

THE CASE

OF

DR. RAPINET

OF

MALTA.

STATED BY HIMSELF.

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THE CASE OF DR. RAPINET.

I. — P R E F A T O R Y.

THE CHARGE.

“Having on the 24th June, 1884, between 8 and 9 p.m., entered into conversation with Private P. Pettitt of the 1st Shropshire Regiment, when on sentry at No. 2 Post, Porta Reale Guard, in the Hastings Gardens (Valletta), and having there made indecent and immoral proposals to the said Pettitt, and having likewise indecently assaulted the said Pettitt.”

DECISION OF THE GOVERNMENT OF MALTA.

“Guilty as to indecent conversation, doubtful as to assault.” “ 3 Nov., 1884.

LORD DERBY TO GOVERNOR SIMMONS.

“I am unable to concur in the opinion of yourself and the majority of the Executive Council that Dr. Rapinet has been proved to be guilty of the charges preferred against him.” “ 3 Dec., 1884.

“I am quite unable to perceive the reason for the distinction, which has been made by you and the Executive Council, between the two branches of the charge. Both of them rest equally upon the testimony of Pettitt, and if there is any doubt as to the truth of his statement as to the assault, no credit can be given to any part of his statement.”

LIEUT.-GOVERNOR HUTCHINSON TO DR RAPINET.

“The Secretary of State has confirmed your suspension, and ordered your dismissal from the offices you hold under Government.” “ 1 July, 1885.

ON the 24th of June, 1884, between 8 and 9 p.m.—just after sunset on a Maltese summer day—I was arrested by a sentry in a public garden of Valetta. Of the cause of arrest two conflicting statements were given on the same evening—my version and the version of the sentry, P. Pettitt.

Patrick Pettitt's surroundings in his earlier days were very equivocal. I cannot enter into details—furnished to me by the police at Birkenhead—without alluding to persons whom I have no right to mention, but I can say that in a written declaration of a

police inspector (Moore), I find that Pettitt was considered to be in Birkenhead "a street loafer and a corner man well known to the police." Pettitt subsequently enlisted at Warrington, and in enlisting he made a false declaration. He, the son of Christopher Pettitt and his wife, stated that his parents were unknown. Whilst in the Shropshire Regiment Pettitt was for some time a servant with one of the officers—Lieutenant Moore—who had to dismiss him as an admitted thief and liar (Moore's evidence before a Commission of Inquiry). The acting adjutant of his regiment, since deceased, told the Greek Consul at Malta that he knew Pettitt well, and considered him unworthy of any credit (Caravia's evidence), and the Earl of Derby, when he investigated my case as Secretary of State for the Colonies, admitted in a despatch (3 December, 1884) that Pettitt's character was "blemished."

This is Patrick Pettitt, my accuser.

I am a native of Malta, am married, and the father of three children. At the time I held several important situations under the local government, having been appointed in 1872 a police magistrate and a judge surrogate, and, moreover, in 1881, a professor of law and a commissioner of charity. I am informed that my name was recorded at Downing-street for promotion—a dangerous distinction in Malta, where every other person is either a placeman or a place-hunter. Before accepting office, I had practised as advocate in the superior courts of the island for sixteen years, and had sat in our legislative council as elected representative of the sister island of Gozo. My character, was, of course, unimpeachable.

Pettitt's version was that I had indecently assaulted him; my version was that he had asked me for a shilling, which I refused to give, threatening to report him, whereupon he, out of spite or to forestall my report, arrested me.

Both versions went up the next morning to the Governor of Malta.

In any other British Colony the Governor would have left the cognisance of the two accusations to the Courts of Justice, reserving the question of my Government appointments to be dealt with after the decision of the Court. In the fortress of Malta, however, instead of this ordinary and elementary course, another arbitrary course was adopted in this case, wherein a soldier was concerned. The Governor, who, unfortunately for me, is also the Commander of the Garrison, took the matter in hand as if no court of justice existed in the island, or as if the island were under martial law. My charge was completely ignored, and the soldier's was believed at once. I say at once, because on the very morning in which his charge was received, and before there was any material time for a serious investigation, energetic action was taken against me. The soldier became the complainant, and the civilian was interdicted from his offices, and became the party accused. A secret and semi-military Commission of Inquiry was substituted for the courts of law. Pettitt swore his charge,

colonels and garrison solicitors pressed it, but the Commissioners disagreed. The case was then submitted to the Executive Council of Malta, and the Council also disagreed, but a majority believed with the Governor *only half* the charge, *wholly* sworn to by Pettitt, and I was suspended from my offices and emoluments, disgraced and ruined.

The soldier—blemished Pettitt—was the sole witness of his charge.

Had the position of the parties been inverted, I, with my unblemished character, would have sworn my charge, and Pettitt might perhaps have been punished.

A report of the case, and of the decision arrived at, was sent, according to the Colonial regulations, to Downing Street. I came to England to ask for justice. The Minister, in a despatch (which I give in full in part iii.), disapproved the investigation and the decision. He deplored that the case had not been left at the outset to the criminal tribunals; he stated that he could not concur in the opinion that I had been proved guilty of any of the charges; he naturally could not understand how a portion of Pettitt's statements could be believed, whilst another portion had been doubted, and he did *not* acquit me. A letter was instead addressed to me from Downing Street, inviting me to return to Malta to be tried in a criminal court, and leading me to understand that if I did not accept the trial I would be dismissed from office. Of course I accepted.

It is strange that whilst I was thus induced to return to Malta, Lord Derby was expressing, in his despatch to the Governor, his opinion that I had not been proved to be guilty, his resolution that he would not confirm my suspension without a trial, and his deep regrets that my case in the Criminal Court was prejudiced by the decision of the Colonial Government."

Had I not been therefore induced to accept the "prejudiced" trial, my suspension could not have been possibly confirmed at Downing Street.

His lordship expected that I would have been tried by a judge and jury, but the local authorities preferred to have the original charge altered, and brought for final decision before a police magistrate, without a jury. I appealed in vain to the Minister. He simply stated that it would have been more satisfactory to him that my case should have been tried by a judge and jury, and declined to interfere.

The local Government had precluded the ordinary magistrate of "English cases" from sitting in my case, by having appointed him a Commissioner in the previous inquiry, in which capacity *he declared that I was innocent*. Another magistrate was selected, who knows not one word of English, and who in consequence had not been permitted for the last ten years to hear police cases with English witnesses. He condemned me. His opinion tallied exactly with that of the Governor of Malta.

I was then dismissed from all the offices I held under Government.

These are the leading facts of my case.

Lord Derby had stated that my case had been prejudiced by the decision of the Colonial Government. My firm conviction is that it has been prejudiced from its very outset, from the moment that the soldier's charge reached the Military Governor of Malta, and that owing to this prejudice, which subsequent events have intensified, it has been unfairly investigated and unjustly decided throughout. This fact is to me as evident as the clearest theorem of Euclid. I shall try to make it equally so to whomsoever will have the patience and the charity to wade through the following pages.

II.—THE GOVERNOR OF MALTA.

1. It is hardly conceivable how General Simmons, the Governor of Malta, did not perceive at a glance the utter hollowness and inconsistency of Pettitt's charge, from the report written by that soldier, and handed in to the police just after the event. (Appendix A.)

A man of my position, character, and experience, is supposed to have assaulted indecently a strong, armed, unknown, and unwilling soldier, in a public garden a little after sunset in summer, within sight of another sentry posted outside the garden, and within hail of two guard rooms full of soldiers. Stranger still, this armed and unwilling soldier, when asked "to have improper conduct," and when I try "to undo his trousers" does not run me through with his bayonet, does not arrest me, does not even call the other sentry or the guard, but allows me "to walk away." And it seems I would have walked away for good if the Sergeant and the Corporal of the guard had not come to visit the sentry, who then seized me and gave me in charge, possibly to forestall my complaints about attempted extortion.

This is the version, on which the Governor acted.

Some ten days after the event a second version was sworn to by Pettitt (Appendix B.), with additions and improvements, which render the accusation even more incredible. It seems that I had forced off three front buttons from the trousers of the unwilling soldier (the three upper ones, according to a third version in the Police Court) when he, with unaccountable meekness, allowed me to walk away! He did not explain how I could, against his will, reach and wrench off these upper front buttons, which are covered and protected by a tunic and a strong leather waist belt, from which a heavy bayonet depended. It seems also that I offered him money, which he refused (either a sixpence or half a sovereign, according to the third version). Pettitt forgot to mention such striking circumstances as the "bursting" of his trousers, and the offer and refusal of money, in making his original report just after the event. Perhaps had he *then* mentioned the "bursting buttons" the Police Inspector, who came to release me and to receive his report and mine, might have wished to see the trousers. Perhaps had he mentioned the sixpence or half-sovereign the Inspector might not have found such coins in my pocket.

Of the third version of the charge sworn to by Pettitt nine months after in the Police Court, and full of new contradictions, I have, unfortunately, no reliable and official report, proceedings in that Court being summary and *viva voce*.

This is the great charge sworn to by Pettitt and by Pettitt *only*, as Lord Derby observed. This is the charge which the Governor, as I shall show presently, believed only in part without considering, as Lord Derby observed, that if any doubt existed as to the truth of one part of Pettitt's statements, no credit should have been given to the rest.

2. My conduct on the occasion is said to have induced the Governor to believe the otherwise incredible charge. My conduct may be epitomised thus : a fainting fit at the sudden shock of my arrest, and a horror at the idea that such a foul accusation should be known in our small, scandal-loving, Maltese community.

When the sentry seized me by the neck suddenly, and other soldiers surrounded me with drawn bayonets, and treated me "roughly" (Williams' evidence), I had a fainting fit, and had to be carried to the guardroom (Downs' evidence). I am subject to syncope on sudden emotions, being affected with heart disease, as the leading physicians of the island attested to the Local Government. But even were it not so, my fit would be a sign of cowardice, of bodily fear at the unusual scene of rough soldiers and drawn bayonets, and not, surely, an admission of guilt.

I went, after my release from the guard-room, and reported the occurrence to the Police Superintendent, and expressed there half a wish to avoid, if possible, publicity. This wish not to drag my name into the mire in connection with so foul a charge is instinctive in a man of any respectability, and I cannot understand how it could have been twisted into a tacit admission of guilt. Lord Derby, commenting on one of the subsidiary charges brought against me—that I had tried to bribe the soldiers to escape—after declaring that he was not satisfied that I had offered money, as sworn by Pettitt and the sergeant, who contradicted each other, aptly observed (section 8, Despatch) that such an act, if proved, would have been excusable, because "committed under the influence of terror, inspired by sudden accusation of a revolting offence." Yes, I felt this influence of terror, but it was terror of publicity, not of inquiry. The absurd charge, supported by an only witness, the accuser, could not inspire me, a lawyer, with any terror as to judicial results. It was the sneers and gibes of the evil-minded, the inuendoes of friends and enemies, the political capital which the opposition papers of the island would have made in alluding to this dirty accusation against a high Government official, that made me shudder and shrink from publicity. For me the question was merely whether it was worth my while to have the soldier punished for attempted extortion and illegal arrest ; and against taking action on these grounds the following considerations also crowded to my mind : Firstly, my state of health, as the excitement of such a case, with its concomitant filthy countercharge, might have intensified my organic disease ; secondly, a projected trip to Italy, for which country I was to start on the morrow, for medical advice, with all my family, and such a case would have obliged me to forego my health-restoring tour, and to deprive my wife and children of a

long expected holiday ; thirdly, the fear of a possible conflict with the all powerful military authorities of the island.

These reasons may not be considered weighty *now*—especially by strangers, who know not what a submissive and timid race Maltese officials are, and how arbitrary is a military government—but people are apt to be over wise *after* events. No consideration of decorum, health, convenience, or quietness would have induced me to avoid publicity, had I foreseen that this half wish, confidentially expressed, would have been reported and distorted into a set purpose on my part ; had I foreseen that the trumpety charge of a soldier, who generally prefer such charges when driven to a corner, would have been taken by our military superiors *au grand sérieux*.

3. The Police Superintendent warmly entered into my views. The next morning he came up to me in the Court-house, in which I was holding a last sitting on civil cases, previous to my departure for the Continent, and he smilingly assured me that he had already taken steps to arrange the affair. He did not tell me that the military official, to whom he had spoken, considered Pettitt's charge to be serious, and that it had been, or was going to be, reported to the Governor, and that he (the Superintendent) would also have to report it officially. No, the Superintendent did not tell me this, because, forsooth, he was anxious "to quiet me that I might go on with the sitting," as if he cared one straw whether and how I decided civil cases (Casolani, evidence). It would have certainly been more straightforward not to have "quieted me," and to have left the civil cases to take their chance. Had the Superintendent wished to lull me into a false security and to induce me to remain passive, when passiveness meant ruin, he could not have pursued this object better than by the course he actually adopted.

Of course, I do not attribute any such wicked intention to the Superintendent. Possibly, after visiting me in the morning at the Court-house, out of pure sympathy, and not through any absurd anxiety about the civil cases, he found out, at the Palace, that a storm was brewing over my head, and he, prudently, kept aloof.

