(No. 27.)

1877.

SESSION II.

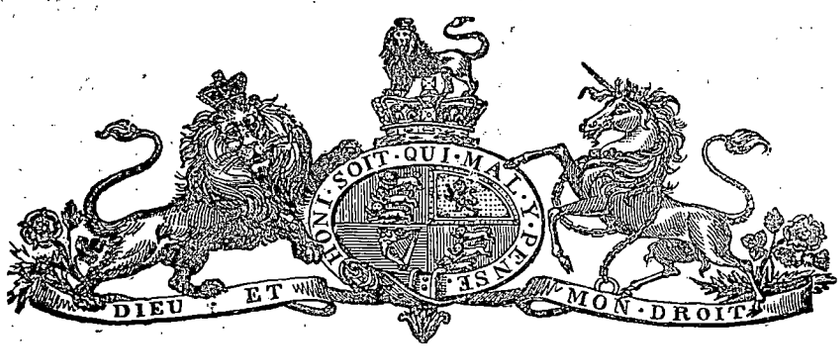
TASMANIA.

HOUSE OF ASSEMBLY.

# LOUISA HUNT.

## PAPERS AND CORRESPONDENCE RELATING TO HER LIBERATION.

Laid upon the Table by the Colonial Secretary, and ordered by the House to be printed, April 24, 1877.




*January 24th*, 1877.

MEMORANDUM.

His Excellency's Responsible Advisers having, at the request of His Excellency, laid upon the table of the House of Assembly a Memorandum forwarded by His Excellency on the 5th January instant to the Premier, having reference to certain remissions of sentences, and amongst others, more especially, to that of Louisa Hunt; and after such Memorandum had been read by the Clerk in the House of Assembly, a notice of motion was tabled by Mr. Adye Douglas to the following effect,—"That the advice tendered by his Ministers to His Excellency, and which led to the release of the prisoner Louisa Hunt, was improper, and such as tended to subvert the administration of justice," are of opinion that the exception taken to the action of Ministers is based upon the eleventh paragraph of the Memorandum referred to, and which is to the following effect,—"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 an 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."

Upon a careful consideration of the paragraph in question, Ministers feel compelled to draw His Excellency's attention to two important allegations contained therein:—

1st. That Ministers have withheld from His Excellency information that was in existence, and which if known to him might have materially influenced his decision.

2nd. That in not doing so they have neglected to do that which it was their bounden duty to have done; viz.—"to lay all possible information before the Representative of the Crown."

To which they reply, that at the time they tendered advice to His Excellency they were not aware of any reports or memoranda, nor are they at the present time, other than those placed before His Excellency; nor have they, to their knowledge, in any particular withheld from His Excellency any information that it was in their power to supply.

Feeling assured that His Excellency would not desire that in so important a particular as the exercise of the prerogative of mercy any misapprehension as to all facts and circumstances should exist in the minds of Ministers on the one hand, or the public on the other, they deem it a duty incumbent upon themselves to respectfully request that His Excellency will, with as little delay as possible, furnish the source from which His Excellency's information has been derived, to enable them to exonerate themselves from a charge which, until disposed of, places them in a position of great personal, as well as public, embarrassment.

THOS. REIBEY.
CHARLES MEREDITH.
C. O'REILLY.
C. H. BROMBY.
W. L. CROWTHER.

*His Excellency* F. A. Weld, *Esq.*, *Governor.*

*January* 24*th*, 1877.

## MEMORANDUM FOR MINISTERS.

THE Governor has considered a Memorandum just received from Ministers.

He desires for greater accuracy to note that he did advise Ministers to lay his Memorandum with all other papers before Parliament at the first opening of the Session, believing, as he still believes, that such a course would have tended to remove the question out of the region of party politics,—that it would have been acceptable to Parliament,—and that, more especially if Ministers could have concurred in that Memorandum, misapprehension would have been removed and the public service benefited.

On receiving the Address of the House the position was altered: he then merely minuted that he had no objection to offer, and left the matter to Ministers. The Address was, it must be remembered, one comprising returns extending over a considerable period, and he was unaware what course Ministers might take in furnishing the return.

The Governor informed the Premier that he was ready to make clear any passage in his Memorandum that might be liable to misconception, and it now appears that Ministers consider the Memorandum to contain the following "allegations:"—

1. That Ministers have withheld information from the Governor that was in existence, and which, if known to him, might have materially influenced his decision.
2. That in not doing so they have neglected to do that which it was their bounden duty to have done,—viz., lay all possible information before the Representative of the Crown.

The Governor regrets that Ministers should, three weeks after the Memorandum was communicated to them, place upon it this construction—one new to him and injurious to themselves—a construction that he cannot think any verbal criticism will sustain.

The Governor has made no such "allegations:" had he done so, Ministers might have asked his authority, and he would have considered the propriety of giving it.

The Governor, however, has simply put a hypothetical case that certain papers may contain the expression of the Judge's opinion, and has stated the consequences that he thinks may be deduced from that hypothesis. Those consequences are not disputed by Ministers.

When, as on this occasion, rumours are afloat likely to disturb the confidence which ought to exist between the Governor and Ministers, the Governor thinks it his duty to inform Ministers accordingly. He does not thereby accept those rumours as true, nor consequently can he be expected to give authority for them. The most distinct and official information that he has received on this point is the confirmation given to them by the Attorney-General in his Minute attached to Ministers' Memorandum of this day, and words previously used by him: it appears from the Attorney-General that a report by the Puisne Judge does exist in Edwin Hunt's case. Such a report may throw light, it is not improbable, on the opinion of the Judge in Mrs. Hunt's case. It has also been rumoured that the Sheriff made inquiries regarding Mrs. Hunt's case. These documents have never been read to the Governor, or sent to him for perusal.

The Governor fully accepts the assurance of Ministers that at the time they tendered advice to him they were not aware of any reports or memoranda, nor are they at the present time, other than those placed before the Governor; and that they have not, to their knowledge, in any particular withheld from the Governor any information that it was in their power to supply.

He has already in his Memorandum of the 5th January, stated that "the Governor doubts not that Ministers will ever endeavour to fulfil that duty,"—*i. e.*, the duty of laying all possible information before the Representative of the Crown, and it is therefore unnecessary to reiterate that assurance.

FRED. A. WELD, *Governor.*

*Judges' Chambers, 27th January*, 1877.

SIR,

IN a Memorandum, dated 5th instant, addressed by Your Excellency to your Advisers, you state that the late Attorney-General, while concurring in your opinion that the Judges should be consulted before interfering with sentences in cases of importance, regretted "that the Judges were unwilling to give opinions or recommendations on the exercise of the prerogative of mercy;" and further, that "the present Attorney-General has also informed the Governor that he understands the Judges to hold that to advise is not their duty or province."

We hasten to inform Your Excellency that there is no ground whatever for attributing to us these views. We have never declined to make such observations or recommendations as appeared to be called for in cases referred to us. We have always held it to be our duty and within our province to advise the Governor with reference to petitions for commutation based upon grounds touching the criminality of the convict; and have never uttered a word from which a contrary inference could be drawn. According to our experience—extending, in the case of the Chief Justice, over a period of nearly thirty years as Law Officer and Judge—it has been the invariable practice to refer all such petitions to the Judge who tried the case before any remission was granted by the Governor. How the late Attorney-General can have fallen into the error, we are at a loss to conceive. With respect to the present Attorney-General, no communication whatever has taken place between him and us with reference to the commutation of sentences.

We should content ourselves with thus correcting the unaccountable misapprehension into which Your Excellency has been led, and with assuring you that we shall be, as we always have been, ready to afford Your Excellency any advice or assistance in our power in the exercise of the prerogative of pardon in cases involving judicial considerations, were it not that we are constrained to pause, lest, in the absence of a clear understanding between Your Excellency and ourselves, our consent to advise upon such cases in future should seem to countenance some novel and dangerous doctrines which have lately been promulgated by Your Excellency's present Advisers.

It appears that the Attorney-General, in a Memo. bearing date the 10th instant, but of which an authentic copy by the Government Printer only reached our hands this day, commenting upon Your Excellency's Memorandum above referred to, considers that, in dealing with petitions for remission of sentences, the Governor, after receiving and giving due weight to the advice of his Advisers, is "acting in some measure as a Court of Appeal,—the only Court of Appeal provided by the English law in criminal cases." Now inasmuch as the common practice in these cases is for the Governor to follow the advice of his Ministers—as appears from Your Excellency's own Memorandum—the proposition amounts practically to this,—that the Governor's Ministers constitute a Court of Appeal from the Supreme Court in criminal cases. Indeed the Attorney-General states distinctly that, having pointed out to his colleagues, in Louisa Hunt's case, that if Ministers advised the remission of the whole of her sentence, it would be virtually reversing the verdict of the jury, "the Premier and Treasurer expressly stated that, after considering the case, they were of opinion that the verdict of the jury was wrong."

It is our duty to inform Your Excellency that the views thus expressed by your present Advisers are, in our opinion, erroneous, and have no warrant in law. Neither the Governor nor the Governor-in-Council is, in any sense, a Court of Appeal from the Supreme Court in criminal, any more than in civil cases. The Supreme Court, in all matters of which it has cognizance, is supreme within this territory. Its decisions are binding upon all Her Majesty's subjects in the Colony, including the Governor and his Advisers. There is no Court of Appeal from its judgments but that of the Sovereign in Her Privy Council; where Her Majesty is assisted by the most learned and experienced Judges in England, where cases are openly debated by learned counsel on either side, and where the procedure is regulated by fixed rules. It would indeed be anomalous if a few gentlemen, not necessarily possessing any legal knowledge or training—proceeding by no fixed rules—bound by no precedents—powerless to compel the attendance of a single witness—unable to administer an oath to any witness who might voluntarily attend—under no obligation to give any reasons for their conclusions—and sitting in secret with closed doors, should be intrusted with the high and responsible function of reversing the judgments of the Queen's Court for her people in this Island—presided over by persons experienced in the laws—possessing effectual means of compelling the attendance of witnesses—having power to enforce the security for the truthfulness of those witnesses which is afforded by the sanction of an oath, and by the test of cross-examination—acting in the presence of all parties interested, and assisted by the efforts of opposing counsel—proceeding by fixed rules, found, as the result of the experience and wisdom of ages, to be best adapted for the investigation of truth—and sitting in the face of the people with open doors.

