

for decision. Upon enquiry I was informed that it had been the practice here ever since the establishment of responsible Government for the Governor to dispose of all applications for mitigation or pardon, except in capital cases, without reference to Ministers. I was told that a correspondence had been going on with the Home Government for nearly three years on the subject, but that, the instructions received being thought to be conflicting, Sir A. Stephen had, a few days before my arrival, written fully to Lord Kimberley,* describing precisely the practice here, and enquiring whether it was thought desirable that a different course should be adopted. Although, therefore, I entertained grave doubts myself as to the propriety of the practice, I thought it better, as it had been in force for sixteen years, and was then under reference to the Secretary of State, to make no change until a reply was received to Sir Alfred Stephen's despatch.

When Lord Kimberley's answer reached me in May, 1873, I at once forwarded a copy of it to the Premier, for his consideration in connection with the previous correspondence on the same subject.† It appeared to me that this despatch, read in conjunction with the Circular despatch of 1st November, 1871,‡ was clearly condemnatory of the practice which had up to that time been pursued in New South Wales. Under that system the Governor alone could be considered responsible for the exercise of the prerogative of pardon in other than capital cases, whilst it was clear that Lord Kimberley considered the responsibility for decisions, which were so intimately connected with the proper administration of justice and the prevention of crime, should rest with Ministers, and not solely with the Governor, as heretofore. It seemed to me from the correspondence that the one thing which Lord Kimberley held to be indispensable was Ministerial responsibility; so long as this obligation was clear and acknowledged it was a matter of little consequence by what form of consultation it was arrived at.

I took the earliest opportunity, after the receipt of Lord Kimberley's despatch, of speaking to Mr. Parkes on the subject. I pointed out that the question so long under reference here had, at length, I thought been conclusively disposed of, and I expressed my readiness to initiate a system more in accordance with home views and constitutional principles whenever he was prepared to take up the question.

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So the matter rested until about a month ago, when the attention of Parliament was attracted to the proposed release of the bush-ranging prisoners. The despatches as regards the exercise of the prerogative of pardon were then called for, and Mr. Parkes wrote his Minute of the 30th ultimo, which will be found amongst the published papers.§

Mr. Parkes' view as embodied in this paper was simply this: he preferred that the responsibility of deciding upon applications for mitigation of sentences should remain as heretofore, solely with the Governor; but if a change were insisted on, and the cases of prisoners were to be decided on the advice of Ministers, as required by the Secretary of State, he could see no sufficient reason for making a distinction between this class of business and the ordinary business of Government. In effect, he declined to accept any responsibility for Ministers unless they had, not only in form but in substance, a voice in such decisions.

I at once felt that it was impossible for me to accept Mr. Parkes' alternative of allowing matters to remain as they were. Such a settlement would have been opposed to the views of the Secretary of State, and it would have been instantly protested against by Parliament, as inconsistent with the principles of responsible government. The discussions which had already taken place in Parliament had shown beyond all question the necessity for some Minister being responsible for the pardons granted, as well as for those which might be refused. As instancing the necessity for ministerial responsibility in even the latter class of cases, I enclose a Parliamentary

* Inclosure 5 in No. 1.

† Inclosure 6 in No. 1.
‡ Inclosure 7 in No. 1.

§ Inclosure 4 in No. 1.