4. And in fact they were very busy at the Palace. The Governor—newly appointed, and to whom I was as yet personally unknown—could not have been struck by any plausibility of the soldier's charge, or by any improbability of my own charge, or by my fainting fit, or by my wish to avoid a *fracas* on a revolting accusation ; but yet he seems to have jumped to the conclusion that I was guilty, because on the same day, within an hour or so from the time that Pettitt's charge had been reported, I was interdicted from my offices, my three months' leave of absence was cancelled, an invitation which I had received to a Palace dinner was countermanded, an audience—which I personally solicited from his Excellency—refused, and a committee was appointed to collect proofs against me.

Of course, all this created quite an excitement in our little community. All Malta rang with my adventure, and with the hostile

attitude assumed against me by the Governor ; placemen and place-hunters, whose name in Malta is "Legion," saw an opportunity of showing their zeal, and of currying favour, and a chance of promotion or of an appointment, and they and their friends bestirred themselves accordingly. My character was already in shreds.

This precipitate action has been attributed to military prepossessions. I believe it might be more naturally explained by quoting Blackstone. This great jurist and keen observer of human nature remarks, in Book iv., p. 215 of his Commentaries : "I mention these instances" (two cases of malicious prosecution for rape) "that we may be more cautious upon trials of offences of this nature, wherein the court and jury may with so much ease be imposed upon without great care and vigilance, the heinousness of the offence many times transporting the judge and jury with so much indignation that they are overhastily carried to the conviction of the person accused thereof by the confident testimony of sometimes false and malicious witnesses." These observations are extended by the great British judge also to unnatural crimes. His Excellency must have been transported by this indignation, from which sober judges, it seems, are not exempted, and, being indignant, he was over-hasty, and threw at once all the weight of his great influence in the scales against me, which alas ! have never since recovered their natural level. He did not consider that he was irretrievably prejudicing my case by making people, and especially my future judges, believe that the Governor sided with the soldier, and by adopting measures, which in calmer moments he might have rejected.

5. And truly, why interdict me at this early stage of proceedings ? The rule in the Colonial Regulations is *not* to interdict at the outset of an inquiry, and this odious and damaging measure is only permitted in exceptional cases, as, for instance (an example quoted in the Regulations), when an officer entrusted with public moneys is under an accusation of embezzlement, and it is not prudent to leave him in the management of public property. What prejudice could have resulted to the public service, had I remained in office for a few days more, until facts could have been sifted with some degree of sobriety ? If in my case—a case affecting principally my private character, and only incidentally my official position—I could not continue in office until the all but incredible charge could be inquired into, and in some way substantiated, when, I ask, is an accused public servant to remain in office ? When is the rule, and not the exception, to apply ? But even if immediate interdiction were imperative for the good of the service—a measure which no Home Secretary of State would have dared, so prematurely and on such slight grounds, to adopt against an English magistrate—it was quite supererogatory in my case, and only tended to prejudice my case, because at the time I was on leave of absence, and would not have performed any official duties for three months.

The second measure adopted against me—the cancelling of my

leave of absence—was equally unwarranted; it must have been merely resorted to to render my interdiction possible. Could his Excellency believe that I would escape him, that I was going to abscond on such a charge, to give up without a struggle position, emoluments, home, and character? It would have been sufficient to communicate to me his desire that I should remain *on leave in Malta*. To depart after such a hint would have been suicidal.

I strongly protest against the refusal of the Governor to see me, to hear what I had to say on this charge as soon as it was received, and before it was acted upon. The Earl of Derby, when I was already found guilty by the Governor and Executive Council of Malta, and not simply accused by a common soldier, consented to receive me at Downing-street, and heard me out patiently and kindly.

6. I cannot help contrasting, as a fit conclusion to the foregoing remarks, the conduct of the Governor towards me, with his comportment to others similarly situated. On the 14th September, 1885, a Maltese nobleman, Tancredi Sceberras, accused Dr. Roncali, a member of the Council of Government, of having addressed to a crowded assembly on the Palace Square of Valletta the seditious cry, "Malta belongs to the Maltese, away with the foreigner," which Mr. Sceberras considered to have but one meaning—expel the English from Malta. The Governor had before him a police report confirming the statement of the accuser, and independent witnesses ready to endorse it. He did not interdict Dr. Roncali from his office of Member of Council and of Advocate, notwithstanding that this charge of disloyalty directly affected the Oath of Allegiance, which the Councillor and Advocate had taken in entering on his functions. He merely caused a letter to be addressed to Dr. Roncali (17th September, 1885), wherein the charge was communicated, and the following words added:—"Having regard to your position as a Member of Council, his Excellency is of opinion that this is a very *serious accusation*, and that it would be *most unfair and improper* on his part *to receive it* without communicating it to you." He also forwarded the police report, telling Dr. Roncali that it could be confirmed by independent witnesses, and that the communication was made "*to give you an opportunity of making any explanations or observations you may think proper to submit to his Excellency in connection with the matter.*" We have here a charge much more serious than Pettitt's, much more grounded than Pettitt's, and much more directly affecting the official position of the accused than Pettitt's charge. On the charge of the common soldier, I go spontaneously to the Governor to explain, and am sent away unheard, and at once interdicted; on the charge of the Maltese nobleman explanations are invited, and no further action, up to this date, is taken. I shall quote the Governor's own words to Dr. Roncali and apply them to my case, and say that such conduct towards me was "*most unfair and improper.*"

7. Another measure was overhastily adopted on that ominous day in which Pettitt's charge was received and acted upon at once,

without explanations required. I can only define this measure as an ugly revival of the old *delatio* of the decadent Roman world. Military sergeants were sent to all the garrison barracks to find out soldiers willing to swear that they had been similarly insulted by Maltese civilians, and to order them to come forward and try to identify me. This un-English manner of fishing for new charges against an accused man to crush him entirely, would be incredible in a British colony were it not proved beyond a doubt by several of the witnesses, one of whom, Jennings, stated that he came forward against me because "Sergeant Jones came round asking whether any man had ever been interfered with while on sentry in the gardens." (Jennings' evidence, question 250). The *esprit de corps* of the garrison—so strong in foreign stations and against alien civilians—having been thus aroused, soldiers from every regiment flocked to the Palace to make statements, and to support their comrade Pettitt. They found there, in the Crown Advocate's office, the Crown Advocate himself (one of my future judges in the Executive Council!) ready to collect proofs against me, assisted by the Military Adjutant General and the Police Superintendent. This secret inquisition, carried on in my absence, was of a piece with the other indignation measures of the day. It was not only most unfair and improper, but also most partial and one-sided. Whilst a mass of new charges of indecencies referring to persons of every condition, age, and personal appearance were sedulously recorded, in the expectation that they might be directed against me, the witnesses, who might have rebutted or weakened Pettitt's charge, were not examined, although well-known to the military and police authorities. The soldiers of the Cavalier guard-room, situate in front of the garden, who subsequently all gave evidence in my favour, were not examined. The sentry, Charles Farrell, posted outside the garden (see his subsequent most important evidence in Appendix C), was not examined. Several civilians—independent witnesses—notably Vincenzo Zarb, who at the time was in the gardens (Appendix D), were not examined. The object or instruction of the inquisitors seem to have been, not to investigate whether Pettitt's charges were grounded, but to collect statements, rumours, fancies, anything that might support it, and to disregard entirely my version of the affair.

I cannot sufficiently regret that the Crown Advocate did not see the expediency of hearing evidence pro and con on Pettitt's charge, and of making some inquiries about the blemished character of the accuser. The Crown Advocate must have known that this *prima facie* investigation would determine the whole course of future proceedings. When an officer of his standing, and one of my future judges, condescends to perform police duties, he acts according to his own lights, and not according to the views of other people.

8. I remonstrated against such unheard of proceedings, against being condemned unheard. The answer was that the charges (no longer charge) were of a "serious criminal nature," and the *prima facie*

evidence strong, and that his Excellency would be pleased if I succeeded in extricating myself from the difficulties with which he was besetting me. But his Excellency did not consider it fair and proper in my case, as in Roncali's case, to communicate the charges or to allow me to explain them *as soon as received*, he simply assured me that after the first secret Committee had concluded its secret labours, another Committee of Inquiry would be appointed, and I would *then* be heard.

This second extra judicial Committee to inquire into a criminal charge or charges is unprecedented in the annals of impartial investigations. A "serious criminal charge" on which "strong *prima facie* evidence" had already been collected, required no further secret investigation. It should have been dealt with openly and at once according to law by criminal proceedings in a Court of Justice. An imputation of an administrative character referring to the discharge of my official duties might have been inquired into administratively, but on a criminal charge preferred against me as a private individual, the Governor's evident duty was not to stay the regular course of justice, and not to deprive me of my right, as a British subject, of meeting criminal accusations in the ordinary and natural tribunals of the land, wherein inquiries are conducted under known rules and guarantees, by civilians *only*, and not by *ex-post facto* judges specially selected for the occasion.

I hasten to add that the law was disregarded in this instance not from any wish to spare me the indignity of a criminal trial, because in that case they would have investigated *my* charge against Pettitt for attempted extortion as Pettitt's charge against me had been investigated; they would have inquired whether *my* charge was supported by strong *prima facie* evidence, and the three inquisitors, who sat in the Crown Advocate's office, would have been instructed to take down *my* statements, to examine *my* witnesses, and to rake up Pettitt's antecedents, as they had taken Pettitt's statements, examined his witnesses, and tried to demolish my reputation by fishing for extra charges. No, there was no desire to screen and to spare the civilian accused by the soldier. I was to appear before the criminal tribunals, but later on, when my character had been sufficiently darkened, when the public had been accustomed to look upon me as a despicable reprobate. The courts were to hear my case, after it had been prejudiced, after inquisitors, commissioners, governor, and executive councillors, had, by secret inquiries, fished charges, and mistaken decisions undermined my character; *then* Pettitt's charge was to be landed in the safe hands of a Maltese police magistrate—selected by Government—without a jury, without public sittings, without any check whatever, excepting the *Government check* of a Government clerk sent to note down, in short hand, and report every word uttered in the trial by all parties concerned, the magistrate included. But I am anticipating.

9. This second committee—two judicial officers and a Colonel

Murray, in no way connected with the Civil Service, to which I belonged—sat “to enquire into the circumstances under which I had been arrested by a sentry on the 24th of June.” Such at least were the words addressed to me in a Government letter of the 30th June. But the Government letter was either a mistake or it was not carried out by the Commissioners, because the real object of the Commission seems to have been to give an opportunity to the barrack witnesses of the secret extra charges to see and identify me. And verily I went before the Commissioners prepared to discuss my charge and Pettitt’s as constituting “the circumstances under which I had been arrested on the 24th of June.” But such were not the intentions or the instructions of the Commissioners. No charge was made. I was not requested to make any statement, and my charge was entirely overlooked. Proceedings commenced by calling in and putting on oath my accuser, Pettitt, and in writing down his statements. The senior Law Commissioner was the chairman, but the soldier could not understand his broken English, so the colonel had to take the lead, to question, and to write the answers. The Colonel got hold, somehow, of the notes of evidence of the previous inquisition, and immediately called in soldier after soldier to repeat on oath, and to attribute to me their foul adventures whilst on sentry. I was the only man in the room with spectacles, a beard, and a bald head, and the soldiers who had given evidence, and those who were to depose, were mixed together in the Palace yard for several days in charge of Sergeant Williams—Pettitt’s sergeant and his confederate, according to the evidence of Charles Farrell. (Appendix C). This Sergeant Williams was seen by another sergeant in the Palace yard pointing me out to the soldiers (Taylor’s evidence). Yet, strange to say, only three soldiers out of about twenty identified me as implicated in their adventures. This conclusively points to the existence of some delinquent for whom the three soldiers who identified me must have mistaken me, if their statements deserve any credit, which I shall prove they do not. Why did I submit to this extension of the inquiry to other unknown charges, in spite of the Government letter to me, which limited the investigation to the “circumstances of my arrest on the 24th June? I knew that my protests would have been unavailing, and would only serve to damage my character and my case. I learn *now*, from Lord Derby’s despatch, that the Commissioners were appointed “to hold a private inquiry into the truth of *the accusations* made against me,” and not, as I have been incorrectly informed, “to inquire into the circumstances under which I had been arrested by a sentry on the 24th of June.” Was there any intention to entice me to an inquiry apparently limited, that I might be identified by the witnesses of the other charges? I believe not. Yet this divergence between the instructions given to the Commissioners and the invitation made to me to attend, is very remarkable.

10. The Commissioners disagreed, and sent in separate reports,

which I have not been allowed to see. It appears that the Colonel, followed by the Chairman, considered me guilty, and that Dr. Micallef, the third Commissioner, who can write English, reported separately that I was innocent of all the acts charged against me.

