the greatest possible effort to be heard.
As medical witness Dr. Alex. Fisher's evidence
in chief is - The prisoner was brought before me for
examⁿ - by detective Mason, he informing me that
the crime of — had been perpetrated upon
him; He complained of pain in the penis &
rectum; I found a slight redness in the penis
& the same about the orifice of the rectum; the
sphincter found perfectly natural & undisturbed
on cross examⁿ - He said - In appearance he
found, did not seem to indicate the pain com-
plained of - that such as they were, they might
have been caused by the witness's own act or by
the natural use of the body; also that a slight
disorganization of the bowels would be sufficient
to account for the appearance of the rectum; that
the sphincter was the only organ that would
indicate the crime alleged to have been com-
mitted & finally that had he not been told, he
saw nothing that would have led him to believe
that this crime had been committed.

The only other witness whose evidence appears is
that of — Campbell who states that he was
employed by Gardner to follow us on the night
of Tuesday 13th which he did for 7 hours, that he
received money from Gardner to pay for his tickets
to the theatre - that he sat behind us the entire
time hearing every word spoken - that he followed
us to when we had a glass sale between the
acts - to when we had a cup of coffee after the
performance & finally to the house in which

5 lived, when he remained for 2 hours after we had gone to bed; but having seen nothing nor heard anything the entire time to excite suspicion, he went away — Does not the fact of Gardner employ-
ing this man show evidence of design?

Knowing that I was completely and entirely innocent of this charge; believing that the very extravagance of the charge with all the attendant circumstances would prove my best protection: & trusting that my own language would carry conviction to the minds of the jury better than the sophistications of Counsel, I went to trial, resolved to trust to my own unaided efforts to establish my innocence. I went to trial as confident of acquittal as ever. The trial went to the altar in the belief that she was about to become a Wife. In entering the dock, the Chief Justice, looking at me but at the seats usually occupied by Counsel, asked if no learned gentleman was instructed to defend me — believing that I should have something to say in the matter I did not honor that not being in the condition in which conscience makes a coward of a man I did not stand in need of the assistance of Counsel to which I replied "I want no conversation with you Sir, put the prisoner down"; I was then informed that Mr. Birnie had been appointed by the Court to defend me; on this I asked Mr. Birnie by note in pencil to apply for adjournment till the next morning for instructions. To which he replied "his excuse" — I complain in the first place that my trial was commenced so late in the day after four o'clock which caused the jury to be unable to sleep — 3 of them being asleep during most of the defence — our objection was the foreman; next I complain most grievously that an uninstructed Counsel was forced

upon me contrary to my desire distinctly expressed.
The Act empowering a Judge to award Counsel
in capital cases to a Prisoner unable to retain
one, must have been framed in beneficence
& could not have been designed as a delusion
a snare to lure a Prisoner to destruction;
neither can a Judge who believes himself to be
so poor a being hold such necessary com-
munication with a Prisoner on his trial as
is needful for the ends of Justice in a civilized
state of mind to preside on a trial; knowing
how important it was not to thwart the Court
I resolved to allow matters to take their course
till my safety demanded that I should act
otherwise; nor can I ever now regret that subse-
quently, by taking the cross examⁿ of the Witnesses
into my own hands elicited most important
evidence that could still be made available.
When the Chief Witness Gardner had given his
evidence ~~in~~ in chief. Mr. Birnie simply asked
2 most unimportant questions & sat down -
seeing then that the case would be lost in consequence
of the non-eliciting of the facts said to the Judge,
"I trust your Honor will permit me to put some
questions to the witness." To which his Honor with
very great warmth replied. "If you say one word
Sir, your Counsel shall not say another"; on this
replied "I am with your Honor's permission I'll
take the case into my own hands." on which his
Honor added with much meaning "And take
the consequences along with it." At a subsequent
stage Mr. Birnie attempted to address the Jury.
When the Judge commanded him to resume
his seat. saying - "You know the rules of this Court
I am ignorant of the rules of his Honor's Court, but I
know something of the rules of the Court of West-
minster, which on this point I will endeavor to
give you - When Counsel are instructed in

6
The usual way by Brief drawn by a solicitor, the
Counsel, and the Judge. will not suffer interference
by a non-professional person; but this rule has
been very frequently departed from: & in particular
I will instance the admirable of John Cook
who being defended by the greatest light that ever
appeared in the forensic horizon Mr. Justice
examined his own witnesses & cross examined
them for the Crown; but this did not prevent his
Counsel addressing the Jury; Mr. Justice would
not have lost cast by being placed in the position
his great predecessor had occupied: & had
the Chief Justice of this Colony copied Lord Mans-
field's rules of action in this & all other respects,
should not have had occasion to address
me you on this subject.

