

(No. 3.)



1877.

T A S M A N I A.

H O U S E O F A S S E M B L Y.

LOUISA HUNT.

PETITION FOR REMISSION OF HER SENTENCE, WITH
MEMORANDUM BY HIS EXCELLENCY THE GOVERNOR.

Laid upon the Table by the Colonial Secretary, and ordered by the House to be
printed, January 23, 1877.



MEMO.

I FORWARD this Petition to the Honorable the Attorney-General; and as I may be absent when it is considered by His Excellency the Governor in Council, I desire to express my hope that the prayer of the Petitioner may be acceded to.

THOS. REIBEY, *Colonial Secretary.*

December 8th, 1876.

To His Excellency FREDERICK ALOYSIUS WELD, *Esquire, C.M.G., Governor of Tasmania, &c.*

The humble Petition of Edwin Hunt, aged 15 years, only child of Louisa Hunt, a Prisoner at present in the Cascades Gaol.

RESPECTFULLY SHOWETH:

That your Petitioner's Mother was convicted before His Honor Mr. Justice Dobson, in July, 1875, of arson in her house at Hobart Town, and sentenced to Seven years penal servitude.

That the material evidence adduced at the trial was remarkably of a circumstantial character, and that the principal witness for the Crown, Amelia Deare, has since become well known to the Police authorities as a person thoroughly dishonest and untruthful.

That your Petitioner's Mother is a foreigner, a German immigrant, to a great extent ignorant of the laws of the Colony, and of the ordinary means whereby to defend herself from imputation, but who previous to this sad occurrence has borne an irreproachable character, and for a long period has held situations of trust and responsibility.

That the health of Petitioner's Mother has become so seriously impaired since her imprisonment that Petitioner and others believe she will not survive the punishment awarded.

Petitioner therefore humbly prays on behalf of his unfortunate Mother that Your Excellency will be graciously pleased to give her peculiar case a merciful consideration; for if mercy should be extended to her by remitting the unexpired portion of her sentence on condition of her leaving the Colony, Petitioner's Father has now a home in Queensland to which she can, if by Your Excellency's clemency permitted, proceed with Petitioner, and where amongst new associations she may be enabled to obliterate the stain upon her previous good name and restore happiness to a now sorrowing circle.

And Your Excellency's Petitioner, as in duty bound, will ever pray, &c.

Hobart Town, November, 1876.

EDWIN HUNT.

WE whose Names and Signatures are hereunto attached respectfully beg to recommend the Petitioner's prayer to the favourable consideration of His Excellency the Governor.

James Lord, M.L.C.

George Crisp, J.P.

Geo. Wilson, J.P.

If anything has transpired in the examination of the "Dears" to exculpate Mrs. Hunt, I feel confident that the Executive will reconsider the case; and I shall be glad if the Governor can see it to be consistent with the ends of justice to extend pardon to Mrs. Hunt, but not on the grounds of proceeding to another Colony.—R. Andrew Mather.

J. P. Boxall, Liverpool-street

John Thomas, Elizabeth-street

D. M. Gregor, ditto

Edward Chancellor, ditto

Thomas Harris, Liverpool-street

R. J. Edwards, Liverpool-st.

Albert Gaylor, ditto

John Perkins, Jun., ditto

Jas. E. Salier, ditto

E. Maher, Argyle-street

D. Lewis, Hampden-road

J. D. Balfe, M.H.A.

J. M. Dooley, M.H.A.

Alfred Pillinger, M.H.A.

James Gray, M.H.A.

Samuel Henry, M.H.A.

Thos. Wm. Field, M.L.C.

John Lord, M.L.C.

M. J. Hoare, Liverpool-street

H. O'Shea, ditto

Laurence M'Villy, Elizabeth-st.

Patrick Cahill, latter, Liver-

pool-street

David Cahill, ditto

Patrick Vale

Thomas Austin

William G. Weaver

William Carmichael

M. J. Beechinor, Catholic

Pastor

M. J. O'Regan, ditto

C. G. Eady

C. J. Barclay

J. F. Innes, Murray-street

Stevenson & Clark

Thos. Kennedy

G. Knowels

Edward Currie

Jas. Johnston

REFERRED to Ministers. I cannot remit sentences upon condition that persons should leave the Colony. Amelia Dear has, I believe, been herself since convicted, or at all events was implicated in a case of shop robbery: there is therefore ground for enquiry.

FRED. A. WELD.
Dec. 2, 1876.

MINUTE PAPER FOR THE EXECUTIVE COUNCIL.

Attorney-General's Office, Hobart Town,
18th December, 1876.

LOUISA HUNT.—REMISSION.

IN pursuance of the opinion of Ministers I advise the remission of this Sentence.

C. HAMILTON BROMBY.
Dec. 18, 1876.

THE Governor in Council approves.