The tribunal which Your Excellency's present Advisers propose to erect would possess none of the means available to a real Court for arriving at correct conclusions, and would be subject to none of the checks which are provided by the Constitution for securing the upright administration of justice. If, as is held by constitutional writers, it is essential that checks should exist as security

against partiality and corruption in the Judges of the land, are not such checks at least as necessary in the case of the advisers of Colonial Governors? To mention only one of these checks, it is deemed an indispensable requisite in the constitution of a Court of Justice that its proceedings should be carried on in public, *apertis foribus*; not only before a promiscuous concourse of bystanders, but in the audience of the whole profession of the law; for the reason that the most corrupt Judge would fear to indulge his dishonest wishes in the presence of such an assembly. Could this check be more safely dispensed with in the case of Colonial Ministers than of Judges? One reason why the doctrine advanced by Your Excellency's present Advisers is so pernicious, is the wide door that it would open to favouritism, undue influence, and corruption. Were the rule which they propound established, who can say that, amidst the rapid and continual changes of which political life in the Colonies furnishes daily experience, the occasion might not arise presenting the scandal of the convict's counsel of to-day, reversing to-morrow the judgment of the Court against his client? Who can say that the day might not come when Ministers might be in office who might be induced to exercise the power of reversing the judgment of the Court through pressure brought to bear by political supporters who might happen to be the convict's friends or sympathisers?

The course pursued in the woman Hunt's case furnishes an apt illustration of the insufficiency of the means possessed by the Governor in Council for arriving at a correct judgment, as contrasted with those possessed by a lawfully constituted Court. It now appears that serious and deplorable errors have occurred. We will instance three of these errors. The Governor in Council proceeded upon the supposed facts,—1. That the police were stimulated by the promise of a large reward by the Insurance Company which was attempted to be defrauded by means of arson. 2. That a material witness, Amelia Dear, had since the trial been convicted of felony, and her evidence thereby rendered worthless. 3. That a carpet was brought into Court dripping with kerosene,—which was taken as a proof of sinister dealing on the part of the police. It turns out, in fact, that no reward was promised; that the witness in question has not been convicted; and that the carpet was not dripping with kerosene when brought into Court. Of course, it is not surprising that the so-called Court should be thus easily imposed upon, when its impotence in respect of those means for the investigation of truth which are possessed by real Courts is taken into consideration. Yet this is the so-called Court of Appeal which, proceeding upon mistaken data—by imperfect methods—without rules—without even an authentic record of the evidence given at the trial (for the Judge's notes were not before the Governor in Council)—and without consulting the Judge who tried the case, thought fit "to overthrow the verdict of the jury and to upset the opinion of the Judge,"—if we may be allowed thus to adopt language used by the Attorney-General in his speech upon the case of Louisa Hunt, as reported, which accurately describes the proceeding of the Governor in Council. It is to be observed that the estimate which Your Excellency's present Advisers seem to have formed of the importance of the verdict of a jury appears to be an extremely inadequate estimate. The verdict of a jury is deemed by the law of England to be a far more solemn and indelible record than they seem to imagine. It is regarded as *res judicata*; and is not to be overthrown or got rid of by the opinion to the contrary of individuals, who cannot have as effectual means of forming a correct judgment as the jury who tried the case.

If the Judge who tried the woman Hunt had been consulted, the errors by which Your Excellency was misled would have been corrected, and you would have received the important information, which appears never to have been laid before you, that the material facts deposed to by Amelia Dear—the witness whose evidence you were told was rendered worthless by her subsequent conviction—were proved by another witness, Lucas, whose evidence was unimpeached.

There is a darker side to the extraordinary proceedings of Your Excellency's Advisers in this case, which we cannot pass over in silence, illustrating as it does the inaptitude of this self-constituted tribunal for the discharge of the functions of a Court of Appeal from the Supreme Court. It appears that they have not scrupled, as a step towards absolving the woman Hunt, to fasten upon Mr. Simpson—a meritorious officer of long service, of much intelligence, activity, and experience, and of reputable character—the atrocious crime of concocting a charge of arson, in order to obtain a large reward alleged to have been promised him by the Insurance Company; and of this odious crime they deliberately found Mr. Simpson guilty behind his back, without giving him the opportunity of exculpation or explanation, which would have enabled him to show that the alleged inducement to the commission of the crime—the promised reward—was a mere fiction. We refrain from characterising this proceeding further than to ask whether it is reconcileable with the most elementary notions of justice; and to state our belief that, upon the whole, the course followed by Your Excellency's present Advisers, in Louisa Hunt's case, is without precedent in any part of the British Dominions.

We hope it is unnecessary to guard ourselves against the imputation of wishing by anything we have said to interfere with the unfettered exercise by Your Excellency of the prerogative of pardon, with which you are personally intrusted by the Queen. We are far too sensible of the value of that most amiable of the Royal prerogatives to wish to see it impaired. We adopt with reverence the language of a great judge (Lord Chief Justice Holt) for the purpose of expressing our own

sentiments: "The power of pardoning all offences is an inseparable incident to the Crown and its Royal power. It is as much for the good of the people that the King should pardon, as that he should punish." But what we protest against is the assumption of the power and jurisdiction of a Court of Appeal for the review and reversal of the judgments of the Supreme Court, under the pretext of the exercise of the prerogative of pardon. The power of pardoning will be found, upon reference to constitutional authorities, to be based, not upon the theory of the reversal of the judgments of Courts of Law, but upon the principle of the forgiveness of offences committed.

Such being our view of the character of the advice tendered to Your Excellency by your present Advisers, you will perceive that it is our duty to avoid any step which may seem to countenance that advice. It appears to us that if, after being made aware of the claim to jurisdiction over the Supreme Court put forward by your present Advisers, we were, without being assured of your dissent from their opinion,—or, at least, without laying before you our reasons for thinking that opinion erroneous,—to continue to advise Your Excellency upon petitions for remission, we might afford ground for inferring a constructive concession of that claim. We should indeed have expected to find Your Excellency taking the earliest opportunity to discountenance a claim amounting to an usurpation of power subversive of the orderly administration of the law; but we have looked in vain for such a disclaimer in your Memorandum of the 25th inst. in answer to that of the Attorney-General. Had Your Excellency taken that opportunity of expressing your dissent from the opinion of your present Advisers, we should not have troubled you with this letter. But as you have not availed yourself of that or of any other occasion for the purpose, we feel that it has become incumbent upon us to bring the whole subject under your notice, as being the personal depositary of the prerogative of pardon. We therefore now respectfully request that Your Excellency will be pleased to inform us whether the advice tendered to you by your present Advisers, upon which it has been our duty to animadvert, has the sanction of Your Excellency's concurrence.

We have the honor to be,
Sir,
Your Excellency's most obedient humble Servants,

FRANCIS SMITH, *C.J.*
W. L. DOBSON, *J.*

*His Excellency the Governor.*

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REFERRED to Ministers.

FRED. A. WELD.
*Jan.* 30, 1877.

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## MEMORANDUM FOR THEIR HONORS THE JUDGES OF THE SUPREME COURT.

*Government House*, 30*th January*, 1877.

THE Governor has received the letter addressed to him by your Honors the Judges of the Supreme Court and dated January 27th, and has given it the careful consideration that any expression of your Honors' opinion will always command; and he will refer it, and his reply, to Ministers.

The Governor would point out that he has not stated that he has been informed by the late or the present Attorney-General that the Judges have not held it to be their duty to advise with regard to "petitions for commutations based upon grounds touching the criminality of the convict;" he has stated that he was informed that the Judges were "unwilling to give opinions or recommendations on the exercise of the prerogative of mercy:" to his mind there is a difference between those statements.

It has been the Governor's aim and object, as shown by the printed Memoranda, to promote complete co-operation between the Executive and the Judges as the rule in all cases of the exercise of the prerogative of mercy. He has therefore received with much pleasure the assurance that your Honors have been, and will be, "always ready to afford" (he presumes to the Government as well as to the Governor) "any advice or assistance in your power in the exercise of the prerogative of pardon involving the consideration of judicial considerations;" because he can hardly imagine a possible case in which some judicial considerations may not be involved directly or indirectly.

The Governor, however, observes that whilst communicating this satisfactory assurance, and in the same letter showing that the advice of the Judges is essential for the assistance of the Executive, your Honors express alarm lest, in giving such assistance without a clear understanding with the Governor, you should appear to countenance certain novel and dangerous doctrines which you state have been lately promulgated by Ministers; and in your concluding paragraph you respectfully request the Governor to inform you "whether the advice tendered to the Governor by his present Advisers, and upon which it has been your duty to animadvert, has the sanction of his concurrence?"

Ministers have not "advised" the Governor that the Executive Council is a judicial Court of Appeal from the Supreme Court, as your Honors would seem constructively to infer, and thereon base your argument. Your Honors refer to one authentic document, the Attorney-General's Memorandum of the 10th January, handed in to the Governor on the 26th January, but of which you state that a copy by the Government Printer only reached your Honors on the 27th, and it has only reached the Governor this day.

