

Colonial Governor to grant pardons, but I deferred replying to that despatch until I had received answers from the other colonies to which my circular despatch was transmitted. As, however, it will not be necessary to issue any further circular, I proceed to deal separately with the points raised by Sir A. Stephen.

The terms of your Commission extending the power of granting pardons to other than convicted offenders, dispose of one of his suggestions; but I am of opinion that the additional words which he has proposed to meet the case of kidnapping and other like offences, committed out of the colony, but triable within, may properly be inserted in future Commissions.

With respect to that part of his despatch which refers to the question of the Governor consulting his Council upon petitions for pardon, I may observe that there is no real inconsistency, as is apparently supposed, between my circular and Lord Granville's despatch of the 4th October, 1869. It was pointed out that a Governor in granting pardons is exercising a portion of the Queen's prerogative, and has strictly a right to exercise an independent judgment; but that in a colony under responsible government a Governor would (as stated by Lord Granville) be bound to allow great weight to the recommendation of his Ministry; in other words, he would (as stated by the circular) be bound not to grant any pardon without receiving their advice thereon.

It was not, however, intended to lay down a rule that a Governor should in all cases formally consult with his Ministers in Council, as is provided by the Royal Instructions in respect of capital cases; and I see no objection to the Governor consulting, or acting upon the advice of, the Minister who is for the time being primarily concerned in such matters, in whatever manner is most convenient to both.

With reference to the suggestion made by Sir A. Stephen in the postscript to his despatch, I will consider whether any modification of clause 406 of the Colonial Regulations is required. It appears to me that the regulation is substantially complied with by the practice adopted in New South Wales; and a strict observance of the regulation is clearly necessary when, for some reason, the presiding Judge is unable to attend.

I have, &c.,
KIMBERLEY.

(No. 7.)

MINUTE for His Excellency the GOVERNOR.

I HAVE given much consideration to the expediency of changing the system of treatment in the cases of petitions presented for the absolute or conditional pardon of convicted offenders, and have carefully read the correspondence on the subject, commencing with Lord Belmore's despatch of 14th July, 1869, and closing with Lord Kimberley's despatch of 17th February, 1873.

The minute of Mr. Robertson, which gave rise to this correspondence, does not appear to me to deal with the real question which the despatches of the Secretary of State present for determination in the colony. That question, in any view, is the extent to which the Minister is to have an active voice in the decision of these cases; but in my view it is much more: it is whether the Minister is virtually to decide in every case upon his own direct responsibility, subject of course to the refusal of the Crown to accept his advice, which refusal at any time should be held to be, as in all other cases, tantamount to dispensing with his services. The seventh paragraph of the minute alone touches the question of the Minister's relation to the Crown, and it seems to prescribe a position for the Minister in which, on submitting petitions to the Governor, he is to express an opinion on each case, to be "viewed as embodying no more than a recommendation," after which he is to have no further concern in the matter. I cannot subscribe to this principle of Ministerial conduct, if this be what was intended by Mr. Robertson.

There can be no question, I believe, that from the beginning of the present reign the Home Secretary in England decides absolutely in all matters of this kind in the name of the Crown, and that the Crown does not in practice interfere. At no former time when the Crown took an active part in such decisions, could the Crown, in the nature of things, be subject to a superior or an instructing authority. The wide difference between the position of the Minister and his relations to the Crown and to Parliament in the colony and in England is at once apparent on reading the despatches from the Secretary of State. The Governor is invested with the prerogative of the Crown to grant pardons, and, by the letter of the instructions conveyed to him by Lord Kimberley's circular of 1st November, 1871, he "is bound to examine personally each case in which he is called upon to exercise the power intrusted to him." By the instructions previously conveyed to the Governor of this colony by Lord Granville, in reply to Lord Belmore's despatch of 14th July, 1869, he is told that "the responsibility of deciding upon such applications rests with the Governor," and, in reference obviously to advice that may be tendered, it is expressly added that the Governor "has undoubtedly a right to act upon his own independent judgment." And, finally, after the question has been re-opened by Sir Alfred Stephen, it is repeated by Lord Kimberley's despatch of 17th February, 1873, that "in granting pardons" the Governor "has strictly a right to exercise an independent judgment."

It seems to be clear that the "portion of the Queen's prerogative" intrusted to the Governor of a colony, unlike the prerogative in England, is intended to be a reality in its exercise. It is undeniably the case that the representative of the Crown in a colony, unlike the Crown itself, is subject to a superior or instructing authority. What, then, is the position of the Minister, and what is intended to be the nature of the advice he may be called upon to give, and under what circumstances is that advice to be given?

In no sense of responsibility, in this respect, has the Minister in this colony hitherto been in the same position as the Home Secretary in England. He has neither exercised the function of pardon, nor, as a rule, been asked for advice. Except in rare cases, and then only in a limited degree, when special features or new facts have presented themselves, he has never actively interfered. What would