The Governor acted on the report of the majority, and caused to be drawn and at last communicated to me five charges, which I give verbatim in the Appendix E. The first three charges were the equivocal charges unearthed by the delators, and they could only thrive in the shade. The Governor, and after the Governor, a majority of his subordinates, who constitute his Executive Council, found them good charges, and fully substantiated, notwithstanding their manifest incongruities, and a strong *alibi* which I was able to prove against one of them; but when these three charges went to Downing Street, and were seriously, impartially, and independently investigated, they were found to be worthless, and were dismissed. They, however, served a purpose as long as they could be bolstered up, they weighed me down heavily in my struggle against Pettitt's charge, and complicated what would otherwise have been a very simple inquiry. The fourth charge was Pettitt's, on which the Governor, and after the Governor, the majority of his Executive Council, discovered that the sworn statements of Pettitt could be doubted in part, and in part believed, and on which I shall presently quote Lord Derby's crushing remarks. The fifth charge was a morbid excrescence, a mere superfluity, which, even if proved—and it was not proved—would not have furnished grounds for suspension, as Lord Derby observed, but which the Governor, and, after the Governor, the majority of his Executive Council, found to be a good and substantiated charge.

11. I have accentuated the fact that the Executive Council gave their opinion *after* the opinion of the Governor. This is unfortunately due to the Colonial Regulations, which in these cases require that the Governor is first to give an opinion, and if it be adverse to the accused employé, the Governor calls his subordinates of the Executive Council, over whom he personally presides, and *he* and they constitute a sort of appeal court from *his* opinion. Under such circumstances a dissenting minority carries great weight, it is not by any means a *quantité négligeable*. In my case, the Governor and the majority of his subordinates found me absolutely guilty of four charges, of which the Minister subsequently acquitted me, and on the principal charge—Pettitt's, that majority, including the Governor, doubted a part and believed another of Pettitt's sworn and uncorroborated statements. On the 3rd November, 1884, I was suspended from all my offices and emoluments.

The next evening I started for London to seek for justice at Downing-street.

III.—THE EARL OF DERBY.

1. The Secretary of State for the Colonies, after a full and careful investigation of the case, censured everything that had been done in Malta. He acquitted me at once of four out of the five charges, and on the outstanding charge—Pettitt's—he condemned the investigation, and criticised the decision to an extent that rendered the confirmation of the latter an impossibility, unless every principle of justice and equity were to be totally disregarded.

I give the despatch in full, which his Lordship sent on this case to the Governor of Malta on the 3rd of December, 1884, and which unfortunately, I could not see before my case had been finally decided. This despatch embodies the views of the Colonial Office, and proves beyond a possible doubt that I have been most unfairly treated and most unjustly condemned by the local Government. It will be afterwards my painful task to show that its conclusions on Pettitt's charge were merely irresolute half measures, which did not meet the requirements of justice.

The Earl of DERBY to Governor Sir J. L. SIMMONS.

Downing Street,
3rd December, 1884.

Sir,

I have the honour to acknowledge the receipt of your despatch, No. 220, of the 10th ultimo, reporting the suspension of Dr. William Rapinet from his offices of Magistrate, Professor of the University, Commissioner of Charity, and Surrogate Judge, and enclosing copies of the Minutes of the Executive Council, and other documents relating to the case.

2. After a full and careful consideration of the notes of the evidence taken by the Commissioners whom you appointed to hold a private inquiry into the truth of the accusations made against Dr. Rapinet, the defence submitted to the Commission by Dr. Rapinet's advocate, the reports made to you by Judge Villa and Colonel Murray, two of the Commissioners jointly, and by Dr. Micaloff, the third Commissioner, separately, and the answers of Dr. Rapinet to the charges which you caused to be preferred against him, in accordance with the Colonial Regulations, and the other papers transmitted to me, I am unable to concur in the opinion of yourself and the majority of the Executive Council, that Dr. Rapinet has been proved to be guilty of the charges preferred against him.

3. Upon the first charge, I am clearly of opinion that, against an *alibi* supported by so strong evidence as that which Dr. Rapinet has been able to bring forward, no Judge would advise a Jury to convict him. I may observe that this evidence was not before the Commissioners when they made their reports, Jennings having, in his evidence, mis-stated by nine months the date on which he was sentry, and the true date having been discovered after the close of the inquiry.

4. With regard to the second and third charges, which are of a less serious character than the first and fourth, the evidence of identification does not appear to me to be sufficiently strong to leave no room for doubt, and I feel bound to give Dr. Rapinet the benefit of the doubt.

5. In dealing with the fourth charge, which is one of a criminal nature, I am much embarrassed by the course which, for reasons of which you have not informed me, you have adopted in this case. Had the ordinary course been followed, of bringing a criminal charge before a Court of Criminal Justice, the question of Dr. Rapinet's guilt or innocence would have been determined in the manner provided by law; and in the absence of any special reason for impugning the decision of the Court, the question of Dr. Rapinet's suspension would have been governed by that decision. But the effect of the procedure adopted in this case had been to lay upon the Governor and Executive Council, in the first instance, and now upon the Secretary of State, the duty of deciding as a Jury, on notes of evidence taken on a secret inquiry, held for the purpose of ascertaining whether further proceedings should be taken, a criminal charge of a nature in which the value of the evidence depends entirely upon the credibility of the witnesses and in which it is consequently of the utmost importance that those who have to decide it should hear the witnesses, and have the opportunity of judging of their demeanour, and the manner in which they give their testimony. Upon the imperfect evidence before me, I cannot say—having regard to the blemished character of the accuser and sole witness of the alleged crime, the very slight corroboration of his statements, and the contraction in the evidence for the prosecution in points which do not appear to be immaterial—that I am convinced that Dr. Rapinet's guilt is proved beyond reasonable doubt, and I am, therefore, not prepared to confirm his suspension without obtaining the decision of a criminal tribunal upon this charge.

6. I am quite unable to perceive the reason for the distinction which has been made by you and the Executive Council between the two branches of the fourth charge. Both of them rest equally upon the testimony of Pettitt; and if there is any doubt as to the truth of his statement as to the assault, no credit can be given to any part of his statement.

7. As to the fifth charge, having regard to the contradictions between the evidence of Pettitt and Williams, I am not satisfied that any offer of money was made; and, even if this had been clearly proved, I should not consider that such an act—committed under the influence of terror inspired by sudden accusation of a revolting offence—would, apart from the question of his guilt or innocence of the offence itself, furnish ground for suspension.

8. In these circumstances I have felt that the only course open to me is to offer to Dr. Rapinet the opportunity of meeting the charge preferred by Pettitt in a Criminal Court, and I have accordingly caused a letter to be addressed to him, of which, and of his reply to which, copies are enclosed.

9. I have, therefore, to request that, as soon as Dr. Rapinet returns to Malta, you will cause the regular proceedings to be taken for prosecuting him, on the information of Patrick Pettitt, for a crime under section 203 of the Criminal Laws.

10. As the Magistrate, Dr. Micalëff, Judge Villa, and the Crown Advocate, are disqualified by their previous connection with the case from taking any part in the proceedings, I trust you will be able to make arrangements for devolving upon other persons the duties which they respectively would, in ordinary course, have to discharge in the matter.

11. You will also cause Dr. Rapinet to be furnished with a certified copy of the notes, made by the Commissioners, of the whole of the evidence taken by them, and afford him every assistance in procuring the attendance of any witnesses whom he may desire to be produced for his defence.

12. It is a matter of deep regret to me that Dr. Rapinet's case in the Criminal Court must be to some extent prejudiced by the decision of the Colonial Government, which I presume is generally known in Malta.

13. The original documents which accompanied your despatch are returned herewith. I request that copies of them may be furnished for record in this office.

14. I have to add that, in my opinion, a moderate alimentary allowance may properly be granted to Dr. Rapinet, pending the final decision of the case, in accordance with my predecessor's circular despatch of the 29th of August, 1872.

I have, &c.,

(Sd.)

DERBY.

Governor Sir J. L. SIMMONS, G.C.B., &c., &c.

2. I am grateful for the careful consideration given to my case by the Secretary of State. It enabled him to declare that I had not been proved guilty of any of the five charges preferred against me, but strangely enough, he acquitted me of four charges only, and did not acquit me of the other charge—the one preferred by Pettitt—an

acquittal which would have sent me back to my Magisterial Bench and to my Academical Chair, a rehabilitated man.

Unfortunately, this total acquittal would have entailed much loss of *prestige* to the Governor and Government of Malta, and I hear that it has been found to be unprecedented in the records of the Colonial Office.

On this outstanding charge the Earl of Derby adopted a middle course. He could not confirm my suspension, and he would not disallow it, so he sent me back to pass the ordeal of a second and criminal trial in Malta, whilst knowing and deeply regretting that my case in that trial would have been prejudiced by the previous decision of the Colonial Government, and he reserved to decide the question of my suspension from office after the judgment of the Criminal Court, which was to govern his decision, unless there should be special reasons to impugn that judgment.

With all due deference to the opinion of his Lordship, I shall show that this middle course was unjust, illegal, and not to be adopted on any consideration, even at the risk of the total wreck of the prestige of the Colonial authorities of Malta.

3. Lord Derby stated (sec. 2 of Despatch): "I am unable to concur in the opinion of yourself (the Governor) and the majority of the Executive Council, that Dr. Rapinet has been proved to be guilty of the charges preferred against him." This admission should have led to one unavoidable conclusion—my immediate and absolute acquittal and re-instatement. The law declares to be innocent whomsoever is not proved to be guilty. This sacred principle led to my acquittal on the other charges, and yet, for some recondite reason, it was not applied to Pettitt's charge.

But Lord Derby, after stating that I have not been proved to be guilty in section 2, observes in section 5 of the same Despatch:—"Upon the imperfect evidence before me I cannot say that I am convinced that Dr. Rapinet's guilt (on Pettitt's charge) is proved beyond reasonable doubt." Granting that this second qualified statement is not discordant with the previous absolute statement (I cannot afford to be hypercritical), I state that I am entitled to the benefit of this "reasonable doubt," a right which the Secretary of State "felt bound" not to contest when on charges second and third he entertained similar doubts, and gave me the benefit of these doubts. I claim the same benefit on the "reasonable doubts" of Pettitt's charge.

I do not like to assume that the exceptional course adopted on Pettitt's charge is due to the absence of any precedent for the Colonial Office to disallow *in toto* a Colonial suspension, and to the inevitable loss of prestige, which a sweeping disallowance would have entailed on the Colonial Government—because such an assumption would mean that I have been sacrificed to political exigencies. I must, therefore, enter into the maze of details of the despatch, and try and discover on what other grounds Lord Derby could possibly have con-

sidered himself justified to disregard, in Pettitt's case, the maxim *in dubiis libertas*. The reason, if any exist, must be found in the Despatch.

Lord Derby complains, in Section 5, that he is called to decide as a jury "on notes of evidence taken on a secret inquiry held for the purpose of ascertaining whether further proceedings should be taken, a criminal charge of a nature, in which the value of the evidence depends entirely upon the credibility of the witnesses, and in which it is consequently of the utmost importance that those who have to decide it should hear the witnesses, and have the opportunity of judging of their demeanour, and the manner in which they gave their testimony. Upon the imperfect evidence before me I cannot say, having regard to the blemished character of the accuser and sole witness of the alleged crime, the very slight corroboration of his statements, and the contraction of the evidence for the prosecution in points which do not appear to be immaterial, that I am convinced that Dr. Rapinet's guilt is proved beyond reasonable doubt, and I am therefore not prepared to confirm his suspension without obtaining the decision of a criminal tribunal upon the charge." These are the ostensible reasons for the new trial. But Lord Derby had before him in the first charge notes of evidence equally imperfect, a charge equally criminal, evidence the value of which equally depended upon the credibility of the witnesses, and an equally stringent necessity that those who had to decide should hear the witnesses, and yet Lord Derby could decide that charge *at once and finally*. Nor can it be said that against that charge there was a special reason—"an *alibi* proved by strong evidence"—because that strong evidence was also imperfectly taken and subject to the identical objections, which deterred his Lordship from deciding Pettitt's charge.

And again, on the same halting evidence, Lord Derby entertained doubts on charges second and third, as he entertained a reasonable doubt on Pettitt's charge, and yet, the imperfect evidence notwithstanding, he could decide *at once and finally*.

And lastly, on all the other charges wherein a course was open for my immediate and absolute acquittal, the accusers were the sole witnesses, as Pettitt was of his charge, and if they had no corroboration, Pettitt's corroboration was "very slight," and they had these noteworthy advantages over Pettitt—their character was not blemished, their statements were not contradicted by their own supporters, as Pettitt's were by Williams (sec. 7, Despatch), and their evidence had not been doubted, as the Governor doubted Pettitt's "as to the assault" (sec. 6, Despatch).

I therefore do not find in the despatch any grounded reason for the exceptional course adopted on Pettitt's charge, and have only to hope that I have not been sent to a prejudiced trial on reasons of policy.

4. I have so far demonstrated that the exceptional course adopted on Pettitt's charge was not warranted by any special ostensible reason,

and that it was an unjust course. I shall now prove its illegality and impracticability, and that it deprived me of my right of defence, and of having a *bonâ fide* decision of the Colonial Government on my suspension from office.

I had been suspended on Pettitt's charge in consequence of the following decision of the local Government :—"Guilty as to indecent conversation, doubtful as to assault;" a decision stigmatised by the very appropriate remark of Lord Derby, "If there is any doubt as to the truth of Pettitt's statement as to the assault, no credit can be given to any part of his statement" (sec. 6, Despatch).

