

M.
1502

To His Excellency Sir Henry
Barkly Knight Commander of
the most Honorable Order of the Bath
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 Majesty's Gaol at Pentridge
formerly under sentence of death for the alleged
Commission of an unnatural crime such
sentence being since commuted to only Fifteen
Years imprisonment the first three years in ions

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 statements
of the entire truths 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 irrefragable character and the charge is
one easily made and has often been known to have been made
from malicious or corrupt motives and in the present instance
has been made by the Prosecutor Gardiner where from many circum-
stances (in themselves not at all uncommon and easily accounted for)
a certain amount of truth is acquired of which he has most
diabolically availed himself to trump up a case of the most pitiful

Former papers destroyed
19/4/62

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 Detective 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 effect 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 that of 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 statements 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 endeavour to commit the offence although nothing adduced in evidence either by the Detectives or Surgeon would lead to the belief or even conjecture that such an attempt had been carried into effect

That your Memorialist in the most 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 and deed your Memorialist is alike wholly guiltless of the of which he is put forth to the

would as being guilty.

That the indictment charges the offence with having been committed on the Tenth 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 if they must mind 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 Gardner

That your Memorialist complains of the want of faithfulness of the Depositions taken at the Police Court and alleges that the Witness Gardner on his first examination at the Police Court used the word "testicles" in stead of privates which appears in the Depositions and Mr. Inspector Brunnigan 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 & Vaughan now by carefully reading over Gardner's evidence 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 Gardner 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 breaks off abruptly the Bench having committed Gardner to prison it appearing upon his own shewing that he was a participator 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 re-appearance 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 matter of discrepancy in the evidence of the Detective officers occurs, is in Edwards evidence and Edwards though that the truth required him to answer the question in your memorialists favor replied when asked as to the state of 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 in fact that nothing had occurred 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 in Court and especially by Mr Stodart the chief Turnkey of the Gaol who was present in charge of the prisoners — also by one Waters also connected with the Gaol this discrepancy is further important as further corroborating the statements of your Memorialist hereafter appearing accounting for the position he was in when the Detectives burst into the room your Memorialist considering there can be no doubt on the mind of any person as to which of the Detectives spoke the truth — and that the fact truly was as stated by Detective Eason and here it may be stated that had this not been the case and your Memorialist entirely innocent of the crime laid to his charge it may be safely assumed that your memorialist would never in cross examining the witnesses for the prosecution have ventured to ask so dangerous a question

That the main facts stated in this Memorial as your Memorialists Statement a reply to this charge against him were admitted by the Prosecutor Gardiner in his cross examination by your

Petitioner on the trial in the Supreme Court to be true and correct and shewing your Memorialist's acquaintance with Gardiner to have been one of a Friendly description towards him having solely for its Object the assistance of a young man representing himself to be friendless and helpless in the Colony and to advance his interests and that it was not from any motives of self interests or anything your Memorialist had to gain from him

That Mr. C. S. Hackett one of the Stipendiary Magistrates for the City of Melbourne was applied to on the fourteenth of November last by Gardiner for a Warrant against your Memorialist and he refused to grant the same — now it is to be presumed the Magistrate fully questioned Gardiner upon the nature of the case he then represented and came to the conclusion that his statements were wholly unreliable and untrue inasmuch as he refused to grant a Warrant against your Memorialist — though if even the case so stated had shewn merely an attempt to commit such offence he would doubtless as was his duty have granted a Warrant against

That the learned Judge in his charge to the Jury though summing up strongly against your Memorialist leaving the Jury no alternative but to find your Memorialist guilty almost desiring them to do so as being guilty of the Capital offence on the thirteenth November (the period before referred to as to which there was no corroborative Evidence and not sufficient according to the Magistrate's judgment to warrant him in granting a Warrant of Apprehension against your Memorialist) pointed out to the Jury that there were two very peculiar features in the case one was Gardiner's conduct as shewn by his own evidence which certainly was very extraordinary modded, and also that his conduct seemed to have changed after the crime was stated to have been perpetrated by his going to the Police on the following day — now your Memorialist contends that these facts should operate thereby in shewing Gardiner's untruthfulness — especially from his pretending that he lent himself and actually sought after the commission of the offence — the other feature is the conduct of the Police in alleging that by their contumacious they brought about the commission of an offence — and in conspiring with Gardiner — in this the learned Judge censured

