A—No. 1

REPORT

OF THE

JUDGES OF THE SUPREME COURT

RESPECTING

THE QUALIFICATION AND ADMISSION OF SOLICITORS.

AUCKLAND:
1859.

REPORT.

Preamble.

WHEREAS the law relating to the qualification and admission of Solicitors in the Supreme Court of New Zealand is defective;

And whereas the Judges of the said Supreme Court are empowered by law to make rules touching the admission of such Solicitors;

Whereas, also, it is expedient that the laws relating to the qualification and admission of such Solicitors should be consolidated and amended, and that rules should be made by the said Judges in conformity with the laws so consolidated and amended;

And whereas the Judges of the said Court, now sitting in Conference at Auckland, have been requested by your Excellency to offer to your Excellency's Government, suggestions for such consolidation and amendment;

We, the Chief Justice, and Puisne Judges of the said Court, have the honor to present to your Excellency the following Report:—

Subjects of the Report.

1. The subjects which we have taken into our consideration are the following:—

(1). The Statute Laws of England with regard to the qualification, admission and regulation of Attorneys and Solicitors, in force on the 14th January, 1840;

(2). The Laws of England on the same subject, enacted since that date, (which have not been adopted in New Zealand);

(3). The present state of the Law of New Zealand relative to the same matter;

(4). The Law of England with respect to the admission of Colonial Solicitors to practise in England; and

(5). The legislative provisions and judicial rules which seem to us fit to be adopted, in consolidating and amending the existing law of New Zealand, so as to form a complete, coherent, and convenient system, applicable to the circumstances of the Colony.

I. The Statute Law of England, in force, 14th January, 1840.

2. From a very early period in the History of England, the admission of Attorneys has been a subject of legislative provisions; for we find that the Statute of Carlisle,—attributed by some authorities to the 15th year of Edward II., and by others, to the 35th of Edward I.,—imposes certain restrictions on the Judges of the Common Law Courts, with respect to this matter. As far back, too, as the 4th Hen. IV., it was provided by Statute, that Attorneys should be examined and placed on the roll, by the Judges, at their discretion, and admitted if they should be "good and virtuous, and of good fame."

From that time down to the year 1840, a great number of enactments on the subject was passed from time to time, by the Legislature (which will be found enumerated in the Schedules to the Imperial Act of 6 and 7 Vic. C. 73), the most important being the 2 Geo 2, C. 23, and the 22 Geo. 2, C. 46, which established a complete system of regulations for the qualification and admission of Attorneys and Solicitors.

To the specific provisions of these and the other English Statutes in force on the 14th January, 1840, it is unnecessary for us now to refer, for reasons which will be explained hereafter.

II. Statute Law of England since 14th Jan., 1840.

3. Since the last mentioned date, the Statute Laws of England with respect to Attorneys and Solicitors have been consolidated and amended, and a large proportion of the Acts previously in force repealed, by an Act passed in the year 1843,—the 6 and 7 Vic. C. 73,—which act, except some very slight modifications and additions, contains the whole of the Statute Law on the subject, now in force in England.

To the provisions of that Act we shall have occasion, hereafter, to advert in detail.

III. The existing Law of New Zealand.

4. With respect to the *Existing law of New Zealand*, we are of opinion that it is at least doubtful whether the Statute law of England touching the matters in question, in force on the 14th January, 1840, could be held to be "applicable to the circumstances of the Colony within the meaning of the English Laws Act, 1858,"—so as to form in as far as they are consistent with the Ordinances and Acts of Assembly of New Zealand—part of the law of the Colony.

5. It seems to us that the only written law in force in New Zealand relating to Solicitors of the Supreme Court is contained in,

(1). The 16th and 25th Sections of the Supreme Court Ordinance of 1844.

(2) The 54th Section of the Conveyancing Ordinance of 1842.

(3). The Supreme Court Practitioners' Ordinance of 1853.

(4). The Scotch Law Practitioners' Act of 1856; and

(5). The Law Practitioners' Act, 1858.

The Supreme Court Ordinance, 1844. Who to be enrolled as Solicitors. 1. English, Irish, and Scotch Solicitors, &c.

6. The 16th Section of the Supreme Court Ordinance of 1844 provides for the admission, as Solicitors of the Supreme Court of the 3 following classes of persons:

(1). Persons who have been admitted as Solicitors, Attorneys or Writers in one of the Courts of Westminster, Dublin or Edinburgh or as Proctors of any Ecclesiastical Court in England.