As this absurd decision led to a suspension from office, the Secretary of State had to confirm or disallow it. He had to determine, as he did on the three first charges, whether the decision was borne out by the evidence; he had to determine, as he did on the fifth charge, whether the act proved against me—an indecent conversation *only*—furnished sufficient ground for the extreme punishment of suspension and consequent dismissal; and *also* whether, if that extreme penalty were applicable in a case wherein an indecent conversation only was proved, he might not exercise the prerogative, expressly given to him by the Regulations, of restoring me to office *as an act of indulgence*. These are the attributes of the Secretary of State under Rules 86 and 91 of the Colonial Regulations, and he is invested with these attributes exclusively *for the protection* of the officer suspended, because he has no jurisdiction whatever when the officer accused has been acquitted or simply reprimanded, in which cases he could not dismiss him, and no report is forwarded to Downing-street for confirmation or disallowance.

In my case Lord Derby thought proper to examine the procedure on Pettitt's charge, which, by the way, was the identical procedure for all the five charges, which had been investigated collectively in Malta; and, although on that procedure he was able to acquit me of the other four charges, reversing their Maltese decisions, he found, on Pettitt's charge, that the evidence was simply worthless, so much so that he could not give an opinion, evidently forgetting that he had already opined that I had not been proved guilty of any of the charges. In this part of the despatch his lordship remarked that the irregular procedure had laid on the Governor in the first instance, and now upon the Secretary of State, the duty of deciding as a jury on evidence which was no evidence at all. He required a new procedure, and, setting aside the spurious evidence, he ordered a criminal investigation, blaming the Governor for not having done the same at the outset, in order that this officer might also have been able to perform his duty and decide properly. But the Secretary of State did not consider that in setting aside the objectionable evidence he was subducting the corner-stone of a whole edifice, and that the entire superstructure—local decision and local defence—must necessarily crumble. According to Lord Derby's own showing, the local decision was a sham. If he could not decide, how could others

decide on such evidence? I have, however, a right, under the Colonial Regulations, of having two *bonâ fide* decisions on my suspension—a decision of the local Government and its confirmation or disallowance by the Secretary of State—and it is the duty of the Secretary of State to see that the suspended officer be not deprived of any of his rights. But as the first decision is not valid, because based on invalid evidence, it follows that by the course adopted of not disturbing this sham decision, and of ordering a new investigation for the exclusive use of the Colonial Office, my case has been defined illegally by one decision—the decision of the Minister, who was only called to confirm or disallow, and not to exercise the primary functions which the law has reserved to the Governor and Executive Council of the colony. Nor can it be said that technically the Minister eventually confirmed the decision of the Government of Malta. Technicalities must give way before evident facts. The Minister could not confirm the decision after showing that it was invalid owing to the evidence, and absurd owing to the distinctions as to the conversation and as to the assault.

This course—this half-measure—would have been less objectionable if it had been consistently and resolutely carried out to all its logical consequences, if not only the old evidence, but also and expressly the old decision, had been annulled. Any ordinary Court of Appeal, under similar circumstances, would have quashed the whole proceedings. A new, a better, a legal, a criminal investigation might then have been properly suggested; but on this new investigation I should have been called upon again to defend myself before the administrative authorities, and the Governor and Executive Council to decide again on my suspension from office, observing the procedure enjoined by the Colonial Regulations.

Yes; I should have been called upon to defend myself again. If the old evidence was worthless for any decision—local or imperial—it was equally worthless as a basis for any defence. My right to defend myself on the *identical* evidence on which I was to be judged is undoubted, according both to Natural Law and to the Colonial Regulations, and it is equally undoubted that my defence on imperfect, contracted, and discarded evidence was a defence *pro formâ*, not worth the paper on which it was written. The new investigation—a police judgment, supplemented by a secret report, which I in vain petitioned to see—went direct to Downing Street. Two petitions to defend myself (May 7 and June 17, 1885) were rejected, and I may safely say that I have been dismissed from the service without any defence at all.

The Governor and Executive Council of Malta should have been called upon to decide again on the new investigation. The Governor, on reconsidering the charge of Pettitt as newly investigated, and as it is now unsupported by the other four exploded charges; and, after having been rebuked for having doubted Pettitt as to the assault, and then convicted me of an indecent conversation on the sole testimony

which he had doubted, and after hearing my special reasons against the police trial and judgment, might have acquitted me. Or, if not he, the Executive Council, or a majority of the Executive Council, might have done so for the same reason; or they might have simply *reprimanded* me for "an indecent conversation." In all these cases the Secretary of State would have been dispensed from interfering any further in the matter.

Another consideration. By allowing the local decision to stand, after having shown it to be worthless and absurd, his lordship deprived the local authorities of the only loophole whereby to quit an untenable position. My former judges were thus precluded from profiting by the lecture on the rules of evidence so unexpectedly given to them by his lordship. Their decision—and with their decision their prestige both at Downing Street and in Malta—was to stand or fall according to my conviction or acquittal in the new trial. Their evident interest was that it should stand—in other terms, that I should be condemned. Against these judges—men subject to human passions and weakness; accustomed to command, yet chafing under rebuke; accustomed to see everything bend to their will, yet obliged to stand at bay—against these judges I was thus mercilessly pitted. And these men are the Government of Malta with all its patronage and its preponderating local influence!

Lord Derby, therefore, by disregarding, without formally annulling the invalid and absurd local decision, by having the facts newly sifted for his exclusive behoof, and by deciding over the head of my natural judges in primary instance—the Malta Government—has not only acted *ultra vires*, but he has deprived me of a *bonâ fide* defence of a *bonâ fide* local decision, which might have acquitted me; of a disinterested local authority to regulate the proceedings and carry out his Lordship's instructions; and of an Imperial appellate authority to review the new grounds of the case if the local officials had again suspended me. These are the inevitable results of half-measures, and of half-measures hesitatingly carried out.

5. The course adopted will appear decidedly odious when we consider that it sent me to a prejudiced trial. Lord Derby stated (Sec. 12, Despatch):—"It is a matter of deep regret to me that Dr. Rapinet's case in the Criminal Court must be to some extent prejudiced by the decision of the Colonial Government, which, I presume, is generally known in Malta." These pregnant words show the deep insight of his lordship of human nature and Maltese idiosyncrasy. He was convinced that I could not have a fair trial in Malta after what had taken place—after the publicity of the indignation measures, of the semi-military committees, the extra charges, the fuss, and the decisions. This consideration, which subsequent events fully justified, should not have elicited a mere expression of sterile, though deep regret; it should have stayed the hand of Lord Derby, even at the risk of leaving a crime unpunished—even at the risk of provoking the resignation of a Colonial Governor. Lord

Derby was not offering me, as he stated, an opportunity of meeting Pettitt's charge in a Court of Justice; he was not obtaining an independent judgment to govern his future action. He was sending me, whom, to say the least, he reasonably doubted to be innocent, to certain imprisonment and disgrace; he was substituting a prejudiced to an imperfect investigation.

6. These comments have been long and, I fear, tedious; but their importance is evident. If I have proved that I should have been acquitted at Downing Street and reinstated at once when the Minister could "not concur in the opinion that Dr. Rapinet has been proved to be guilty of the charges preferred against him;" if I have proved that the adopted course was illegal and incompletely carried out, depriving me of all the rights resulting from the Colonial Regulations; if I have proved that I have been sent knowingly before a prejudiced tribunal, I shall have made out a strong case for redress; and I trust that no influence, no criminal conviction, no technicalities, will prevent my obtaining this redress.

In offering the foregoing remarks against the despatch, I have been encouraged by Lord Derby's own words in a recent speech at Blackburn, wherein, speaking of the English people, of which he is such an important unit and so influential a leader, he stated that "the public does not want slaves, it values frank speech and manly spirit, and it will bear dissent and even contradiction courteously and respectfully expressed." And I have striven to be respectful in what I considered it my duty and my right to submit, because my gratitude towards Lord Derby is great. His despatch is a tower of strength to my cause. It established facts, which otherwise it would have been most difficult for me to prove, and which are the best reason against the course adopted at Downing Street.

7. I shall presently examine the consequences of this unfortunate course—the prejudiced trial and judgment—but first I must notice with deep regret what induced me to accept the prejudiced trial. They wrote to me from Downing Street on the 28th of November, 1884:—"Lord Derby is *reluctant to confirm* your suspension on a charge of a criminal offence without the opportunity being given to you of meeting the charge in a court of law, and he therefore directs me to inform you that, if you are willing to return to Malta and to answer a charge before the proper criminal tribunal of the offence of which you are accused by Patrick Pettitt, he will defer his decision upon the question of your suspension until he is informed of the decision of the court upon that charge. I am to add that, having considered the evidence adduced by you in answer to the charge, founded on the evidence of James Jennings, his lordship does not think it necessary to call upon you to meet that charge in a court of justice. . . . I am to request that you will inform his lordship as soon as possible of the course which you propose to adopt."

This letter told me plainly, as far as I can construe it, that if I did not accept the chance of a trial, my suspension would have been

confirmed at once, and my dismissal from office inevitable. Under such circumstances I had no option—I had to accept. And I did accept the trial in a deprecatory letter of the 29th November, wherein I submitted in vain all my reasons against the proposed course, including the evident impossibility of having a fair trial. *Now*, I find, to my great astonishment, that “reluctant to confirm my suspension,” meant reluctant to disallow it, that it could not be confirmed unless I accepted to be tried, that the trial was not an opportunity given to me, but to my former judges and present antagonists. I say so because, after I had been condemned by the criminal tribunal, I succeeded in obtaining a copy of the despatch, which I have transcribed, and which gave me the *real* views of his lordship on my case. I find that his lordship was in the utter impossibility of confirming my suspension without the trial, because he could not concur that I had been proved guilty, because Pettitt’s character was “blemished,” and he, the accuser and sole witness, had been “contradicted” by Williams (Sec 7), and “doubted” by the Governor. Had I known *then all this*, had I known *then*, that I was *already virtually acquitted* by the local decision “of the indecent assault,” which was the *criminal portion* of the charge, and which had been doubted, I would have refused to return to Malta to be tried, and would have requested his lordship to decide at once, being convinced that my reinstatement would have been the necessary result.

“Reluctant to confirm your suspension on a charge of a criminal offence without the opportunity being given to you of meeting the charge in a court of law.” These words were written to me; but to the Governor his lordship admitted in the despatch (Sec. 5): “*I am not prepared to confirm his suspension without obtaining the decision of a criminal tribunal!*”

Often—after my imprisonment and dismissal from office, in the seclusion and poverty of my new home—often have I compared the wording of the ministerial letter to me, with that of the ministerial despatch to the Governor, I will not say with what feelings.

IV.—THE POLICE COURT.

1. Lord Derby, a competent authority, has defined and blasted the administration of criminal justice in Malta when he stated that in the Maltese tribunals a case must be prejudiced if a previous opinion upon it be expressed by the Colonial Government (Sect. 12, Despatch).

Maltese criminal justice is administered in Italian, and in a Criminal and a Police Court.

The Criminal Court is presided over by one of H.M.'s local judges, who are unremovable, and who sit with a jury drafted from the English civil residents and from members of the native community enjoying the electoral franchise. In the last General Election to our Legislative Council (June, 1884), the electors returned by immense majorities all the Opposition candidates, including Dr. Roncali, mentioned at page 11. A court so constituted cannot be prejudiced to any great extent by any opinion previously expressed by the Colonial Government.

But in the Police Court there are no jury and no immovable judges. Cases are heard summarily and *vivâ voce*, and finally decided by a subordinate officer called a police magistrate, not to be compared in any way to the Sir James Inghams, of London. He holds office during pleasure, he can be easily interdicted, and he is sometimes promoted to a judgeship. He knows that the Governor sends periodical reports to Downing Street on candidates for office or promotion, besides special reports when vacancies occur.

I was tried in this Police Court.

2. Lord Derby had expected a trial by judge and jury. Deeply regretting that my case had been prejudiced by the colonial decision, he evidently trusted an independent jury, who, in giving a verdict, might not care very much whether they ran counter to the opinions of the Palace authorities, and he was not prepared to trust a prejudiced case to a subordinate police official, nor to raise this petty official to the giddy height of approving or disapproving the decision already given by the Governor, and of directing, by his judgment, the future action of a Secretary of State of the British Empire. In fact, Lord Derby spoke to me of a jury trial, and at my request he sent a despatch, for publication in Malta, to dispel any erroneous impression which his directions to have me prosecuted might have created in the local community which furnishes jurors—a publication quite supererogatory, if my case were intended to be tried by a police magistrate. Moreover, Lord Derby, when my case was sent to the

Police Court, admitted that it would have been more satisfactory to him if it had been tried by a judge and jury.

Possibly, had Lord Derby suspected a police trial, he would not have sent me back to be tried on this prejudiced case, and decidedly, had I suspected such a thing, I would have refused to return to Malta.

3. Before explaining how my case became so unexpectedly a police case, I must record the impression made in Malta by the despatch of the 3rd December, which I have given in full at page .

