

1892.  
NEW ZEALAND.

# THE PREROGATIVE OF MERCY

(CORRESPONDENCE RELATING TO, BETWEEN THE GOVERNOR OF NEW ZEALAND,  
THE SECRETARY OF STATE FOR THE COLONIES, THE NEW ZEALAND GOVERNMENT,  
AND THE AUSTRALIAN COLONIES).

*Return to an Order of the House of Representatives dated 16th August, 1892.*

*Ordered, "That a return be laid before this House of all correspondence between the Government of New Zealand and the Colonial Office and the other colonies relating to the exercise of the powers of the Governors of the colonies in relation to the pardoning of criminals, or the remitting or commutation of sentences passed."—(Mr. REES.)*

## No. 1.

MY LORD,—

Wellington, New Zealand, 7th February, 1891.

I have the honour to report that on the 21st of October, 1890, sentence of death was passed upon one Mahi Kai, a Maori, convicted of the murder on the 12th of April, 1890, of one Stephen Maloney.

2. The jury in delivering the verdict accompanied it with a recommendation to mercy on account of his age (17 years), and his being of the Native race.

3. I went fully into the case, and my Executive Council advised me to commute the sentence to one of penal servitude for life, and I accordingly did so.

4. The minute in the book recording the proceedings of the Executive Council is as follows:—  
"The Minister of Justice submits the case of Mahi Kai, an aboriginal native under sentence of death for murder at New Plymouth. Commuted to penal servitude for life."

5. From this your Lordship will observe that there is no record of the advice given by the Executive Council, nor does any such advice appear upon the papers in connection with the case.

6. A question has been raised as to the form in which this advice should be given in such cases—whether orally at the Council, or in writing on the papers at the time of their consideration by the Executive Council.

I enclose a memorandum from the Premier, from which your Lordship will gather that my present Advisers entertain the opinion that all acts of administrative government within the colony should, without exception, be done on the advice of Ministers.

They entertain the same opinion as to the advice which the Governor is directed to take from his Executive Council as did Lord Carnarvon in his despatch of the 4th of May, 1875, in which he says that "Whether also given orally or not, it should be given in writing."

7. So long as Ministers held it to be a constitutional practice and a duty that they should retain office, even if the Governor should decline to accept their advice in the exercise of the prerogative, and so long as it was believed that collisions between the Governor and his Ministers could be avoided by mutual tact and forbearance, the system may have worked well; but as soon as Sir Thomas McIlwraith resigned because the Governor of Queensland refused to accept his advice, on which occasion your Lordship did not uphold the action of Sir A. Musgrave, it became obvious that the retention of office under such circumstances ceased to be a constitutional practice with Australasian statesmen.

8. If Ministers see no reason for making a distinction between the ordinary business of government and the business in connection with the exercise of the Royal prerogative of mercy, the Governor may at any moment find himself as Sir A. Musgrave did—without Advisers, and unable to replace them with others having the confidence of Parliament.

9. I have found in practice that the wishes and opinions of the Governor are in other matters, as well as this, listened to with all respect, and that when consistent with their own opinions Ministers endeavour loyally to co-operate with the Governor, accepting full responsibility for their actions.

But it may be that the Executive Councillors would hold very strong opinions antagonistic to those of the Governor; that the public, knowing that the Governor is instructed to call for the advice of his Executive Council, would bring very strong pressure on them to give certain advice and to resign if it were not taken; for your Lordship is aware how strongly the public mind is sometimes agitated in cases of criminals sentenced to death.