4488.

83 Swanston Street
Melbourne 30th Sept 1863

Sir

In the case of George Thomas Bateson convicted before the Chief Justice in Decr 1860 and now undergoing sentence of 15 years at Pentridge, I have the honor to state I am instructed by the Prisoner to ask the favor of your attention to the memorial which now lies in the Crown Law Offices and which was forwarded shortly after such sentence and has since been laid more than once before the Attorney Generals Aspinall and Ireland and Mr Wood the late Minister of Justice — as yet unsuccessfully

The prisoner still asserts his innocence and requests me to bring forward another fact which appears to have not been mentioned in either of the memorials hitherto forwarded

The fact tends to impugn the evidence of Gardiner the Chief Witness for the prosecution and if found to be as the Prisoner states would probably induce you to recommend his discharge — On the Trial the Crown Prosecutor Mr Adamson put into the hands of the Witness Gardiner a piece of paper whereon was written "George Bateson Esqr" and examined him as follows

Qr Do you identify this" Ans "I do"

Qr Was it ever in your possession" Ans "It was"

Qr How did you obtain it" Ans "It was handed to me by the Prisoner"

2dly Is it in his handwriting "Ans It is"

2nd How do you know it to be his handwriting "Ans It was written by him in my presence"

The Prisoner asserts that the Paper is in the handwriting of John Murchison Esqre King Parrot ~~Parrot~~ Creek and that it being in the hands of the Crown it would be referred to by its officers and that on being shewn to himself or to his Son Roderick or to Mr R. Goldsborough or to Mr J.P. Bear it would be at once recognised as in the handwriting of that Gentleman, thus shewing to be false two of the statements of the witness Gardiner and throwing grave doubts on the whole of his testimony — I am also requested to state that the said witness was paid £25 for his Testimony — I am instructed also to ask that his memorial may again receive the consideration of His Excellency The Governor Sir Charles Darling and of his advisers and if a more favorable view should upon review of the above facts and of such memorial be taken of his case that the Prisoner may be relieved from further punishment

I am also requested to call your attention to a letter upon the above subjects from the Prisoner addressed to the Inspector General — Penal department dated 14 April 1863 And to ask that such letter or a copy of same be laid before you for your consideration —

I have the honor Dear Sir

Your mo. Obed. Servt.

J. B. Buckley

The Hon.ble
The Minister of Justice
Crown Law Offices
Melbourne

R223/62

B. 1261

10.9.62

201

Re Bateson.

Bundle 7

No. 20

File

Memorial from Mr. J. G. Wigley in favor of Ls. F. Bateson

3735
3935
R 1444/67
17/7/67

Recd from Law Offices 19/5/62
Put away again
O. F. J.

Letter to Mr Wigley 7/7/62
Put away
O. F. J.

Law Offices
10/9/62

Filed
2/10/62

Confidential

File

Will the Chief Commissioner of Police if it can be done without inconvenience, cause it to be ascertained whether it would be impossible as the Kissmer Bulletin alleges that what he said should have been overheard by the Detectives placed where they were.

Yours

Secretary to the Law Department will furnish the Chief Commissioner with a short note of that part of the evidence of the Detectives which relates to their overhearing the conversation.

The only reason I have for thinking it not all impossible that the Detectives may have been giving untrue evidence is that they were so eager to have a conviction that they permitted the commission of the crime (in their own sight).

May I also ask if any payment to a reward was held out to Faulner

before the commission of the alleged crime
in which as Bateson truly states, he
was on his own admission, a participator

E. Maitland Ward
4/5/85

H/
642

The report of the Supt. of Detectives is forwarded for the information of the Hon. the Minister of Justice.
I satisfied myself by personal inspection of the premises that the conversation wh took place between Gardener & Bateson could have been easily overheard by the Detectives from their place of concealment.
With reference to the remarks in the 2d paragraph of Mr Ward's minute, I may state that the conduct of the Detectives in this case was rigorously inquired into by me at the time. There is no doubt a trap was laid for Bateson & it would appear by the advice of the Police Magistrate, but in the progress of the inquiry I made, it was distinctly denied that the Detectives had allowed the offence to be actually perpetrated. I may add that I am not aware of the nature of the evidence on that particular point, given at Bateson's trial.