(2). Persons who shall have served such term of Clerkship with a Solicitor of the Court as shall be required by the general rules thereof; and

2. Clerks who have served Solicitors of the Court according to its rules.

(3). Persons who shall have established themselves in the exercise of their profession on or before the 22nd day of December, 1841.

3. Persons in practice before 22nd December 1841.

7. The 25th Section of the same Ordinance empowers the Judges to make rules for regulating among other things, the admission of Solicitors.

Rules for admission.

By virtue of these two Sections, rules were made by the Judges respecting the service of terms of Clerkship with a Solicitor of the Court, as a qualification for admission, which were confirmed, among others, by "The Supreme Court Rules Ordinance of 1844."

Rules made under these 2 sections.

But as the rules confirmed by that Ordinance, (with certain excepitions which do not include the rules now in question) may be considered to have been repealed by "The Supreme Court Procedure Act, 1856," there would, if that construction were correct, be no rules now in force such as are contemplated by the 16th Section of the first mentioned Ordinance.

May be considered repealed.

8. For the remedy of this defect in the meantime, we have—with due regard to the provisions of the Legislature to which we are about to call attention—prepared general rules, to be submitted for the approval of Your Excellency in Council, which are intended to remain in force only until a complete system shall have been adopted by the Legislature.

Proposed rules to be in force in the meantime.

9. The provisions of the 54th section of "The Conveyancing Ordinance of 1842" imposes a penalty of £50 on *any man*, not being a Solicitor, acting as a Solicitor, and on any man, not being a Barrister or Solicitor, acting as a Conveyancer; but subsequent Ordinances and Acts have empowered Barristers to act as Solicitors, and therefore, the first part of this enactment is impliedly repealed as regards Barristers.

The conveyancing Ordinance of 1842, sec. 54.
Penalty for practising, not being a Solicitor.

10. By "The Supreme Court's Practitioners Ordinance of 1853,"

The Supreme Courts Practitioners Ordinance, 1853.

(1). Persons who have been admitted as Barristers, Solicitors, Attorneys, or Proctors in any Court in Australia or Van Dieman's Land; and

Additional persons qualified.

(2). Persons who have served any portion of the term of Clerkship required by Law to qualify them to practice as Solicitors or Attorneys in Great Britain or Ireland or in any part of Australia or Van Dieman's Land or New Zealand, and shall have completed such term according to the rules of the Supreme Court of New Zealand in that behalf; may be enrolled to practice in the Supreme Court of New Zealand on making a certain declaration.

(1) Solicitors, &c., of Australia or Van Dieman's Land, Clerks who have served partly in Great Britain or Ireland, Australia or Van Dieman's Land or New Zealand, and completed term here.

It seems to us difficult to construe this enactment *reddendo singula singulis*, as there are no Proctors in New Zealand.

We suppose it was intended to enable Barristers from other Colonies to practise as Barristers here and Solicitors, Attorneys and Proctors, and Clerks who had served partly in those Colonies or in Great Britain or Ireland, and in New Zealand, and had completed their term of service in New Zealand, to act as Solicitors of the Supreme Court of New Zealand.

Observations thereon.

But this provision does not extend to the case of Clerks who have served the *whole* of their time in Great Britain or Ireland, or the specified Colonies. We presume that this case producing an obvious hardship, is a *casus omissus*, and we have provided for it, in the meantime, by one of the Rules to be submitted for Your Excellency's approval.

No provision for complete service out of this Colony.

11. "The Scotch Law Practitioners Act, 1856," extends to the right of admission to persons who have been admitted to practice as Writers or Solicitors in any Sheriff Court in Scotland, or who have become qualified to be admitted so to practice in such Court.

"Scotch Law Practitioners Act, 1856."

12. "The Law Practitioners Act, 1858," is the last of a series of enactments empowering Barristers to act as Solicitors, and Solicitors as Barristers, for limited periods.

"The Law Practitioners Act, 1858."

13. Our attention has been directed to an Act of the Imperial Parliament, the 20 & 21 Vic. c. 39, intituled "The Colonial Attorneys' Relief Act," and we have come to the conclusion that the Legislature of New Zealand, in consolidating and amending the law as to the qualification and admission of Solicitors, could not secure for any of the Solicitors of its Supreme Court the benefit, conferred by that Act, of being admitted as Attorneys and Solicitors in England, without denying, hereafter, the privilege of admission, as Solicitors of such Court, to classes of persons to which it has already expressly granted such privilege.

