MEMORANDA AND REPORTS

BY

THEIR HONORS THE JUDGES OF THE SUPREME COURT

OF

NEW ZEALAND,

ASSEMBLED IN CONFERENCE AT CHRISTCHURCH,

MARCH, 1863.

PRESENTED TO BOTH HOUSES OF THE GENERAL ASSEMBLY, BY HIS EXCELLENCY'S COMMAND.

AUCKLAND.

1863.

MEMORANDA AND REPORTS,

BY THEIR

HONORS THE JUDGES OF THE SUPREME COURT.

No. 1.

COURT OF VICE-ADMIRALTY.

The Judges of the Supreme Court of New Zealand, assembled in conference, respectfully invite the attention of His Excellency's Government to the communications between the Government and the Judges, and the Despatches received from Her Majesty's Secretary for the Colonies, respecting the Court of Vice-Admiralty,

The Judges are of opinion that the geographical and social circumstances of this Colony would render it impossible for one Vice-Admiralty Judge to perform the duties of the office for the whole Colony, and would make a Vice-Admiralty Court held at one port only, for the whole Colony, of comparatively little value.

The intervention of Her Majesty in Council by Special Order would therefore seem to be necessary, and, moreover, it seems clear to the Judges that the Colonial Legislature cannot give Solicitors and Barristers the *status* of Proctors and Doctors, without the existence of which officers no steps can be taken in the Court.

The Judges cannot but expect that the necessity for a Vice-Admiralty Court will soon be felt in the Colony; and, as it seems to them probable that the necessary arrangements for the establishment of the Tribunal will occupy some considerable time, they have thought it but right thus, respectfully, to recall the attention of the Government to the subject.

GEORGE ALFRED ARNEY, C.J.,
ALEXANDER J. JOHNSTON, J.,
H. B. GRESSON, J.,
C. W. RICHMOND, J.

Christchurch, Canterbury, 9th March, 1863.

No. 2.

ON DUTIES AND REMUNERATION OF SHERIFFS.

The Judges of the Supreme Court have considered the questions on which the Government desired their advice respecting the office of Sheriff in this Colony.

1. They are of opinion that the office ought not to be abolished. On the contrary, they would recommend that whenever Sheriffs retire, endeavours should be made to induce gentlemen of character and position to accept the office.

2. The Sheriff is not only responsible for the due execution of the processes of the Court—a duty which, as the Colony advances, will become one of great importance to the community, but also is a protection to the Court, and a means of preventing unbecoming collisions between the Court and the Public. It would be inconsistent, and oftentimes impracticable, for the Registrar to discharge the duties of Sheriff.

3. The Sheriffs ought to be indemnified for their loss of time. Whether they shall be paid by salary or fees, or partly by one and partly by the other mode of remuneration is matter for the Government to determine; but it is reasonable that where the Sheriff receives no salary, he should be specially remunerated for his loss of time in attending the Court, unless the total annual amount of his fees should be such as to afford sufficient remuneration. The Chief Justice may, if necessary, make provision in the list of Sheriffs fees for allowing (say) three guineas a day for such attendance.

4. It is self-evident that the fees payable in any given district to a Sheriff for executing the processes of the Court, should be on a scale sufficient to enable him to employ experienced and trustworthy officers.

Christchurch, Canterbury 4th March, 1863.

GEORGE ALFRED ARNEY, C.J.
ALEXANDER J. JOHNSTON, J.
H. B. GRESSON, J.
C. W. RICHMOND, J.

The Honorable the Colonial Secretary, Auckland.

No. 3.

REMISSION OF SENTENCES.

Parliamentary Papers, House of Commons, 28th May, 1861.

WE, the Judges of the Supreme Court, assembled in conference, having now been enabled to peruse the Report of the late Select Committee of the House of Commons on Transportation, together with the Minutes of the Evidence taken before the Committee, beg to express our definitive opinion on the questions, on the subject of the Remission of Prisoners Sentences, propounded to the Judges, separately, by the Honorable the Colonial Secretary's letter of 18th October, 1860.