The Hon. the Attorney-General.

E. C. NOWELL.
18. 12. 76.

SHFF. infd.—19. 12. 76.

FORWARDED to the Assistant Colonial Secretary for record.

F. STOPS.
Attorney-General's Office,
4. 1. 77.

MEMORANDUM.

THE Governor desires to call the attention of Ministers to certain questions which formed the substance of a conversation he yesterday held with the Premier on his return from the North, relative to the exercise of the prerogative of mercy, and to certain instances of its exercise which have recently given rise to public comment.

On the Governor's arrival in Tasmania he found a practice of remission in operation which appeared to him more lenient (especially considering the "regulated remission" regulations laid down by Parliament) than the practice to which he had been accustomed either as a Governor or as a Prime Minister or other Executive Councillor; and though he has ever borne in mind the instructions to "allow great weight" and to "pay due regard" to the recommendations of Ministers, he has still found it his unpleasant duty on various occasions to object to remissions that have been proposed to him.

The Governor also, with the full concurrence of the late Attorney-General, has adopted the plan of conferring personally with the Attorney-General upon important or doubtful cases before dealing with them in Executive Council. This practice, new in this Colony, has also been recognised by the present Attorney-General as conducive to the more careful conduct of this branch of the public business.

The Governor, in his late Government (a Colony of the "Crown," or rather mixed or transition type of Constitution), was in the habit of rarely interfering with sentences, beyond simple good conduct remissions, without previously considering the recommendation of the Judge, or the appearance of new facts or matters unknown at the trial; consequently, he has here frequently asked Ministers for the recommendations of the Judges, and expressed an opinion that in every case of importance they should be obtained. In this opinion the late Attorney-General frequently expressed his concurrence, but regretted that the Judges were unwilling to give opinions or recommendations on the exercise of the prerogative of mercy; and the present Attorney-General has also informed the Governor and the Premier that he understands the Judges to hold, that to advise is not their duty or province.

The Governor has now, however, some grounds for believing that the position taken by the Judges may not have been quite fully or accurately apprehended by the Law Officers of the Crown, and that more assistance than has been obtained may be obtainable; and it is mainly to lead the way to a clearer understanding on that point that the Governor now writes this paper.

The Governor will note in regard to the recent instance of a pardon granted to the woman Hunt, that he assented to her release after some discussion, on the distinctly expressed ground that he considered that a Governor, having responsible advisers, ought not to refuse (excepting on grounds

of Imperial policy or on very grave considerations) a very strongly urged and unanimous request for mercy to a Convict made formally in Executive Council by his Ministers, backed by the assurance of the Premier that he did not doubt the innocence of the prisoner, and by the point urged by the Attorney-General, that the witness Amelia Dear having been since convicted her evidence was worthless, and that consequently new light had been thrown on the case since the trial.

The liberation of Aherne on ticket-of-leave was agreed to in Executive Council by the Governor, on the recommendation of Ministers, on the 4th December; but as the Governor was about to proceed to Port Arthur, accompanied by three of his responsible advisers, the Attorney-General, from information received, thought it best to make some further enquiries at Port Arthur. Those enquiries were satisfactory, and, by the renewed advice of Ministers present, the Governor then informed Aherne of the decision which had been already arrived at in Executive Council; but Aherne was also told that his ticket would be revoked if he came to Hobart Town or gave cause of fear to his wife there resident. On the Governor's return to Hobart Town, however, he was informed privately that there were grounds for apprehension on the part of the wife: similar information was conveyed to the Attorney-General, and the prisoner was, and is still, detained pending further enquiry.

In such cases as Aherne's it is a grave matter for consideration whether all hope of mercy is to be for ever cut off from criminals who after long years of servitude and punishment have conducted themselves well for a considerable period, and who have had hopes held out to them that good conduct, and the suppression of strong natural tendencies to violence and resistance to authority, will obtain for them remissions which have been frequently granted to men whose original offences were possibly worse, or more generally dangerous to society than theirs. Nor does this last remark apply only to Tasmania; in England very long probation servitude is becoming obsolete; and a very distinguished Australian Governor, in fulfilment of a personal promise, set free the bushranger Gardiner after Ten years servitude although the Judge declined to recommend mercy.

Having thus reviewed the actual position, the Governor desires to impress upon Ministers the advisability of taking steps to ascertain definitely what measure of assistance the Judges may consider it consistent with their duty to afford to the Executive when questions of remissions of sentences arise. The Governor now records his repeatedly expressed opinion that the Judges should be requested to make a minute, with such recommendations or observations as they may see fit, upon each case in which sentence has been passed by them, before the question of remission is brought before the Governor; and he recommends that Ministers, or that he himself, should at once officially ascertain how far the Judges feel themselves at liberty to assist the Executive in a matter in which they are so specially competent to advise,—a matter directly affecting the ends of justice, and more indirectly, but still very really, the status of the Supreme Court.