Rudd. Standish
Ch: Comr of Police

15-5-85

Detective Police.
Melbourne.

Memo:

I visited the premises referred to, on the 11th & 13th insts:- on the latter occasion, at night.

When the house is quiet, a conversation in the room, even with the door closed & fastened, can be easily overheard, from the place where the two Detectives were. —

The walls are thin - the frame of the doorway has shrunk - and the door itself is warped, leaving an opening between the two —

No reward was ever promised, offered, or paid, in this case to either Gardner, or the Detectives

The

To the Chief Commissioner of Police.

The latter did not permit the commission of the crime, intentionally. On this point, I beg to refer to the former correspondence, on the subject.

C. H. Nicolson.
Supt:
14. 5. 63.

The Judge's notes of evidence on trial of

Geo: Bateson

were sent to the Law Officers, on the 14th of May 1862 – and have never been returned.

They were sent at the request of the Minister

J. H. Kay
C & C

5th May. 1863

62
V5763.
R593/62

To Penal Dep. 2/10/62.

Crown Law Offices,

MELBOURNE, 5 May 1863.

Memo:

Will the Private Secretary be so good as to forward the petitions and other papers relating to the case of the prisoner Bateson

R. Ireland

The Private Secretary

R.223/62

The papers are with the Law Officers.
R.W.
5/5/63.

Sent 5/5/63

Returned 8/5/63

Sent 14/5/63

Crown Law Offices,

MELBOURNE, September 10th 1862

Will the Private Secretary be so good as to forward to these offices the papers in the case of prisoner Bateson, under sentence for ~~sod~~ sodomy —

A. Chomley
Secretary.

Forwarded
R.W.
10/9/62 -

R593/62.

63/2829

The writer of this letter was committed by Judge on 17 Decr 1860 at Melbourne. He requests that the grounds named in his letter may be brought under consideration of the proper authorities, and I accordingly forward it to the Honorable Minister of Justice

W Thomson

27 April 63

This manuscript
has been engraved
into Bepreuilly
MK

(564) Bateson

Rec. 15/4/63

Pulaski Stockade, Apr. 14. 1863.

To Inspector General

63/14/63

Sir,

I have the honor to beg your consideration, to certain points in my case, which appear to me, to be of so flagrant a character, that it is impossible they can fail to command attention.

Imprimis — I am indicted for having committed the offence on Friday 16th Nov.r & on that day only: & am found guilty of having committed it, on Tuesday 13th: On this point I beseech the Law to note this: — Although an indictment will lie for an offence committed at an unknown date; if the offence be charged in the indictment to have been committed on a day specified, it must be proved to have been so; but the object of the present is not so much to claim this, as a point of Law, though I do maintain my right to do so, but mainly to point out to you, that if the depositions are strictly analysed, it will be found in this point, the perjury of the conspirators, or witnesses for the prosecution will be clearly apparent; It is evident in the commencement of the proceedings that it was the intention of Gardner & the 2 detectives to have charged the offence as having been committed on the 16th: & when they found that the medical evidence would fail to establish it for that day, they changed their plans & agreed to charge it for the former day; On reference to the depositions, it will be found that there were two days' Examn. at the Police Court: that the first day's examn. breaks off suddenly, in the course of Gardner's examn. when he was committed to prison by the Bench, upon the same charge, on his own evidence: but, he was not sent to the common Gaol, but kept until the adjourned day, at the Detective Office: it will be found that on the first day, he had completed his evidence entirely, as regards the occurrences of the 13th; & that when his evidence was stopped he was proceeding with the subsequent days; but it