The questions are as follow :—

Firstly. Whether good conduct should, *per se*, be considered as a ground for the remission of any portion of a prisoner's sentence ?

Secondly. If so, what portion ?

Thirdly. Whether the prospect of remission of sentence should be held out in the Prison Regulations, or in any other authoritative manner ?

Fourthly. Whether the promise should be absolute, or only to the effect that in consequence of good conduct during a given period of the sentence, the Governor would favourably consider the application for remission, without any pledge being given as to the result of such consideration ?

I. The first question we answer in the affirmative. We consider that the principle is a sound one of holding out to the convict the expectation of a definite abridgment of the term of his sentence, as the reward of his good conduct and willing industry whilst undergoing his punishment.

Society is directly interested in the success of the reformatory influences which may be brought to bear upon the convict. Notwithstanding the partial success of all hitherto attempted plans of reformatory punishment, there must always be some hope, that a course of willing obedience and steady industry, pursued in confinement, may form good habits in the convict, which will not be wholly lost even when he has regained his freedom. Hope and fear are instruments in the work of reformation too powerful to be discarded by a wise Administration ; and in no way can these agencies be brought to bear more effectually than by the conditional promise of a substantial abridgment of the term of punishment.

On this subject Sir Joshua Jebb, in a letter published in the "Times" newspaper, of 19th November last, remarks as follows :—"Many an iron hearted man, who would be unmoved, or grow sulky and obdurate, under harsh treatment, has determined on a new line of conduct by seeing clearly that it was his interest to take advantage of the terms offered to him by paying the price in good conduct. Many a man too, has been subdued and cordially rendered willing obedience under just and considerate treatment, who would have been brutalized by the reverse.

"The public benefit in this way ; that many, under the influence of such prospects and treatment, insensibly acquire self-respect, together with habits of industry, cleanliness, &c., and are not so likely again to sink to the same depth of moral and physical degradation as others who, without such inducements, may have served out every day of their confinement in dogged submission to authority, alternating with audacious defiance of it."

It is an accepted maxim that the right sentence is the lightest which is likely to produce the desired effect. The reformation of the offender is to be regarded as one object of punishment, not capital ; and the presevering good conduct of a prisoner affords some presumption (though it must be admitted no certain test) that this object has been attained. Such conduct on the part of the convict may, therefore, on the principle just stated, afford some ground for terminating his punishment. But in adopting the principle of partial remission, the security of society, as the principal end of punishment, must by no means be sacrificed or tampered with. The minimum term to which punishment may be reduced by remission must, accordingly, be fixed high enough in each class of cases to preserve the distinction between different gradations of crime, and to maintain a salutary fear of the Law. When once a scale of remission has been determined upon, the Judges will be responsible for the infliction of an adequate minimum of punishment.

We need scarcely observe that in the practical application of the principle of remission, all possible care should be taken to secure impartial and intelligent Reports of the conduct of prisoners.

We take notice that in the Mother Country the public mind is agitating with great anxiety the question how to deal with that class of offenders who were formerly sentenced to Transportation, and who since the abandonment of Transportation are punishable by Penal Servitude. The discussion in question has been caused by a temporary increase in London of the crime of Robbery, and the fact that

in many cases the offenders proved to be released convicts. Loud complaint is made of the premature liberation of convicts under what are known as "Tickets of Leave;" and the final release in Great Britain or Ireland of the worst class of convicts, even though they may have undergone the full term of their sentences, is felt to be so great an evil that numerous proposals are being made to revert to the old plan of Transportation. We do not see that the agitation of opinion to which we refer ought to affect the conclusion we have arrived at on the subject of this Memorandum.

