

It is not, however, considered necessary to issue at once supplementary Commissions for this purpose, as you (or your Executive Council, if an emergency should compel them to take action at a time when you are absent and cannot be immediately communicated with) can issue a notice that the grant of Her Majesty's gracious pardon to any accomplice who shall give such information and evidence will be recommended. Such notice, which is similar to that issued in England in like circumstances, will have the desired effect, and the formal authority to grant the pardon can in due course be transmitted to the Governor by the Secretary of State.

Lastly, with respect to the fifth head—namely, the promise of pardon to political offenders or enemies of the State—Her Majesty's Government are of opinion that, for various reasons, it would not be expedient to insert the power of granting such pardons in the Governors' Commissions; nor do they consider that there is any practical necessity for a change.

If a Governor is authorized by Her Majesty's Government to proclaim a pardon to certain political offenders or rebels, he can do so. If he is not instructed from Home to grant a pardon, he can issue a Proclamation, as was done in New Zealand in 1865 by Sir G. Grey, to the effect that all who had born arms against the Queen should never be prosecuted for past offences, except in certain cases of murder. Such a Proclamation would practically have the same effect as a pardon.

The above-mentioned are, I believe, all the cases for which it is necessary to provide; and I trust that this explanation will have the effect of removing, for the future, any doubt as to the exercise of the prerogative of pardon in the colony under your Government.

I have, &c.,  
KIMBERLEY.

For His Excellency, who will perhaps peruse the side minutes of mine, and the larger minute of the Attorney-General.—JOHN R., 17th April, 1872.

With reference to all the paragraphs marked for my consideration, I may say, generally, that the matters to which they relate are already sufficiently provided for by the Constitution of this colony and the Governor's Commission. Many of the observations in Lord Kimberley's despatch are made in apparent forgetfulness of the fact that by despatches from the Secretary of State for the Colonies, and from Lord Kimberley himself, the right of the Governor to pardon, on the advice of his Ministers here, is distinctly recognized, and has for many years been acted on as of course. It is everyday practice. The dealing with cases of persons admitted approvers has never involved any difficulty whatever. The law and practice here are the same as in England.—J. M., 11th April, 1872.

The Under Secretary, Colonial Secretary's Department.—W.E.P., B.C., 12th April, 1872.

#### (No. 5.)

The ADMINISTRATOR of the GOVERNMENT to the SECRETARY of STATE for the COLONIES.

MY LORD,—

Government House, Sydney, 30th May, 1872.

Your despatch of 1st November, 1871, marked "Circular," respecting the powers of a colonial Governor to grant pardons, was received by Lord Belmore on the 25th December, and immediately forwarded by him to the Cabinet. It was not returned here until the 18th April, a delay occasioned, I believe, by other engagements of the late Attorney-General, whose report was desired as to the practice observed in this colony.

2. Your Lordship's despatch appears to have been occasioned by some questions raised, and therefore, I presume, some difficulties felt, in New Zealand. With respect to the Governor's pardoning power, I am able to state that no question has arisen or difficulty been experienced in New South Wales; although, if we construe literally the terms of his Commission, difficulties might easily be made. The only questions which have arisen here relate to a different, although a kindred point—namely, in what cases the Governor ought to consult his Ministers before granting or refusing a pardon, and how far, if at all, he is bound by their opinion.

3. Those questions have respect to pardons, absolute or conditional, after an offender's conviction, being the subject which is classed, in your Lordship's despatch, under the first head or division.

4. With regard to the second, third, and fourth divisions of the subject (so called in the despatch), I have had a large experience in such matters, both as a Law Officer and a Judge; and I confirm Sir James Martin's statement that the English practice respecting pardons, or the promise of pardon prospectively, to witnesses and accomplices, has invariably been adopted in New South Wales, as also, I believe, in the sister colonies. The legal power of the Governor to pardon, in such cases, may be doubtful. Practically, however, no inconvenience has arisen, because the power of prosecuting is in all cases vested exclusively in the Attorney-General. Should a person ever happen to be convicted to whom a promise of pardon or protection had been held out by the Governor's authority, the pardoning power could then confessedly be exercised, as, of course, in such a case it would be.

5. On the class of cases fifthly specified, relating to political offenders and State enemies, no observation seems necessary, as no case of the kind, that I remember, has ever occurred in New South Wales.

6. I am glad to learn from your Lordship that the Commissions to Governors will in future be amended, by conferring in express terms the power of pardoning parties prospectively. At present (clause 6 in Lord Belmore's Commission), the authority given is restricted to convicted offenders. It will hereafter embrace, I presume, all persons "guilty or supposed to be guilty" of any crimes com-