will also be found, that, at that time, he says nothing that would establish the charge for the 13th; On the second day's examn. after being three days in the custody & society of the detectives, on being admitted to evidence, & being examined by a Policeman, he said "He entered my body"; but previous to bringing his mind to swear this grand climax of his perjury, He had also said, with equal distinctness, "He did not enter my body" as well as "I should not like to swear he did"; but, I regret to say, that in accordance with the usual practice of taking copies of depositions, the first statement herein set down alone appears; I say quite aware that I must now rest with the depositions as they are reported to have been: & I unhesitatingly assert, that as they appear, they are quite sufficient to shew that some great influence was brought to bear upon Gardner, in the interval between the two days of Examn.; It was also stated in evidence on the trial, that the Speech was not perpetrated on the 16th, but, that it was on the 13th; then why was Gardner taken for surgical examination on the morning of the 17th & was not submitted thereto, on the 14th for it appeared that he was in communication with the detectives, on the morning of the last named day, quite as early as on the morning of the 17th? Again, there is not a tittle of corroboratory evidence, beyond the bare ipse dixit of the man who describes himself as an absolute Particeps criminis & fully consenting Party; & not only so but a person actually seeking that the crime should be committed upon him.

I now beg leave to draw your attention to a point which, I think cannot fail, satisfactorily to shew the perjury of the detectives: — The only corroboratory evidence, offered by them, of the alleged occurrences of the 13th is the remark which they put into Mr. Ure viz. "Let me do it, I won't hurt you" — & not only, absolutely deny that I ever used these words or any that contained a similar meaning: but, I also maintain that if the premises be examined it will be found that where the detectives were, it was impossible for them to

have heard any thing that was said in the room occupied by Gardner & me; the detectives were in a detached clothes press, standing in a passage, separated from our room by a solid stone wall 21 inches thick: our room door, which is at the end of the room most remote from the press, Gardner swears was locked: this however was not the case: but it was closed in the ordinary way, by the latch, which was quite sufficient for the entire exclusion of sound; I am satisfied that they did not hear any thing that passed, not merely from my knowledge of the premises, but also from the fact, that when in conversation with Gardner, I did make use of those expressions that would have suited their purpose, with as well as the language they invented; e.g. when Gardner was importuning me to draw me into conversation, & hanging over me, while I was lying with my back towards him, I said - "Oh turn over, turn over" - & also, when he was lamenting the hardness of his fate, I said - "How sorry I am" ; Had these expressions of mine been heard, they would only too gladly have been quoted against me; & though uttered in perfect innocence would no doubt have been considered strong evidence of "intent" -; Considering the immensity of the interests involved, I cannot think it is too much to ask that the premises should be examined -

Referring to the statement I laid before you, on the subject of the communication received from Herman Davies; - If this main evidence has been lost by lapse of time: I would now again impress upon you, that he stated, he heard Gardner say that he had received Twenty Five Pounds from the detectives for the evidence he gave; I have heard from another quarter that this was paid him in three instalments of Ten Pounds, at two several times & Five Pounds; I presume it is within the power of the Executive to ascertain if these or any other sums have been paid to Gardner; & if found to be the case, I should think they cannot fail to reject his testimony; admitting that it is in accordance with the practice of the Police, to pay for information even evidence: this man Gardner ostensibly appears as a person seeking Justice, for an alleged offence committed upon him; & purports to have set the Police himself in motion; & if such an one appears to have been the recipient of money from the Police

there can be no doubt of the entire absence of Bona Fides in the maker.

Finally the entire case rests on the evidence of three persons, who, it is acknowledged, illegally combined together, to cause an offence to be committed, as they say, for the sake of a conviction; — that a conviction shall not be accomplished upon such evidence, the Law is most positive & explicit: & it seems to me obvious to common sense, that such an enactment is most needful for the public safety: for if men can be so base as to cause crime to be committed for a purpose, the same men would not hesitate to say it was committed, if it had not been, could their base words accomplish their object: touching the value of statements upon Oath, I may remind you, Sir, that a couple of Centuries ago, if a malicious person owed his neighbor a grudge, it was only needful for such a one to declare, on oath, that he saw her, wriggle out of the top of her chimney, & sail away through the air, to cause his neighbor aforesaid to be hanged drowned or burnt, at the discretion of the Judge; knowledge may have advanced since this period, but the amount of malice & wickedness in the World is probably not much less now than then; & if undue importance is to be attached to statements, because on oath, motives & collateral circumstances being ignored, and the Barriers for the public safety, which Wisdom & Experience have caused the Law to set up, as Public safeguards, can be thrown down at will, We are but in process of retrogression to the dark Ages. —

I trust that you will be pleased to consider this statement of sufficient importance, to be placed in the hands of the Law Officers of the Crown —

I am Sir,

With great Respect

Your mo. Obedient Servant

G. W. Baker Jr.

Forwarded
18/12/63

Correspondence re £5
to Dept Berlin, in
connexion with Daylesford

B/3935

5th Sept/61.