I am perfectly assured that at the close of the defence
& previous to the Judge's address to the Jury, there
was not a soul in Court that was not confident
of acquittal; the servile & obsequious nature
of slaves to the charge of a Judge is a mark of
indignity - nor can there be found a man who
better appreciated the influence over a Judge
Jury a Judge possesses than his Honor who presided
on this occasion. It is a wide spread &
vulgar error of the multitude to extend to Judges
that fiction of Law that applies to Sovereigns - "The
King can do no wrong" - but nothing can be further
from the fact than this - the powers of the Judge
are closely & strictly defined by Law & in proof of
I would refer you to a motion of Serjeant Chambers
supported by John Summings afterwards the first
Lord Ashburton & Leader of the Bar at Westminster
in the house of Commons, "On the administration
of Justice, especially as regards the functions of
Juries" this you will find reported in Hansard
under date December 6. 1780 - But I will here

take leave to tell you, that Trial by Jury was
instituted by Alfred the Great. & except
only the two inspired Kings Edward & Solomon,
the greatest Monarch that ever wielded an earthly
sceptre; that as it was established 1000 years
ago, it remains to us at this day, one of the dearest
Palladia of British Liberty, has borne the
bunt of time better than the mountains of the
lands - now Alfred hangs two of his ancles
on for accepting a verdict from a majority instead
of the whole of the Jury; & the other for precisely the
same open charge against his Honor Sir
William Forster Maxwell - for influencing
the Jury to find an adverse verdict.

The Judge is presumed to be a Learned Man
experienced in the Law: he is merely the Presi-
dent of the Court. Judicial being before him
but by the Jury - His duties are to direct the Jury
on any points of Law that may arise in the case -
at the close of the case to place before the Jury the
prominent & salient points of the case in a
clear & perspicuous manner - but he is especially
warned against biasing the Jury in their
verdict. He is instructed to caution them
against raising suspicion into proof & desire
them to give any doubt in favor of the Prisoner -
Judges are sworn to administer Justice accord-
ing to the Law; and I may add, that to make
up that exalted character an Upright and
Judge, a calm, cool & equal temper must
not be wanting.

Before entering upon the Judge's charge to the Jury,
for summing up their evidence, I must tell you
that I cannot take blame to myself for having con-
ducted myself in any way that could account
for the equanimity of the Court being disturbed.

6 or that had failed in any defence to place every
point fully & lucidly before the jury: & in particular
that I directed their attention to this point, which
I now most emphatically desire to impress upon
yourself - that this case is avowedly got up by
two members of the Police Force for the sake of a
conviction - that the chief witness makes himself
an actual participant in the crime & that his evidence
is supported only by the two accessories before
the fact; that there is an Act known as Sir John
Tervis's Act, passed expressly to prevent such evidence
being received unless corroborated by pure
testimony; I am enabled to tell you from actual
personal knowledge of the history of this Act, that
experience had shown from the notorious misjuring
of this class of evidence, that this Act was loudly
& imperatively called for; and I would respect-
fully ask you if a stronger illustration could
possibly arise than the present; for I think you
will agree with me that it is obvious if men are
willing to be found base enough to admit, which, in this
case they have freely done, that they conspired together
to cause this most atrocious crime to be perpetrated
for the sake of a conviction, is it not a natural and
inevitable sequence that they would assert it
had been expected, if it were not.

The Judge's address to the jury with observations.

The prisoner has defended himself with great
ability & ingenuity; I suppose it was for the sake of
making this display that caused him to decline
counsel; but my duty is to tell you that that ability
& ingenuity must not avail him in this case -
was not entitled, and only to such poor ability as
myself possessed, but also to the highest talent at
the Bar; and think you Sir had I been defended
that any Judge could be found who dared to