their conduct in strong terms. Stating it was not attempted to be denied on the part of the prosecution that the offence of the Fifth was brought about by the contrivance of the Detectives and that this conduct was strongly to be condemned, and as long as he sat in that place he should always say that it was better that crime should go unpunished than that it should be created for the purpose of punishment adding also that their conduct did not mitigate your Memorialist's guilt, but it did most materially affect the value and purity of their evidence. Referring to your Memorialist's position at the time of being into the room which is fully explained in the statement at the end of this Memorial - the learned Judge also added to the Jury "The prisoner has told you why he was in the position he was found in - Gentlemen Is it necessary that one man should get on the top of another to look in his face" your Memorialist complaining that such an argument coming from the Judicial bench was conclusive to the minds of the Jury as to the guilt of your Memorialist and should only have been used by an advocate for the prosecution as matter of argument - that the Judge altogether exceeded his functions in thus becoming his prosecutor - and in his arguing the case most strongly against your Memorialist a course which he did actually take and which was apparent to and was matter of comment to many persons present in Court on the trial - so much so that the Jury were not left to a full and free exercise of their Judgment - though unfortunately from the nature of this case it was not fully reported - your Memorialist is well assured that if it had been fully laid before the public it would have been before this taken up and freely commented on further the learned Judge stated to the Jury "The Prisoner has defended himself with great ability and ingenuity. He has evidently received a high education and has had great experience, where he obtained it from is not for me to say but it is my duty to tell you that ability and ingenuity must not avail him in this place - You must only treat the defence as an ingenious lie' all which your Memorialist will always contend had the effect of inducing and coercing the Jury in finding your Memorialist guilty - further the learned Judge told the Jury they might consider the evidence of the Detectives of the night

to be corroborating of Gardiners evidence of what he stated took place on the Monday night the thirteenth which your memorialist considers as an unjust staining of the law against him inasmuch as if Gardiners as to the thirteenth is not admissible by law from want of corroboration no subsequent facts or evidence could make it admissible

That the evidence of the Detectives against your memorialist, as to what they stated took place between your memorialist and the Prosecutor Gardiner whilst lying in wait and before bursting into the room is utterly untrue and could be shown to be untrue by an examination of the premises where they are stated to have occurred namely the room N^o 3 on the first floor of Courvoys Hotel where your Memorialist was at that time residing and which is situate immediately over the bar of the Hotel with the street lamps in front of the window and shining brightly into the room - the door was fastened by a little bolt - the latch being out of order - and the door being thus shut and the room separated from the rest of the rooms and the passage by a brick partition wall at least twenty inches thick it would be impossible for any person while in the place the Detectives state they were to hear what conversation was being held in the room where your Memorialist was. your memorialist therefore charges the Detectives with wilful and deliberate perjury in to your memorialist the language they do it being quite impossible for them to have heard what was said - your Memorialist also charges the Detectives with inciting Gardiner to face and betray your memorialist into the appearance of Guilt and to commit perjury

That several comments arise on the applicability of the inducement of the Doctor namely the witness Alexander Fisher who was examined at the Police Court and the extent it might be relied on in support of the evidence for the prosecution in this case but as the learned Judge who tried this case put it aside beyond the notice of the Jury directing them they might discard it from their minds in considering their verdict your Memorialist considers he need not making any lengthened comments on the evidence attention might however be called by your Memorialist to the fact that the Doctor admitted in cross examination at the Police Court that he saw nothing in the examination of Gardiner

person that could have led him to infer that this crime had been committed had he not been told so also that the appearances stated by him might be incidental to any one that they did not indicate the pain complained and that there might be many natural causes to account for them - that the only organ that could give evidence of the crime was the urinary bladder which he found in a perfectly natural state and that if the subject were suffering pain at the time of the examination caused by the alleged offence he should expect to find the bladder dilated - which was not so in this case that it is undoubtedly astounding that a man could be found upon whom this crime had not been perpetrated to submit his person to such an examination - Yes such is the case in this instance - the fact is eminently calculated to prejudice the minds of all men

That to draw the attention of your Excellency to the date of the above case against your memorialist it is here stated that Monday the 12th day of November one thousand eight hundred and sixty was the night of the ship being on fire in the Bay and the period from which Gardiner's evidence commences - the 13th of November is originally the date of the alleged offence, but not the one of the subject of the indictment against your memorialist. During the 14th 15th & 16th days of November the Prosecutor Gardiner was in communication with the Police during all which time they did not take him for examination to the Doctor - the 16th day of Nov is the day on which the indictment is laid on the 17th day of November Gardiner was examined by the Doctor - from which your memorialist supposes the Detectives intended to charge your memorialist with the commission of the crime in question on the 16th day of November and as they had been in communication with Gardiner since the 14th why had they not taken him for examination by the Doctor as to the alleged occurrence of the previous night namely the 13th may it not be reasonably inferred that when they learnt from the Doctor that they had failed to impose on him and that his evidence would not establish the charge for the 16th and they then agreed

to fix it on the 13th a period too remote probably for medical testimony to find traces of the alleged crime

