

(No. 6.)

The Secretary of State for the Colonies to His Excellency the Governor.

DOWNING STREET, February 17, 1873.

SIR,—I have had under my consideration the questions raised by Sir A. Stephen, in his despatch, No. 48, of 30th May last, in reply to my Circular of 1st November, 1871, respecting the powers of a Colonial Governor to grant pardons, but I deferred replying to that despatch until I had received answers from the other Colonies, to which my circular despatch was transmitted. As, however, it will not be necessary to issue any further circular, I proceed to deal separately with the points raised by Sir A. Stephen.

The terms of your Commission extending the power of granting pardons to other than convicted offenders, dispose of one of his suggestions, but I am of opinion that the additional words which he has proposed to meet the case of kidnapping and other like offences, committed out of the Colony, but triable within, may properly be inserted in future Commissions.

With respect to that part of his despatch which refers to the question of the Governor consulting his Council upon for petitions for pardon,—I may observe that there is no real inconsistency, as is apparently supposed, between my circular and Lord Granville's despatch of the 4th October, 1869. It was pointed out that a Governor in granting pardons is exercising a portion of the Queen's prerogative, and has strictly a right to exercise an independent judgment; but that in a Colony under responsible Government a Governor would (as stated by Lord Granville) be bound to allow great weight to the recommendation of his Ministry; in other words, he would (as stated by the Circular) be bound not to grant any pardon without receiving their advice thereon.

It was not, however, intended to lay down a rule that a Governor should in all cases formally consult with his Ministers in Council, as is provided by the Royal Instructions in respect of capital cases; and I see no objection to the Governor consulting, or acting upon the advice of the Minister who is, for the time being, primarily concerned in such matters, in whatever manner is most convenient to both.

With reference to the suggestion made by Sir A. Stephen in the postscript to his despatch, I will consider whether any modification of Clause 406, of the Colonial Regulations is required. It appears to me that the regulation is substantially complied with by the practice adopted in New South Wales; and a strict observance of the regulation is clearly necessary when, for some reason, the presiding Judge is unable to attend.

I have, &c.,

(Signed), KIMBERLEY

(No. 7.)*Minute for His Excellency the Governor.*

I have given much consideration to the expediency of changing the system of treatment in the cases of petitions presented for the absolute or conditional pardon of convicted offenders, and have carefully read the correspondence on the subject, commencing with Lord Belmore's despatch, of July 14, 1869, and closing with Lord Kimberley's despatch of February 17, 1873.

The minute of Mr. Robertson, which gave rise to this correspondence, does not appear to me to deal with the real question which the despatches of the Secretary of State present for determination in the Colony. That question, in any view, is the extent to which the Minister is to have an active voice in the decision of these cases; but in my view it is much more—it is whether the Minister is virtually to decide in