{ to instruct the jury in his unmistakable manner to ignore the defence? His Honor continued: "There are two very extraordinary features in this case, certainly very extraordinary indeed; the first is the conduct of the Witness Gardner; & his conduct seems almost inexplicable, but it may be accounted for by his being in a strange house. That his conduct seems to have changed immediately after the offence was committed, as we find him in communication with the police on the following day" - had his Honor been in a fit state of mind to have duly appreciated the bearings of this case, I think he would have seen that the interview with the police was the continuation of a pre-determined design: & that having accomplished it by staying with me all night, the circumstances on which the appearance of the possibility of this offence might have been perpetrated, the matter was then left for the introduction of the police - "The other peculiarity in this case, is the conduct of the Police themselves: So long as I sit here, I will always maintain that it is better that crime should go unpunished, than that it should be brought about, for the sake of a conviction: but the conduct of the Police does not mitigate the Prisoner's guilt. I need scarcely point out the inconsistency of this passage: nor draw your attention to the legal solecism contained in the words underlined; the way in which the Police have given their evidence is worthy of commendation: nor can I see the least appearance of conspiracy" - & yet His Honor, just previous had animadverted on the conduct of the Police in bringing about the offence for the sake of punishment; the Prisoner has attempted to account for the attitude in which he was found; well I suppose no other defence could have been made: Gentlemen could it be necessary for one man to get on the top of another to look into his face? - as this was perverting the language that used, which was as distinct & intelligible as is herein set down, I made an attempt to correct His Honor; when he desired me in a loud & peremptory tone, to be silent.

That the 13th is ad. included in the indictment, is
the consequence; there can be no doubt that the
open was committed on Tuesday & you may
consider what the Police saw & heard on the Friday as
corroboratory evidence of what took place on the Tuesday
You cannot believe what the Police have sworn they
overheard. You cannot believe a word you've heard,
the door was no doubt out of order" These latter words
underlined in the fact of Gardner having sworn that
the door was locked & the Police that they burst in
the door. — The whole of this address was delivered

with great rapidity & in a tone of excessive irritability.
We must go back a long way in the history of the Swiss
jurisdiction of our country to find a parallel to this
address; similar instances have arisen, when justice
was administered by venal Judges, under the influ-
ence of a corrupt Court; in like manner did Scroggs,
Alibone & Jeffrey accomplish their several bloody
atrocities, which had caused their names to be held
in deserved & universal execration; when the Jury
had found their verdict in this manner extorted the
Judge's associate said in the usual language, "what
have you to say?" — on which I commenced in a
very subdued & respectful tone of voice. "I am fully
aware that any thing I can say for you can be of no avail
— when His Honor broke in with great violence
"Stop then sir! It shall be worse for you, for that"
Comment here would be superfluous; & I know must
with difficulty be believed: but all the incidents I
have here set down can be proved by respectable &
most credible witnesses.

Ag. in to revert to the Act under which a Judge is empower-
ed to award Counsel; the Legislature must have
contemplated, that Prisoners should have the full benefit
of the legal assistance so granted: to accomplish
which, instructions in the case are absolutely necessary:
else would it be "keeping the promise to the ear & breaking
it to the sense"; neither could any sane person take
offence at a Prisoner declining the proffered aid: both
alone any conviction is to be admitted.

When the Emperor Julian was on one occasion conferring

with his Council on an Appeal from a criminal conviction, on opposed to the Appeal said "If it be sufficient to deny who shall be found guilty?" &c. &c. The Emperor very positively replied "If it be sufficient to affirm who shall be found innocent?"

A passage from Disdonois address I have omitted. Tell me that two men are found in the same bed, I want no further proof of their intentions" such a speech as this from the common herd, might be supposed to pass; but from a British Judge upon the Judgment seat, so to raise suspicion into proof instructing a Jury is a deed, I dare not attempt to characterize; while on this point I may tell you, that for six years I have been almost constantly engaged driving Stock: that during this time, I have been in the habit of travelling with a small express wagon, in which our bed was night made, for two or often for three persons; & therefore, whatever my ideas once were on this point, they have been long since broken down: & whenever circumstances seem to render it necessary, I would no longer appear so unusual to steep two in a bed

This direction of the Jury has always been considered a sufficient cause to set aside a Verdict: & there can be no question that the Judges conduct in presiding on this trial, entirely invalidates the proceedings; & when you are thoroughly informed in the entire case, you will see that the conviction has been obtained in a manner opposed to the just principles of British Justice, & in the highest degree dangerous to the Public Safety.

This is most pertinent & very relevant to this enquiry that I should endeavor to make you alive to the condition of the Mallowme detection force; It is matter of not only that these men are taken from the basest & most depraved classes: & every inducement is held out to them to secure convictions, in any manner they can be accomplished; that they do so secure them by Perjury, both of themselves & there is well

known to many high Officers of the Government; & a appalling fact. Weyburn is an Institution of the State.