That in analysing Gardiner's motives in this most base proceeding it is impossible for any honest mind to enter into the feelings of one that is dishonest but the point is obvious to any dispassionate observer if his evidence of the proceedings of the nights of Monday and Tuesday the 12th and 13th is to be believed added to the fact of his getting Campbell to follow your Memorialist and Gardiner unknown to your Memorialist for 7 hours in the latter night he & Gardiner must have come to your Memorialist on the 13th with the full intention of offering himself as a victim — your Memorialist sincerely believes it to be more consistent with a depraved nature that his whole statement is false created for some ulterior and corrupt purpose and that the truth will yet be revealed

That subsequent to the conviction of your Memorialist & evidence of a most important character has transpired which is most favorable to your Memorialist inasmuch as it is shown that the evidence of Gardiner against your Memorialist was by his own confession and acknowledgement wholly false and untrue and it also shows the corrupt motives that actuated his most false and atrocious accusations against your Memorialist the evidence is transpired in the following manner — while your Memorialist was being apprised when in the Central Gaol at Melbourne in or about the month of April last of the fact of your Excellency having been pleased to commute to commute the sentence of Death which had been passed upon him at the trial to one of fifteen years imprisonment the first three to be passed in irons. Your Memorialist was so appalled by what appeared the severity of the sentence knowing and acutely feeling as he in truth did, his entire innocence and the gross injustice of the prosecution against him all the energies bodily and mental of your Memorialist became completely paralyzed and your Memorialist became and remained for a long while insensible and the fact attracting the attention of the prisoners one of them learning the nature of the crime alleged against him your Memorialist afterwards

made a most important statement to him his name was Rufus Davis a Colored man who informed your Memorialist in the presence of some of the Authorities at the Central Gaol that he was there confined under sentence for a crime being so far as your Memorialist can recollect for contempt of Court and that he lived at Daisy Hill Amhurst and that some two months previously his mate came up to him with another man and they were continuing a conversation already commenced - Davis describing the other man in a manner leading your Memorialist to identify him with Gardiner the Proseuta in the case against him and the conversation being still addressed to Davis's mate, Davis heard him state as follows "I have just come from Melbourne, this is the fourth day from Melbourne and the first day I have appeared by daylight having troubled by night three nights" on being asked why he said "my reason for so doing is that I have been engaged in the prosecution of a man who was about to set up a boiling down establishment on the River - for so doing I have had to leave Melbourne in a hurry and have travelled by night for fear of being taken as I am afraid of another prosecution in consequence of the evidence I gave - I received some money for the evidence I gave which was untrue and expected more but dare not wait longer in Melbourne. "I wish you could tell me where I could get on a Station" that the name of the mate of Rufus Davis who also heard the above statement is Thomas Smith - and both Davis and Smith can be found and will give their evidence to the above effect at any time.

That the following is a truthful and correct statement in every particular and respect of the way in which your Memorialist first became acquainted with Gardiner and of all that transpired between them - that Gardiner's statement that the first time he became acquainted with your Memorialist was on the Monday the 12th day of November 1860 whereas the truth was that for three weeks previously to that time your Memorialist had been in the habit of meeting and talking with him and he had at the period Gardiner speaks of become well acquainted with

him.