IV.
The Colonial Attorneys Relief Act, 20 & 21, Vic. c. 39.
Semble not applicable.

14. The Act of 20 and 21 Vic. c. 39, is not to take effect in any colony, until Her Majesty shall, by order in Council, have directed it to come into operation in respect to such colony (sec. 1); and by sec. 7 it is provided that no such order shall be made, except upon the application of the Governor of the Colony, and on its being shewn to the satisfaction of Her Majesty's Principal Secretary of State for the Colonies, that the system of jurisprudence administered in such Colony, and the qualification for admission as an Attorney or Solicitor in the Supreme Courts of the Colony, fulfil the conditions specified in sec 3 of the Act.

Its provisions.

Now the condition contained in that section as to the jurisprudence of the Colony is, that it should be founded on, or assimilated to the common law and the principles of equity as administered in England. Which, probably, might be affirmed with safety, of the jurisprudence of New Zealand ; but the only qualifications for admission as an Attorney or Solicitor specified in the section are "where full service under articles of Clerkship to an *Attorney at law* for the space of five years at the least, and an examination to test the qualification of candidates are or may be required previous to admission, save only in the case of persons previously admitted as Attorneys or Solicitors *in England.*

Why not applicable to New Zealand.

15. It appears therefore, that the law of New Zealand, although it were to render examination indispensable, could not fulfil this condition, unless it were to exclude persons admitted as Attorneys, Solicitors, or Proctors in Ireland and Scotland, and the Australian Colonies, and Writers in the Sheriff Courts of Scotland, and persons who had served the whole or part of their Clerkship to a Solicitor of the Supreme Courts in Scotland, (there being, as we believe, no *Attorneys at law* in that country), or who had served the whole or part of their Clerkship in the other specified countries with Proctors or Writers not being such *Attorneys at law.*

Amendment of the 20 & 21 Vic., c. 39.

16. We think, however, that an amendment of the Imperial Act quite consistent with its spirit—and which probably might be obtained from the Imperial Legislature—might enable such Solicitors of the Supreme Court of New Zealand as had fulfilled the conditions of the 3rd section of the Relief Act to be admitted, on examination, in England.

V.

Suggestions as to the consolidation and amendment of the Law. Desirable that the Law should be as like the English Law as possible. And that the 6 & 7 Vic., c. 73, secs. 2–20, inclusive, and others, should be followed.

17. With respect to the *suggestions* which we have to offer *as to the mode of consolidating and amending the law touching the qualification and admission of Solicitors,* we are of opinion that it is desirable that the enactments to be made by the Legislature, and the rules to be framed by the Judges should be as nearly similar to the English law and practice as possible. With this view we recommend that the Government, in presenting a Bill to the Legislature, should adopt provisions similar or analogous to those contained in the Imperial Act 6 and 7 Vic. c. 73, sections 2 to 20 inclusive, and sections 28, 29, 30, 31, 32, 35 and 44, as far as they are applicable ; with such modifications, alterations and additions, as a consideration of the existing law, and the actual circumstances of the Colony, may require.

PROVISIONS OF BILL.

Details of provisions recommended.

18. We now proceed to state in detail the provisions which we think proper to be introduced into such a Bill, accompanying them with such observations as may be necessary to make their purport more intelligible We are not, however, to be understood as recommending, in any case, the adoption of the very language of which we have made use.

Not necessary to repeal the Statute Law of England in force January 1840. What to be repealed.

19. Being of opinion, as we have before stated, that it is at least doubtful whether any of the English Acts relating to Attorneys and Solicitors, in force on the 14th January, 1840, are applicable to New Zealand, and considering that, at all events, an Act containing provisions similar to those of the 6th and 7th Vict., c. 73, would supersede all such portions of those English Acts as could be supposed to be applicable to New Zealand, we do not think it will be necessary to repeal the English Acts in question ; but of course those portions of Ordinances and Acts of Assembly, the provisions of which are to be incorporated or superseded in the new Act, must be repealed.

No person to act as Solicitor except admitted before Act, or after Act, admitted according to its provisions. Compare 6 & 7 Vic., c. 73, sec. 2. *Semble,* The words within ( ) are unnecessary.

20. After a repeal clause, the Bill might go on to provide to the following effect:

That from and after the passing of the Act, no person shall act as a Solicitor of the Supreme Court of New Zealand (or as such Solicitor, sue out any Writ or Process, or commence, carry on, solicit, or defend any action, suit, or other proceeding in the name of any other person, or in his own name, in the Supreme Court of New Zealand) unless such person shall, previously to the passing of this Act, have been admitted and enrolled as a Solicitor of the said Court, or unless such person shall, after the passing of this Act, be admitted and enrolled and otherwise duly qualified to act as a Solicitor of such Court, pursuant to the directions and regulations of this Act, and unless such person shall continue to be so duly qualified and on the roll at the time of his so acting in the capacity of such Solicitor aforesaid.