I conveyed to you on Saturday that during the Ministration of Mr. Attorney General Aspinall a Memorial to His Excellency was rejected, as His Honor was perfectly satisfied with the Verdict! although Mr. A. has since expressed himself in strong terms as dissatisfied with the Judge's ruling. In a Memorial to His Excellency he but and speak from the Judge to the Judge, a Memorial is but a mockery; it has long been conceded that cases frequently arise, that require revision by the Executive & the prerogative of the Crown has become one of the dearest rights of the people; another Memorial is now under consideration: I have now to request that you will use your influence to bring the matter under His Excellency's own individual advice; I tell the Governor I have a care, how lightly he entrusts to any man the Langman's cord, that incontinently used, may strangle that subtle essence we call our breath, that by him who gave it, may have been intended to have been poured into words of Wisdom; let not the Assassin's knife through form of law, pour out that blood upon the ground that left to course within the channels, Nature's God has assigned it, may yet prove, each drop of it, to our Fellow Men, worth nuggets of pure Gold; You know sir, there are within the bowels of the Earth, Gems of as pure a lustre as did ever illumine a Royal Academy; there are also, sunk deep in this land, minds as great & geniuses as resplendent as ever made the walls of a Senate House reverberate; some of us know we have that within us, that when we commit ourselves to the sea of popularity, we might, on the wave of popular applause, be borne onward, to His Excellency's own right hand.

There can be no doubt, that as a Member of the
Assembly your rights & privileges are identical
with those of a Member of the House of Commons
in the mother country; neither can there be
any question, that the course I am adopting in
asking you as my Representative to inform
yourself in, & take charge of this case is the
proper constitutional course for me to take;
In doing so, I wish to impress upon you, that I have
not asked, nor do I ask for mitigation of punish-
ment; I have never done ought deserving of punish-
ment; & the only just intendment of Justice that I
have asked or will accept, is free Pardon -
Finally - should His Government determine
that we are blame not under the Law, but under
a Judicial Autocracy, remind you, that like as
Paul of old time, being by the Magistrates of Judaea
found guilty of "Sedition & stirring up the people",
did appeal from their decision to Herod Agrippa
the titular King & from him, to the Emperor on
the Throne at Rome, so can, a British subject
appeal to my Sovereign & Her Privy Council, &
assist me in the exercise of His right, I look for your
aid. — Had I been the subject of a Foreign State,
I could have claimed the assistance of my Consul;
being convicted contrary to Law, should long ago
have regained my liberty; a British subject of
untainted blood should not be in a worse position
than an Alien. —

Whether in this paper or in the interview of Saturday
I have been wanting in coherence, I plead the
shock my mind has had to sustain; that in addition
to the first overwhelming blow, "the iron hath entered
into my soul"; — that for ten months I have been

9 immersed in a lonely Tomb: for ten short months
I have had to deal with the basest of mankind
who are strangers to my language: & I speak
and think; neither can it be expected that I should
speak of my destroyers with the same calm serenity
that one would discuss the rise or fall of a nation;
I am subject to all the Laws that Nature has imposed
upon humanity: & this effort is as much as my
present shattered intellect is now equal to: &
such even as it is, if I am longer left here, it will
not long remain

I trust I may look forward to the honor
of your kindly informing me, what is doing
herein

I have the honor to be

Sir,

Your most Obedient Servant

G. W. W. W.

Pentridge, September Twenty Four 1862.

Mr. Wigley will give you the particulars of a communication
made to me in the Melbourne Jail, to the effect that Gardner had
acknowledged that the evidence he gave was untrue; & that
he was paid for it, which if followed up at the time, would
no doubt have led to the clearing up of the matter.

to Wash: in several

to Wash: in several

Wash

2579/50

5763

65
M 15 62
Date 22 Nov 64
Regis 14 Feb 65

Sec. of State

N^o. 72 Requesting report on certain
Statements made by a convict named
Bateson

62/5763
65/1824

Penal 28.3.65
29.8.65

Penal 15.2.65
28.2.65

Allen 28.2.65
3/5

Referred to the Inspector Genl. of Penal Establishments
for report.

14.2.65

Moore

65/123

Enclosed herewith is a list of the
documents, ~~as well as~~ a list of what
has been done in Bateson's matter
since his conviction, and sent also
all such former papers as I have been
able to obtain, in reference of which
I should wish them to be returned
as some of them have been borrowed
from other departments

Thompson

24 Feb 65

The Honorable
The Chief Secretary

1824

This document should
come to Mr. Chief Secretary, ~~and~~
for his information

27/2/65
M.C.