The Governor has grounds for believing that Memorandum never to have been adopted as the weighed and careful expression of the deliberate sense of the Cabinet; it was in no sense tendered to him as "advice;" it does not appear necessarily, or even naturally, to have the full signification your Honors attach to it. The words "in some measure" are probably the key to the real meaning of the writer, seem much to reduce the gravity of the sentence, and certainly to divest it of that accuracy and precision which alone would give it importance.

The Governor does not consider that he sits in Executive Council as a judicial Court of Appeal from the decisions of the Supreme Court.

That a Governor should sit as a Court of Appeal in certain specified cases is, as your Honors will be aware, not new to Colonial systems of judicature; but when such powers are given they are regulated and defined by special laws. It is not as such a Court that the Governor decides on the exercise of the prerogative of mercy.

Your Honors the Judges of the Supreme Court may therefore be assured that the Governor does not assume to step out of his constitutional province. Nice distinctions exist between the boundaries of functions different in their essence and well defined at their root, but still almost mingling in their ramifications, and it is in practice rather than by words that they may be best defined. The Governor is glad that he is able to illustrate his own views on this aspect of the subject of remission by a reference to a by-gone case, unconnected with this country and foreign to the discussions of the Tasmanian Parliament.

In papers laid before the Legislative Council of Western Australia and printed in 1873, the following passages occur in a Despatch dated 24th February, 1873, from Governor Weld to the Earl of Kimberley:—"I also lay down a rule that it is rather the province of the Judge and jury to try the facts and to fix a sentence, than the Governor's duty to re-try them, which he can only do at second-hand, or on hearsay, or on possibly garbled reports." And again:—"I will not, however, express any decided opinion upon evidence which I did not hear; and if not, least of all ought I to oppose the decision upon such a question of the Court which received it and weighed it with advantages that one not present cannot possess. Did I do so, a Governor might at once supersede Judge and jury, and trials, as in the infancy of nations, be once more conducted by the Head of the Executive."

Your Honors will readily recognise the compatibility of these views with the exercise of the prerogative of mercy, especially on the strong and united recommendation of Ministers: and the Governor observes your emphatic disclaimer of any desire to interfere with his unfettered exercise of the prerogative of mercy entrusted to him personally by Her Majesty the Queen.

FRED. A. WELD, *Governor.*

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Copy forwarded for information of Ministers.

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MEMORANDUM.

MINISTERS have the honor to acknowledge the receipt of a letter from their Honors the Judges of the Supreme Court addressed to the Governor, having reference to the commutation of the sentence of Louisa Hunt, and His Excellency's reply thereto, under dates January 27th and 30th ultimo, respectively.

The importance of the subject, the length of the document in question, and the gravity of the charges therein contained, coupled with the absence from town of the Honorables the Attorney-General and Colonial Secretary for several days, have prevented an earlier reply.

Whilst fully endorsing all that His Excellency has said in his reply of the 30th January, Ministers deem it incumbent upon them to record their opinions at some length, believing as they do that the conclusions arrived at by their Honors are not only erroneous but at variance with fact, inasmuch as Ministers have not at any time advised His Excellency that the Executive Council occupied the position of a Judicial Court of Appeal from the Supreme Court, as the Judges constructively infer.

In the first place their Honors state they never declined to make observations or recommendations, &c. touching the criminality of the convict. They have never been solicited upon this point, for the simple reason that the finding of the jury and sentence of the Judge have fixed this; and with the sentence ended the functions of the Judge, excepting in capital cases.

His Excellency's Memorandum stated the belief that the Judges "were disinclined to make recommendations to the Executive on the exercise of the prerogative of mercy,"—a thing totally distinct and apart from the "criminality of the convict."

Their Honors likewise say, "the invariable practice has been to refer all such Petitions to the Judge who tried the case before any remission was granted by the Governor." Upon enquiry Ministers find the practice stated has been the exception, not the rule.

Should any case demand judicial consideration, reference to the Judge would always be made, but certainly not when the question involved was one of grace or mercy alone.

Their Honors speak of "correcting the unaccountable misapprehensions into which His Excellency has been led, and fear lest by their actions they should seem to countenance some novel and dangerous doctrines which have lately been promulgated by His Excellency's present Advisers." This appears to Ministers gratuitous, as the Attorney-General's Minute, written long after the release of Mrs. Hunt, and in reply to His Excellency's Memorandum of the 5th January last, was an individual expression of opinion on his part, not of the Cabinet collectively.

The inferences and conclusions of their Honors upon this point have been evidently based upon erroneous data.

Ministers have expressed no opinion upon the law of the case, nor have they, in recommending the prisoner Louisa Hunt to mercy, acted in any other capacity than that of grace; and the arguments of the Judges are wholly fallacious, wishing it to appear as they do that a Court of Appeal has been established when such has not been the case.

Arguing again upon false premises, their Honors speak of "the tribunal which Your Excellency's Advisers wish to set up," and ask, "if, as is held by constitutional writers, it is essential that checks should exist as security against partiality and corruption in the Judges of the land, are not such checks, at least, as necessary in the case of the Advisers of Colonial Governors?"

Now the fact is this, practically there is scarcely any check upon the actions of Judges, as evidenced by their directions to juries; whilst in the exercise of the prerogative of mercy, delegated by the Sovereign to the Governor only, not to his Advisers, the practical check rests with himself, he having only to approve or disapprove as to his conscience seems best. "No advice tendered by Ministers could make him do an act of which his Sovereign would disapprove."

The whole argument is based upon erroneous premises, the prerogative of mercy resting solely with the Governor. The evils which have been so graphically pourtrayed by their Honors could not by any possibility take place.

They say, "the course pursued in the woman Hunt's case furnishes an apt illustration of the insufficiency of the means possessed by the Governor in Council for arriving at a correct judgment."

As the Executive Council was not in Louisa Hunt's case considered in the light of a Court of Appeal by either His Excellency or his Advisers, (nor could any forced construction or legal sophism

make it such), in recommending to mercy it was neither "imposed upon, nor impotent as to the means of investigation" applicable to the case, His Excellency's Advisers considering it one that "suitably belonged to the Crown," the question really being whether it was one in which the "interposition of the prerogative of mercy could be exercised as an act of grace;" no question having arisen upon any point of law, rendering it necessary to refer to the convicting Judge, had such a course been usual.

"If the Judge who tried the woman Hunt had been consulted, the errors by which Your Excellency was misled would have been corrected."

Ministers emphatically assert that His Excellency has not been misled in any particular, but on the contrary had all the information placed before him that was at their disposal, there having been no facts on record with regard to Louisa Hunt, nor any opinion of the convicting Judge in existence other than that made by him in young Hunt's case, and which they always thought had been placed before His Excellency at the time the application for mercy on his behalf was brought under his consideration by a former Executive: in fact the opinion expressed by Mr. Justice Dobson upon that case was to the effect, that "he could not recommend him to the favourable consideration of Your Excellency, as he believed the boy controlled the mother, not the mother him," and was therefore the more guilty person.

"There is a darker side to the extraordinary proceedings of Your Excellency's Advisers in this case which we cannot pass over in silence, illustrating as it does the inaptitude of this self-constituted tribunal for the discharge of the functions of a Court of Appeal from the Supreme Court."

Ministers answer by stating as a fact, that if a reward was not openly offered, one was actually paid.

With regard to the witness Amelia Dear, the Governor in Council did not "proceed upon the supposed fact," as their Honors say, that since the trial she had been convicted of felony. Every member of the Cabinet knew that Amelia Dear had not been found guilty of felony, but had been acquitted because her mother pleaded guilty.

Their Honors state that "the course followed by Your Excellency's Advisers is without precedent in any part of the British Dominions." This is an assertion unsupported by facts, for if they will only take the trouble to refer to modern works upon Parliamentary Government in England, and make use of the precedents noted under the heading "The Royal Prerogative in pardoning offenders," a little further light will be thrown upon the subject, and an addition made to their knowledge in this important particular which may ultimately prove beneficial, and enable them to understand their true position in relation to His Excellency as the depository of the Royal prerogative of pardon.

It must also be within the recollection of their Honors that the records of this Colony, if referred to, speak to the contrary, as evidenced by the remission of the life sentence of the prisoner Wollf, convicted of a capital offence, during Colonel Browne's administration; of the remission of Eliza Osburn's sentence of 9 years for stabbing, during Mr. DuCane's administration; and of young Hunt's sentence during His Excellency's administration.

"We (their Honors) hope it is unnecessary to guard ourselves against the imputation of wishing, by anything we have said, to interfere with the unfettered exercise by Your Excellency of the prerogative of pardon with which you are personally intrusted by the Queen. * * * But what we protest against is the assumption of the jurisdiction of a Court of Appeal for the review and reversal of the judgments of the Supreme Court under the pretext of the exercise of the prerogative of pardon."

This fallacious argument is answered by stating that the Executive Council is not, nor cannot ever, by the most special and disingenuous process of reasoning, be considered in the light of a Court of Appeal, nor has any jurisdiction been assumed, excepting in the minds of their Honors, of the nature indicated.

No claim of any kind, as His Excellency is fully aware, has been put forward by His Excellency's present Advisers to jurisdiction over the Supreme Court; and it will therefore be unnecessary for His Excellency to "assure their Honors of your dissent from" a proposition which, it is self-evident, has no real existence.

Ministers note also the following paragraph:—

"We should indeed have expected to find Your Excellency taking the earliest opportunity to discountenance a claim amounting to an usurpation of power subversive of the orderly administration of the law; but we have looked in vain for such a disclaimer in your Memorandum of the 25th inst., in answer to that of the Attorney-General. Had Your Excellency taken that opportunity of expressing your dissent from the opinion of your present Advisers, we should not have troubled you with this letter; but as you have not availed yourself of that or any other occasion for the purpose, we feel that it has been incumbent upon us to bring the whole subject under your notice, as being the personal depository of the prerogative of pardon. We therefore now respectfully request that Your Excellency will be pleased to inform us whether the advice tendered to you by your present Advisers, upon which it has been our duty to animadvert, has the sanction of Your Excellency's concurrence."