That despatch reached Malta before me, and it cannot have proved pleasant reading in the Valletta Palace. Every section it contains is a heavy blow, not the less telling because delivered in courteous official language. It disapproves everything—the investigation, the proofs, the decisions, even the famous distinction “as to the conversation and as to the assault.” Had Lord Derby finally disposed of my case, it would have been quite indifferent to me what amount of censure he might have considered proper to lavish on the bungling local authorities, but, as matters stood, that despatch created a strong feeling against me, its innocent cause, in the official world of Malta at a time in which my prejudiced case required support and not antagonism. Of course, the contents of the despatch were kept rigorously secret by the Governor and by the Executive Council to which it was read ; but when the gods are angry they show their displeasure, and officials in Malta, both high and low, require but a smile or a frown from the dispensers of loaves and fishes, to shape their course. I was met by a spirit of defiance, and officially boycotted. My friends looked grave, others avoided me not to compromise themselves, and the suspiciously inclined believed that in the forthcoming trial the question would be : The Prestige of the Government *versus* my Acquittal.

4. Quite suddenly, the Police Superintendent felt conscientious objections to have me tried by a jury. Of course he knew that an independent jury would have been very little prejudiced by the previous decision of his Excellency, especially as I would have carefully weeded from the jury box as many public employés and place-hunters as I could possibly challenge, but still he had objections. The charge framed by the Lieutenant Governor or the Crown Advocate, approved by the Governor and Executive Council, pending for decision before the Secretary of State, did not meet with the approval of Captain Casolani, Police Superintendent. Pettitt's charge, as originally framed, contained an indecent assault, and was an indictable offence, but the Superintendent, by dropping the assault and substituting “filthy acts,” made of it a quiet police affair to be disposed of summarily *en famille*, with closed doors to save morality, without a jury to save . . . trouble, and by a Maltese police magistrate. I objected to this disastrous innovation, but the Superintendent had studied Pettitt's statements, and was determined to improve the charge. Pettitt had stated (Appendix B): “He (Dr. R.)

said, let me look, *pulling* at my trousers, I shoved his hand away, and he *forced* three buttons ; ” and again, “ by his action he tried to *force* me ; ” and again, “ it was an insult to *burst* my trousers.” And the leading law officers of the colony had said : “ indecent assault ”—answering to *attentato violento al pudore* of our local law, which literally and properly means a violent attempt against modesty (Appendix F).

But the Superintendent knew better. He asserted (Casolani's evidence) that the soldier meant that he, the soldier and not I, had forced the buttons in shoving off my hand, and consequently that the violence proceeded from the soldier and not from me ! I had to call Pettitt to explain his own words. Pettitt was asked in the Police Court, through a special military interpreter (the ordinary interpreter of that court, a civilian, having been put aside), “ Did the three buttons burst off in consequence of the force used by the prisoner (me), or by the force you employed in shoving off the hand of the prisoner ? ” And Pettitt answered, “ By the prisoner.” (Pettitt's evidence in court.) This decisive answer would have convinced anyone, but the Superintendent was not open to conviction, so the case went on, on the altered charge, as if Pettitt had not explained at all. It was useless to petition the Governor, and to ask to be tried on the identical charge pending before the Minister. His Excellency, having read the ill-omened despatch, intended “ to keep aloof, and to wash his hands entirely clear of the whole business ” (letter 12 Jan., 1835), and remembering that he ought to have carried out the instructions contained in Section 10 of the Despatch, by substituting a lawyer to the Crown Advocate, he appointed this substitute, but after the charge had been altered—as every one suspected by superior orders—and was before the Police Court and the public, and when its correction would have been quite a scandal. The lawyer made, it seems, some secret report on this question, after it had been *thus prejudiced*, and this report effectually prevented the Secretary of State, to whom I appealed, from interfering.

Notwithstanding the secret opinion of this lawyer, or of any higher authority to the contrary, I persist in believing that if my case had been an ordinary case, on which no Governatorial decision had been given, and no Ministerial despatches written, it would have gone to a judge and jury on the original charge, because when a man “ pulls ” at another's dress, “ forcing ” buttons therefrom, and tries by his “ action to force ” the other man, he commits violence, he commits an assault according to the laws of England, or Malta, and of common sense.

It was thus that Pettitt's charge, shorn of the “ assault,” was steered clear of an immovable judge and an independent jury, and landed in a Police Court ; it was thus that the Secretary of State was deprived of the jury trial he desired, and had to be satisfied by stating (Government Letter, 5 February, 1885) that “ it would have been more satisfactory to him that the charge should have been tried by

a judge and jury," as if my knowing what was more or less satisfactory to his lordship could help me in the awful predicament in which I had been placed.

5. On this altered charge I was condemned on the 30th April, 1885, by a police magistrate, who, by a decree of the 7th February, affirmed his jurisdiction, which I had contested.

I petitioned Her Majesty's Privy Council for leave to appeal from the police decree and judgment, for the transmission "of the pleadings, and evidence, and other proceedings," and for my provisional liberty from arrest in order to come to England and plead my case. No one of these prayers was granted. The Privy Council gave *no opinion on the case, and did not even see* "the pleadings, the evidence, or the other proceedings," which were not transmitted; it simply declared that, *primâ facie*, the Magistrate was right in sustaining his jurisdiction to entertain and dispose of the case by final sentence (vide transcript from the shorthand notes of Martin and Meredith, 13, New Inn).

The police judgment, therefore, *stands alone as far as the investigation of facts is concerned*; it is not supported by any higher and more trustworthy tribunal—a circumstance not to be lost sight of in what I am going to urge against it, and against its possibility of guiding the decision of the Secretary of State.

6. Lord Derby had stated, in the often quoted despatch (section 5), that, in the absence of any special reason for impugning the decision of the Criminal Tribunal of Malta, the question of my suspension would have been governed by that decision. Who was to submit these special reasons to his lordship's consideration? Surely not the Governor of Malta, who, in the police judgment, found an echo to his own decision and *a reply* to the strictures of his lordship's despatch of censure. The right to point out these reasons belonged *to me*, and I petitioned to exercise this right both from Malta (May 7th, 1885) and through my London agents (June 17th, 1885), but I petitioned in vain. The case had pended too long, and his lordship decided, and dismissed me unheard from my offices.

Shall I submit these special reasons *now*? Alas, with what hopes of redress after the Ministerial decision. Official *vis inertiae* is proverbially great, and it is too stubborn for my unaided efforts. Still my reasons against the police judgment are, in my opinion, too strong to be entirely overlooked, and my trust in English justice and fair play is unbounded. I shall therefore give some—not all—of them, as briefly as I can.

7. Two special reasons against the police judgment and its capabilities of governing a Minister's decision have been furnished by the Minister himself. The trial has been prejudiced by the previous decision of the Colonial Government, and Lord Derby required, but could not obtain, an independent verdict of a jury.

8. A third special reason results from the organisation of the Police Courts. It is a petty court intended for petty cases; its pro-

ceedings are summary and *vivâ voce*, and leave no traces behind (Criminal Laws of Malta, 338), and its decisions, given by the score every morning, are final.

Such a court in such a case could not offer any guarantee or proof to the Minister that justice had been administered, that the prejudice, of which he had spoken as resulting from the adverse decision of the Colonial Government, had not influenced the judgment to the extent of bringing about a positive miscarriage of justice. This court could not furnish to the Colonial Office any official and reliable record of its proceedings, or of the evidence; it could only furnish a certified copy of its decision, which, in the present instance, considering the importance of the interests at stake and the notorious object of the trial, was suspiciously and unusually laconic.

The formal criminal inquiry required by his lordship the better to investigate my case thus dwindled into an oral and summary investigation. The previous administrative and written inquiry, with two detailed reports and ostensible notes of evidence, was most inadequately substituted by a short written judgment, affirming in half-a-dozen lines the decision of the Governor, which the Minister had censured.

Such meagre results, this absolute want of details and of any check, must have forcibly struck the local authorities, because they tried to supplement the police judgment by other documents. A Government clerk—who, as a self-taught amateur shorthand writer and in the absence of any professional stenographer in the island, publishes officiously a report of the proceedings of our Legislative Council, after honourable members have corrected his drafts—appeared in the Police Court to take notes, incidentally, overawing the poor magistrate—and his notes were sent to Downing Street, translated into English, how and by whom I cannot tell. The Magistrate was also required to produce his private memoranda in Italian, and to sign a secret report in English, a language which he does not know; and these memoranda and report were also sent to the Minister. But all these papers are worthless documents. I cannot admit the proficiency of the shorthand writer, nor the trustworthiness of his unsworn notes. He is not a professional or an independent man. I was only allowed to see his notes after the conclusion of the trial, which pended for three months, and consequently I could not check what he has written, and I could not see what had been translated. The Magistrate's private and equally uncontrolled memoranda and report I have not seen at all, either in the original Italian or in their English translation, although I asked for a copy even from Downing Street.

I must protest against these underground communications—steno-graphic and magisterial. In a case of such vital importance to me I must speak plainly, even at the risk of offending over-sensitive people. I cannot trust any official who avoids the light of day, because, like Lord Derby, I am convinced that my case has been prejudiced; and

if his lordship trusts not Courts of Law I, with greater reason, trust not individual officials. I accepted, in an evil moment, the offer to return to Malta, and to stand a trial, in order to furnish to the Colonial Office data obtained in a legal and open manner, not secret reports, of which enough had already been written. Such official, such trustworthy data could not be obtained in the Police Court, and the result has been a laconic police judgment which cannot be checked, which cannot show how extensively the investigation has been prejudiced by the decision of the Colonial Government mentioned by Lord Derby.

I consider this to be a strong special reason to impugn the police judgment. Had I seen the secret supplementary documents, I might point out others, but even in the un-English darkness in which I have been kept I have other special reasons to submit.

9. My next special reason against the police judgment will answer a possible objection to the foregoing reason. It may be urged that Lord Derby did not require notes of evidence or detailed reports of the criminal investigation (which, however, were sent and read, and withheld from me); all he required was the opinion of a magistrate, judge, or jury, who had heard the witnesses, and could judge of their demeanour, and of the manner in which they gave their testimony, and this opinion he obtained in the police judgment. But I can prove that this opinion could not be given by the sitting magistrate, Francesco Mizzi.

On the 30th September, 1874, the agents in Malta of British steamships addressed a noteworthy remonstrance to Government. They complained that English seamen were tried in Malta by magistrates who knew not their language, "and consequently do not understand their usages and idiosyncrasy, and cannot give a true value to their actions." "It is evident," the agents added, "that the nice sense of discrimination, which every British subject has a right to expect in a court of justice of a British colony of nearly eighty years' standing, is, under the circumstances, frequently a desideratum in the police courts when British interests are concerned, as it is notorious that four out of the five police Magistrates either do not know at all, or speak very imperfectly, the English language, and that the other Magistrate, who has a thorough English education, is not exclusively entrusted with the hearing of such cases." Of the four non-English-speaking Magistrates mentioned by the agents, only one survives at present, Dr. Mizzi, who decided my case. I was the English-speaking Magistrate alluded to by the agents. Government had to admit the justice of these complaints, and regulations were issued on the 14th November, 1874, precluding by name the magistrates who knew not English from hearing cases, wherein either the prosecutors or the defendants were English. Dr. Mizzi, much to his disgust, was one of the precluded Magistrates thus confined to perform the mere obscure drudgery of the police courts. He attributed the letter of the agents to my suggestions, and looked

upon me as the cause of the subordinate position to which he was reduced, and which precluded promotion. This brought about an estrangement between us, which increased with every English case or shipping inquiry which turned up before him during the last ten years, and which he was obliged, by the standing regulations, to send to me for decision, and as political differences and mutual antipathy tended to widen the breach, we of late years were hardly on speaking terms.

I contend that Dr. Mizzi, according to the standing regulations of the police courts, could not sit in my case, whereof the complainant Pettritt, and also the majority of the witnesses, were British soldiers speaking the Shropshire or Irish dialects, and that the infraction of these regulations is a reason to impugn the decision.

It is true that when the Governor offered me this Magistrate Mizzi in lieu of Magistrate Carbone (of whom anon), and when I protested that the selection of my judge was unconstitutional, and that, moreover, Dr. Mizzi knew not English, and had been precluded for years from hearing English cases, his Excellency declared that my objection was not valid, and this declaration might render Dr. Mizzi, if not intrinsically, at least officially capable of hearing English cases. But it is also true that Dr. Mizzi, during the last ten years, until he took up my case, had not examined an English soldier or any English witness whatever in a police case, and that his ignorance of the language, manners, and idiosyncrasy of Englishmen admitted by Government could not, in force of any gubernatorial *fiat*, render him suddenly competent to give an opinion on the credibility of English witnesses making conflicting statements on the credibility of Pettitt and Farrell, and Williams and Finn, and scores of others, whom he only understood through an interpreter, and to value their evidence, their demeanour, and the manner in which they gave their testimony, and to decide without the possibility of a local appeal.

10. I have still another special reason to impugn the police judgment, and it is the absolute want of independence, judicial calmness, and self-possession displayed by the magisterial bench in trying this big case in the petty police courts.