Transportation, which shifts to some distant, perhaps to some unborn community, the dangers and evils attending the liberation of convicts, is doubtless, to the transporting country, a more convenient mode of punishment than Penal Servitude. But we are not here dealing with the question of a substitute for the present mode of punishment in use in this Colony; nor are we aware that any substitute is practicable, or likely to become practicable. The lessons which we can derive from what is passing in England seem to be—1st, A caution against so far reducing the length or mitigating the severity of punishment as to tempt to the commission of crime. 2nd, A suggestion that relapses into crime should be steadily visited with severe sentences. The question of the policy of partial remissions in the event of the good behaviour of the convict, of sentences originally passed with a view to such reduction, remains unaffected, so far as we can see, by the recent occurrences and discussions to which we have alluded.

II. In reply to the Colonial Secretary's second query, we beg to state that we consider one third of the sentence would be the best proportion to adopt. This is a good deal higher than the English scale of remission, which commences with one-sixth and only attains so large a proportion as one-third when it reaches sentences for fifteen years and upwards.

We suggest that there should be no remission of any portion of sentences of Imprisonment for terms less than a year; and perhaps it may be worth while to provide that the possible reduction on sentences not exceeding two years shall be at the rate of one-fourth only of the original term of the sentence.

We think that the case of sentences for life must, as in England, be specially dealt with by the Government; it being, however, intimated that life convicts will not be eligible as applicants for remission until they have undergone say years of their sentence. The case of persons convicted of capital offences, whose sentences have been commuted to Penal Servitude for life, may require separate consideration; as may also the case of life convicts far advanced in age.

The Term in England is or was 8 years if the Convict be removed to a Colony. But if he be not so removed, 12 years.

III. & IV. We reply to the third and fourth queries that the prospect of remission should be authoritatively held out in the form of a promise that applications for remission on the part of convicts whose behaviour entitles them to the indulgence will be favourably considered. This, no doubt, would pledge the Government as effectually as an absolute engagement. Nevertheless, there is a real difference between encouraging the prisoners to expect the remission as a matter of grace, and enabling them to demand it as a matter of right.

Notices expressing the terms of remission might be communicated by posting printed copies on every Gaol or in any other convenient way. In England it appears that a notice is placed before each convict in his separate cell. [See the Minutes of Evidence above cited, Sir J. Jebb, question 27.]

The Notice might be in the following form, in which we have adhered pretty closely to the form in use in England.

"NOTICE TO CONVICTS.

"Convicts sentenced to penal servitude, or to imprisonment for one year and upwards, may, by good conduct and willing industry, become eligible for the remission of one-third of their sentences.

"Sentences for life will be considered by the Government according to the special circumstances of each case. But no Convict under sentence for life will be entitled to apply for a consideration of his case, with a view to remission of his sentence. until he has undergone at least years of it.

"Prisoners under sentence of imprisonment for terms of less than twelve calendar months, must not expect a shortening of their sentences, on account of ordinary good conduct only."

A fixed scale of remission for good conduct not only does not contravene, but strongly affirms the fundamental principle that punishment should be certain. It will have been seen that, after full consideration, we are unanimous in thinking that the attempt, through the action of the Executive Government, to graduate punishment to the circumstances of the individual offender should be given up in favour of the principle of certainty. The deterrent influence of punishment is greatly diminished when it is understood that sentences are open to revision in ordinary cases. It is, besides, far better that punishment should, in general, be measured by broad external circumstances, of which the law and its interpreters can at once take cognizance, and which are patent to all mankind, than that attempts should be made by inquiry into collateral circumstances, nicely to graduate punishment, so that each individual criminal may receive a correction neither greater nor less than he may be supposed to merit or require. Thus to adjust the measure of punishment transcends all human power, and great mistakes and enormous abuses are certain to follow the attempt.

