

questions not the justice of the decision, either as regards the finding of the jury, or the sentence of the Judge. But, upon a review of the whole case, it decides either to let the law take its course, or to exercise the prerogative of mercy, either in pardoning the criminal altogether, or in commuting or lessening the sentence. This power being a matter of prerogative, and emanating from the Sovereign alone, is exercised by the Sovereign alone, and does not involve any ministerial responsibility. As a matter of practice, and even of necessity, the Sovereign has the assistance of the Judge, and the advice of the Home Secretary, in arriving at a decision.

As representing the Crown, the same power is conferred upon Colonial Governors, but to be exercised within certain limits prescribed by the royal instructions which accompany their commissions, and, according to recent practice, upon the advice of their responsible advisers; except in cases in which Imperial interests are concerned, when the Governor-General, as an Imperial officer, must finally decide upon his own independent judgment, after consultation with his Ministers. With the latter class of cases we have not here to deal. It is with those in which Imperial interests are not concerned that difficulties have chiefly arisen. And they have arisen because while the Governor was required to ask the advice of his Ministers, he was left free, by his instructions, to follow it or not, as in his judgment he thought proper. This condition of things, it was contended, was not in accordance with the true principles of responsible government. Nevertheless the rule was clearly laid down by Lord Carnarvon, in 1875, in a circular despatch to the Governors of the Australian colonies, that the Governor was to ask for the advice of his Executive Council, but having received that advice, he was to act upon it or not, according to his own deliberate judgment, *whether the members of his Council concurred therewith or not*. In defence of this practice, Lord Carnarvon said in the House of Lords, in 1875, as quoted by Todd: "No doubt it may be objected to the system of a Governor consulting his Ministry, and still acting on his own judgment, that it sets up a double responsibility. In reply, I submit that in this case a concurrent responsi-