The Governor has no wish to discuss the soundness of the advice tendered to him by Ministers in Mrs. Hunt's case, but he has lately been informed that reports or memoranda exist bearing on that case which have not been brought to his knowledge by Ministers, and he learns that their existence is also unknown to the Premier: should those papers contain the expression of the opinion of a Judge, the Governor's decision might have been materially influenced by that opinion. It will readily be admitted that it is the duty of a Ministry to lay all possible information before the representative of the Crown. The Governor doubts not but that Ministers will ever endeavour to fulfil that duty, and it is equally clear that reference to the Judges may much facilitate that endeavour.

The Governor desires, in placing this Memorandum before Ministers, to record facts, to suggest an arrangement for future guidance, and also to afford Ministers an opportunity for making any explanations, suggestions, or remarks which they may think it advisable in the interest of the Public Service.

FRED. A. WELD, *Governor.*

Government House, 5th January, 1877.

I HAVE read His Excellency's Memorandum, concerning the existing system of extending the Royal prerogative of mercy to Convicts, with great interest. I think in many cases that Ministers would be enabled to give sounder advice to His Excellency in dealing with Petitions for the remission of sentences if the Judges would consent to make a report on cases tried before them. At the same time I do not think that Ministers, in tendering advice to His Excellency, should feel themselves bound by the report of the Judge. I consider that the Governor in acting after receiving and giving due weight to the advice of His Advisers on these questions is, after all, acting in some measure as a Court of Appeal,—the only Court of Appeal provided by the English law in criminal cases; and therefore, though great deference should be paid to the reports of the Judges, the reports should not be considered by Ministers as conclusively binding upon them.

I think it would be well, in pursuance of His Excellency's desire, to endeavour to obtain from their Honors a definite statement whether they object to give their valuable assistance in these cases when it may be requested.

In regard to the case of the woman Hunt I offered no advice to His Excellency, because I had acted as her Counsel at her trial; but I pointed out to my Colleagues that if Ministers advised the remission of the whole of her sentence, it would be virtually reversing the verdict of the jury; and I think both the Premier and the Colonial Treasurer expressly stated that, after considering the case, they were of opinion that the verdict of the jury was wrong. I think His Excellency misunderstood what I said about the witness Amelia Dear. I said, or intended to say, that she had since been tried for receiving stolen property: that she was acquitted on her mother pleading guilty: that there was no moral doubt of her guilt; and that the evidence showed her character to be so unsatisfactory as to make it doubtful whether much or any weight would have been allowed to her testimony at Mrs. Hunt's trial had it been fully known. I have no knowledge of any report or memorandum on Mrs. Hunt's case. The only papers connected in any way with it are a Petition of Mrs. Hunt's some time ago; a request by the late Attorney-General to the Puisne Judge to report on her son's case; the report of the Judge dealing entirely with the son's case, and declining to express any opinion whether he should be allowed his discharge; and a report of Mr. Quodling as to certain statements made by Mrs. Hunt after her conviction. These statements, and the report on them, do not in any way touch the grounds upon which Ministers doubted the justice of the verdict. I had not seen them at the time Mrs. Hunt's Petition was before the Executive.

I agree with His Excellency that it is a matter calling for grave consideration whether any sane prisoner ought to be allowed to abandon all hope of retrieving his character. In Aherne's case I think the interference of well-meaning people has had the effect of frightening his wife unnecessarily. In such cases where the cause of fear is local, and by the removal of the prisoner the fear would cease, I think an exception might be made from the ordinary rule, and the prisoner, after undergoing the usual term of imprisonment, might be removed to some place where there would be no fear of his repeating his offence.

C. HAMILTON BROMBY.

January 10, 1877.

MEMORANDUM FOR MINISTERS.

THE Governor has this day received the Attorney-General's Memorandum of January 10th.

The Governor concurs that the recommendation of a Judge is not necessarily binding upon the Executive. He recommends that it should be ascertained whether a form similar to that now in use in New South Wales, which the Governor has shown to his Ministers, might not, with necessary modifications, meet the requirements of this Colony, and obtain the concurrence of the Judges.

The Attorney-General's statement that he "offered no advice" to the Governor in the case of the woman Hunt requires explanation. The Governor understands that in Cabinet the Attorney-General from a motive of delicacy left the decision to his Colleagues: but every Member of a Cabinet is bound by, and answerable for, the action of his Colleagues until he resigns; and the Governor would certainly not have acceded to the recommendation had he not been certain that the Attorney-General, in whose department the case was, and who formally made it in Executive Council, was entirely at one with his Colleagues in opinion. Had it been otherwise, he would not have called attention to the trial of Amelia Dear, nor remained silent when the Governor made the remarks he did as to the grounds on which he consented.