The case, under ordinary circumstances, would have come for trial before Magistrate Micallef, the only English-speaking Magistrate available, but the Governor had appointed him a Commissioner in the administrative inquiry, and, therefore, Dr. Micallef could not sit in court, though not legally precluded. The case came before a Dr. Carbone (doctors are very plentiful in Malta), an acting magistrate appointed during my interdiction from office, and hoping to succeed me on the bench when I would be proved guilty. He *would* have succeeded me had he not blundered so egregiously in hearing my case. At the first sitting, held with closed doors, owing to the immoral charge, I objected to the presence of the Government stenographic reporter. The Magistrate, instead of deciding the point after it had been argued, sent the Registrar officially to the Lieuten-

ant-Governor for instructions! Another instance of want of independence is still more glaring. The Magistrate had put off the case to a day which he named; on the appointed day the Police Superintendent appeared in court, and *adjourned the case to the following day at 10 a.m., by superior order!* This enormity is incredible, yet it is recorded in the acts of the Court, a copy of which I sent to Downing Street. I transcribe verbatim the record. "12 Gennaro, 1885. Chiamata per ordine di Corte la causa della Polizia contro il Dr. Rapinet, é comparso il Soprintendente di Polizia e disse che la causa è differita a domani alle ore, 10 a.m., per ordini superiori, (sd). R. Leonardini, Assistente Registratore." An English magistrate would have resented this interference of the Executive Authorities; he would have punished as contempt of court this piece of impertinence of the Police Superintendent. The Maltese Magistrate of this prejudiced case (I blush to record it) humbly allowed the case to be put off, over his head, and went home, and duly appeared in court the next morning at ten precisely, according to superior orders! These are the Police Courts of Malta, these the independent Magistrates destined to guide the action of Secretaries of States!

I was quite alarmed at such subserviency, and, to gain time, I accepted the offer of Government to have Dr. Mizzi substituted to Dr. Carbone, which I had before refused as unconstitutional, and in the meanwhile petitioned Lord Derby, by telegraph, to allow Dr. Micallef to sit, but my petition was refused, and Dr. Mizzi sat, instead of Dr. Carbone. Scylla and Charybdis.

All this attracted attention, and a Member of Council asked Government for explanations concerning the independence of the Police Bench. Dr. Carbone had been imprudently zealous, and Government could not defend his conduct. The cue was taken. Magistrates no longer cringed, they blustered.

Dr. Mizzi made a remarkable speech in court. He said that the case was now his, and that he would not allow anyone to interfere (as if such a resolution was so heroic as to be worth mentioning), and, starting on his legs, he addressed a big Crucifix hanging on the wall opposite, and exclaimed: "It is to you alone that I have to answer; I will appear before you after this case is concluded as innocent as I am now!" After this tirade, what elected Member of Council would dare to question the independence of magistrates? All this was very deplorable and very alarming. The want of judicial calmness and self-possession displayed by Dr. Mizzi was as prejudicial as the "superior orders" too overtly obeyed by Dr. Carbone. I had a right to have an independent and impassive Magistrate, who would look on my case as on any other ordinary case, without asking for instructions, without obeying superior orders, without addressing any big crucifix, without feeling, in short, that the eyes of the authorities were upon him, and anxiously waiting for results. This Magistrate I could not have, and therefore I impugn the Police Judgment.

11. Another special reason. Dr. Mizzi has given in the case a jurisdiction decree and a final judgment, and has displayed such a want of discrimination and such disregard of law, that were there no other reasons, his two decisions by themselves would be sufficient to throw an utter discredit upon his opinions.

The jurisdiction decree rejects my plea for a trial by jury, on the motive that the magistrate could not say with precision whether the statements of the accuser Pettitt constituted a mere violent attempt against modesty or an unnatural crime. Fancy a Magistrate not able to distinguish one offence from another ! Both these offences however are indictable, and either of them rendered him incompetent to decide my case ; and yet he adduces his incapacity to fix on one of them as a sufficient reason to treat the accusation as a police offence. He reasons like a stupid physician of my acquaintance, who, having had once before him a case of fever, and being too ignorant to discover whether the fever was typhus or yellow fever, resolved to treat it as if it were toothache. This is the grand motive of the jurisdiction decree, which should have evidently led to the conclusion of my committal to a jury. The other motives are mere platitudes and truisms leading nowhere. I do not exaggerate, and the reader may judge for himself, as I have got the decree itself, as translated for the Privy Council, which Council took good care not to confirm its motives.

“ 7 February, 1885.

“ The Police

versus

Dr. G. Rapinet.

Dr. F. Mizzi,

Sitting Magistrate.

“ The Court,

“ Having heard the request of Dr. Rapinet that it should constitute itself from a Court of Criminal Judicature into a Court of Instruction ” (i.e., to prepare a written record of the case for a judge and jury) “ considers that the charge is regularly made by the police, which is the authority entrusted by law with this duty ” (truism No. 1), “ and that the charge, as it is framed, is undoubtedly within the competence of this Court of Criminal Judicature ” (truism No. 2).

“ That, according to the statement of Pettit, we cannot say, with any degree of certainty, and without fear of committing a mistake, whether the said statements constitute the crime provided against in the First Clause of Section 203 of the Criminal Law ” (violent attempt against modesty), “ or the crimes, either attempted or committed, provided against in the preceding sections mentioned in the said Clause First, Section 203 ” (unnatural crimes ; either alternative constitutes an indictable offence).

“ That there is no serious doubt ” (nor any doubt at all) “ that filthy and vicious acts of incontinence are provided against in Clause Second of Section 203 ” (truism No. 3) “ and consequently ” (mark the strange inference) “ the Superintendent, in framing the charges

with the least possible aggravation to the party accused, acted in the best manner to favour the latter" (and to avoid a judge and jury).

"That this Court is not called upon to examine the question, raised by Dr. Rapinet, whether the Police Superintendent has strictly followed the instructions of the Colonial Office, if any such instructions have been given" (true).

"That the admission, made by Dr. Rapinet, evidently with the object of obtaining a different line of procedure, namely (1), that the crime described by Pettitt is of a more serious nature than the one mentioned in the charge, and the assertion (2) that a different line of procedure would afford him better means of proving his innocence, and (3) the desire he evinces of having this case tried by a jury in order to have copies of the evidence, all these circumstances cannot influence the decision of the point at issue" (not even the first circumstance, your Worship?), "this Court, as it is now constituted, offers every possible guarantee for the defence of the party accused" (a covert rebuke to Lord Derby, who said that a jury trial would have been more satisfactory).

"For these reasons" (without saying whether the statements of Pettitt constituted or not filthy acts, *which was the point at issue*) "the Court rejects the plea of incompetence, and orders that the trial be proceeded with on Monday next at 9 a.m."

"Signed, R. LEONARDINI, Assistant Registrar.

This is a sample of the reasoning powers of Dr. Mizzi, whose final judgment was to govern the future action of a Secretary of State!

12. The final judgment is of a piece with the jurisdiction decree, but it is much shorter, because, perhaps, after the comments of the bar on the illogical decree, his Worship saw the prudence of not indulging in "motives." But, short as it is, it would have been sufficient, in ordinary circumstances to have the Magistrate pensioned at once.

The judgment defines my offence: "Having, after a reprehensible conversation and offer of money, placed my hand on the sentry to unbutton his trousers, with the intent of reaching his person, for an immoral purpose," which is the cleanest way of rendering into English the reprehensible cynicism of the original Italian, (Appendix G). And what about the "bursting buttons" sworn to distinctly, repeatedly by Pettitt before the Commissioners and before the Magistrate, who had even put to Pettitt the special question through an interpreter, reported above: "Did the three buttons burst in consequence of the force used by the prisoner, or by the force you employed in shoving off the hand of the prisoner?" "By the prisoner." What about the "bursting buttons," I repeat. The Magistrate does *not* believe in the bursting buttons. This is quite clear. Section 344 of the Criminal Laws of Malta enjoins that the Police Court "shall, in its decision, declare the facts whereof the accused shall have been found guilty." Dr. Mizzi declared accordingly: reprehensible

conversation, offer of money, and placing my hands to unbutton. This is all. I am not declared guilty of having bursted buttons, a fact which the law requires to be declared, if proved, and which is too important, too aggravating, to be overlooked, if believed, especially after the jurisdiction discussion, which exclusively hinged upon the "bursting buttons." The Magistrate did not believe in the bursting buttons (never shown to anyone), exactly as his Excellency had doubted Pettitt "as to the assault," which is another expression for "bursting buttons." And as the Magistrate re-echoes the Governor, I can safely endorse to his Worship the unanswerable observation of Lord Derby to his Excellency, and say: "If you do not believe Pettitt as to the bursting buttons, how can you consistently believe any other part of Pettitt's statements?"

13. The Magistrate's opinions are not only the echo of the opinion of his Excellency "as to the assaults or bursting buttons," but they also tally most remarkably with the opinion of the Police Superintendent as to "filthy acts." But owing to section 344 of the Criminal Law, which imperatively requires details in a judgment, the Magistrate could not be vague as the Superintendent had been before him, and we can now see what his Worship considers to be filthy acts. It cannot be, surely, the conversation or the offer of money; it must be, therefore, the placing of the hand on the sentry in order to unbutton. Now, I ask any man of sense if such an act can be said to be "filthy and vicious acts of incontinence, offensive to public decorum?" the words of the judgment (Appendix F). Is the act of placing the hand on the *upper* buttons, *per se*, a filthy act?

At the very utmost it is, considering the alleged intention, *an attempt* to commit a filthy act, which would have been *committed* had I succeeded in reaching, or had I been allowed to reach, the person of the soldier with the sharp, but evidently useless, bayonet. The placing of a hand on a strong box with the intent of reaching and using the money within is not a theft committed, but an attempt to steal. This mistake—if it may be called only a mistake—is very serious. An attempted crime is quite a different thing from a crime committed, and in this case its maximum punishment would have been either twenty days imprisonment or one month's simple detention, or a fine of £5 (37, 31, 203 Crim. Laws), which is a great deal less than the two months imprisonment and £10 fine awarded by the Magistrate in spite of law and justice, and with a glaring abuse of power. This is bad enough, but what makes it worse is the, to me, fatal coincidence that, owing to this illegal extension of punishment to two months, I was prevented from coming to England in time to plead my case before the Privy Council, where my thorough knowledge of local laws would have been of some use in the discussion of the jurisdiction question—the only one discussed there—and my intimate knowledge of the facts of my case would have been indispensable if that Tribunal had determined to review those facts. This extended punishment also effectually

prevented my being in England in time to submit my special reasons against the judgment, to show, supported by the despatch of the 3rd December, which I had in the meantime obtained, that the Minister was condemning me without any defence—as I have demonstrated at page 21—and perhaps to bring back to Malta some Ministerial despatch as unpleasant to read in the Valetta Palace as the one just mentioned of the 3rd December. This illegal punishment has not only deprived me of my liberty by an unjustifiable abuse of power, but it also—accidentally, of course—contributed most effectually to deprive me of my chance of obtaining justice at the Privy Council and at Downing Street. But, to return to the line of my present argument, I ask, what trust, what reliance can a Secretary of State have in a Magistrate who not only is unable to discriminate between a violent attempt against modesty and a crime committed against nature, and who believes and disbelieves with one breath portions of the same evidence, but who, in this prejudiced case, commits the terrible blunder of sending to prison a British subject beyond the term established by law, by describing a crime attempted, and then dealing with it as if it were a crime committed. This want of discrimination, this ignorance or disregard of the rudimentary rules of evidence and of the most obvious criminal laws and rules, are faults, grievous faults, which furnish ample reasons to impugn the police judgment, which Lord Derby has taken for his guide.

14. But were the conversation, the offer of money, and the attempt to unbutton proved in any way before the Magistrate? This question has been already answered, in part and in the negative, from what I have already said about the case, the Magistrate, and the decision; but I could prove much more, and show that not only these facts have been excluded, but also that Pettitt's attempted extortion of a shilling from me has been fully substantiated. But where is the evidence, where are the proceedings, where the grounds or motives of the judgment? I have nothing reliable and official to quote from, everything is vague, oral, summary, and secret, the ostensible decision being a mere cautious enunciation of what was considered a fact, and an application of what was considered a legal punishment, whilst the grounds or motives were prudently reserved for a secret report to Downing Street, by whomsoever written. But there are reliable notes of evidence to consult—the notes of the previous commission (see Appendix, Doc. B. C. D.). The same witnesses examined by the Commissioners were re-examined by the Magistrate. Their statements, after the lapse of ten months from the event, were naturally less positive, and decidedly less reliable, but substantially the same, with such additions and omissions, which after thought or want of thought, good or defective memory, interest or indifference as to results, and captious questions answered by ignorant soldiers might have occasioned. These reliable statements have been examined by Lord Derby, and, I believe, the Law Officers of the Crown in England, and the charge was considered not to be proved.

But, it may be urged, Lord Derby did not see the witnesses. True, but was it of any use to the Maltese Magistrate that *he* has seen them, if he could not understand their words or appreciate their demeanour, and the way in which they gave their testimony, not to mention his other perceptive failings already alluded to? Fortunately we have the opinion of a competent person who *has seen* the witnesses, and, what is more important still, could *understand them* and *judge* of their manner of giving evidence.