My first acquaintance with Gardiner was a casual meeting in the Vestibule of the Theatre Royal, he told me then that he had lately arrived by the *Aldinga* and that he was disappointed he was not retained on board in the situation he had filled coming out "Ships Carpenter". After this your Memorialist was in the habit of meeting him frequently and each time I became more interested in him from observing his increased dejection and lowness of spirits at his inability to obtain employment here. On this Monday night the 12th of November alluded to by Gardiner and stated to be the first time we had met, we had been at the Theatre and after the performance was over your Memorialist went for a few minutes into the Albion Hotel and on coming out met Gardiner at the door who spoke to him, we then walked on in conversation to Elizabeth Street as I was going to Courays Hotel I asked him to come into the Glasgow Hotel and have a glass of Ale he did so on coming out we saw in the sky the reflection of a large fire, Gardiner said let us go and see what it is, we went and on getting into William Street near the Exhibition we found the light proceeded from a ship on fire so we agreed to go on to Botman's Hill to look at it, when we left the Hill Gardiner wanted to accompany your Memorialist back again towards Courays Hotel where I was living and did come part of the way as far as the corner of Bourke Street and Elizabeth Street, the Post Office Clock was then striking 2 and I said to him do you hear how late it is you will perhaps have some difficulty in getting in at your Lodgings, if you like to come with me you are welcome to share my bed and I can always get in without disturbing anyone as there is always left open for the boarder he however preferred trying to get in at his own Lodgings and left me. Now it may strike your Excellency as remarkable that I should have asked Gardiner to share my bed but my occupation for nearly six years in this Colony has been driving Stock, what it is our habit to travel with a light cart in or under which we make a general bed for two or three persons as the case may be and indiscriminately sleep together. Now I had learnt from Gardiner that he was the son of a Glasgow Merchant and found him rather an amusing and intelligent companion far above those I have been often times compelled to associate with of late years, therefore however extraordinary it may

Seem to dwellers in town to sleep two in a bed in the way I describe my ideas as a bushman on that subject rendered the occurrence a perfect matter of indifference to me. It is the practice of Bushmen oftentimes to sleep two and three under the same set of Blankets and the Bed. I occupied at Courvois was much more commodious than one. I have often been compelled to sleep in one of three for weeks together, however it seems that my invitation to Gardiner that night (to whom as he was recently in the Colony) the habits of Bushmen would be unknown, must have just suggested the diabolical designs which he afterwards put into execution. He came to me in Queen Street on Tuesday and told me of his vain efforts to get employment he was very much dispirited I felt for his situation and promised to use my endeavours to procure him employment which as I was about entering into an arrangement for carrying on a large boiling down Establishment I thought it probable I should be able to give him myself and I said if I succeeded in carrying out my views I would take him with me to help tending down a flock of Sheep and as he seemed so low spirited I asked him to spend the evening with me and go and see the American Children at the Theatre he said he should be glad to come but that if he went he must get me to allow him to stop all night with me as his Landlady would not wait up for him I consented and after the Theatre he accordingly went to my Hotel with me and shared my bed that night. The next morning on leaving I arranged for him to call and see me on the Friday ensuing by which time I told him I should know definitely whether I should give him employment or not and in case I should hear of any thing to suit him in the meantime I took down his address in my pocket Book so that I might communicate with him I had previously given him my own name and address on Friday accordingly to our arrangement. He came and as I was still unable to give him any answer as to employment and he was consequently much dispirited I offered to take him to the Theatre and he seemed glad to have the opportunity of going remarking however as before that if he went he should be obliged to remain the

the night to which I made no objection, We went to the Theatre came home and went to bed about 12 O'clock on this night the Memorialist remarked 2 Detectives several times passing and repassing him both in the Theatre and elsewhere your Memorialist knew them both perfectly well by sight, and had been acquainted with one of them (Eason) for some 4 years and the other, Edwards about half as long on our return from the Theatre both of these men were in the Bar at Courvois Hotel, Now if your Petitioner had had any guilty knowledge of Gardiner on the last night he was with him, or had any guilty intention towards him on this night is it not reasonable to suppose that he would have associated the movements of the detectives with himself, But your petitioner went to bed as innocent of any evil intention and as unmindful of detectives as any citizen in Melbourne Immediately after retiring to bed, the witness Gardiner commenced speaking in terms of the most extravagant gratitude for what your Memorialist had done for him in endeavoring to obtain him employment on his repeatedly reiterating his thanks in what your Memorialist thought a most extraordinary and unnatural manner, Your Memorialist was induced by his most strange behaviour (and as the room was perfectly light from the street lamp burning immediately in front of the window) to sit up in bed when on looking Gardiner in the face and asking what he meant by such extraordinary conduct, He suddenly threw his arms round your Memorialist drew him on his face knocked off the bed clothes and gave the signal agreed on to the detectives who in an instant rushed into the room whereupon one of them said to Gardiner has he done it and Gardiner said Yes. Oh take him off me your Memorialist was then taken into custody and upon his trial upon the sole evidence of the witness and accomplice Gardiner and certain evidence given by two detectives Alexander Eason and Edwards convicted and sentenced to death such sentence of death being afterwards commuted to a

Sentence of Imprisonment for fifteen years in the Gaol of the
Colony the first three years in irons