We would not be understood as wishing to preclude by regulation all extraordinary exercise of the mercy of the Crown. Doubtless the Royal Prerogative of Mercy must occasionally be thus resorted to as the only fit or available instrument for the discharge of the Royal duty of Justice, as the only possible mode of remedying the casual miscarriages, and supplying the unavoidable defects of Her Majesty's Courts of Law. But it is well said:—"This high Prerogative the King is entrusted with upon a special confidence that he will spare those only, whose case (could it have been foreseen) the law itself may be presumed willing to have been excepted out of its general rules, which the wisdom of man cannot possibly make so perfect as to suit every particular case." [1 Shower 284, cited in Stephen's Blackstone, Vol. 2, page 517 (1858)]. Plain mistakes on the part of Judge or Jury, new evidence coming to light, new

information affecting the value of evidence relied upon at the trial, strongly distinguishing circumstances entitling a prisoner to a special exercise of grace—facts like these may afford patent grounds for the intervention of the Crown. Such an use of the Prerogative, if not reducible to fixed principles, will yet (when the facts of the case are made known) at once vindicate itself to common notions of humanity, justice, or propriety.

It is, however, in our opinion of the utmost importance that the exercise of the Prerogative should be relieved from all appearance of mere arbitrariness, and it is as much on this ground as on any other that we approve of the proposal to offer to convicts a fixed scale of remissions, hoping as we do, that under such a system extraordinary interference with the sentences of the Judges will become of rarer occurrence.

We have referred to the fixed principles or plain equities which should rule the exercise of the Prerogative of Mercy. We are far from saying that such may not have hitherto governed the use of that Prerogative in this Colony; but we feel it our duty before closing this Memorandum to state that we have been wholly unable to conjecture from the circumstances of several recent cases, so far as they have become known to us, what may have been the grounds of remission. This is in itself a great evil. It is not enough, we most respectfully submit, that the Prerogative should be exercised in accordance with definite principle, or upon righteous grounds. It is of the last importance that those grounds and principles should be publicly known, understood, and recognised. It is our duty to point out this evil, leaving it to the wisdom of other powers in the State to provide a remedy, if possible.

Christchurch, March, 1863.

George Alfred Arney, C.J.,
Alexander J. Johnston, J.,
H. B. Gresson, J.,
C. W. Richmond, J.

The Honorable the Colonial Secretary, Auckland.

No. 4.

ON GAOL DISCIPLINE.

Our opinion as to the necessity of introducing more severe rules of Prison Discipline than are at present in force in the Province of Otago, having been invited by the Honorable the Colonial Secretary's Letter to the Chief Justice of 6th January, 1863 (No. 11), we, the Judges of the Supreme Court of New Zealand, in Conference assembled, have the honor to reply as follows:—

We have to observe, in the first place, that the Visiting Justices of the Dunedin Gaol in their Report of 18th November last, appear to conceive that for an offence such as that of which they narrate the circumstances, they were enabled to punish the offender only by a sentence of fourteen days solitary confinement. Their language is not free from ambiguity, but their meaning seems to be what we have stated. If so, they appear to be in error. The offence they describe falls within the third and highest class of offences against discipline defined in the Convict Prison Regulations of the 17th October, 1862. It therefore seems to be punishable under those Regulations by six calendar months' solitary confinement, to be inflicted in distinct periods of fourteen days separated by intervals of forty-two days; by placing in irons; and by reduction for the space of at least a year to the second class.

The total duration of solitary confinement thus inflicted is double what is allowed by the Victorian Act (17 Vic., No. 26, sec. 4). Disregarding the distinction between lunar and calendar months, the Otago Regulations would appear to authorise, as we have above stated, six months' solitary confinement in twelve distinct periods of fourteen days each, separated by intervals of forty-two days, the punishment extending over two years less forty-two days in the whole. (See, however, our note appended as to the construction of the Secondary Punishment Act and Regulations.) The Victorian Regulations authorise three months' solitary confinement in three distinct periods of one month each, separated by intervals of one month; the punishment extending over five months in the whole.

We should see no objection to substituting the Victorian measure of punishment if upon mature consideration it were thought more effective, and if experience of its operation in Victoria warrant the belief that the mental and physical constitution of ordinary criminals can support the infliction. But this cannot be done without a repeal of the 10th section of the Secondary Punishment Act, 1854, which provides that solitary confinement shall not exceed fourteen days at any one time, and shall not be repeated at a less interval than forty-two days.