Indemnity clause for all Solicitors admitted before Act.

21. We are of opinion that a clause should then be introduced indemnifying Solicitors who have been admitted and enrolled before the passing of the Act, against any defect or irregularity in their qualification, admission, or enrolment, not attributable to their own fraud.

Qualifications for admission as Solicitor, after Act.

22. As to the qualifications for admission after the passing of the Act, the following classes of persons seem to be contemplated either by the letter or the spirit of the existing law, and it might be enacted to this effect:—

That no person shall be entitled to be admitted and enrolled,

1. Persons admitted elsewhere. Supreme Court Ordinance, 1844, sec. 16. Scotch Law Practitioners, 1856.

(1.) Unless he shall have been admitted as a Solicitor, Attorney, or Writer in one of the Superior Courts of England, Ireland, or Scotland, or in a Sheriff Court in Scotland, or as a Proctor in any Ecclesiastical Court in England or Ireland, or as a Solicitor, Attorney, or Proctor, in any Court of Australia or Van Diemen's Land, and shall have been admitted or actually have practised

in such capacity within a period of three years before his application to be admitted as a Solicitor in New Zealand, and shall have passed such examination as hereinafter required in such case ; or,

(2.) Unless he shall have been bound by a contract in writing to serve as Clerk, and shall have duly served, under such contract, as Clerk to a practising Solicitor, or Barrister lawfully acting as a Solicitor in New Zealand, or to a practising Attorney, Solicitor, Writer, or Proctor in England or Wales, Ireland, Scotland, Australia, or Van Dieman's Land, for and during the term of five years ; and shall also, within three years after the expiration of such term of five years, have passed such examination as hereinafter required in such case ; or,

Clerk who has served five years in New Zealand or other places. 6 & 7 Vic., s. 3. Sup. Ct. Ord., 1844. Supreme Court Practitioners Ordinance, 1853. Scotch Law Pretners Act, 1856.

(3.) Unless he shall have served some portion of the term of Clerkship required by law to qualify him to practise as a Solicitor, Attorney, Writer, or Proctor, as aforesaid, in England or Wales, Scotland, Ireland, Australia, or Van Diemen's Land, and shall within two years after the expiration of such portion of such term have been bound by contract in writing to serve and actually have served as Clerk to a practising Solicitor, or Barrister lawfully acting as a Solicitor in New Zealand, for and during such a term as taken along with such portions of a term herein before mentioned, shall amount in the whole to five years at least, and shall within one year after the expiration of such last mentioned term have passed such examination as hereinafter required in such case ; or,

3. Clerk who has served part of 5 years elsewhere and completed time here. Supreme Court Practitioners Ordinance, 1853.

(4.) Unless he shall, within four years before having entered into such contract as hereinafter next mentioned have taken a degree in Arts or Law from some University or other body in Great Britain or Ireland, Australia, Van Dieman's Land, or New Zealand, which has or hereafter may have power by Law to grant such degrees, and shall have been bound by a contract in writing to serve, and shall have duly served, as Clerk under such contract to a practising Solicitor, Attorney, Writer, or Proctor in England or Wales, Ireland, Scotland, Australia, or Van Dieman's Land, or New Zealand, or to a Barrister lawfully practising as a Solicitor in New Zealand for and during the term of three years or unless he shall have been bound by a contract in writing to serve, and shall have duly served under such contract, as Clerk to a Solicitor or Barrister lawfully practising as a Solicitor in New Zealand, for and during a term which, when taken along with any portion which he may previously have served of the term of Clerkship required by Law to qualify him to practice as a Solicitor, Attorney, Writer, or Proctor in England or Wales, Ireland, Scotland, Australia, or Van Dieman's Land, shall amount in the whole to three years at the least, he having taken such degree as aforesaid within four years of the commencement of the former term of service, and having entered into the second contract and the service thereunder within two years of the expiration of such portion of such previous service ; and shall within two years of the completion of such term of service of three years have passed such examination as hereinafter required in such case ;

Graduates who have served 3 years in one or several services. 6 & 7 Vic.. c. 73, s. 7. 14 & 15 Vic., c. 88, s. 3.

