

No. 5.

Mr. G. E. BARTON to the Hon. the COLONIAL SECRETARY.

SIR,—

Brandon Street, Wellington, 5th November, 1878.

I have now the honor to reply to your letter of the 29th October, in which you inform me that the Government are of opinion that "no inquiry should be made into any charges against the Judges, &c., unless they are particularized and specified," and you add the statement that the *Hansard* report of my speech fails to do this.

In reply, I would submit that it is scarcely possible to set out with greater fullness and accuracy than that of my address (and the *Jurist* report therein referred to) the occurrences in the cases of *Spence v. Pearson* and *Gillon v. Macdonald*, leading up to my imprisonment. The same answer would equally apply to my charge of judicial misconduct in making *Gillon* a bankrupt, and also to my charge as to the untruthfulness and unfairness of Mr. Justice Richmond's letter, laid on the table of the House of Representatives. The facts of my imprisonment, and its illegality, are long since public, and are set forth in affidavits filed in the Court in the several motions made respecting that imprisonment.

I therefore presume that the charges the Government wish to be specified and particularized are those referred to in the closing paragraphs of my address. Those charges I will now refer to, and will number them for the purpose of future reference.

CHARGE 1.—That on one occasion "the Chief Justice so rudely attacked me, and assailed my honor and veracity, that I was incapacitated from further defending my client on a charge of attempt to murder." That occasion was the trial of *Jacob Pune*, before the Chief Justice, on the 3rd October, 1876. I, at the time, wrote a letter to the Colonial Secretary, dated 3rd October, 1876, complaining of the conduct of the Chief Justice, and demanding an inquiry.

CHARGE 2.—That "because I wrote him a letter informing him, as a matter of due courtesy, that I had sent to the Government a complaint of what he had done, the Chief Justice brought me up for contempt, and led the public to believe that I had sent him an anonymous letter, although it was signed with my name in full; and, to carry out the fiction, he even asked the officer of the Court, publicly, 'whether he had ascertained the name of the writer?'"

This occurred during the proceedings on the motion for contempt in October, 1876. I may state that Mr. Prendergast has been for years acquainted with my handwriting, and I am therefore unable to account for his pretending that he had received an anonymous letter, except by assuming a desire on his part to induce the public to believe that I had written him a letter of which I was ashamed to avow the authorship.

CHARGE 3.—That the Chief Justice untruly "charged my firm with 'laying a trap' for the officers of the Court."

This charge was made by the Chief Justice at the opening of the trial *Clayton v. Isaacs*, January 24th, 1878. The accusation was made before any evidence had been given, and was entirely without foundation. No evidence was afterwards given of any misconduct whatever; and Mr. Travers (the opposing counsel) acknowledged that what had been done by the firm of Barton and Fitzherbert in no way differed from the ordinary practice of solicitors in Wellington. I, at the time, requested, as a matter of justice, that the Chief Justice should retract his remark, or apologize for having made it. He declined to do either, saying that it was "no part of his business to give a character to any lawyer," or words to that effect.

CHARGE 4.—That the Chief Justice charged me and my firm with want of "common honesty."

This took place on the hearing of a motion in Chambers in the case of *Cole v. McKirdy*. The facts are fully set forth in the petition presented by me to Parliament in August, 1877, and also in a letter of complaint forwarded at the time by me to the Government.

CHARGE 5.—That the Court has been in the habit of using improper expressions to me. These have occurred in almost every case in which I have appeared, and in many instances are reported in the newspaper reports of the Supreme Court trials in which I have been engaged.

CHARGE 6.—That the Judges have corruptly favoured my opponents, and refused and delayed justice to clients in my hands.

As instances I refer to the cases—*Corporation of Wellington v. C. W. Schultz*; *Gillon v. Macdonald*; *Peters v. Joseph*; *Joseph v. Peters*; and *Pole v. Tonks*.

CHARGE 7.—That the Judges "have acted as counsel against me, and have worked earnestly to defeat the right whenever my client was the possessor of that right." As instances I refer to the cases of *Gillon v. Macdonald*, *Peters v. Joseph*, *Joseph v. Peters*, *Leach v. Johnston*, *Doherty v. Education Board*, *Buckridge v. Wardell*.

CHARGE 8.—That the Chief Justice, while I was in gaol, signed an order purporting to be made "by consent," to which, within his knowledge, I had never consented. I refer to an order made by the Chief Justice in the case of *Peters v. Joseph*. It was an order granting leave to the defendants to strike out the whole of the pleas and issues on which they had been defeated at a then recent trial, and allowing them to substitute a new defence—a plea of payment into Court of £10 in full satisfaction of plaintiff's claim.

The injustice of this order will be apparent from the following statement:—

Peters had just obtained a verdict against Joseph and Co. for £500 damages in excess of all demands of Joseph and Co. against him. Joseph and Co. applied to the Court for a new trial on the ground that this verdict was unjust and contrary to the evidence, and the new trial was granted on all the issues, the Court declaring that nominal damages only could be recovered, and reserving the question of costs until after the result of the new trial should be known.

Thus Peters was being forced to a new trial to settle the question of costs: If he should lose he would have to pay the costs of the action. If he should win he would escape costs, but could only recover £10 (instead of the £500 the first jury gave him). And if he still resolved to seek substantial damages he would have to bring another action in some different form not pointed out by the Court.