Ministers, in turn, deem it their duty to firmly but respectfully protest against Your Excellency being called upon to answer an interrogation of this kind, whether emanating from the Judges of the Supreme Court or any other persons,—an interrogation essentially inquisitorial, and substantially a direct interference with the Royal prerogative as exercised by His Excellency, and one which cannot be challenged by the Court over which their Honors preside, nor by any other tribunal short of the High Court of Parliament by which the Judges themselves are amovable. And if reference be made to Parliamentary Government in England, every attempt to call into question the prerogative of mercy has been at once discountenanced.

It is to be regretted that before addressing His Excellency upon the case of Louisa Hunt, and commenting in the tone and manner they have done as to the action of the Executive in the matter, their Honors had not carefully perused the circular despatch of Earl Carnarvon upon the prerogative of pardon: had they done so they would have discovered that the pardoning of a criminal as an act of grace is not the act of the Administration alone, and, having been performed, must have had His Excellency's "sanction and concurrence."

THOS. REIBEY.
CHARLES MEREDITH.
C. O'REILLY.
WILLIAM LOD$^{K}$. CROWTHER.

*His Excellency* F. A. WELD, *Esq., C.M.G., Governor.*

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*Judges' Chambers, 2nd February*, 1877.

SIR,

WE have the honor to acknowledge the receipt of Your Excellency's Memorandum dated 30th January, in reply to our letter of the 27th January, and to express to Your Excellency the satisfaction with which we receive your assurance that "the Governor does not consider that he sits in Executive Council as a judicial Court of Appeal from the decisions of the Supreme Court." We understand Your Excellency to express by this phrase precisely the same opinion which we stated in the words—"neither the Governor, nor the Governor in Council, is, in any sense, a Court of Appeal from the Supreme Court in criminal, any more than in civil cases."

The extract from Your Excellency's Despatch to the Earl of Kimberley, which you are so good as to quote in illustration of your views, and which we thank Your Excellency for bringing to our notice, seems to put the question in a very clear light, and to show that your opinion is substantially identical with our own as set forth in our letter.

There are, however, some expressions in your Memorandum which seem to render it necessary for us to offer some further explanations and observations to Your Excellency.

You point out that "the Governor has not stated that he has been informed that the Judges have not held it to be their duty to advise with regard to 'petitions for commutation based upon grounds touching the criminality of the convict,'" but "he has stated that he was informed that the Judges were 'unwilling to give opinions or recommendations on the exercise of the prerogative of mercy;'" and that "to his mind there is a difference between these statements."

There is undoubtedly a difference between the statements; but we are unable to appreciate the materiality of that difference in relation to Louisa Hunt's case—which is the case in respect of which mainly the question has arisen. The difference appears to be this—that the one includes the other. For if, as Your Excellency was informed, we had been unwilling to give opinions upon the exercise of the prerogative of mercy—a proposition which extends to all cases—it would follow that we should not have held it to be our duty to advise in cases involving the question of criminality. If Your Excellency had not received the impression that we did not hold it to be our duty to advise in cases involving grounds touching the criminality of the convict, the question naturally arises why was not the Judge consulted in Louisa Hunt's case? because that case involved no grounds but those touching her criminality. What we meant to convey by the statement in our letter, upon which Your Excellency founds a distinction of which we are unable to perceive the relevancy, was that there existed no ground for attributing to us the views which Your Excellency derived either from the late or from the present Attorney-General.

Your Excellency's remark that Ministers have not "advised" the Governor that the Executive Council is a judicial court of appeal, as we seem constructively to infer; and that you have grounds for believing the Memorandum of the Attorney-General never to have been adopted as the weighed and careful expression of the deliberate sense of the Cabinet, and was in no sense tendered to you as advice, renders it necessary that we should lay before Your Excellency more fully our reasons for thinking that Ministers did advise Your Excellency as we inferred, and that the Memorandum of the Attorney-General was to be regarded as having tendered the advice of your Cabinet.

It is to be observed that that Memorandum was in reply to Your Excellency's Memorandum of the 5th January, addressed, not to the Attorney-General only, but to the whole Cabinet; of which one object was expressly stated by Your Excellency to be "to afford *Ministers*"—we quote the exact words—"an opportunity of making any explanations, suggestions, or remarks which they may think it advisable in the interests of the public service;" in other words, to afford Ministers an opportunity of tendering advice upon the very important questions discussed by the Governor. For if the making of explanations, suggestions, or remarks upon questions of vital importance is not to be regarded as the tendering of advice, then we profess ourselves incapable of comprehending what is to be so considered. The Attorney-General's Memorandum in reply, which is dated the 10th January, does, in response to the Governor's invitation to "Ministers," make "explanations, suggestions, and remarks" upon the questions raised—in other words, does, according to our notion, tender advice. Now when one Minister, in reply to an invitation to all the Ministers, sends to the Governor a formal Memorandum stating his views, we should have thought it not only a warrantable, but the only legitimate inference, that his colleagues had been consulted and had been made acquainted with his opinion; and that consequently he was to be regarded as stating their views as well as his own. We should have thought that to put any other construction upon his act, and to infer that he would give his independent opinion, without notice to the other Ministers and without ascertaining that it was not at variance with theirs, would be to suppose him to be culpably wanting in respect for the Governor, and in fidelity to his colleagues.

But in this instance we are not left to inference. We know, from the public statement of the Attorney-General, that, as was natural to suppose, he did think it necessary that his views upon questions so important should be communicated to his colleagues previously to their being laid before the Governor; and that the delay which occurred between the date of his Memo. and that of its being placed in the Governor's hands, was owing to the Attorney-General having taken this precaution. We know that his colleagues had, therefore, a full fortnight for deliberation. Now when, at the end of that time, the Memo., having been seen by the whole Cabinet, was formally placed in the Governor's hands, we are at a loss to understand how it can be said not to contain the views, and therefore the advice, of Ministers. We cannot but think that it would be a very unusual and ambiguous proceeding on the part of Ministers, and calculated to mislead the Governor, if they had allowed the document to be formally handed to him without intimating their dissent, if they did not agree with it; or their inability to come to an opinion if they had not made up their minds during three weeks. If such a course of action were permissible, the difficulties of fixing Ministerial responsibility would be seriously increased. It would certainly surprise us if Your Excellency's Advisers were, themselves, to assert that the Memorandum of the Attorney-General, seen and considered by themselves, and handed to Your Excellency with their privity, did not contain their views, and was not to be regarded as their deliberate advice.

Your Excellency also considers that we have fallen into error in respect of the signification which we attach to the statement in the Attorney-General's Memo., that the Governor, in acting after receiving the advice of his Advisers in cases of remission, is "acting in some measure as a Court of Appeal,—the only Court of Appeal provided by the English law in criminal cases." We thought that the signification of these words was, that the Governor, with the advice of his Advisers, constituted a tribunal for reviewing the proceedings and judgments of the Supreme Court, with power to reverse the same if they considered them erroneous. Whatever may be the nature and extent of the qualification implied by the words—"in some measure,"—which seem to Your Excellency much to reduce the gravity of the sentence, and to divest it of that accuracy and precision which alone would give it importance,—there remains a clear assertion of the existence of a Court of Appeal in Criminal cases provided by the English law. Our object, in our former letter, was to state to Your Excellency our opinion that this assertion, however qualified, was erroneous; and that it is a mistake to say that the English law provides any such Court of Appeal; or that the Governor, with or without his Advisers, is invested with the power of acting, in any measure, as a Court of Appeal from the Supreme Court.

But, whatever may be the necessary or natural signification of the words, or the operation of the qualifying words, there can be no doubt whatever of the meaning which the Attorney-General intended to convey. That was placed beyond doubt by his declarations on the subject some days after, during the debate upon the vote of censure passed by the House of Assembly upon Your Excellency's present Advisers. The charge against them—which was, in substance, the assumption of a power to set aside the decisions of the Supreme Court, subversive of the administration of justice—was such as rendered it necessary for them to explain clearly the nature and extent of the power they claimed. And the Attorney-General, speaking on behalf of Ministers and in the presence of his colleagues, did state, very unmistakeably, the nature and extent of that power. He thus stated the views of Ministers upon the very question upon which he had given Your Excellency his opinion in the Memorandum; and his declarations may be regarded as a commentary on that Memorandum and as throwing light upon its meaning. In his speech upon the occasion mentioned, he explained that the power he claimed, and meant to exercise while he remained in office, was a power to overthrow the verdict of the jury and to upset the opinion of the Judge, whenever he considered that the jury had given an improper verdict, or the Judge an improper opinion or a

wrong charge. He asserted that the Executive Government constituted a great Court of Appeal in criminal cases, with power, as a higher Court, to revoke the decisions of the Supreme Court.

Declarations so explicit as these leave no room for doubt as to the nature and extent of the power over the Supreme Court claimed on behalf of Your Excellency's present Advisers. If the shade of a doubt could arise it would be dissipated by the manner in which they carried out in practice their theoretical views. The grounds on which Louisa Hunt's sentence was remitted were stated to be—that Your Excellency's Advisers had come to the conclusion that she was innocent—that Mr. Simpson, of the detective police, incited by the promise of a large reward, had concocted evidence for the purpose of convicting her—that the verdict was wrong, and justice had miscarried—that she was pardoned as one who ought not to have been convicted, and on the express ground of going behind the verdict of the jury; from which ground they would not flinch—and that, if such a case arose again, they intended to act in a similar way.