Note.—We have considered that it would come within the spirit of previous legislation to extend the Privilege here granted, to Graduates of all Universities, &c., including those of Scotland, and all such others in Great Britain or Ireland, or the Australian Colonies or New Zealand, as may hereafter have the power of conferring degrees.

(5.) Or unless he shall have been qualified to be admitted to practice in the Sheriff Court in Scotland, and have acquired such qualification not more than two years before his application to be admitted in New Zealand, and shall have passed such examination as hereinafter is required in such case ;

Persons qualified to be admitted in Sheriff Court in Scotland. Scotch Law Practitioners Act, 1856.

(6.) Or unless he shall have been duly appointed as Clerk to any Registrar of the Supreme Court of New Zealand, and shall have duly served as such Clerk for and during the term of five years at least, and shall within one year after having ceased to serve as such Clerk have passed such examination as hereinafter required in such cases.

Duly appointed Clerk to Registrar who has served 5 years.

23. It should be provided also—

That in the calculation of the time of actual service of a Clerk to an Attorney or Solicitor in England or Wales, any period of time during which the Clerk may have been employed as Pupil of a Barrister or certificated Special Pleader in England or Wales or the London Agent of such Attorney or Solicitor, and which by the Law of England would be allowed as good service for a part of the term contracted for, shall be taken into consideration and allowed for the purposes of this Act.

Part service as Pupil of Barrister or Pleader or London Agent 6 & 7 Vic., c. 73, s. 6.

24. A provision should then be introduced, similar to that of the 6 & 7 Vic. c. 73, S. 13, for the case of the dissolution of the first contract of service by death, cessation of business, consent or rule, care being taken to use such words as "Solicitor or Barrister lawfully practising as a Solicitor in New Zealand," in order to cover the case of a pupil articled to a Barrister, while Barristers are entitled to act as Solicitors.

Provision for care of dissolution of first contract of service. 6 & 7 Vic., c. 73, s. 13.

25. It would, moreover, be but proper to provide to this effect,—'That in calculating the whole or any portion of the time of service of any Clerk in England or Wales, Ireland, Scotland, Australia, or Van Dieman's Land, for the purpose of this Act, any time which such Clerk may have served under a second or other subsequent contract of service, to any Attorney Solicitor, Writer or Proctor, and which might have been allowed by the law of such country as good service for the purpose of the Clerk being admitted as an Attorney, &c., in such country, shall be taken into consideration and allowed.

Provisions for calculating services under successive contracts elsewhere which would have been allowed by the law of the place.

Filing articles and affidavit of execution, 6 & 7 Vic. c. 70, s.s. 8 to 10.

26. A clause should be introduced containing provisions similar to those of 6 & 7 Vic., c. 73 sec. 8 & 10 to the effect—

"That every contract for serving as a Clerk to a Solicitor in New Zealand (or a copy thereof) should within months after its execution be filed with the Registrar of the Supreme Court in the district in which the Solicitor resides, and at the same time an affidavit be filed of the execution and date of execution of the contract by Solicitor and Clerk; and that such contract (or copy) and affidavit should be produced or transmitted by such Registrar, on reasonable notice from the Clerk to the Judge or one of the Judges to whom such Clerk shall apply for admission at the time of such application."

Book for entry of names and addresses 6 & 7 Vic. c. 73 s. 11.

27. Following up these provisions, the clause should direct—

"That a book should be kept by the Registrar of each district containing the names and addresses of all Solicitors and Clerks, and the date of the execution of the contract of service, which book should be open to the inspection of the public on request."

N.B.—The several Registrars should communicate to each other the above particulars with respect to Solicitors admitted in their respective districts.

For ensuring *bona fide* service. 6 & 7 Vic. c. 73, s. 11. 6 & 7 Vic. c 73, s. 12.

28. For the purpose of ensuring actual and continuous service, a clause, similar to the 12th section of the Act of 6 & 7 Vic., C. 73 should provide—

"That every service under any contract by any Clerk for the purposes of this Act shall be a *bonâ fide*, actual, and continuing employment of such Clerk, by such Solicitor, Attorney, Writer, or Proctor, in the business of such Solicitor, &c., except as to such time as such Clerk may have been lawfully employed as pupil with such Barrister, Special Pleader, or London Agent, as aforesaid.

Provision for discharging contract of service on insolvency, &c., of Solicitors and for other reasons. 6 & 7 Vic. c. 73, s. 5.

