

FURTHER CORRESPONDENCE RELATING TO THE EXERCISE OF THE ROYAL PREROGATIVE OF PARDON IN NEW SOUTH WALES.

No. 1.

Governor Sir H. ROBINSON, K.C.M.G., to the Earl of CARNARVON.—(Received April 12.)

MY LORD,—

Government House, Sydney, 8th February, 1875.

I have the honor to acknowledge the receipt of your despatch of the 7th October (*vide* No. 5 of Command Paper [C. 1202], April 1875), which has, at the suggestion of my Advisers, been communicated to Parliament. I enclose some spare copies for facility of reference in your Lordship's department.

2. The decision that, whilst the Governor is bound to consult his Ministers, he is still ultimately responsible for the exercise of the prerogative of pardon, has, I think, been generally received here as a proper and satisfactory settlement of the difficulty. I enclose a leading article which I have extracted from the *Sydney Morning Herald* on the subject.

3. The course prescribed by your Lordship is precisely that which has been adopted here for the last eight months. All petitions and applications for commutation of sentence reach me from the Department of Justice, with the Minister's recommendation minuted upon them. These papers are then carefully perused by me before deciding on each case, and in the only instance in which I have been unable to concur with the Minister's recommendation he has at once acquiesced in the force of my objection.

I have, &c.,

HERCULES ROBINSON.

Enclosure in No. 1.

ARTICLE from the *Sydney Morning Herald* of 2nd February, 1875.

THE despatch from Earl Carnarvon which has reached the colony just as the Gardiner question has worked up its political crisis is the commentary of the Secretary of State on that question of prerogative which was connected with the earlier stages of this controversy. This despatch is definite on two points: first, as to the *locus* of the responsibility in respect to the granting of pardons; and, secondly, in respect of the policy of exiling prisoners. On both these points Earl Carnarvon has to express an opinion which is to some extent at variance with that of the Colonial Government, and therefore he is expressly careful to guard himself against being supposed to imply any censure on either Governor or Government. But, while willing to recognize the importance of making the Responsible Ministers in the colony responsible for their advice with respect to the pardons granted to prisoners, he will not admit that that responsibility should rest exclusively with them, or that pardon should be considered as a branch of the local administration in the same sense in which the other details of government are so. On the contrary, he insists on it that the Governor is the representative of Her Majesty, so far as concerns the exercise of the Royal prerogative of pardon, and that this prerogative is delegated by her only to select and trusty servants. In the mother country it is delegated to the Home Secretary. In the case of a colony it is impossible for Her Majesty to delegate it in the same way personally to a Colonial Secretary, of whom she has no knowledge, and in whose nomination she has no direct voice. In a colony the Governor alone can be her direct representative, and it is to the Governor, therefore, that she delegates the responsibility of this important prerogative. In this respect, as in some others, the fact of the colony being a dependency makes it impossible to imitate precisely the form of procedure adopted in the mother country, where personal contact with the Sovereign is possible.

Nor does the Earl of Carnarvon at all approve of the idea that the Ministerial responsibility is to be in any way got rid of or mitigated by informal consultations between the Governor and the Minister specially charged with the penal department. On the contrary, he intimates that the advice should be as specific, as clear, and as unmistakable as in other cases. From this arrangement, rendered necessary by the fact that the Royal prerogative could only be delegated to persons selected and named by Her Majesty, it follows that both the Governor and the Cabinet will possess a responsibility in the matter; it will not be halved between them, but each will possess it fully. Granting pardons is a branch of the local administration, and will be considered as such; Ministers will have to decide what they think it right to recommend, and will have to make their recommendations distinctly; but before doing as they recommend, and exercising or refusing at their wish the Royal prerogative, the Governor will have to consider that he is the depository of that prerogative for the time being, and that he is to exercise it subject to his own responsibility for doing it wisely. No amount of advice tendered to him would justify him in doing what he thought his Sovereign would disapprove.

It is obvious that, under these circumstances, there may possibly arise a collision between a Governor and his Minister. It will be part of the duty of Governors always to exercise such tact in the performance of their duty as to prevent such collision if possible; and it will be the duty of judicious Ministers always to seek to avoid it. But still collisions may happen, and it is obvious that this kind of difficulty is one which attaches to the system of responsible Government in the colonies, and which does not attach to it in England. It is one of the anomalies which arise out of importing into a dependency a system of government that is not really native to the soil, but that has been applied to our circumstances in a spirit of traditional attachment. It will rest with all those who have any share in government to do what lies in their power to prevent the theoretical difficulty from ever becoming a practical one. The cases will probably be very rare and exceptional in which the double responsibility will lead to a conflict that cannot be got over.