These must be regarded as the views of Ministers,—having been stated on their behalf, and in their presence. But, again, we are not left to inference alone; although that would have been conclusive. The Colonial Secretary, a few days before, expressed similar views, when he declared that, having always entertained from the very first a conviction that the woman was not guilty, he was bound to advise the remission of her sentence, and would have deserved execration if he had not done so. The whole of the evidence, he said, was circumstantial, and the witnesses not of the best character; and he was convinced that justice had miscarried. And upon these grounds, and without consulting the judge who tried her, the woman was pardoned.

We have gone into the matter at such length because we think it of importance to demonstrate, as we hope we have done, to Your Excellency's satisfaction, that we did not, as you suggest, make erroneous inferences in attributing to your Advisers the dangerous opinions to which we drew attention in our former letter. It is manifest that their avowed views and the course which they have pursued involve an assumption of the functions of an appellate court, with the largest and most peremptory powers of reviewing and reversing the decisions of the Supreme Court, as if it were a subordinate tribunal. Such being the case, we cannot doubt that Your Excellency will agree with us that it was our duty to protest against an usurpation so subversive of the administration of justice; and that it would have been highly unbecoming our character as Judges to have been less vigilant than the Parliament of the Colony—by both Houses of which votes of censure have been passed upon your present Advisers—in defending from aggression on their part that authority of which we are, in a peculiar manner, the guardians on behalf of, and in trust for the Crown and the people.

We have the honor to be,
Sir,
Your Excellency's most obedient humble Servants,

FRANCIS SMITH, *C.J.*
W. L. DOBSON, *J.*

*His Excellency the Governor.*

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REFERRED to Ministers, with enclosure.

FRED. A. WELD.
*Feb.* 8, 1877.

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*Launceston, 6th February*, 1877.

THE Governor has received the letter of your Honors the Judges of the Supreme Court, dated Feb. 2nd, which has this day reached him when absent from the seat of Government.

In your former letter your Honors took the course of asking the Governor's personal views upon a question partly legal and partly constitutional, as in your opinion a preliminary necessary before you could undertake to afford to the Executive certain assistance which your Honors concurred with the Governor in thinking would be of public advantage.

The Governor under these exceptional circumstances considered, and Ministers concurred with him, that he might best, so far as in him lay, promote the harmonious working of the public service were he, in a question somewhat personal to his office, frankly to give a personal reply; and in so doing he further attempted to remove certain misapprehensions.

Believing that questions of principle are ever best, and most wisely, kept apart from accessories which have been the subject of recent and warm public discussion, and that it would be improper in him to touch them, the Governor did not follow your Honors' letter in doing so.

It has now become his duty distinctly to express his conviction that it would be inconsistent with the proper position alike of the Governor and of the Judges, and he fears likely to impair public confidence in their impartiality, were they to join in discussing allegations made by the latter, which might seem to imply charges against the Ministers of the Representative of the Crown,—more especially should such allegations be constructively framed, and supported by extracts from speeches reported to have been delivered in Parliament.

The Governor cannot but feel that were he to allow himself to be led into such a course of action, ordinary constitutional relations between himself and the political party, represented by whoever might happen to be the Ministers of the day, might become impossible; and that, moreover, such action would have a direct tendency seriously to interfere with that freedom of debate which is a most valued and undoubted privilege of Parliament, the proper and ultimate tribunal by which the actions of Ministers are approved or condemned and to which most fitly belongs the cognizance of what is uttered within its walls.

The Governor must further observe that the Crown has constitutional means of learning its Ministers' mind, is the sole and only competent judge whether they have, or have not, tendered certain advice to him; and that such constitutional means are not within the province of the Judges, nor in any way requisite to the due performance of their proper functions.

Therefore your Honors will readily perceive that the Governor, holding these views, and believing them to be of a larger and wider import than the further elucidation of the merits of any particular case already dealt with by Parliament, is not in any way derogating from that high respect which is due, and which he will ever render, to the Judges of the Supreme Court in their own sphere, by simply referring your Honors' present letter and this reply to Ministers.

FRED. A. WELD, *Governor.*

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COPY referred to Ministers with their Honors' letter.

F. A. WELD.
*Feb.* 8, 1877.

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MEMORANDUM.

*9th February*, 1877.

MINISTERS have the honor to acknowledge the receipt of a second letter addressed to His Excellency by their Honors the Judges of the Supreme Court, and his reply thereto, under dates February 2nd and 6th respectively.

Ministers have to thank His Excellency for the very able, prompt, and pertinent reply to their Honors' lengthened effusion, and the very decisive manner in which he has dealt with a document replete with special pleading,—disingenuous from the fact that it had for its primary object a desire to lead His Excellency into a discussion relative to acts done by Ministers in Executive Council, and utterances made by them within the walls of Parliament,—a course inconsistent with the proper functions assigned to them as Judges of this Colony, and one if acceded to by His Excellency would have tended to impair public confidence in the impartiality of men who ought at all times to stand aloof from political questions, to be above party feelings, and by their acts give evidence that to them it is a matter of indifference of what *personnel* His Excellency's Advisers may be composed, and are prepared on all occasions without "fear, favour, or affection" to mete out justice even-handed.

Having so fully replied to their Honors' former letter, and dealt in detail with the various inaccuracies and inconsistencies therein set forth, and expressed their opinion upon and dissent from the position assumed by their Honors in relation to His Excellency, little good could result from an analysis of the present document, which appears to them to be but a reiteration of the same allegations,—constructively framed, no doubt, with great ability, but wholly erroneous, as the arguments from first to last have been based upon wrong premises. Their Honors have, in their over-anxiety to protect the judgment seat, evidently forgotten their true position and the relations which ought to exist between themselves as the depositories of law on the one hand, and His Excellency as the Representative of Her Majesty on the other, so far as the prerogative of mercy is concerned; and have endeavoured to establish a precedent for conduct essentially "inquisitorial" in its character as to the acts of Ministers sitting in Executive Council.

Ministers have felt it their duty to comment upon the extraordinary action of the Judges in its relation both to His Excellency and themselves; and are led to hope that, as a grave error, perhaps unintentionally, has been committed by their Honors in having stepped out of their proper sphere, the lesson will not be uninstructive; and they beg to assure His Excellency that nothing was farther from their thoughts, when they recommended the release of the prisoner Louisa Hunt, than consider-

ing the Executive Council as a "Court of Appeal," or that they had any desire to encroach upon or detract from the powers of the Supreme Court, for which they will always be prepared to entertain the profoundest respect, so long as those entrusted with its high prerogatives confine themselves strictly to their proper functions, viz., the due administration of the laws of the land.

THOS. REIBEY.
CHARLES MEREDITH.
C. O'REILLY.
WILLIAM LODK. CROWTHER.

*His Excellency* F. A. WELD, *Esq.*, *Governor.*

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*Judges' Chambers, 9th February,* 1877.

SIR,

WE have the honor to acknowledge the receipt of Your Excellency's Memo. dated the 6th, in reply to our letter of the 2nd instant.

You inform us that it has become your duty distinctly to express your conviction that it would be inconsistent with the proper position of the Governor and of the Judges, were they to join in discussing allegations made by the latter implying charges against Ministers; and further that were you to allow yourself to be led into such a course of action, ordinary constitutional relations between Your Excellency and the political party represented by your Ministers for the time being might become impossible.

If, as we infer from these statements, you are under the impression that we have sought to draw Your Excellency into a discussion of our allegations, or to lead you into such a course of action as you describe, we can only express our regret that we have so failed in conveying our meaning.

Our object has been, not to involve Your Excellency in any discussion whatever, or to lead you into any course of action, but merely to obtain an answer to the question with which our first letter concluded. In submitting that question, we deemed it due to Your Excellency, on account of its being so unusual and of so very peculiar a character, to explain fully our reasons; and we also considered it to be our duty to state our opinion unreservedly upon the dangerous tendency of the principles avowed by Your Excellency's Advisers as the basis of their advice in the case out of which the question arose—the case of Louisa Hunt.

Your Excellency's reply was not confined to an answer to our question; but went on to point out what, in your view, were errors and misapprehensions on our part. This rendered it incumbent upon us—unless we had been content to be taken to admit these alleged errors and misapprehensions, which we could not truthfully do—to offer to Your Excellency further explanations and observations. Having done this in our last letter we had no wish to prolong the discussion.

There are some remarks in Your Excellency's present Memo. upon which we feel constrained reluctantly to observe.

We cannot agree with Your Excellency that questions of principle—when the principle involved is a constitutional principle—are best and most wisely kept apart from accessories. We think that such principles can be most effectively discussed in connection with the very cases out of which they have arisen, and which necessarily supply the clearest illustration for their correct application. Your Excellency does not need to be reminded that the distinctive excellence of the Constitution of England, as compared with other countries, consists precisely in the fact that it is the result of experience derived from practical dealing with particular cases when they arise, as contra-distinguished from the evolution of principles from abstract considerations—a circumstance which makes England the land

> "Where Freedom broadens slowly down
> From precedent to precedent."

We felt ourselves compelled to resist a bad precedent; and, for that purpose, to prove that it was bad.

We cannot understand what is meant by Your Excellency's suggestion that we have made allegations constructively framed which might seem to imply charges against your Ministers. Our allegations may, in substance, be summed up thus—that the advice which your Ministers have given in connexion with Louisa Hunt's case is dangerous—opening a wide door to scandalous corruption—subversive of the administration of justice—and involving an aggression upon the authority and jurisdiction of the Supreme Court. We do not see how it can be said that there is anything constructive about allegations so distinct as these.