Rec^d 9/9/61.

B/1261

Mr. Wigley

Forwards an amended Memorial in favor of prisoner G. T. Bateson.

Mr Wigley to be informed that previous to the receipt of his second Memorial, the present Attorn General had enquired fully into the facts of Bateson's case, and having learned that the Chief Justice was perfectly satisfied with the Verdict, and himself seeing no grounds to interfere, its correctness had advised we not to interfere. That has been acted upon. ~~[illegible]~~ Mr Wigley will be informed that if he ~~[illegible]~~ to allow that advice, that I cannot decline therefore to interfere further in the matter.

JCD 10/9/61

Done

J. S. S.

13/9/61

3935

B/Hol

83 Swanston Street
5 Sept.r 1865

Sir

I have the honor to forward an amended Memorial in the case of G. T. Bateson for your report in lieu of memorial forwarded to the Govt. some time since – Some further evidence of an important nature having transpired –

G. T. Bateson

The matter being of the deepest interest to the unfortunate convict who was, there is much reason to believe, unjustly condemned – I beg to ask that the matter may exhibit your early attention –

I have the honor to be Sir
Your obed. Servt
J. Smeiglay

The Hon.ble
The Attorney General

The Honble
The Attorney General
Collins Street East

To His Excellency
Sir Henry Barkly
K. C. B. Governor &
Victoria &c &c &c

The Memorial and
Petition of G. T. Bateson
now a Prisoner under
Sentence at the Pentridge
Stockade -

Colonial Office
the Chief Clerk - In Chamber

J. G. M. Wigley
83 Swanston Street
Solicitor to the Memorialist

B/1861

To His Excellency Sir Henry Barkly K. C. B.
Governor in Chief of the Colony of Victoria Captain
General and Vice Admiral of the same

The humble Memorial and Petition of George Thomas
Bateson now a Prisoner in Her Majestys Gaol at Pentridge
formerly under Sentence of death for the alleged Commission
of an unnatural Crime such sentence being since commuted
to one of Fifteen years imprisonment the first three years in iron

Sheweth. That your Memorialist wholly denying and repudiating the commission of the atrocious Crime imputed to him the idea of which he contemplates with the greatest horror and in the full consciousness of his complete and entire innocence of the guilt laid to his charge bitterly feeling the position in which a mistaken view of the entire case by the Learned Judge has by a most unjust sentence placed him humbly prays that your Excellency will be graciously pleased to reconsider this Case and in justice to an innocent person to read the evidence given on your Memorialist's trial and compare the same with the statement of the entire truth of the matter which your Memorialist and Petitioner now submits for your Excellency's consideration together with a recital of the following facts relative thereto. That your Memorialist has been for several years in this Colony and has always borne an irreproachable character and the charge is one easily made and has often been known to have been made for malicious or corrupt motives and in the present instance has been made by the Prosecutor Gardiner where from many circumstances (in themselves not at all uncommon and easily accounted for) a certain coloring of truth is acquired of which he has most diabolically availed himself to trump up a case of the most filthy and revolting nature against your Memorialist with a view to extort Money from him and has not hesitated (after receiving an assurance of safety from prosecution against himself by the Detectives Officers employed in getting up the case) with the most unblushing Effrontery to proclaim himself a willing accomplice in the unnatural offence of which he would have your Memorialist considered guilty. That the only evidence in support of the case is the bare assertion and wholly unsupported testimony of