29. It appears to us that in addition to a clause similar to the 5th section of the 6 & 7 Vic., c. 73, which provides for the case where a Solicitor has become bankrupt or insolvent, or has been in prison for debt for 21 days, it might be desirable to give the Court power, - reasonable cause being shown (either of misconduct by the master or such decrease of business as would deprive the Clerk of any substantial benefit from his Clerkship)—to order his discharge and permit him to enter into a fresh contract for the residue of his term.

The clause might be the same as the 5th section, with the addition, after the words "twenty-one days," of such words as these: "or if it should appear to the satisfaction of the Supreme Court (or one of the Judges thereof) that there is reasonable cause for discharging such contract, it shall be lawful for the Court (or such Judge thereof) "upon the application of such Clerk to order, &c." (as in 5th section.

Provisions for the examination of candidates for admission. 6 & 7 Vic. c. 73, s. 15.

30. The provisions for the examination of candidates for admission might be to the following effect:—

"The Supreme Court, (or any Judge thereof) before admitting any person to be a Solicitor of the said Court, shall examine and enquire, and cause to be examined and enquired, by such ways and means as it or he shall think proper—

(*a.*) Touching the admission of any candidate for admission who shall have previously been admitted as an Attorney, Solicitor, Writer, or Proctor, in Great Britain, Ireland, Australia, or Van Dieman's Land, and the time when he ceased to act in such capacity.

(*b.*) And touching the contract of service, and the service of any Clerk as hereinbefore mentioned;

And touching the character of any such person, so having been admitted, or so having served and his fitness and capacity to act as a Solicitor of the said Supreme Court; and if the said Court (or the said Judge thereof) shall be satisfied by such examination and enquiry, or by a Certificate of Examiners, such as hereinafter mentioned, that such person is duly qualified and competent to act as a Solicitor of the said Court, the said Court (or Judge) shall administer or cause to be administered to such person the Oath of allegiance, and the Oath hereinafter mentioned; and after such Oaths shall have been taken, to cause such person to be admitted, and his name to be enrolled, as a Solicitor of such Court; which admission shall be in writing, signed by the Judges or a Judge of the said Court."

Oaths to be administered.

Admission and enrolment.

Fees.

31. If it should be deemed advisable that some fees should be paid on admission, and on filing the affidavit of the execution, of the contract, or at other times, and otherwise, it would probably be better to leave that matter to be made the subject of a rule of Court. (See sec. 30 of 6 & 7 Vic., c. 73.)

Judges to appoint examiners.

6 & 7 Vic. c. 73, s. 15. Appointment of examiners.

Judge's power to make rules touching examinations, &c.

32. For the purpose of facilitating the examination and enquiry respecting the previous admission, or the service as Clerk, of any person, and of his fitness and competency to act as a Solicitor, it might be enacted that—

"The Judges of the Supreme Court shall have power, from time to time, to appoint either themselves or some one of them in conjunction with some other persons, or some other persons only such as they may think fit, to be Examiners and to give Certificates that any person applying for admission as a Solicitor has satisfactorily passed an examination for the purposes hereinbefore mentioned; and shall also have power from time to time to make such General Rules and Regulations, touching such examination, and touching the evidence of previous admission and of service as a Clerk, and of character, and touching the fees to be payable in respect of filing affidavits of the

execution of contracts of service as Clerk, and of admission, and enrolment, as Solicitors of the Court, and touching any other matters relating to such enrolment and admission, as they may think fit."

Examination as to competency.

33. We are of opinion that all persons applying to be admitted as Solicitors should be examined as to their competency; but that those who have been admitted elsewhere, should, with regard to competency, be examined only as to the law of New Zealand in so far as it differs from the law of England, and that a proviso should be added to the last clause to this effect.

Persons admitted elsewhere to be examined as to competency, only on Law of New Zealand.

'Provided always, that no rule shall be made by the Judges requiring persons who have been previously admitted as Attorneys, &c., in Great Britain, &c., touching any other matters than their character, the circumstances of their previous admission, the period at which they ceased to practise under such previous admission, and their knowledge of the law of New Zealand in so far as it differs from the law of England.'

Suggested Rules for evidence of character.

34. (We propose to introduce among the General Rules as to examination, provisions for certificates in the nature of a *bene discessit* by the Law Society in England, or similar bodies, a Judge, Attorney-General, Queen's Counsel, &c., applicable to persons previously admitted, or to Clerks who shall have served at home or in the Australian Colonies. It seems to us more convenient that such provisions should be the subjects of rules than of Statutory enactments.)

Solicitors Oath 6 & 7 Vic. c. 73, s. 19.