We beg respectfully to disclaim the wish to lead Your Excellency into such a course of action as would render impossible ordinary constitutional relations between the Governor and the political

party represented by the Ministers of the day; and we cannot find anything in the letters which we have addressed to Your Excellency which, in our view, can be considered to have that effect. There are no party considerations that we know of involved in the question; nor do we see how such considerations can be involved in a question of this nature. Neither are we able to understand what it is that we have written which can be supposed to lead to any action having a tendency to interfere with freedom of debate in Parliament. The reference which we made to the djebates in Parliament was for the purpose of citing the declarations of your Ministers upon the subect of the Attorney-General's Memo., in order to prove that our construction of that Memo. as expressing the opinion of your Ministers was correct. The debates of Parliament when published become public property, open to all the Queen's subjects to make such lawful use of as they may think fit. And we are yet to learn that a reference to these debates in order to cite the declarations of Ministers with the view of showing what are their opinions upon any subject is not perfectly legitimate; and in what respect it can possibly be thought to have a tendency to interfere with the freedom of debate we are at a loss to imagine. To suggest, as it appears to us that Your Excellency does suggest, that we could think that the cognizance of what is uttered within the walls of Parliament belongs to any person or authority other than Parliament itself, is, we beg very respectfully to point out, to suggest a degree of ignorance which would be discreditable. Men do not, even in the colonies, reach the bench who are unacquainted with the Bill of Rights.

We have never claimed that the constitutional means of learning the minds of Ministers are within the province of the judges, or in any way requisite to the due performance of their functions. Such constitutional means are, as Your Excellency justly observes, possessed by the Crown. We take leave to add that they are also possessed by Parliament; but not by the Judges. We cannot concur in Your Excellency's opinion that the Crown is the sole and only competent judge whether Ministers have or have not tendered certain advice. When once that which has passed between the Governor and his Ministers upon any subject is disclosed, we conceive that Parliament becomes a very competent judge of that question. We think too that if the subject touches the jurisdiction of the Supreme Court, the Judges are also competent to form an opinion upon the same question, and to give effect to that opinion.

In the present case it appears that both Houses of Parliament have come to the same opinion which we hold, as well upon the question whether in fact Your Excellency's Ministers tendered certain advice, as upon the character of that advice. And in corroboration of the correctness of that opinion we beg Your Excellency's particular attention to the pregnant circumstance that in neither House did your Ministers deny that in point of fact they had given the advice which was impugned;—a denial which, we cannot but think, would have gone far to rescue them from condemnation; but which, not having been then made, would now, we submit, be rather late.

We are unable to discover in what respect the discussion of our allegations between Your Excellency and ourselves—should such discussion take place notwithstanding we did not desire it—would be inconsistent with the proper position of the Governor and of the Judges; or be likely to impair public confidence in our impartiality. If, as we considered, there had been an invasion by your Advisers of the jurisdiction of the Supreme Court, whom could we so properly address as the Governor to whom is confided, by the Queen's Commission, the duty of the impartial administration of justice? How anything which we have written can be conceived to have a tendency to impair public confidence in our impartiality we cannot understand. It can hardly be thought that we should have taken any different course to that which we have adopted, if other persons had been Your Excellency's Advisers. We should have been—we shall ever be—equally prompt to resist any invasion of the jurisdiction of the Supreme Court come from what person or from what quarter it may. We beg leave to say that Your Excellency may safely rest assured that we are not likely to do any act having a tendency to impair that confidence in our impartiality on the part of our fellow-subjects throughout the Colony which we feel assured that we possess, and to which we know that we are entitled. We cannot refrain from noting that this is the first occasion that such a suggestion has ever been made during our tenure of the judicial office, extending to periods of more than sixteen years, and six years, respectively; and that it is now made in connection with a matter in which we have not the remotest personal interest. It is, we repeat, from an imperative sense of duty to the Crown and to the people—in trust for whom we hold the office of Judges—that we have felt bound to resist aggression upon the authority of the Supreme Court—regarding it as a sacred obligation to preserve that authority as we received it, and to hand it to our successors, unimpaired through any want of vigilance, or any pusillanimity, on our part.

We have the honor to be,
Sir,
Your Excellency's most obedient humble Servants,

FRANCIS SMITH, *C.J.*
W. L. DOBSON, *J.*

*His Excellency the Governor.*

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REFERRED with reply to Ministers. FRED. A. WELD,
*February* 10, 1877.

## MEMORANDUM FOR THE JUDGES OF THE SUPREME COURT.

THE Governor, in acknowledging the letter of yesterday's date addressed to him by the Judges of the Supreme Court, will only observe that he sees no reason to depart from his previously expressed opinion, that it is inexpedient that he should carry on a discussion with your Honors on the various points touched upon in your Honors' letters; he is content with having stated his views, he disclaims any intention of suggesting an imputation on your Honors' impartiality any more than on his own, and he will refer this letter and reply to Ministers.

FRED. A. WELD, *Governor.*

*Government House*, 10*th February*, 1877.

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*Judges' Chambers*, 10*th February*, 1877.

SIR,

WE have the honor to acknowledge the receipt of Your Excellency's Memorandum of this day's date in reply to our letter of the 9th February.

In concluding this correspondence we take occasion to convey to Your Excellency the assurance —which, however, can scarcely be needed—that the firmness with which we have felt it to be our duty to maintain our opinions upon those points upon which it has been our misfortune to differ from you has been perfectly consistent with the very sincere respect which we entertain for Your Excellency in your personal not less than in your official capacity.

We have the honor to be,
Sir,
Your Excellency's most obedient humble Servants,

FRANCIS SMITH, *C.J.*
W. L. DOBSON, *J.*

*His Excellency the Governor.*

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FORWARDED for the information of Ministers.

FRED. A. WELD.
*Feb.* 12, 1877.

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## MEMORANDUM FOR HIS EXCELLENCY THE GOVERNOR.

MINISTERS have to acknowledge the receipt of a third letter addressed by their Honors the Judges of the Supreme Court to the Governor, and his reply thereto, under dates February 9th and 10th respectively.

It is not Ministers' intention, at this stage of the proceedings, to examine in detail the contents of a document framed with all the peculiarities incidental to the legal mind—a document that in every paragraph speaks for itself, and whilst disavowing much, obtrudes more; is discourteous in tone, partisan in character, and utterly devoid of any argument that would induce Ministers to consider the censorship proffered other than an assumption extra-judicial.

Their Honors, despite the Governor's second reply, again demand, "whether the advice tendered to the Governor by his present Advisers, upon which it has been their duty to animadvert, has the sanction of the Governor's concurrence."

To ordinary minds the answer returned by the Governor would have been sufficient, to the legal mind it appears otherwise; and the astonishment is the greater when the declaration of Earl Carnarvon upon the prerogative of mercy is taken into consideration; an utterance so explicit, that no sophistry on the part of their Honors will enable them to fix upon Ministers the sole responsibility of Louisa Hunt's release.

If their Honors were cognisant of, and conversant with, the contents of the despatch in question (which they ought to have been) ere they first addressed the Governor, it makes the course pursued by them, more particularly after his reply to their second communication, not only untenable, but exhibits in their extraordinary desire to impeach Ministers, not only an actual departure from their assigned and recognised functions as Judges, but displays a total absence of that fine feeling which in the ordinary offices of every-day life regulates and controls all correspondence, official or otherwise, not only as between individuals of equal rank, but more especially when subordinates address Her Majesty's Representative.

"The Judges are also competent to form an opinion and give effect to that opinion." Perhaps so; but a great deal will depend upon the manner in which that opinion is expressed to render such acceptable, whether suggestive, dogmatic, or dictatorial; when the latter, as in the present instance, it can only be regarded with indifference.

Their Honors say, "Your Excellency may rest assured that we are not likely to do any act having a tendency to impair the confidence in our impartiality on the part of our fellow-subjects throughout the Colony, which we feel assured we possess, and to which we know that we are entitled."

Men, their Honors as well as others, are judged by their actions; and we need only refer to the pertinacity displayed by their Honors in again demanding from the Governor, after the explanation he has given, a more specific reply to the interrogations contained in their first letter to him as a proof that some peculiar notions are held by their Honors as to what constitutes impartiality when dealing with a question as affecting Ministers in their relations to the Crown, the zeal displayed by them in the present instance being marked by a want of discretion hardly compatible with the judicial mind, if that mind were, as their Honors would wish it to be believed, uninfluenced by the politics of the day.

THOS. REIBEY.
CHARLES MEREDITH.
C. O'REILLY.
WILLIAM LOD$^{K.}$ CROWTHER.

13*th February*, 1877.

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*Attorney-General's Office*, 17*th February*, 1877.

SIR,

As I was unavoidably absent from Hobart Town when the Memoranda of their Honors the Judges reached my colleagues, I was unable to assist in the preparation of the replies made by the rest of Your Excellency's Ministers. Though I have only very lately received those Memoranda, together with the answers of my colleagues, I hasten to reply at once, and as shortly as possible, to some of the observations made by their Honors. In doing so I wish to say that, agreeing substantially with all that your Ministers have said, I yet feel called upon to make some additional remarks in explanation of certain allusions to myself contained in the Judges' Memoranda. But before doing so, I must protest against the interference of the Judges in a matter which in no way concerns them as Judges, and which has been made a political question, and used for party purposes. In the second place I regret the tone adopted by the Judges throughout their Memoranda, and the inaccuracies in their statements of facts.

My reason for saying that this matter in no way concerns the Judges, as Judges, is, that when a prisoner has been tried, convicted, and sentenced, the duties of the Judges are at an end; and they have no right to interfere with any advice that may afterwards be given to Your Excellency by your responsible Advisers as to the ultimate disposal of such prisoner, unless requested to do so either by Your Excellency or by your Ministers. I cannot help thinking that, by taking the step their Honors have taken, they have descended from their proper impartial and Judicial position, in order not only to mingle in political warfare but to take actively the part of one side against the other in the contest. The tone, too, the Judges have adopted is obvious throughout their Memoranda, and especially in their repeated use of the term "censure," and in their use of the term "condemnation," when alluding to the vote of the House of Assembly during the last Session,—when, in fact, the motion was evidently made merely for the purpose of testing the strength of parties, was only carried by the casting vote of the Speaker, and would probably have been otherwise carried had all the Members of the House been present.