Your Memorialist and Petitioner therefore
most humbly prays that your Excellency will
be graciously pleased to take the whole of the
of the facts comprised in the above Memorial
with consideration and your Memorialist
most solemnly asseverating his entire innocence
of the charge made against him, that your
Excellency will be pleased to direct that a
full and free pardon and remission of
the sentence under which your Memorialist
is now suffering may be granted to him and
that he may be set at liberty

And your Memorialist will ever pray &c

Prepared for G. F. Bateson
and att his request

J. M. Wiggley

Bowman Street

Shrewton

9 April 1862

(Copy)

Penal Establishment Pentridge

31 January 1870

Mr Percival South

Gentlemen

After the lapse of so many years, it will doubtless surprise you, to find me requiring your professional assistance services to extricate me from this place, neither can you fail to suppose in common with the Public in general, who as yet are in profound ignorance of the unexampled circumstances that have caused me to be an inmate here, that I must long ago have acquiesced in the Justice of my conviction & yielded to my fate: the exact antithesis to this is the fact. — At my so-called trial, I was unrepresented, believing the truth to be so great a fulcrum from which to speak, knowing my own complete & entire innocence of the charge, I thought my own

language

language would carry conviction
to the minds of the Jury, better than
the subtleties and plausibilities
of counsel; but in order to defeat
Justice and pervert the beneficent
intentions of a wise legislative
enactment, an uninstructed Counsel,
none to whom no one has ^{ever} yet

thought fit to entrust an important
case, was forced upon me against
my will expressed at the time -

Mr. Bernie!!! After conviction a
case was drawn for counsel, Mr.
Atkins - who replied that "it
would be a very proper case for the
Executive to interfere in"; hereupon
I drew a full statement of the entire
case, for the Inspector General of the Penal
Department, with the view of obtaining
the exercise of an undoubted right,
to memorialize the Governor: this
being most positively refused, I

was

was enabled to get a memorial drawn
in another quarter & presented: this
was supposed to be apparently disregarded
in the Crown Law Offices, during the
Attorney Generalship of Mr Ireland,
for a period of eight months: as I have
since learnt, in consequence of Mr
Ireland & the learned personages who
officiated as Judge, being at issue on
the case. Mr Ireland was succeeded
by Mr Aspinall: after he had been
two months in office, I received an
answer to the following effect - The
Chief Justice being perfectly satisfied
with the verdict, and the Hon: the
Attorney General himself seeing
no ground to impugn its correctness
has advised His Excellency not to
interfere -

Subsequently learnt from
the Revd Mr Parson Chaplain of
this Stockade, that Mr Aspinall
informed him, after his retirement
from office, that he also was at

opine with the Judge: & had no
doubt of the illegality of the conviction.
I had previously thought that all
Ministers of the Crown, on being
inducted into Office, called upon
the LORD GOD HERBERT - to hear
them swear & bear witness to a solemn
oath, that in all matters within
their respective Departments, they
would at all times, tender to His
Excellency, advice to the best of their
own knowledge, belief & judgment;
It may be that you have also
participated in this discussion.

As have been Messrs Ireland &
Aspwall's opinions on the case
there can be no doubt such have
been, also, the opinions of every
Crown Law Officer; other Hon &
Learned Gentlemen having differed
from Messrs Ireland & Aspwall only
in the amount of their ingenuousness.
A leading member of the Bar once said

Mr Aspinall
has informed
me that he
never saw
So. B. Janin,
Mr Gardiner,
news of the
23rd Nov 1884
shows the
falsehood of
the Preserver
Statement
C. J.

The paper on
Proposition of Chief
Secretary, would
show that Mr
Wickie and
Mr Wood subsequently
agreed with Mr
Ireland and
Mr Aspinall that
there was no possibility
of interference
C. J.

to me, It must always be borne in mind, that Crownlaw Officers and Barristers, practising in the same Judge's Courts, whose decisions they have to reverse: and if George Lord Jeffries himself were Chief Justice here, no such men will be found willing to oppose the Judges will.