35. The clause providing for the Solicitor's Oath might be the same as the 6 & 7 Vic., C. 73, S. 19.

Whether Solicitor to take no more articled Clerks than two. 6 & 7 Vic., c. 73, s. 4. Solicitor not to take such Clerk after ceasing to practise or while Clerk to another.

36. We think it is a matter peculiarly for the Legislature to determine, whether, under the circumstances of the Colony, a Solicitor should be prevented from taking more Articled Clerks than two, as is the case in England under the 6 & 7 Vic. C. 73, S. 4, but it seems to us desirable that the latter part of that Section should be retained, which precludes a Solicitor from taking or retaining an Articled Clerk after discontinuing business, or while he is acting as Clerk to another.

Other provisions. 6 & 7 Vic. c. 73, ss. 28, 29, 31, and 32.

37. The following Sections of the Act of 6 & 7 Vic., C. 73, may be adopted *mutatis mutandis:*

S. 28; which provides that defects, &c., of Solicitors shall not disqualify Clerks who have served them;

S. 29; which provides that applications for striking Solicitors off the rolls for defects of service, &c., should be made within 12 months of admission;

S. 31; preventing Solicitors from acting as such while in prison;

S. 32; providing that Solicitors shall not act as agents for persons not qualified.

38. Instead of the 44th Section of the Act, a clause might be inserted directing

Admission of persons qualified at time of passing of Act. 6 & 7 Vic. c. 73, s. 44.

'That every person who at the time of the passing of the Act, shall have been qualified to be admitted as a Solicitor of the Supreme Court of New Zealand, according to the law in force at the time of the passing of the Act, shall be admitted as such Solicitor, as if this Act had not passed.'

Practice both as Solicitor & Barrister.

39. In order to obviate the necessity of passing Acts, from time to time, enabling Barristers to act as Solicitors, and Solicitors to act as Barristers—but keeping in view at the same time, the importance of securing the separate action of the two branches of the profession, when the circumstances of the Colony or of any part thereof shall permit, and also recognising the hardship which might accrue to practitioners established for some years, if they were not allowed, on the severance of the two branches, to have an option as to the branch which they should subsequently adopt, we propose a clause to the following effect:

Law Practitioners Act, 1858. Solicitors to act as Barristers, and Barristers as Solicitors, till expiration of 6 months after rule by Judges published in Gazette.

'All persons admitted as Barristers of the Supreme Court shall be entitled to practise as Solicitors thereof, and all Solicitors thereof to practise as Barristers thereof, until the expiration of six months after the publication in the Gazette of a rule of Court (which the Judges of the said Court are hereby empowered to make when they shall deem it expedient), directing that no Barrister shall, after the expiration of such six months, practise as a Solicitor of the said Court and no Solicitor shall practise as a Barrister thereof except as hereinafter excepted.'

Rule to apply to the whole or part of the Colony.

'*Provided*, that it shall be competent for the Judges to make such Rule applicable to the whole Colony or to any part thereof as they shall deem expedient.'

Option to Barrister or Solicitor established (three) years to choose either branch.

'*And provided always*, that any Barrister practising as a Solicitor of the said Court at the time of the making of such rule as herein-before last-mentioned and who shall have practised as such Solicitor for not less than three years theretofore, shall be entitled within six months of the publication of such rule to declare, by a declaration in writing, under his hand, to be filed with the Registrar of the Supreme Court for the district in which he usually practises, that he intends from thenceforth to practise as such Solicitor only; and from and after the expiration of such six months, such Barrister shall be entitled to practise as a Solicitor only in such Court.'

[Here should follow a similar clause to provide for a Solicitor electing to practise as a Barrister.]

6&7 Vict. c. 73, s. 35 Conveyancing Ordnce, 1842, s. 54. Penalty on persons not qualified acting as Solicitors.

40. In order to punish unqualified persons for acting as Solicitors, an amalgamation of the provisions of the 6 & 7 Vic., C. 73, S. 35, and the Conveyancing Ordinance 1842, S. 54, might enact that

'Any person, not being a Solicitor of the Supreme Court, or a Barrister entitled by law to act as such Solicitor, who shall in any way act as a Solicitor in the said Court shall be incapable to

maintain or prosecute any action for any fee, reward, or disbursement, for or in respect of any matter in respect of which he shall have so acted as such Solicitor, and such person shall be deemed to be guilty of a contempt of the Court in which he shall bring or prosecute any such action, and shall forfeit and pay for every such offence the sum of £50, to be recovered by action in the Supreme Court by any one who shall sue for the same.'

