

question, and would furnish the nearest possible analogy between the practice to be pursued in each country.

In the United Kingdom, while the British Parliament makes laws for the punishment of crimes committed by the inhabitants, the Sovereign exercises her prerogative of mercy towards such criminals, under the advice of her Minister there, who is chosen as other British Ministers are chosen, and is responsible to the British Parliament for his advice. Therefore, in the United Kingdom, this power is exercised under the same restraints and with the same securities to the people concerned as the other powers of Government.

This, it seems to me, is the practical result which should be obtained in Canada.

There, while the Canadian Parliament makes laws for the punishment of crimes committed by the inhabitants of Canada, the Sovereign should exercise the prerogative of mercy towards such criminals under the advice of her Privy Council for Canada, or of her Minister there, chosen as her other Canadian Ministers are chosen, and responsible to the Canadian Parliament for his advice; nor having regard to the reasons given in the report already referred to, can it be conceded that the suggested responsibility of the Governor to the Colonial Office for the exercise of this power independent of, though after, advice, would be a satisfactory substitute for the responsibility to the Canadian people of a Minister charged with the usual powers and duties in this respect.

2. The second argument is that expediency requires that this prerogative should be independently exercised by the Governor, and it is suggested that "the pressure, political as well as social, which would be brought to bear upon the Ministers, if the decision of such questions rested practically with them, would be most embarrassing to them, while the ultimate consequences might be a serious interference with the sentences of the Courts."

This suggestion, which is supported in the case of one of the Australian Colonies by the views of local authorities, is not applicable, in a general sense, to Canada, where it has been commonly supposed that the decision of this, as of other questions, rests practically with the Ministers; where it is believed that the embarrassments suggested would but rarely occur, and that, at any rate, Ministers would not be relieved of any such embarrassments by the proposed course; and where it is confidently maintained that no improper interference with the sentences of the Courts would result.

No doubt in the exercise of this, as of many other powers of Government, embarrassments and difficulties may from time to time arise; but it is believed that their true solution will depend upon the unflinching application to every question of the Constitutional principle, and that greater difficulties and troubles will arise from the avoidance than from the assumption of the responsibility which I suggest should, by the alteration of the existing instruction, be imposed on ministers even in capital cases.

*Commission, Clause 6.*—The latter part gives authority to the several Lieutenant-Governors to assemble, prorogue, and dissolve the Legislative bodies of the several provinces. It would seem that any powers which may be thought necessary should have been conferred upon the Lieutenant-Governors by the British North America Act, and it appears to me they must be taken to be expressly or impliedly so conferred.

The provision giving these powers to the Lieutenant-Governors, by the Governor-General's Commission appears somewhat objectionable, and it might perhaps be advisable to leave these matters to be dealt with by those officers under the British North America Act, the 82nd section of which in terms confers on the Lieutenant-Governors of the new Provinces of Ontario and Quebec the power in the Queen's name to summon the local bodies, a power which no doubt was assumed to be continued to the Governors of the other Provinces.

*Commission, Clause 7,* appears unsuitable to Canada. All the subjects with which it deals, namely, marriage licenses, letters of administration, probates of wills, and the custody and management of lunatics and idiots and their estates, are within the exclusive control of the several provinces, and are dealt with under local legislation, the Governor-General and his advisers having no concern with these matters. The only possible application it can have is to the north-west territories pending the establishment there of local government; and as this is shortly to take place, it would seem proper to omit the clause in the next Commission.

*Royal Instructions, Clause 5,* purports to authorize the Governor to act under limitations in opposition to advice.