Continuing the comparison of the Convict Regulations of Victoria and Otago we find that the chief remaining difference consists in the power accorded to the Visiting Justices by the Victorian Act, of inflicting cumulative sentences of imprisonment with hard labour, upon prisoners summarily convicted before them of breaches of discipline.

We consider that this provision of the Victorian Law is entirely misconceived. It confounds offences against discipline with substantive crimes. In such grave cases as that of the ferocious attack referred to by the Visiting Justices, or that, still graver, of the mutiny in Wellington gaol, where the Gaol was broken, and a convict (whose original sentence His Excellency the Governor was lately advised to remit) very nearly succeeded in an attempt to murder the turnkey,—in such grave cases as

these, it is undoubtedly proper to deal with the offence as a substantive crime. But then upon principle, and even, we think, upon the ground of expediency, the offender ought to be brought to a regular trial. The delay can scarcely be deemed an objection to a trial before the Supreme Court, or as in any degree diminishing the moral effect of the punishment, seeing that the sentence can in no case come into operation until a future and probably a far distant day.

As a mere instrument of discipline, we are disposed to think that the power of prolonging imprisonment would be absolutely worthless. A sentence of additional imprisonment would be unavailing to restrain men already rendered desperate by the length of punishment to which they have to look forward; nor could it be expected to curb the insubordination of determined criminals bent upon breaking prison; more probably it would but increase their resolution and their fury.

The true remedies are, stronger gaols, stricter ward, and a severer discipline; to take away, if it be possible, the chances of a successful mutiny, and to banish the hope of escape. It may then be possible to bring to bear the means of taming these ferocious spirits. At all events the spectacle of their punishment will have its due effect on others as a deterring influence.

We give no opinion upon the proposal of the Superintendent of Otago to reduce the Scale of Dietary. Comparing the Scale of Rations of No. 2 Class in the Convict Prison Regulations with the Hard Labour Ration (No. 3), as fixed (we presume under the Powers of the Prison's Ordinance) by the Superintendent's Notice of 1st April, 1862, we find that the latter is the most liberal of the two. The indulgences of Tea, Cocoa, and Tobacco, allowed by the General Government Rules to Convicts of No. 1 Class, may or may not be politic. With whatever disadvantage their allowance may be attended, it is obvious, that they must operate as additional, and very powerful, means of discipline in the hands of the Visiting Justices, who are enabled, by reducing offenders to Class 2, to deprive them of these much coveted luxuries. As regards Tobacco, we are fully disposed to concur with the Visiting Justices in condemning its allowance, so long, at all events, as the Gaols of the Colony do not admit of an efficient separation of different classes of prisoners. We observe that indulgences in the shape of Tobacco and Spirits, which, it appears, are received by the Hard Labour Gangs at Gibraltar and Bermuda, are condemned by Sir J. Jebb, the Chairman of the Board of Directors of Convict Prisons. [See his evidence before the House of Commons' Committee on Transportation, Parliamentary Papers, 28th May, 1861, Qu 2995.]

The difficulties felt by the Superintendent of Otago, and the Visiting Justices of the Dunedin Gaol (which we can well understand), appear to us incurable by mere Regulation or Legislation. The truth is, as we have so frequently remarked, that the Colony remains destitute of the needful appliances for an effective gaol discipline. In particular, there is no possibility of enforcing upon the worst class of offenders the severe unintermittent labour which is their just doom. Nor can we, for want of the necessary accommodation, apply the system of separate confinement which, in the mother country, forms the initiatory portion of the punishment of Penal Servitude. It may be said that the Home system has broken down, and the discussions now going on in England may be appealed to in support of that conclusion. To this we should reply that the failure of the English system (if it be true that it has failed) can be no reason for continuing one in this Colony, which is manifestly far inferior. With the same appliances as England possesses, New Zealand might expect to be proportionately much more successful than the mother country in diminishing the number of the criminal class, because there are no great obstacles in this part of the world to the rapid absorption of released convicts into the working population.