The Governor may easily have misunderstood the Attorney-General as saying that Amelia Dear was convicted, when he really only said that her trial and that of her mother left no moral doubt of her guilt. The Governor readily admits the mistake, but would remark that, if at all, the misunderstanding very slightly affects the question at issue.

FRED. A. WELD, Governor.

25th January, 1877.

LOUISA HUNT.

(In continuation of Paper No. 3.)

[Laid upon the Table by the Attorney-General, and ordered by the House to be printed, 25th January, 1877.]

I HAVE read His Excellency's Memorandum, concerning the existing system of extending the Royal prerogative of mercy to Convicts, with great interest. I think in many cases that Ministers would be enabled to give sounder advice to His Excellency in dealing with Petitions for the remission of sentences if the Judges would consent to make a report on cases tried before them. At the same time I do not think that Ministers, in tendering advice to His Excellency, should feel themselves bound by the report of the Judge. I consider that the Governor in acting after receiving and giving due weight to the advice of His Advisers on these questions is, after all, acting in some measure as a Court of Appeal,—the only Court of Appeal provided by the English law in criminal cases; and therefore, though great deference should be paid to the reports of the Judges, the reports should not be considered by Ministers as conclusively binding upon them.

I think it would be well, in pursuance of His Excellency's desire, to endeavour to obtain from their Honors a definite statement whether they object to give their valuable assistance in these cases when it may be requested.

In regard to the case of the woman Hunt I offered no advice to His Excellency, because I had acted as her Counsel at her trial; but I pointed out to my Colleagues that if Ministers advised the remission of the whole of her sentence, it would be virtually reversing the verdict of the jury; and I think both the Premier and the Colonial Treasurer expressly stated that, after considering the case, they were of opinion that the verdict of the jury was wrong. I think His Excellency misunderstood what I said about the witness Amelia Dear. I said, or intended to say, that she had since been tried for receiving stolen property: that she was acquitted on her mother pleading guilty: that there was no moral doubt of her guilt; and that the evidence showed her character to be so unsatisfactory as to make it doubtful whether much or any weight would have been allowed to her testimony at Mrs. Hunt's trial had it been fully known. I have no knowledge of any report or memorandum on Mrs. Hunt's case. The only papers connected in any way with it are a Petition of Mrs. Hunt's some time ago; a request by the late Attorney-General to the Puisne Judge to report on her son's case; the report of the Judge dealing entirely with the son's case, and declining to express any opinion whether he should be allowed his discharge; and a report of Mr. Quodling as to certain statements made by Mrs. Hunt after her conviction. These statements, and the report on them, do not in any way touch the grounds upon which Ministers doubted the justice of the verdict. I had not seen them at the time Mrs. Hunt's Petition was before the Executive.

I agree with His Excellency that it is a matter calling for grave consideration whether any sane prisoner ought to be allowed to abandon all hope of retrieving his character. In Aherne's case I think the interference of well-meaning people has had the effect of frightening his wife unnecessarily. In such cases where the cause of fear is local, and by the removal of the prisoner the fear would cease, I think an exception might be made from the ordinary rule, and the prisoner, after undergoing the usual term of imprisonment, might be removed to some place where there would be no fear of his repeating his offence.

C. HAMILTON BROMBY.

January 10, 1877.

MEMORANDUM FOR MINISTERS.

THE Governor has this day received the Attorney-General's Memorandum of January 10th.

The Governor concurs that the recommendation of a Judge is not necessarily binding upon the Executive. He recommends that it should be ascertained whether a form similar to that now in use in New South Wales, which the Governor has shown to his Ministers, might not, with necessary modifications, meet the requirements of this Colony, and obtain the concurrence of the Judges.

The Attorney-General's statement that he "offered no advice" to the Governor in the case of the woman Hunt requires explanation. The Governor understands that in Cabinet the Attorney-General from a motive of delicacy left the decision to his Colleagues: but every Member of a Cabinet is bound by, and answerable for, the action of his Colleagues until he resigns; and the Governor would certainly not have acceded to the recommendation had he not been certain that the

Attorney-General, in whose department the case was, and who formally made it in Executive Council, was entirely at one with his Colleagues in opinion. Had it been otherwise, he would not have called attention to the trial of Amelia Dear, nor remained silent when the Governor made the remarks he did as to the grounds on which he consented.

The Governor may easily have misunderstood the Attorney-General as saying that Amelia Dear was convicted, when he really only said that her trial and that of her mother left no moral doubt of her guilt. The Governor readily admits the mistake, but would remark that, if at all, the misunderstanding very slightly affects the question at issue.

FRED. A. WELD, *Governor.*

25th January, 1877.