this Witness Gardiner who so unblushingly proclaims himself the accomplice neither the evidence of the Surgeon (upon whose testimony no reliance was placed on the Trial by the learned Judge before whom the case was tried and who in his Summing up to the Jury directed them to disregard it) or that of either of the Detectives in the least affect or in anywise tend to corroborate or confirm his statement. That to support a conviction for the capital offence of which your Memorialist is unjustly convicted it is indispensable that if an accomplice appear as a witness his evidence (besides being received with the utmost doubt and caution) should be confirmed in all the main points This was not done in the present case nor was there any direct evidence of the offence so charged to your Memorialist of any legal or moral value. That there was a material discrepancy in the statement made by the Witness Gardiner and that by the Detective officers as to the conversation said to have taken place on the Friday night between your Memorialist and Gardiner who never mentioned in his Evidence or in any way alluded to the words said to have been spoken and overheard by the Detectives which words had they been used might have been presumptive of a wish or intention on the part of Speaker (coupled with the rest of the evidence) to endeavor to commit the offence although nothing adduced in evidence either by the Detectives or Surgeon would lead the belief or even conjecture that such an attempt had been carried into Effect

That your Memorialist in the most unqualified manner most Solemnly declares that no such expression or words to a like effect as those imputed to him by the Detectives were used or spoken by him at any time and that in thought word or Deed your Memorialist is alike wholly guiltless of the enormity of which he is put forth to the world as being guilty

That the indictment charges the offence with having been committed on the sixteenth day of November one thousand eight hundred and sixty whereas the evidence most distinctly shews it could not have been committed on that day and the learned Judge directed the Jury that they must find that if it was committed at all it was on the thirteenth. To establish which there was however only the unsupported testimony of the witness Gardiner. That your Memorialist complains of the want of faithfulness of the Depositions taken at the Police Court and alleges that the witness Gardiner on his first examination at the Police Court used the word "testicles" instead of privates which appears in the Depositions and Mr. Inspector Brannigan who was conducting the prosecution asked the witness "Do you know what the testicles are" reply "I do" Question "Do you know what "the Penis is" Same reply Question "Then which do you mean" Witness again

replied "Testicles" The examination shortly after this closed and the case was remanded by the Sitting Magistrates Messrs Hull and Vaughan Now by carefully reading over Gardiners evidence ~~our~~ of the first day even without substituting the word that was actually used for the one appearing in the Depositions it would seem that the idea of charging your Memorialist with the capital offence had not on that first day suggested itself to the mind of Gardiner also it will be observed that he had completely concluded what he then intended should be the narrative up to the morning of the Fourteenth the evidence then breaks off abruptly the Bench having committed Gardiner to prison it appearing upon his own shewing that he was a particeps Criminis in the alleged offence - however instead of his being sent to the common Gaol he was taken charge of by the Detectives and on his reappearing on the day of adjournment was taken from the Dock and placed in the Witness box when he enlarged upon his previous evidence so as to support a conviction for a capital offence and a careful investigation of his evidence will lead to the conclusion that the case gradually became progressive in his mind and that his knowledge upon such cases had very much enlarged in proportion in fact as his communications with your Memorialist ceased and those with the Detectives began. Further that in the Depositions the only question and answer in cross-Examination set down (And here a material discrepancy in the evidence of the Detective officers occurs is in Edwards evidence) and Edwards (though knowing that the truth required him to answer the question in your Memorialist's favor) ~~replied~~ when asked as to the state of ~~your~~ the person of your Memorialist at the moment he and the other Detective burst into the room answered in a manner that would best secure a conviction and his answer is set down when the other Detective Eason appeared in the Witness box (he having been out of Court during the Examination of the Witness Edwards) he answered truly that the person of your Memorialist was perfectly quiescent shewing the fact that nothing had occured but this was not set down in the depositions however on the trial at the Supreme Court much to the surprise of your Memorialist both the Witnesses Edwards and Eason gave the same replies and in the same manner differed with each other - this contradiction would no doubt appear from the notes of the Judge who tried the case and if accidentally not there appearing or not so prominently as the fact really was it could be proved by many persons present in Court and especially by Mr. Stodart the chief Turnkey of the Gaol who was present in charge of the prisoners also by Walter son Waters also connected with the Gaol this discrepancy is further important as further corroborating the statement of your Memorialist hereinafter appearing accounting for the position he was in when the Detectives burst into the room Your