

The Sheriff accordingly recommended that, instead of continuing to treat these cases individually, they should be dealt with collectively with a view to equality of treatment, as far as circumstances would permit, a consideration which should always have a first place in prison administration. He submitted a scale of reductions which he thought would meet the cases generally, excepting, however, from its operation cases in which life had been taken, the cases of old offenders, and others presenting specially unfavourable circumstances. This suggestion was laid before me by the Colonial Secretary without remark, and I eventually, after a slight modification of the scale, concurred in the proposal, indorsing on the papers the following Minute, under date 5th June, 1873 :—“ I think, with this amendment, the cases of the prisoners referred to might be dealt with in the general manner recommended by the Sheriff, each case being submitted with a separate Report from the Sheriff as to whether there are any circumstances in connection with it which render it undesirable to apply to it the general regulations in the accompanying letter of the 21st January.” This decision was initiated by the Colonial Secretary as seen by him on the 10th June, 1873, and in the following October the Colonial Secretary submitted to me the special recommendations of the Sheriff in twenty-three cases based on the general scale of reduction already sanctioned. Full particulars of these cases, with the precise mitigation in each case of which I approved, will be found in the return which accompanies Enclosure D, before referred to.

Thus, it will be seen that, although Gardiner's case and those of the other twenty-three bush-rangers were disposed of at a time when, for the reasons explained in another despatch, the exercise of the prerogative of pardon in other than capital cases was understood to rest with the Governor, these cases were dealt with out of the usual routine. They were, as I have shown, the subject of much correspondence, which originated with the Colonial Secretary ; and all subsequent communications passed through his hands. The cases, too, were eventually decided in precise accordance with the recommendations of the permanent head of the Prison Department, which were submitted to me by the Colonial Secretary, who was supposed, from the absence of any statement to the contrary, to concur entirely in the views and proposals of his subordinate officer.

So the matter rested until about two months ago, when a question was asked in Parliament as to the proposed liberation of Gardiner. Mr. Parkes' answer not being considered satisfactory by the questioner, the adjournment of the House was moved, and a debate ensued, which will be found reported in the accompanying copy of the *Sydney Morning Herald* of the 30th April last. *

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As soon as the question was disposed of in Parliament, several petitions, some of them largely signed, were presented to me, one being in favour of keeping faith with Gardiner, and the others deprecating any mitigation of his sentence. I found that Ministers, after the defeat of the adverse resolutions in the House, did not propose to offer me any advice, but wished to leave me quite free to exercise my own unbiassed judgment as to whether the decision which had been come to in December, 1872, as to Gardiner's case ought or ought not to be adhered to. I accordingly considered very carefully whether any fresh facts had been brought to light by the public discussion of the question which would justify me in disappointing now the expectations which I had raised when Gardiner's case was first brought before me about eighteen months ago. Before coming to any decision I had a long conversation on the subject with the present Chief Justice, Sir James Martin, who, having been Crown Prosecutor when Gardiner was convicted, was thoroughly conversant with all the circumstances of his case and the condition of the country at that period of excitement. I found that Sir James Martin was very decidedly of opinion—(1) That Gardiner's sentence was excessive for the offences for which alone he had been convicted ; (2) that he had now been sufficiently punished ; and (3) that he might be released even in Sydney without any substantial danger. As I myself entertained precisely the same views, I embodied my reasons for adhering to my former decision in a Minute for the Executive Council, marked (R), and, the Council concurring in my conclusion, the case may now be considered as finally decided and disposed of.

On the whole, I am disposed to think that the agitation which has been got up about this case will do good. It has already served to call attention to the mode of exercising the prerogative of pardon in ordinary cases, which has in consequence been placed on a proper footing. I trust also that it may have the effect of making the public here investigate more closely the principles which should govern the punishment and treatment of criminals. The paper marked E, which accompanies this despatch, discloses some startling facts. It shows that the mitigation by the Executive of judicial sentences upon no settled system whatever has been here not the exception, but the rule. This, of course, is quite contrary to all the recognized principles of modern criminal treatment, under which prisoners as a rule should only receive such remission of their sentences as they may themselves be able to earn under the established good conduct regulations. But Executive interference will necessarily take place when judicial sentences are excessive or wanting in uniformity. This subject was ably discussed in 1867, in a Minute by Lord Lisgar (then Sir John Young), in which he pointed out the excessive severity of the sentences passed in this colony as compared with those usually awarded in the British Islands ; and he characterized the punishments imposed here in cases of a certain character as “ cruel and oppressive, and, under all the circumstances of the country, beyond all the measure of justice or reason.” I enclose a printed copy of this Minute (marked S) which was quoted in the recent debate.