I little thought I should be compelled to realize with such appalling force, the terrible truth of this remark. We all know that counsel earn their bread, dependant on the favor of the Judges: & should they incur their oblivion, they may as well retire from the profession: consequently in this Colony an appeal from the Executive, is practically an appeal from the Judge, to the Judge. —

In an interview, I had with Dr Youl on the month of February 1768 after poking poking every I had previously said to him for seven years & telling me that we one had any doubt about the

case, he then admitted that every
Ministry that had held office since
my conviction had been greatly
embarrassed in dealing with
the case: this embarrassment has
arisen from the difficulty of deciding
between the conflicting claims of
Justice and the Judge: but when
an eminently influential patron
can be obliged at the trifling cost
of - Truth, Honor, Justice, the
violation of a solemn oath, the betrayal
of the greatest public Trust, with
which an Hon & learned Gentleman
can be entrusted invested: & the
sacrifice of a human being, any
old resident in Melbourne, would
of course expect that each
succeeding Crown Law Officer
would elect to serve - himself
I am aware that Mr Aspinall
has again returned to office: since
these events above named, occurred
eight years have elapsed: it may

X Bide de
your reply to
my note
appeared hereto
C. J.

possibly

possibly occur to him, that he is
so much nearer to his own final
judgment: & it may be that he
would earnestly desire to make such
reparation as is in his power —
In a Colony such as this where so
many are separated from their
friends & kindred by the whole extent
of the East, where perjury is as
common as speech, & justice is
administered as it were by the dice
box, it must be patent to every
one, that many persons are
frequently wrongfully convicted:
that when this is the fate of
ignorant, illiterate & penniless persons,
they may possibly have to undergo
their allotted sentences: but when the
World shall be informed of the details
of my case, in all their hideous horror:
that a member of an honorable & well
known family, who never, humanly
speaking, did wrong, was convicted
of an offence which he never committed,
never contemplated, where not a little

of evidence was deposed against him
that the law allows to be received,
on the testimony of a fully ascertained,
absolutely acknowledged conspiracy,
got up by persons born in crime,
nurtured in crime, steeped & saturated
in crime, professional perjurers in
the pay of the government, who
procured a suborned witness at
the cost of Twenty five pounds to play
the part of Prosecutor, when to insure
the success of the prosecution, the
so called trial took place at so
late an hour, that the entire body
of the court was occupied by two
Birmen only, no reporter for the
press present, when the conviction
was obtained by the open violation
of the law & every fundamental
principle of British Justice: &
that since his conviction every
expedient has been resorted to, to
prevent him having recourse

I cannot see
any thing in
the papers to
justify any
such statement
C. J.

This is utterly
denied by the
Superintendent
of Detective Police
C. J.

to
C. J. by the government

Utterly untrue
as the papers
abundantly show
His case has been
repeatedly and
carefully considered
by the government

to such quarters as the law & the
constitution have provided: that
such a man having an unusual
amount of knowledge & experience &
having evinced the firmest determination
to make his position known could
fail to do so throughout a period
exceeding NINE YEARS. the people
were assuredly stand aghast with
consternation & dismay - on the 12th
November I applied to the Inspector
General in person for leave to
communicate with yourselves &
having received a most positive
refusal, I on the 17th of the same month,
saw the Visiting Justice requesting
his interference: nothing resulted
from this interview: but after the
lapse of six weeks I again saw His
Worship: when although he
declined to come into conflict with
the I. G. by allowing me to write,
on informing himself that I had
the means wherewith to defray your
bill of costs, he undertook to send

9

your

you out for a personal interview;
I was then informed by Mr Farie that
he had refused to allow you access
to me: nor could I by long, solicitation
and energetic remonstrance induce
him to yield. — You know it is a
maxim of Law, that an attainted
person can always move for the
reversal of the attainder. — On the
19th Instant Mr Farie surprised me,
by the announcement that he had
granted you, an order to see me,
on the 7th: That you could have been
informed that I most earnestly
desired to open up communications
with you, that you could have been
at the trouble to make two
applications for an order & when
you obtained the same, that you
could have retained in your
possession 24 days without
material use of it, is to me

I did that on
condition that
it was only to see
if any legal
action could be
taken to bring
the case again
before a Court
of Law, but ~~not~~
not with the
view of again
appealing to the
Government.
I found that
had already
been done. *Refused*

C. J.

overpliable

irrefragable. When once refused
by Mr. Justice, why did you not
apply to the Attorney General, &
if need be to the Governor?
certainly I have been told, over &
over again, that "the Governor is
nobody" & an opinion seems very
generally to prevail that in this
Colony, the Governor is politically
speaking, only a name, an
idea, an abstraction, a nullity: the
Parliament & People of Great Britain
believe the Governors of their distant
possessions to be a substantial
power, the guardians & protectors
of British interests, in the Countries
over which they are commissioned
to rule. If the Colonial idea that
the Governor's duties consist only in
opening & proroguing Parliament,
giving a birth night ball, & occasionally
gracing the Theatre with his presence,
how is that formality that was
performed in presence of the
assembled