

In England a pardon is not granted before the trial, neither has the party admitted as Queen's evidence any legal claim to a pardon, nor has the Magistrate before whom the original examination is taken, any power to promise him one on condition of his becoming a witness.

In such cases where the accomplice's evidence has been obtained (which can be done either by his pleading guilty, or by the Crown entering a *nolle prosequi* against him before calling him as a witness against his accomplice), and he appears to have acted in good faith, and to have given his evidence truthfully, he is always considered to have an equitable claim to the merciful consideration of the Court, which is usually extended to him by the Judge presiding at the trial, by the infliction of minor, or in some cases of a merely nominal, punishment.

With respect to the fourth head, namely, the promise of pardon in order to discover and convict the principal offender, Her Majesty's Government will be prepared, in future Commissions, to vest in the Governors of Colonies the power of granting a pardon to any accomplice, not being the actual perpetrator of the crime, who shall give such information and evidence as shall lead to the apprehension and conviction of the principal offender.

It is not, however, considered necessary to issue at once supplementary Commissions for this purpose, as you (or your Executive Council, if an emergency should compel them to take action at a time when you are absent and cannot be immediately communicated with) can issue a notice that the grant of Her Majesty's gracious pardon to any accomplice who shall give such information and evidence will be recommended. Such notice, which is similar to that issued in England in like circumstances, will have the desired effect, and the formal authority to grant the pardon can in due course be transmitted to the Governor by the Secretary of State.

Lastly, with respect to the fifth head, namely, the promise of pardon to political offenders or enemies of the State, Her Majesty's Government are of opinion that, for various reasons, it would not be expedient to insert the power of granting such pardons in the Governors' Commissions; nor do they consider that there is any practical necessity for a change.

If a Governor is authorized by Her Majesty's Government to proclaim a pardon to certain political offenders or rebels he can do so. If he is not instructed from home to grant a pardon, he can issue a proclamation, as was done in New Zealand in 1865 by Sir G. Grey, to the effect that all who had borne arms against the Queen should never be prosecuted for past offences, except in certain cases of murder. Such a proclamation would practically have the same effect as a pardon.

The above-mentioned are, I believe, all the cases for which it is necessary to provide, and I trust that this explanation will have the effect of removing, for the future, any doubt as to the exercise of the prerogative of pardon in the Colony under your Government.

I have, &c.,

(Signed),

KIMBERLEY.

(No. 5.)

*The Administrator of the Government to the Secretary of State for the Colonies.*

GOVERNMENT HOUSE,

SYDNEY, 30th May, 1872.

MY LORD,—Your despatch of the 1st November, 1871, marked Circular, respecting the powers of a Colonial Governor to grant pardons, was received by Lord Belmore on the 25th of December, and immediately forwarded by him to the Cabinet. It was not returned here until the 18th April, a delay occasioned, I believe, by other engagements of the late Attorney-General, whose report was desired as to the practice observed in this Colony.