I allude to Dr. Micallef, the Magistrate, who, according to the standing regulations of the Police Court, would have heard and decided this case if the Governor, with lamentable shortsightedness, had not appointed him one of the Commissioners of the administrative Inquiry, and thus precluded him from performing his judicial duties. Dr. Micallef saw, heard, and examined, as Commissioner, the same witnesses whom Dr. Mizzi saw in the Police Court, and Dr. Micallef examined them on the morrow of the event, when impressions were still fresh, and he declared, like Lord Derby, and previously to Lord Derby, that I was innocent, whilst Dr. Mizzi saw the witnesses after ten months and declared, like the Governor, and *after* the Governor, that I was guilty. Magistrate Micallef's opinion is of great weight. He has been entrusted with the hearing of English cases since his appointment to the police bench, and has for many years examined, almost daily, soldier witnesses, and he is always calm and independent, without sending to the Palace for instructions, obeying superior orders, or addressing the big Crucifix, and he can see, "without fears of committing a mistake," if an offence be indecent assault or unnatural crime committed, and he does not disbelieve a portion of an evidence and then convict on the remaining portion, and he has never, that I know of, described an attempt to offend, and then punished it as a crime committed. Consequently, he is far more competent than Dr. Mizzi to give an opinion. Dr. Micallef would have been the sitting Magistrate in my case had not his Excellency been pleased to preclude him by naming him Commissioner, and I have every right to assume that as he has acquitted me as Commissioner, he would on the same proofs and arguments, have acquitted me as Magistrate. Thus was I disgraced and ruined in a case which, notwithstanding the altered charge of the Superintendent, and the successful efforts to avoid a judge and jury, would have ended in my acquittal if administrative meddling had not deprived me of the ordinary English-speaking Magistrate of such cases, and pitted me, first against my probable successor on the bench and then against Dr. Mizzi, whom I have described. These are reasons, and strong special reasons, against the police judgment.

15. One word about the enormous punishment awarded, which incidentally kept me in Malta until my case was definitely decided in England. Two months imprisonment and a £10 fine, when the Court had the option from one hour to three months imprisonment !

Did the Magistrate, in giving this exaggerated punishment, consider my previous good conduct, my previous agony for ten months under illegal investigations, my prospective loss of office? If this punishment was just and legal and proper for "placing my hand on the sentry to unbutton," what proportionate punishment would have sufficed, within the three months established by law which he misapplied, had I really unbuttoned, had I "burst the buttons," had I reached the person, had I completely *succeeded* in the nefarious attempt attributed to me?

Lord Derby, in expressing his unavailing regrets on the prejudiced case, did not realise, I am sure, to what extent the case *had been prejudiced*, not only by the Colonial decision, but also, and much more, by his despatch of censure to the Malta Government.

V.—CONCLUSION.

I have stated my case, as temperately as it is possible for a man who has lost much, suffered so bitterly, and who writes under the conviction that he has been sacrificed. My object is to convince by facts, not to give vent to feeling.

It is a fact that had the two original reciprocal charges—mine and Pettitt's—not been unduly meddled with by the Governor of Malta they would have led to a criminal trial before my case had been prejudiced and my character ruined, and that this trial would have been held by the ordinary Magistrate for "English cases," Dr. Micallef.

It is a fact that this Magistrate, having been appointed one of the Commissioners to inquire into the case for administrative purposes, reported that I was innocent.

It is consequently due to the Local Government not only that my case was most improperly withheld from the ordinary tribunals of the land at a time when I could hope for an impartial judgment, but also that my natural judge, Dr. Micallef, was precluded from hearing it as a Magistrate then or afterwards, and from acquitting me.

It is a fact that the administrative investigations substituted by the local authority to the courts of justice were disapproved by the Secretary of State. I have shown how unfair and one-sided they have been. I have shown that my charge against Pettitt was set aside on the outset, and never investigated, that indignation and over-hasty measures were unnecessarily resorted to against me to my great prejudice, that I applied in vain for a personal explanation before any action was taken in the matter, that one of my adminis-

trative judges—the local Crown Advocate—was appointed to collect proofs against me, and that a military colonel was named to report on a case of a civil employé, and that I was induced to appear before the semi-military Commission by the Government statement that it would inquire into the circumstances of my arrest on the 24th of June, whilst in point of fact other distinct and unknown charges, for which I was wholly unprepared, were also inquired into.

The fishing for these new charges against a man labouring under a grave accusation is a notable feature of the local proceedings. If these extra charges had not been fished and bolstered up—to be afterwards dismissed at Downing Street—what would have been the result of the whole inquiry in Malta? Only an indecent conversation with Patrick Pettitt. An indecent conversation sworn to by a soldier of a blemished character, contradicted by others, disbelieved by one of the three Commissioners and by a minority of the Executive Council, and doubted in the more important part of his testimony by the Governor himself and the majority of the Council. This tame result on Pettitt's charge would not surely by itself have justified the extreme punishment of suspension from office if it had not been supported by the other now exploded charges. I can safely assume that my suspension was decided upon in Malta on the other charges, which the Minister dismissed. I will go a step further, and say that even the indecent conversation would not have been believed in Malta if the other charges had not thrown a sinister light upon my character.

In the Colonial Office, when the five charges, their proofs, and decisions, were submitted from Malta, a warm feeling of sympathy towards me—the injustice committed being so evident—must have prevailed at first; but unfortunately a cold fit of hesitation seems to have supervened when the question of my re-installment in office was to be dealt with. What would the Maltese think, what would the opposition members of the Legislative Council, backed by the immense majority of the population, say, if I returned to Malta, a rehabilitated Magistrate and professor, after all the fuss that had taken place? What would become of the prestige of the local authorities who had found me guilty? It was then that a half measure was adopted, big with disastrous consequences to me; it was then that the man against whom the Minister considered that no one of the charges had been proved was ordered to be prosecuted, after his case had been irretrievably prejudiced by the local decision. It was then that I received the letter inducing me to return to Malta to be tried in a Criminal Court, without which trial the local administrative decision could not be upheld.

“Guilty as to the indecent conversation, doubtful as to the assault,” the Governor had decided. “If there is any doubt as to the truth of Pettitt's statement as to the assault, no credit can be given to any part of his statement,” the Minister had retorted. And yet the Minister, after declaring so much, and after stating that he could not concur in the opinion that I was guilty, did not acquit me at once

of Pettitt's charge, as he had acquitted me of all the other charges, but ordered the new procedure, an ordeal, which produced the police judgment.

But the Minister could not set aside the other charges and order a new investigation on Pettitt's charge without giving his reasons—hence his despatch, which, in censuring all that had been done in Malta, prejudiced my case even more than the local decision. I was no longer to cope with an insignificant soldier having disreputable antecedents; the struggle was now between me and the all-powerful Government of Malta.

Pettitt's charge was reduced, and the verdict of an independent jury, which his lordship expected, was avoided; the case was first brought before an acting Magistrate, who expected to succeed me permanently on the bench; then another Magistrate was unconstitutionally selected and substituted, whom I was obliged to accept, after the proofs of subserviency given by my expected successor; and this second incompetent Magistrate decided the case in the manner and on the grounds which have been described.

I cannot sufficiently repeat that had the ordinary Magistrate for "English cases" been not precluded from sitting by the action of the local Government, *I would have been acquitted.*

The Minister had stated that the judgment would have governed his final administrative decision in the absence of special reasons to impugn it. Who was to submit these special reasons? That right undisputably belonged *to me*, and yet my repeated petitions to be heard on the police judgment were disregarded. I was dismissed from the service; I was cast adrift, unheard.

Yes, unheard, and unheard in the full meaning of the term, because even my previous written defence in the administrative inquiry in Malta had become worthless as based on evidence, which had been superseded by the police investigation. The Minister had set aside that evidence as imperfect, and he consequently had also set aside my defence and the Colonial decision upon such evidence. He decided on the police judgment and on new secret reports, against the spirit and the letter of the Colonial Regulations, which require a *bonâ fide* defence from the accused official, and a *bonâ fide* local administrative decision before the final decision of the Secretary of State.

And while my dismissal and disgrace were being determined upon, amidst the turmoil of leaving office, I was lingering between life and death in Malta, under a recrudescence of an organic disease in a public hospital, whither I had been transferred from the common gaol, to which the pious Magistrate had condemned me, and where, if I remained, the Government physicians had certified that I would die. In vain had all the elected members of our Legislative Council repaired in a body to the Governor to solicit my release, in vain the Archbishop of Malta had written, and three thousand independent citizens had petitioned in the same sense. The Governor could

not exercise the prerogative of mercy in my case. There had been gubernatorial doubts on Pettitt's statements, there had been mistakes elicited in the Ministerial despatch, there had been a dissenting minority in the Commission of Inquiry and in the Executive Council, there had been an ordinary Magistrate precluded by the action of his Excellency from sitting in my trial and acquitting me, as he had acquitted me as Commissioner, there had been an incompetent Magistrate unconstitutionally substituted, there were the deep regrets of a Secretary of State that my case had been prejudiced, there was the altered charge, the address to the Crucifix, the logical and judicial blunders of the police decision, and the enormous punishment that kept me in Malta whilst my case was being reviewed in England, but his Excellency could not exercise the prerogative of mercy. I remained in durance until the two full calendar months of imprisonment expired, and until I lost my appointment.

Now that I am a free agent again, and can speak, and write, and act, the injustice to which I have been subjected to will be my evening song and my morning prayer. I will strive to clear my name, it is a duty I owe to myself and to my poor children. I may not succeed, because the events I have related have raised strong interests against me, and I am now poor, and consequently friendless. But if I have proved, or even induced a reasonable doubt, that I have been unfairly treated and unjustly condemned and disgraced, perhaps the lovers of justice and fair play, who may be willing and able to assist me, may obtain for me some redress, and the people who knew me in my former honoured position may think not unfavourably of my case and of my character.

APPENDIX.

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A.

COPY OF FIRST REPORT MADE BY PRIVATE PETTITT TO THE POLICE
INSPECTOR ON THE EVENING OF THE OCCURRENCE.

“June 24, 1884.

“1st King's Shropshire Light Infantry.

“I, No. 968 Private Patrick Pettitt, was on sentry at No. 2, Poste Porta Reale Guard, when this man came and asked to have improper conduct with me, and tried to undo my trousers in front. At the time the Sergeant and Corporal came to visit me he was walking away and I gave him in charge to Seargeant of Guard and Corporal Downs.”

“Evidence.

Sentry { No. 1150 Sergeant WILLIAMS.
 { No. 317 Lance-Corporal DOWNS.
 { No. 968 Private P. PETTITT.
 HOR. WILLIAMS, Sergeant.

“Corporal Wells was in charge of
Guard at the time.”

—

B.

EVIDENCE OF PATRICK PETTITT BEFORE THE COMMISSION OF INQUIRY.

3rd July, 1884.

Private Patrick Pettitt, duly sworn, states :—

I was on No. 2 Post on the 24th ult., Porta Reale Guard, when a gentleman walked into the garden at 9.30 p.m. He came over to me and asked me if I would have a cigar. I told him I did not smoke. He put the cigar back into his breast, and said, “Would you mind my walking up and down the path with you, sentry?” I said, “No, not in the least.” He said, “How long ago is it you were with a woman?” I answered, “About three or four days ago.” He said, “Let me look?” pulling at my trousers. I shoved his hand away, and he forced three buttons. He said, “Take this money,” but I could not see what it was; “you know what I mean, toss me off.” This took place at the far end of the garden, in St. John Bastion. I said, “You don't know who might be knocking about here, it is rather a dangerous place. You had better walk up the garden again. Just then the sergeant and corporal came down in the garden, and I got hold of the gentleman by the collar and by one arm, and I said to the sergeant, “Take this man to the guardroom. This is the man; hand him over to the civil power.” I noticed the gentleman offering the sergeant anything he had to let him go, and not to disgrace him. He was taken away then by an escort.

Did the gentleman make use of those very words, “toss me off?”—He did. I never heard that word before, but I had heard rumours in the barracks of a man visiting Porta Reale Garden by night, and I guessed what the word meant.

Why did you say to the sergeant, “This is the man?”—The sergeant had told me, when I went on sentry, that if a man came to the gardens, attempting such

things as we had heard of, I was to confine him. I told the sergeant to be on the alert to give me assistance.

Had you ever seen the gentleman before? Yes, I had; not a long time before—perhaps five or six days before. He was pointed out to me by Private Tuckwell, of my regiment, opposite Davidson. He said, “That is the gentleman who comes round Porta Reale Gardens.” This occurred after dinner, and before retreat. The gentleman was walking with a boy. I was standing on the curbstone and did not take any particular notice of him, but, as Tuckwell spoke, he turned round and looked at us.

How long before was it you heard of the rumours in the barrack room of a gentleman visiting the Porta Reale Gardens?—I should say at least 12 months before, but I did not credit it.

Was there anyone in the garden when the circumstance occurred on the 24th June?—There was no one to be seen. There was someone a quarter of an hour before. It was a dark night and no moon.

Did the rumours refer to one man?—Yes.

When you made your statement in the preliminary investigation you had stated that the gentleman had offered all he possessed to the sergeant to let him go?—I did; and I now add that he put his hands in his pockets and pulled out notes. I cannot say what notes; it was a dark night.

Can you recognise the gentleman?—Yes (points at Dr. Rapinet). In the garden I could not see his face well because it was dark, but I saw him well afterwards in the guardroom. I never lost sight of him, as I was relieved off sentry immediately to charge him.

