

and would have to pay the costs of that trial, and ultimately, in all likelihood, the costs of the first trial, left for the present in the discretion of the Judges. On the other hand, I showed (I thought conclusively) that if, instead of going to trial, Peters elected to take the £10 paid into Court in satisfaction of his claims, and that I applied to the Court to give him his costs, I should do so in the teeth of the Chief Justice's decision in the recent case of *Wallace v. Crawford*, in which he refused his certificate for costs, stating that he and Mr. Justice Richmond had "consulted together and come to the resolution" that in no case, except under very special circumstances, would they certify for costs when the sum recovered was less than £100.

The result brought about by this order is, that a man who has obtained from a jury a verdict of £500 was left in doubt whether to abandon it and become bankrupt, or to proceed with a second trial with no result but to increase the amount due to his creditors; in fact, whatever step he took could have but one result. "Heads! (by consent) Peters loses. Tails! (by consent) Joseph wins."

Sir, the two learned Judges declare that they see no ground for any imputation upon such an order as that; but with all due respect to their Honors, I see no reason to change my opinion. Is it no fraud to place on the records of the Court, signed by the hand of the Chief Judge, a statement that a party "consented" whom nobody now pretends has ever "consented," and who is by the filed affidavits of at least three persons, sworn never to have "consented?" I most humbly take leave to think such an order is a fraud; and I think, too, that if such an order is to lie on the files of the Court, side by side with its triple contradiction, then the sooner Parliament abrogates the law that treats records of the Court as "absolute verity" the better. Is it no fraud to perpetuate as against Peters an order of a Judge, the truth of which the present law prevents him from disputing, although it states what is undeniably untrue?

Is it no fraud that an order professing to leave open all fair questions between the parties should be so drawn up that one of the parties can neither move hand or foot but to his own destruction?

Is it no fraud that the verdict of a jury for £525 should be thrown to the winds, and the case set down, nominally for a second trial, but really with the foregone conclusion that the plaintiff cannot recover more than the £10 paid into Court, and yet that the order should compel him to go to the second trial which he *must* lose, to entitle himself to payment of the costs of the first trial, which he had already won?

Having failed in my attempts to upset this order, I could see no way to extricate the case from its enlargement, or to burst through these impenetrable obstacles. I am reminded of the curiously constructed American log-fence, called a pig-puzzler. The logs are laid in triangles, and these are so contrived that no matter where a pig gets in, he nevertheless finds himself still outside the garden; the pig at last gives it up.—I am, &c., GEORGE ELLIOTT BARTON.

No. 6.

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

SIR,—

Wellington, 12th December, 1878.

I have the honor to acknowledge receipt of your letter of the 5th November, in reply to mine of the 29th October, in reference to your charges against their Honors the Chief Justice and Mr. Justice Richmond. I have to regret that so long a delay should have occurred in replying to your letter, but it has been occasioned mainly by the Government making a searching inquiry into your charges, and by the time that was necessarily spent in obtaining the documents and papers relating to them.

In former correspondence (17th June, 1878) you have expressed the opinion that it was the duty of the Government to make a full preliminary inquiry into any charge brought against a Judge of the Supreme Court, so that, if they thought the charge proved a serious one, steps might be taken in Parliament to deal with the charge and with the Judge. The Government have followed this course. I may state that the Government have not thought it necessary to communicate with any of the Judges, nor to submit a copy of your letter of the 5th November for their consideration. The various charges have been dealt with on the reported judgments and evidence, and on the various documents filed in the Supreme Court. I now proceed to deal with your charges.

CHARGES 1 AND 2.—These charges may be taken together. They appeared in your petition to the House of Representatives in 1877, and the House affirmed a resolution that your petition could not be considered. The resolution was in these terms:—

"*Ordered*, That the order made on the fourteenth day of August, one thousand eight hundred and seventy-seven, 'That the petition of George Elliott Barton be received,' be read and discharged, on the grounds that the allegations contained in the petition are, for the most part, not sufficiently specific to call for inquiry, and that the specific charges, even if proved, are not of a character to justify any interference on the part of this House."

Under these circumstances the Government would be bound to refuse an inquiry which Parliament had declined to sanction. There is, however, another objection to the Government dealing with these charges. They have been practically the subject of judicial investigation and decision. It is true that this investigation was held before the Chief Justice; but he expressed his willingness, and almost urged you, to have the matter dealt with before the full Court of Appeal. This you declined, preferring an immediate decision to waiting for the Court of Appeal to meet. At the conclusion of the Chief Justice's judgment, you said,—

"Allow me to express my thanks to the Court. I came here this morning without any hope or expectation of a judgment such as your Honor has just delivered. It is true your Honor has observed of my defence made before your Honor that it was perhaps out of taste. Without intending the slightest disrespect to your Honor, you will permit me to say that, so far as my own mind is concerned, whatever may be the actual fact, I am not conscious that I have been guilty of bad taste. At the same time allow me to say this, your Honor, that I now openly and in Court say that if I