No action for fees. Contempt £50 penalty

Power of Court to strike Solicitors off the rolls, suspend, attach, &c., Supreme Court Ordnce, 1844, s. 16.

41. In order to reserve to the Court all the power of striking Solicitors off the roll which the Supreme Court Ordinance, 1844, S. 16, contemplates, and all the powers of Suspension, Attachment, and Summary proceedings, (such for instance as depriving them of, and making them pay costs) which are applicable to Attorneys in England, it seems advisable to enact to the following effect:

'That nothing herein contained shall affect the Summary jurisdiction of the Supreme Court over Solicitors thereof; but the Supreme Court [or a Judge thereof] shall have full power to remove from the rolls, suspend from practise, or attach any Solicitor of such Court, or to make any such other order as it or he may think fit respecting the practise of such Solicitor, upon reasonable cause shewn, wheresoever and whensoever the same may have arisen.'

Conclusion of provisions recommended.

42. Such is the substance of the enactments, which, as at present advised, we should recommend for the adoption of the Government in a Bill touching the qualifications and admission of Solicitors.

Other topics to which attention is called. Provisions as to Certificates in 6 & 7 Vic. c. 73.

43. But we would further wish to call the attention of the Government to the provisions of the 6 & 7 Vic, C. 73, Sections 22 to 26 inclusive, with respect to *certificates*, in order that they may consider whether it be advisable to introduce any similar or analagous provisions in New Zealand—as for instance, provisions that each Solicitor should annually sign the roll or send a Declaration to the Registrar of the district, for the purpose of shewing that he continues in practice, and should pay a fee (which with fees of admission, &c., might be devoted to the formation and support of a law Library); and also to Sections 37 to 43 inclusive, which relate to the delivery and taxation of Bills of Costs. The latter provisions seem especially worthy of attention.

And delivery, and taxation of Bills of Costs.

Framing of rules by Judges postponed.

44. As regards the *General Rules touching examination*, admission, service, &c., to be made by the Judges, we are of opinion, that it is not expedient that we should proceed to the framing of any system of rules till information and documents which, we are informed, the Attorney-General has requested the Incorporated Law Society of England to send out to New Zealand, shall have been received and considered, and till, at all events, a draft of the New Solicitors' Bill shall have been prepared.

Questions for discussion.

45. Before concluding our Report, we would beg to mention a few points which have occurred to us, and which we think worthy of the attention of the Government and the profession, but touching which we are not prepared to offer any specific recommendations.

What sort of examinations.

46. 1. It is worthy of consideration whether the examination of Candidates for admission as Solicitors ought to be restricted to matters connected with their practise as Solicitors, &c., elsewhere, or their services as Clerks, their character, and their knowledge of principles and practise of law,—or whether it should not also extend to literature and general knowledge, and if to literature whether to ancient classics, or modern languages, in particular, either or both.

Whether men of 24, after 3 years service and an extraordinary examination, should not be admitted.

2. It appears to us a matter well worthy of discussion whether it might not be desirable, for encouraging a superior class of men to enter the profession, to admit persons of certain age—say 24 or 25 years after 3 years service (the whole or part in the Colony) provided they shall pass an extraordinary examination.

Whether the ordinary examination should not be in two parts the first at least a year before the end of service.

3. It has also struck us as a question of some importance whether the ordinary examination after terms of service in the Colony, might not, advantageously, be divided into two parts,—the first examination to take place at some time not less than a year before the conclusion of the term of service, and the second at its conclusion. The first examination would give the Examiners an opportunity of discovering deficiencies in the education of the Clerk, and directing his attention to particular branches of knowledge in which he might appear specially deficient; and moreover it would give the Clerk the advantage, which he might not otherwise have, if he resided far from the seat of the Supreme Court—of seeing something of the proceedings in open Court at the sittings.

Conclusion.

47. In concluding our Report, we are desirous of expressing our conviction that its contents, in consequence of the hasty manner in which it has necessarily been prepared, must be crude, imperfect, and open to criticism; but we are anxious to present it at once to your Excellency, in order that the Profession or the Public may point out objections and deficiencies, and offer suggestions, which we may be able to take into consideration, at our next Conference, before the meeting of the General Assembly.

We have the honor to be,
Your Excellency's obedient humble servants,
GEORGE ALFRED ARNEY, Ch. J.,
ALEXANDER J. JOHNSTON,
H. B. GRESSON.

To His Excellency
Colonel Thomas Gore Browne, C. B.,
&c., &c., &c.