Can you swear that the gentleman who was pointed out to you by Tuckwell is the same person?—No, I cannot; but I daresay that Tuckwell can.

From which of the two gates of the garden did he enter?—From the gate nearest the guard room,

On which path were you walking when he made proposals?—On the one next the ramparts.

What time intervened between his entrance and the proposals?—A few minutes; I cannot say exactly.

What do you mean by “toss me off?”—I do not know exactly the meaning, but I understood I was to put down my trousers. By his action he tried to force me.

Did you understand at the moment what he wanted you to do?—I knew it was an insult; it was an insult to burst my trousers.

Will you state distinctly what the rumours were you heard in barracks?—I was told a gentleman came to the gardens and wished to snip a tail, which means doing something backwards.

Have you ever heard of a crime called Sodomy?—I have.

Was it for the purpose of allowing the gentleman to show his intentions to commit Sodomy that you took him to the furthest end of the garden?—I did not take him there at all. I walked round the garden and he followed me. When I arrived at the furthest end he pulled at my trousers.

Why did you allow him to walk up and down with you if you had no idea of his intentions to commit Sodomy before you arrived at the corner?—I was put on the alert that this man was coming round, and I said if I found out it was true, I would have him confined, for it was time it was put a stop to.

What made you think it was the man when he first entered the garden?—By hearing he would ask me to have a cigar.

In what part of the garden was the sergeant when you collared the gentleman? The sergeant entered by the furthest gate, and as soon as I recognised him I collared the gentleman.

Was the sergeant alone?—No, with Corporal Downs.

Where was your brother at the time?—He was cook to the guard, but I do not know where he was.

Do you mean to say you were induced to collar the gentleman by seeing the sergeant?—No, I was not. If the sergeant had not come I would have stunned him with my bayonet until the relief came.

Did you notice there was a sentry with a rifle in front of the garden?—Yes, I did, when I was first put on sentry, and that sentry came over to the gate when we took the gentleman prisoner.

Why did you not give the alarm to that sentry instead of waiting for the sergeant to collar the gentleman?—The sergeant came in the instant, and if I had shouted the sentry would not have heard me; and I knew the sergeant was coming.

Were you examined by the sergeant separately from the others, in the guardroom, soon after you were relieved?—No, he told me to make the charge of what he had done to me outside the guardroom after I was relieved.

What was the conversation that passed between you and the sergeant?—That I decline to answer; it did not concern the case at all; there were only three words spoken.

You must refer these words unless they criminate you?—The word were, we will report this to the field officer when he comes; and we did refer it.

Why did you say, you decline to answer?—Because I thought I had been asked many questions that do not bear on the case.

You stated in your examination that the gentleman said, "Take this money," and that you did not see what it was. Did you notice anything in his hand?—Yes, I noticed it was money, but I could not say what coin it was, and I cannot state whether he continued to hold it in his hand. I was looking about the garden for the sergeant to come.

C.

EVIDENCE OF C. FARRELL BEFORE THE COMMISSION OF INQUIRY.

3rd July, 1884.

Charles Farrell, duly sworn, says:—

On the night of the 24th June I was sentry, from eight to ten p.m., on the road in front of Hastings Garden. After gun fire Sergeant Williams with James Pettitt went into the garden; after that I saw a gentleman go into the garden, and he walked round by the railings, and when he got opposite the statue I saw he had a white waistcoat. I saw Private Pettitt catch hold of him by the collar and by the arm, and hand him over to the sergeant. I heard Pettitt shout out, "He has a loaded stick." The sergeant handed the stick to me in the gateway, and I said, "It is not loaded, it has only silver on the end of it." I said to the sergeant, "Don't pull the gentleman about so much; he may give you some money." He said, "No, I won't give you any money at all." The sergeant told Pettitt to go down to the guardroom and tell one of the corporals to go for a policeman. Sergeant Williams came down afterwards to the Cavalier Guardroom, and having got me relieved, he called me out of the guardroom to speak to me, but I said, "Speak to me inside here, before all the other men." Sergeant Williams took me out and asked me to say that the gentleman had offered him £400, his watch, and all he had, to let him go. And I answered, "No; I would not tell a lie. I will only speak the truth." The sergeant then got my name from Corporal Martin and went away.

What induced you to ask the sergeant to speak to you in the guardroom, before the other soldiers, and not outside?—He said, "I want to speak to you about this affair;" and I preferred not speaking about it except in the presence of others.

How long after the gentleman entered the garden did Pettitt collar him?—Three or four minutes.

Was there any corporal in the garden when he collared him?—No; only the sergeant and Pettitt's brother.

Did you hear any charge made by Pettitt?—He gave the gentleman in charge to the sergeant, and I heard him say that he pulled a button off his trousers, and offered him 10s. This was at the garden gate, and the gentleman was leaning against the railings.

Did the gentleman say anything at the time the charge was made?—No, he did not say anything at the moment ; but, as I before stated, he said he would not give them anything, when I asked them not to treat him roughly.

Would you recognise the gentleman if you saw him now?—Yes ; I believe this to be the gentleman (Dr. Rapinet).

Since this occurrence have you had any conversation with Sergeant Williams, or with any other person, on the subject?—Not with Sergeant Williams, but with a Maltese owner of a public-house near the Palace Square, where I went on Saturday night last, with Corporal Langley and Private Stephenson. I was talking of the affair with my comrades, and I said to the landlord that I would like to see some one, as I was anxious to speak the truth of the gentleman. He then went for a man, and I said to this man that I wished to speak the truth for the gentleman.

Did you speak to the public-house owner of your own accord, or did anyone ask you to do so?—I spoke to him of my own accord. From what I knew of the matter, I believed the gentleman to be innocent.

Were there other men in the public-house at the time?—No ; there were some men of other regiments, but I do not know them.

Would you recognise the owner of the public-house?—Yes ; this is the man (Salinos).

D.

EVIDENCE OF V. ZARB BEFORE THE COMMISSION OF INQUIRY.

Vincenzo Zarb, Trader and Broker, being duly sworn, states :—

On the 24th June last, between 9.30 and 9.45 p.m., I was in Hastings Gardens, sitting near the monument, smoking. I saw Dr. Rapinet come in, passing by the railings and stopping on the open space before the monument. The sentry accosted him, and said, "You cannot smoke here." He paid no attention. Near the monument the sentry and Dr. Rapinet met again, and the sentry stopped him, using either the stick or bayonet, I am not sure which, by placing it against his chest. Dr. Rapinet said, "Send for the police." After a minute the sentry said to Dr. Rapinet, "Give me a shilling, I send you away." Dr. Rapinet replied, "I give you nothing ; send for the police." The sentry asked for money more than five times. I myself had a lighted cigar, so, to avoid being arrested, I concealed it in my hand, and went away ; while going away I heard the sentry call the sergeant of the guard. I left the garden by the furthest gate. Some days after Police-constable Zarb, who is my relative, met me, and I asked him if he knew why the sentry had arrested Dr. Rapinet, a man of respectable position, for nothing, and I told him what I knew about the matter. After this I was sent for by the police superintendent to make my statement.

Did you see anyone else in the garden?—I did not see anyone else in the garden from the place where I was. I was sitting on a stone seat, which is round a tree.

Are you in the habit of visiting that garden at night and smoking there ; and have you ever been prevented from smoking by the sentry?—I am in the habit of going there ; sometimes I am allowed to smoke, sometimes not.

In which of the paths was Dr. Rapinet walking?—On the central path by the railing of the monument.

Did you ever see Dr. Rapinet there before on an evening?—Yes, several times : at 5 p.m., at 7 p.m., sometimes at 7.30, 8 and 8.30 p.m.

Did you speak to Dr. R. that evening?—I have never spoken to Dr. Rapinet in all my life.

Have you ever seen Dr. R. speak to the sentries on other occasions?—No.

Repeat in English the words used by the sentry when he addressed Dr. R.?—"There is not allowed to smoking here. Give me a shilling and I send you away."

Did you observe anything more than what you have said, or could anything have happened which you did not observe?—I have not seen anything else. It was not a particularly dark night. Dr. R. was in the garden until I left, less than five minutes.

E.

COPY OF THE FIVE CHARGES MADE BY THE COLONIAL GOVERNMENT WITH
THEIR RESPECTIVE MALTESE DECISIONS AND MINISTERIAL REMARKS.

Charges.

“For having been guilty of conduct unbecoming the character of a Magistrate and a Professor of the University.”

I.

“In having on or about the 9th day of February, 1883, entered into conversation with Private James Jennings, of the Royal Sussex Regiment, when on sentry on No. 3, Post Treasury Guard, now No. 2 Post, Porta Reale Guard, in the Hastings Garden, between the hours of 8 and 10 p.m., and having there made indecent and immoral proposals to the said Private Jennings.”

Finding by Malta Government : Guilty.

Lord Derby : “Upon the first charge I am clearly of opinion that, against an *alibi* supported by so strong evidence as that which Dr. Rapinet has been able to bring forward, no Judge would advise a Jury to convict him.”

II. III.

“In having on or about the 11th June, 1884, accosted Private John Roberts, of the 1st Shropshire Regiment, when on sentry at No. 2 Post, Porta Reale Guard, in the Hastings Garden, between the hours of 8 and 10 p.m., and held improper and indecent conversation with him.”

“In having on or about the 4th June, 1884, between the hours of 8 and 10 p.m. entered into conversation with Private Henry Tuckwell, of the 1st Shropshire Regiment, when on duty at the Second Post of the Porta Reale Guard, in the Hastings Garden, and having addressed an indecent and immoral remark to the said Private Tuckwell.”

Finding of Malta Government : Guilty.

Lord Derby : “With regard to the 2nd and 3rd charges, which are of a less serious character than the 1st and 4th, the evidence of identification does not appear to me to be sufficiently strong to leave no room for doubt, and I feel bound to give Dr. Rapinet the benefit of the doubt.

IV.

“In having on the 24th June, 1884, between the hours of 9 and 10 p.m., entered into conversation with Private Pettitt, of the 1st Shropshire Regiment, when on sentry at No. 2 Post, Porta Reale Guard, in the Hastings Garden, and having there made indecent and immoral proposals to the said Pettitt, and having likewise indecently assaulted the said Pettitt.”

Finding of Malta Government : Guilty as to indecent conversation ; doubtful as to assault.

Lord Derby : “Upon the imperfect evidence before me I cannot say—having regard to the blemished character of the accuser and sole witness of the alleged crime, the very slight corroboration of his statements, and the contraction in the evidence for the prosecution in points which do not appear to be immaterial -- that I am convinced that Dr. Rapinet’s guilt is proved beyond reasonable doubt.”

“I am quite unable to perceive the reason for the distinction, which has been made by you and the Executive Council between the two branches of the 4th charge. Both of them rest equally upon the testimony of Pettitt ; and if there is

any doubt as to the truth of his statement as to the assault, no credit can be given to any part of his statement."

V.

"In having on the 24th of June, 1884, attempted to bribe Sergeant Horton Williams, 1st Shropshire Regiment, Commander of the Porta Reale Guard to induce the said Sergeant Williams to release you."

Finding by Malta Government : Guilty.

Lord Derby : As to the fifth charge, having regard to the contradictions between the evidence of Pettitt and Williams, I am not satisfied that any offer of money was made, and even if this had been clearly proved, I should not consider that such an act—committed under the influence of terror inspired by sudden accusation of a revolting offence—would, apart from the question of his guilt or innocence of the offence itself, furnish ground for suspension."

Lord Derby on all the charges : "I am unable to concur in the opinion of yourself and the majority of the Executive Council that Dr. Rapinet has been proved to be guilty of the charges preferred against him."

F.

SECTION 203 OF THE CRIMINAL LAWS OF MALTA, SHOWING WHAT IS MEANT IN MALTA BY THE TERM "INDECENT ASSAULT."

"Il colpevole di qualunque attentato violento al pudore, che per se stesso non costituisca un delitto consumato o tentato di quelli contemplati negli articoli precedenti di questo capitolo, sarà punito coi lavori forzati o colla prigionia da tre mesi a un anno.

"Il colpevole di ogni altro atto turpe o sregolato d'incontinenza che offendesse il pubblico costume, come pure il colpevole di ogni oltraggio al pudore pubblico, sarà punito colla prigionia per un tempo non eccedente tre mesi e colla multa."

G.

POLICE JUDGMENT.

30 Aprile, 1885.

La Corte.

Rigetta la domanda per la revoca contrario imperio del decreto con cui la Corte dichiara d'essere di sua competenza la presente causa, e dichiara constare di essere il Dr. Rapinet colpevole di atti turpi e sregolati di incontinenza che offendono il pubblico costume avendo egli il 24 Guigno ultimo passato di notte nel giardino di Hastings, dietro riprovevole conversazione con offerta di danaro messo le sue main addosso alla sentinella in quel luogo Patrick Pettitt onde sbottonargli i calzoni, all'oggetto di avere accesso al suo membro virile per uno sfogo di libidine—reato preveduto dal secondo inciso dell'Art 203 delle Leggi Criminali. quindi prese in considerazione le circostanze del caso lo condanna alla pena della prigionia per due mesi ed alla multa di Lire sterline dieci.

ROS. LEONARDINI,
Ass. Registratore.