One measure might be taken without any great delay. We mean the establishment of a General Inspection of the Gaols of the Colony by a permanent officer of the General Government, possessing, if possible, English experience. Such an inspection need not interfere with the control at present exercised by the Provincial Governments. But the publicity thus given to the state of the several Gaols, and the comparisons thus afforded, would be found very useful. As a guide to the right exercise of the Prerogative of Mercy, experience may show that it would be desirable to have the Reports of such an officer on the conduct of prisoners, as he would have no interest in relieving a particular Province of the burthen of their continued custody.

The Draft Otago Gaol Regulations do not appear to draw the distinction which the Law of New Zealand requires between Regulations made under the Secondary Punishment Act 1854 and those made under the Prisons Ordinance. We have no experience qualifying us to give an opinion npon the details of the proposed Regulations, or upon the particular question of the proper hours of convict labour in the various Gaols of the Colony, to which our attention is invited by the Colonial Secretary's letter to the Chief Justice, of 5th February, 1863 (No. 57). Possibly, the differences in climate, and in the length of the day, in different parts of this extensive Colony may interfere with the adoption of a perfectly uniform standard.

GEORGE ALFRED ARNEY, C.J.
ALEXANDER J. JOHNSTON, J.
H. B. GRESSON, J.
C. W. RICHMOND, J.

Christchurch, 9th March, 1863.

The Honorable the Colonial Secretary, Auckland.

NOTE.—Upon the construction of the Otago Convict Regulations, which agree in this respect with the Convict Regulations in force in the Provinces of Auckland and Canterbury, we remark that the clause defining the third and worst class of offences against discipline commences with the words "Every person who may be so confined as aforesaid." The reference seems to be to the words "every person confined within the said prison under authority of the said Act," with which what are termed the "Punishment Regulations" commence. But the words "shall be punishable by solitary confinement for any period not exceeding fourteen days" occur in the sentence immediately preceding the words "every

No. 5.

ON CRIMINAL PROSECUTIONS.

Sessional Paper, 1860, A3, No. 2. Ditto, 1861, D. 2A, No. 4.

The Judges of the Supreme Court, assembled in Conference, respectfully beg to recall the attention of His Excellency's Government to the Reports forwarded to the Government in 1859 and 1861, touching the subject of Criminal Prosecutions. They find that, in two Provinces of the Colony, gentlemen calling themselves "Crown Prosecutors" repudiate all responsibility as Solicitors for the conduct of the prosecution, and claim to appear as Counsel, instructed only by the depositions, the result of which, as might be expected, is frequent failure of justice. The Judge within whose district this practice occurs has hitherto foreborne from taking any practical steps in the matter, in the hope that, as he has repeatedly called the attention of the gentlemen in question to their want of *status* as public prosecutors, some arrangement would be made between them and the Attorney-General, by which the Judge might be relieved from the disagreeable duty of refusing to hear them, unless they profess to be retained by the party bound over to prosecute, or appear with the consent, and on behalf, of the Attorney-General, subject to the usual duties and responsibilities of Solicitors and Counsel for prosecutions.

The Judges agree that it would not be proper to allow the anomalous state of things above described to continue, but think it better to communicate with the Government, so as to give the Attorney-General an opportunity of intervening, if it should be deemed desirable, before the Judge of the district proceeds, as all the Judges think him bound to do, to refuse to hear the so-called "Crown Prosecutors" in question, and thereby to create a public scandal, affecting the administration of justice.

GEORGE ALFRED ARNEY, C.J.,
ALEXANDER J. JOHNSON, J.,
H. B. GRESSON, J.,
C. W. RICHMOND, J.

Christchurch, 9th March, 1863.

The Honorable the Colonial Secretary.

No. 6.

AS TO THE COURT OF APPEAL, CIRCUIT COURTS, VACATION, &c.

SIR,—

The Judges of the Supreme Court assembled in Conference, have the honor to acknowledge the receipt of your letter of the 23rd February in answer to their communication to you of the 7th of that month.