The Judges in their first Memorandum state, in alluding to a Memo. of mine in which I give my individual opinion as to the practice of dealing with petitions for the remission of sentences, that "some novel and dangerous doctrines have lately been promulgated by Your Excellency's present Advisers." As what I then stated has evidently been misunderstood by their Honors, I think it incumbent upon me to explain what was meant by the words alluded to, and complained of, by the Judges. Neither in that Memo., nor in any advice that I have had the honor to tender to Your Excellency since I have held the office of Attorney-General of this Colony, have I attempted to act in any other way than that which is pursued in other similarly constituted colonies and by my predecessors in this. The custom as I found it when I took office was, when a prisoner's petition was presented to Your Excellency for a remission of a sentence, for Your Excellency to refer such petition to your Ministers, and then, after an enquiry more or less full according to the circumstances of each case, for the Attorney-General to advise Your Excellency whether in the opinion of Ministers the prayer of the petition should be granted or not. In coming to a conclusion in a case where the justice of the conviction is impugned, it has always been considered necessary for Ministers, if they think there is any ground for such an

allegation, to enquire as diligently as circumstances will permit into the facts of the case. If the result of those enquiries is that Ministers are of opinion that the allegations contained in the petition impugning the justice of the conviction are made out, they do not, and in my opinion they cannot, in advising Your Excellency, do otherwise than advise Your Excellency not merely to remit a portion of the sentence but to pardon the petitioner. This is the practice I believe in other colonies; and indeed it is recognised in Lord Carnarvon's despatch of May 4th, 1874, to Your Excellency, and by two Governors and the Colonial Secretary of New South Wales whose statements and opinions are contained in that despatch. Such is also the practice in England. The Home Secretary receives similar petitions and advises the Crown what remissions or pardons should be granted. I will mention to Your Excellency only one case which happens to occur to me—the case of a man named Toomer who was tried and convicted of felony at the Reading Assizes some 12 or 15 years ago. The Judge who tried the case, the late Mr. Justice Shee, showed his full concurrence in the verdict of the jury, and sentenced the prisoner to five years' penal servitude. A petition was presented to the Home Secretary, and the prisoner, I believe against the opinion of the Judge, and without any fresh evidence being produced, was afterwards pardoned. What, I may ask, Sir, would have been thought of the conduct of the English Judges if they had protested against the action of the then administration, and strenuously insisted that a new tribunal was being constituted and a Court of Appeal set up? And, to make the case still more strictly parallel, I am sorry to be obliged to ask what would have been thought of them if it had been known that those Judges held political opinions bitterly hostile to the Government? And yet your present Advisers, Sir, have done nothing that their predecessors have not frequently done in following the practice which obtains in England and in other colonies; therefore their Honors are incorrect when they say that the course followed by Your Excellency's present Advisers is without precedent in any part of the British Dominions. Their Honors will not, I hope, be offended by being thus corrected by one who has had much more experience of the English practice than they have had the advantage of.

This advice then, Sir, thus given by your Advisers, and explained by myself, is the sole foundation for the charge made against us by the Judges of having established a Court of Appeal from their decisions. I admit that a number of gentlemen not necessarily having legal knowledge or training, as the Judges say, can form but an unsatisfactory body to review the verdicts of juries; and there is great weight in what the Judges say as to the disadvantages under which Ministers lay when considering such petitions for remission as may be referred to them. But these arguments are nothing to the purpose. They would be most valuable as arguments for altering the present practice, or for founding a better tribunal; but we, Sir, can only take the law and custom as we find it, and act accordingly. The more difficult Ministers may find a question of remission to be, the more careful should they be in the advice they tender; but after having made all the enquiries they can, if they come to the conclusion that a wrong verdict has been given, I submit that they are bound by their oaths of office to tell Your Excellency so, and to advise a pardon.

I will not, Sir, trouble you with further remarks upon this subject, nor allude to that portion of the Judges' Memorandum which begins with the ominous words, "There is a darker side," because if I did so, I should be obliged to go fully into the facts brought out during the trial in question, and to facts that have come to your Ministers' knowledge since; but this I must say, that in my humble opinion, and I know also in the opinion of many others, no one of unbiassed mind could help admitting that a portion of the evidence brought against the accused at the trial was concocted evidence. In conclusion I will only add, that I trust the respect felt for the Judges of the Supreme Court will not be diminished by their conduct in this matter; and that they will perceive that to interfere in a matter of this sort again must tend to lessen the belief of the public that the Judges are removed from the sphere of political partisanship. To justify their great regard for the value of following precedent, their Honors quote a well-known passage from the early writings of Mr. Tennyson: may I, on the other hand, remind Your Excellency of a later opinion of that poet who in his maturer years speaks of

—— "the lawless science of our law,
That codeless myriad of precedent."

I have the honor to be,
Your very obedient Servant,
CHARLES HAMILTON BROMBY.

*His Excellency the Governor.*

*Judges' Chambers, 19th February, 1877.*

SIR,

WE have the honor to acknowledge the receipt of Your Excellency's Memorandum dated 16th February, transmitting a printed paper containing a copy of the correspondence which has passed between Your Excellency and ourselves, and of Memoranda by your Advisers commenting upon that correspondence.

Upon a perusal of these Memoranda, we observe that the usurpation on the part of your Advisers, which caused us, in the first instance, to address Your Excellency, is renounced. The renunciation, it is true, takes the unexpected and startling form of a disavowal. This, however, does not render the renunciation any the less effectual; and consequently our object in addressing Your Excellency—the protection from invasion of the authority of the Supreme Court—is accomplished. Therefore the singular lateness of a disavowal which, if earlier made, might have obviated parliamentary censure; its inconsistency with the opinions conveyed to Your Excellency by one Minister with the privity of the others; and its incompatibility with the defence set up by your Ministers in Parliament, become matters of merely speculative interest, which it does not concern us to discuss.

Equally unprofitable would it be, as it is obviously unnecessary, to answer reasoning so conspicuously weak and inconsequential as that which is put forth in these documents; and betraying so plainly a failure to comprehend the scope of the arguments which it professes to refute. It is evidently superfluous, were it desirable, to enter into controversy with gentlemen who, for example, conceive that the remission of a sentence on the alleged ground that the prisoner is an innocent person wrongfully convicted upon a false accusation fabricated to obtain a promised reward, is an act of grace and mercy not involving judicial considerations—who think they find a precedent in cases where these alleged grounds of remission were absent—who state that it has not been the practice to refer all petitions for commutation based upon grounds touching the criminality of the convict to the Judge who tried the case before any remission was granted by the Governor—who see no distinction between the offer of a reward as an inducement to obtain a conviction, and the giving of a gratuity, after conviction, as a recompense for unusual exertions—who, in the face of the Governor's distinct statement that he assented to the prisoner's release under the belief that a supposed fact existed, deny that the Governor in Council proceeded upon that supposed fact, on the mere ground that the members of the Cabinet did not do so; thus ignoring, as it seems, the circumstance that the Governor forms a constituent, not unimportant, of the authority known as "the Governor in Council."

We trust that Your Excellency does not share the opinion that the question which we respectfully addressed to you was an inquisitorial interrogatory, or that it was an interference with the prerogative entrusted to Your Excellency. Knowing from published documents that certain advice had been given to Your Excellency, with the privity of all your Ministers—advice which they now impliedly admit to have been erroneous, and disavow—and considering that such advice involved an aggression upon the authority of the Supreme Court, can it rationally be contended that we were not justified in taking steps to ascertain whether Your Excellency concurred in that advice, or that there was anything inquisitorial in such a course? If indeed we had sought to discover what undisclosed advice had been tendered to Your Excellency, there would have been ground to characterise such an interrogatory as inquisitorial; but our question was based upon communications and opinions of your Advisers which had been made public.

We conceive that we may safely express the conviction that Your Excellency cannot possibly share the strangely fallacious notion which appears to have taken such complete possession of your Advisers that they refer to it twice in the course of their short concluding Memorandum. We allude to the statement that we, "despite the Governor's second reply, again demand whether the advice tendered to the Governor by his present Advisers has the sanction of the Governor's concurrence;" and the subsequent reference to our supposed pertinacity in making this demand, as proof of the imputation of partiality, indiscreet zeal, and political bias, which your Advisers think it seemly to make against us. It is needless to say that, having received a very explicit and satisfactory reply to our question in Your Excellency's first Memorandum, which we acknowledged in our second letter, we had no occasion to repeat the question, and in point of fact have not done so.

We trust that Your Excellency will concur with us that there is no need to repel the insinuation that our correspondence has exhibited any want of that respect which is due to you as the Queen's Representative; and which, as we have already assured you, we unfeignedly entertain not only in that but in your personal capacity. We are persuaded that Your Excellency is quite capable of understanding that the firm support of conscientious opinions is very compatible with the highest respect for a person who holds opposite opinions.

We cannot, of course, avoid perceiving the studious discourtesy towards ourselves personally which is exhibited in these Memoranda. It does not, we confess, surprise us; and gives us not the least offence. We wish it to be observed that we, on our part, were careful in our correspondence with Your Excellency to avoid any personal reflection upon your Advisers; scrupulously confining

our remarks to the nature and consequences of their acts, advice, and opinions. Had we been deterred from expressing, as we deemed it our duty to do, our opinions upon these, in uncompromising terms, by the anticipation of discourteous personality, we should have proved ourselves weak and unworthy depositaries of a high and important trust.

We have the honor to be,
Sir,
Your Excellency's most obedient humble Servants,

FRANCIS SMITH, *C.J.*
W. L. DOBSON, *J.*

*His Excellency the Governor.*

P.S.—Since the foregoing letter was written we have received from Your Excellency another printed paper containing copy of a letter from the Attorney-General, dated 17th February; having perused which we do not consider that it calls for any remark in addition to those which we have already made in the letter.

