

2. Your Lordship's despatch appears to have been occasioned by some questions raised, and, therefore, I presume, some difficulties felt, in New Zealand. With respect to the Governor's pardoning power, I am able to state that no question has arisen or difficulty been experienced in New South Wales; although if we construe literally the terms of his Commission, difficulties might easily be made. The only questions which have arisen here relate to a different, although a kindred point; namely, in what cases the Governor ought to consult his Ministers before granting or refusing a pardon, and how far, if at all, he is bound by their opinion.

3. Those questions have respect to pardons, absolute or conditional, after an offender's conviction, being the subject which is classed, in your Lordship's despatch, under the first head or division.

4. With regard to the second, third and fourth divisions of the subject (so called in the despatch,) I have had a large experience in such matters, both as a Law Officer and a Judge; and I confirm Sir James Martin's statement that the English practice respecting pardons, or the promise of pardon, prospectively, to witnesses and accomplices has invariably been adopted in New South Wales, as also, I believe, in the sister Colonies. The legal power of the Governor to pardon, in such cases, may be doubtful. Practically, however, no inconvenience has arisen, because the power of prosecuting is in all cases vested exclusively in the Attorney-General. Should a person ever happen to be convicted to whom a promise of pardon or protection had been held out by the Governor's authority, the pardoning power could then confessedly be exercised, as of course in such a case it would be.

5. On the class of cases fifthly specified, relating to political offenders and State enemies, no observation seems necessary; as no case of the kind, that I remember, has ever occurred in New South Wales.

6. I am glad to learn from your Lordship that the Commissions to Governors will in future be amended, by conferring in express terms the power of pardoning parties prospectively. At present (Clause 6 in Lord Belmore's Commission), the authority given is restricted to convicted offenders. It will hereafter embrace, I presume, all persons "guilty or supposed to be guilty" of any crimes committed in the Colony, after which, I would suggest the addition of the words "or for which the offender may by law be tried therein." The power will then include cases of kidnaping and other offences in these seas, in which its exercise may be found of service.

7. By the Governor's instructions (clause 8 in those issued to Lord Belmore), he is "in all cases" to consult with the Executive Council, except when material prejudice would be sustained thereby, or the matters shall be too trivial or too urgent to render such consultation advisable. Now, does this instruction apply to cases of petition for pardons or mitigation, where the sentence is not capital? By clause 13, the Governor is specially required to consult his Council in capital cases, and not to grant or withhold a pardon, until after receiving their advice. Nevertheless, he is to act eventually on his own deliberate judgment, whether the Council shall have concurred with him or not.

8. What is to be the Governor's course when the sentence was to imprisonment with hard labor (penal servitude) or to a fine and imprisonment, and the prisoner's friends, or sympathisers with his family, think the punishment too severe originally, or that he has after a certain period endured enough, or, perhaps, that the evidence was not sufficient, or that circumstances subsequently discovered or arising call for a mitigation?

9. The practice hitherto adopted has been, almost as a matter of course, to refer petitions containing any such representation to the sentencing Judge. The consequence is—petitions of one or the other of these classes being numerous—that his time is largely occupied, if he does his duty by reporting fully in, (substantially) trying the case over again, and justifying his sentence to the Executive, or explaining why for the sake of the community it ought to be endured. I have always thought that these references should be exceptional—made sparingly and with due discrimination—and yet, that the Governor ought never (or except under very peculiar circumstances) to mitigate a criminal's punishment without reference to and