As His Excellency's Government approve of the Programme suggested by the Judges for the sittings of the Supreme Court throughout the Colony, the Judges have the honor to request that the necessary Proclamations be made in time to give ample notice to the public.

On the subject of the place at which the Court of Appeal should be held hereafter, respecting which you invite the Judges to express their opinion, they think that it will probably be desirable that they should wait till after the June Sittings to ascertain whether any business has arisen for the Court, and from whence the principal part is likely to come, as there will be ample time between the conclusion of those sittings and the month of October, to give the statutory notice of the sitting of the Court.

Mr. Justice Johnston will be prepared to undertake the holding of the Circuit Courts at Wanganui and Picton when the local Authorities shall have arranged with His Excellency's Government respecting conveyance and the necessary accommodation and appliances for the Court. If it be deemed desirable that he should go to Wanganui, arrangements might probably be feasible for conveyance by land.

The Judges beg to offer the Government their best thanks for the expression of a desire to relieve them from the inconveniences to which they are subjected in travelling by sea, on the public service, and for authorizing each of them to engage a cabin with two sleeping berths, when necessary. This boon will often be practically unavailable, except in cases of a journey from one terminus of the steam communication to the other; but the Judges fully appreciate the difficulty of making a more satisfactory arrangement, and are grateful to the Government for this concession towards their comfort.

With respect to the lengthening of the vacation, the Judges think there may, probably, be some

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person who may be so confined as aforesaid," which somewhat obscures the meaning of the words of reference. It might possibly be argued that "so confined as aforesaid" means "in solitary confinement as aforesaid." It is also to be observed that in the definition of the second class of offences the term "every convict" is used apparently as synonymous with the phrase "every person who may be so confined as aforesaid." But if the same thing is meant, the same words should be used. It is not, perhaps, perfectly clear that the 10th section of the "Secondary Punishment Act, 1854," authorises the making punishable of one and the same offence by a series of periods of solitary confinement, in the same manner as the 12th section makes punishable the offence of escape committed by a life convict. Probably it may be desirable that the Regulations in force in all the Gaols of the Colony should undergo a careful revision. At present they differ in regard to the severity of punishment more than any local circumstances can require. Clause 34 of the Hawke's Bay Regulations purports, we observe, to authorise close confinement for any period not exceeding one month.

misunderstanding, which would be removed by an interview between the Chief Justice and the Honorable the Colonial Secretary; but, for the present, they have the honor of informing the Government that, although by law the responsibility lies entirely upon them, as to the time and extent of the vacation, and they are quite prepared to shew that the public would have no just cause of complaint, and would suffer no inconvenience from the lengthening of the vacation, they will refrain for the present from altering the existing rule on the subject.

GEORGE ALFRED ARNEY, C.J.,
ALEXANDER J. JOHNSON, J.,
H. B. GRESSON, J.,
C. W. RICHMOND, J.

Christchurch, 9th March, 1863.

The Honorable the Colonial Secretary.

No. 7.

AS TO TAXATION OF COSTS IN SUPREME COURT.

SIR,—

In answer to your letter to the Chief Justice, dated 5th February, 1863, accompanying correspondence and documents relating to the taxation of costs.

The Judges find they have not time to enter fully into this subject, and they think that a parliamentary inquiry may possibly be desirable.

They are, however, of opinion that under the existing circumstances of the Colony, a rigid uniformity in the taxation of costs throughout the Colony might be unjust, as there is a very marked, though it may be temporary, difference in the cost of the necessaries of life between the different settlements.

Probably an intermediate scale of costs between the highest and lowest of which examples have been given, would be the proper one for all parts of the Colony, not exposed to exceptional influences, which for the time diminish the value of money. In the last mentioned places, it would seem that some additional per centage might be with propriety allowed.

The Judges are of opinion that the matter is not yet ripe for their interference.

GEORGE ALFRED ARNEY, C.J.,
ALEXANDER J. JOHNSTON, J.,
H. B. GRESSON, J.,
C. W. RICHMOND, J.

The Honorable the Colonial Secretary, Auckland.