F. S.
W. L. D.

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REFERRED with my reply to Ministers.

FRED. A. WELD.
*Feb.* 21, 1877.

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*Government House*, 21*st February*, 1877.

THE Governor has this morning received your Honors' letter of February 19, acknowledging the receipt of his Memorandum of February 16, in which he transmitted certain Memoranda by Ministers in the same (printed) form in which he received them.

The Governor has already informed your Honors that he does not admit that Ministers ever tendered him the advice that the Governor in Council sat as a judicial Court of Appeal in criminal cases upon which your Honors have considered it your duty to animadvert; and Ministers deny that they ever tendered it, or that Parliament censured any advice excepting the advice that Louisa Hunt's sentence should be remitted. Your Honors differ from the Governor and Ministers, and still believe that such advice has been tendered and is now disavowed by Ministers. You observe, however, in your letter of February 2nd, that the Governor's opinion upon the true functions of the Governor in Council appear "substantially identical" with your own.

The Governor regrets that this correspondence should have taken place, for reasons indicated in his Memorandum of February 6th. He admits that Judges, believing such advice to have been given, were justified in enquiring whether the Governor intended to give effect to it; though, from the first, he has been of opinion that his personal assurance that he was not aware of such advice having been given, accompanied by an explanation of his own views, might well have been sufficient without any written communications.

Your Honors held a different opinion, and have acted upon it; but the Governor is fully sensible that the most decided opinions are, to use your Honors' own words, "very compatible with the highest respect for a person who holds opposite opinions." He willingly adopts those words,—and he needs no assurance from your Honors that you are ever ready to uphold the respect due to his office as the Representative of the Crown. With this assurance the Governor closes his part of this correspondence.

FRED. A. WELD, *Governor.*

*Their Honors the Judges of the Supreme Court.*

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24*th February*, 1877.

MEMORANDUM.

MINISTERS have to acknowledge the receipt of a fifth letter from their Honors the Judges to the Governor, and His Excellency's reply thereto, under dates February 19th and 21st respectively.

Ministers have to thank the Governor for his reply to their Honors' communication, containing as it does the distinct and positive intimation, previously made by him, that "he does not admit that Ministers ever tendered him the advice that the Governor in Council sat as a Judicial Court of Appeal in criminal cases upon which their Honors have considered it their duty to animadvert;" and Ministers deny that they ever tendered it, or that Parliament (by the casting vote of the Speaker in the House of Assembly) censured any advice excepting the advice that Louisa Hunt's sentence should be remitted.

Despite the Governor's declaration their Honors differ from him and Ministers, and still assert that such advice has been tendered; raise a false issue,—fight as it were with a shadow,—and pretend, through the instrumentality of action most questionable, "to have accomplished an object," viz. "the protection from invasion of the authority of the Supreme Court,"—the sacred portals of which have not, excepting in the imagination of their Honors, been in any particular either encroached upon, or, as they would desire it to appear, invaded.

To review in detail the present letter of their Honors would be an unprofitable task, inasmuch as it differs but little from previous communications, displays no larger knowledge of the matters at issue, (in some essentials, less), and, regardless of the assurance of the Governor and Ministers, exemplifies the fact that their Honors have descended from that high and important position they are bound to occupy as Judges of this Colony, by initiating and continuing a correspondence replete with special pleading, at variance with facts, essentially inquisitorial and illogical,—the premises being erroneous,—and the effect of which upon the public mind must be, as soon as its purport is clearly understood, to lessen confidence in persons to whom have been entrusted the important functions of administering the laws of the land. The question naturally forces itself upon Ministers whether a phase has not arrived in the proceedings, as initiated and continued by their Honors, that will, in the interests of the public, demand a reference to, and arbitrament by, a tribunal to which their Honors the Judges are amenable.

It is with deep regret that, in repelling the attack that has been made upon Ministers by their Honors, Ministers should have felt called upon to animadvert upon the discrepancies exhibited by their Honors, and the attitude assumed by them, which, if not in words, at least in effect, imputes untruthfulness both to the Governor and Ministers. Such a line of action can only be accounted for by their attempt at justification in re-asserting that which has been distinctly proved to have no existence, viz., "that Ministers have constituted a Court of Appeal."

The Judges say, "Ministers have failed to comprehend the scope of their Honors' arguments;"—it may be so; but it must be borne in mind, arguments that are not based upon fact hardly admit of comprehension.

One thing Ministers have not found a difficulty in comprehending, viz., that in their desire to impeach Ministers, their Honors have departed from their assigned and proper sphere of action, and have lost sight of the dignity of the Judge in assuming the character of the partisan.

In support of this opinion, not hastily arrived at, Ministers append extracts upon the "Moral Qualifications essential to a Judge," as detailed by "Gisborne on 'The Duties of Man,'" not inapplicable to the present controversy. This writer says, there must be,—

"Incorruptible integrity" "Absence of unbecoming artifices, all browbeating, all intemperate heat, all personal asperity: he will show by his fairness and candour that he has not imbibed any of the prejudices which may be prevalent in respect to the cause of parties at issue." "There must be perfect impartiality, a *conscientious avoidance of all strained inferences and forced constructions.*" "He will endeavour to meet and dispel prevailing antipathies, whether political or religious." "He will industriously exert himself in allaying animosities and heats." "He is bound to hold steadily the middle track between man and man, and he is under an obligation no less solemn to steer an independent course between party and party." "*He must not be blinded and biassed by ministerial or anti-ministerial attachments, and must never let the turbid stream of politics pollute the fountain of justice.*" "He must not be betrayed into an unmerited and intemperate opposition to the Crown and its Executive Officers, when causes in which they are concerned come before him, by a desire of gaining popularity, party purposes, or the defeat of political opponents." "To sacrifice justice to political or party considerations, would be more criminal now than in former ages." "His duty is to cherish, invigorate, and distribute the streams of justice through every part of the body politic,"—to use the words of Shakespeare, to

"Poise the cause in Justice' equal scales
Whose beam stands sure, whose rightful cause prevails."

THOS. REIBEY.
CHARLES MEREDITH.
C. O'REILLY.
WILLIAM LODR. CROWTHER.

*His Excellency the Governor.*

*Judges' Chambers, 28th February*, 1877.

Sir,

We beg to draw Your Excellency's attention to the omission of your Memorandum of the 16th February from the printed Correspondence relating to the Prerogative of Pardon.

That Memorandum is material for the purpose of assisting to correct a mistaken impression which is likely to arise (and which we know has arisen) from the form in which the correspondence is printed. The Memoranda of your Advisers are, as printed, so inserted amongst the Letters and Memoranda which passed between Your Excellency and ourselves as to present the appearance of having been sent to yourself, and seen by us, separately and successively, at the several points in that correspondence at which they are inserted.

The Memorandum of Your Excellency which is omitted shows in a distinct manner that the Memoranda of your Advisers were not received by Your Excellency, nor seen by us, until after the correspondence between Your Excellency and ourselves was closed. A considerable portion of that correspondence would have been obviated if we had been made aware of the disavowal of your Advisers at the point indicated by the form in which the papers are printed.

We have the honor to be,
Sir,
Your Excellency's most obedient humble Servants,

FRANCIS SMITH, *C. J.*
W. L. DOBSON, *J.*

*His Excellency the Governor.*

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*Government House, Hobart Town, March* 1, 1877.

The Governor has the honor to acknowledge the receipt of your Honors' Memorandum of 28th February, and has called the attention of Ministers to it.

FRED. A. WELD.

*To their Honors the Judges of the Supreme Court.*

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Referred to Ministers. On reference I do not observe the Memo. of the 16th February in the printed papers now on my table. It would be well to get copies at once struck off and inserted in the series if it has not been printed with the rest.

FRED. A. WELD.
*March* 1, 1877.

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*Colonial Secretary's Office, 1st March*, 1877.

MEMORANDUM.

The Memorandum of the 16th February last, referred to in the first paragraph of the Judges' letter of the 19th February, has not been printed, because the Colonial Secretary has not been favoured with a copy.

The Governor will observe that the Memorandum was addressed by His Excellency to their Honors.

THOS. REIBEY.

*His Excellency the Governor.*

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MEMO. FOR MINISTERS.

As the Governor personally at the time made a communication to the Prime Minister on the subject of his Memorandum of the 16th February last, he supposed that a copy of that Memorandum, addressed like his others to their Honors the Judges, was in the hands of Ministers. As his late Private Secretary has left the Colony, he is unable to trace a mistake which if it occurred in his office he regrets; but he trusts that Ministers will not hesitate at any time to apply to his office for any documents which may be required to complete a series. The Governor now forwards the desired copy and requests Ministers to cause it to be printed.

FRED. A. WELD.

*Government House, Hobart Town, March* 2, 1877.

THE Governor has this day (Feb. 16) received, and for the first time seen, the following Memoranda from Ministers, namely, Memorandum by the Honorable the Premier, the Colonial Treasurer, the Minister of Lands and Works, and the Honorable W. L. Crowther, commenting upon their Honors the Judges' letter of Jan. 27th and the Governor's reply.

Memorandum by the same Ministers, commenting upon their Honors' letter of Feb. 2nd and the Governor's reply.

Memorandum by the same Ministers, commenting upon their Honors' letter of Feb. 9 and the Governor's reply.

The Governor with the concurrence of Ministers transmits these Memoranda for the information of their Honors the Judges.

He is informed that a separate Memorandum from the Attorney-General will reach him to-morrow.

(Signed) FRED. A. WELD.

*Government House, Feb. 16th*, 1877.

JAMES BARNARD,
GOVERNMENT PRINTER, TASMANIA.