

Judges at the times of sentencing, and from the action of the Executive in commuting from time to time a number of sentences; and I pointed out that the dealing with Gardiner's case, from the prominence of his career, would be by these men regarded as indicative of what they would, as to possible commutation of sentences, have to look forward to. I may here mention that, during the period which it is proposed to embrace in this report, there have been forty-seven cases of the kind in question in which remissions of more or less time has been made of periods ranging from nine to three years; some by conditional pardons, and these generally for the longer periods, excepting as regards a few cases wherein it has been made on the merits of the conviction, under circumstances subsequently brought to light. In the larger number of cases, the length of the sentences and the diminution of bushranging were, I understand, mainly operative; at any rate, it is so regarded by the prisoners still detained.

3. I conclude that it was intended that the decision in Gardiner's case should in a great measure govern the dealing with those of the other men now under consideration.

4. The cumulative sentences of Gardiner amount in all to thirty-two years. The decision conveyed in your letter of the 10th December last is equivalent to allowing him a pardon on condition of his exiling himself beyond the Australian Colonies and New Zealand, after a penal service of ten years, which may be taken substantially as a remission of two-thirds of his sentence upon that condition. I do not suppose that his liberation within the Colony, were he unable to comply with the exiling condition, would be assented to under a service of fifteen years, or one-half the entire period.

5. It is highly desirable, in carrying out a general reduction of the sentences now under consideration, to give a large preference in point of time to exiling rather than liberation in the Colony. Yet, to allow no abatement whatever to those who may be unable to provide means of exiling would be to give an undue advantage to means of friends or accidental circumstances—as, for instance, a prisoner having been a sailor, and able to work his passage; while it would be a denial, in the majority of cases, of the expectations the men have been permitted, as above stated, to form.

6. I regard sentences of ten years and upwards as within the category contemplated by the Government. Were that period not to be taken as a minimum, many cases comprehended in the intention would be excluded—in fact, the large majority—and great discontent would be occasioned.

7. These cases are embraced within the period from 1860 to 1870 inclusive, which may be said to comprehend that from the commencement to the suppression of bush-ranging as a peculiar and distinctive crime of the Colony.

8. It was my intention to have submitted the cases in a schedule form, something like that used for the ordinary monthly remissions, but I think that a general direction in a more comprehensive form could more conveniently be given upon this report, and a schedule afterwards submitted under the guidance of such directions.

9. In making commutations, it will be necessary to do so on a scale lessening the periods of reduction according to the lesser duration of the sentences,—the principle in operation under the remission regulations.

10. By the adoption of such a scale, whilst so large a concession will not be made in all cases as in that of Gardiner (whose conduct in gaol was taken into material account), the other long-sentenced prisoners for the like crime will gain considerable benefit beyond the provisions of the existing regulations.

11. Taking the case of Gardiner as a starting-point, I have the honour to submit the following suggestions, subject to reservations to be noticed further on, viz.:—

- (1.) That sentences to life be treated as for thirty years, and that such sentences and all others above fifteen years be treated, with some modifications according to the precedent of Gardiner, thus:—Conditional pardons to be allowed after a service of  $\frac{1}{4}$ ths, which, in a sentence of thirty years, would amount to twelve years and six months. And liberation in the Colony after a service of  $\frac{1}{2}$ ths, which in a sentence of thirty years would give a service of seventeen years and six months.