# REPORT

OF THE

# JUDGES OF THE SUPREME COURT

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## SUPREME COURT JURISDICTION BILL.

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AUCKLAND.
1859.

# SUPREME COURT JURISDICTION BILL.

## REPORT.

WHEREAS we, the Judges of the Supreme Court, have been informed that it is the intention of your Excellency's Government to introduce a Bill into the General Assembly for the repeal of the Supreme Court Ordinance of 1844; and for substituting provisions in the place of those contained in such Ordinance, and whereas we have been requested by your Excellency to suggest any amendments in the provisions of the said Ordinance which may seem to us desirable for the better defining the jurisdiction of the said Court, and for the better administration of the law:

We, the said Judges, have the honor to report to your Excellency as follows:—

1. We think that all the provisions of the Ordinance in question now in force should be re-enacted, with the amendments, omissions, and additions hereinafter suggested.

2. For the second section of the Ordinance we would suggest an enactment to this effect:—

"The Court shall have jurisdiction in all cases as fully as Her Majesty's Courts of Queen's Bench, Common Pleas, and Exchequer at Westminster, *or any Judge of any such Court*, have or hath in England."

This is to meet cases in which powers are specially given to *a Judge* of the Superior Courts of Common Law.

3. Instead of the 3rd and 5th sections of the Ordinance we would propose that it should be provided,—

"The Court shall also have all such Equitable and Common Law Jurisdiction as the Lord High Chancellor, the Court of Chancery, or any other Court of Equity hath in England, and also all such jurisdiction and control over Infants, Lunatics, Idiots, and persons of unsound mind, and the Estates of such persons, as the Lord High Chancellor hath in England by the Royal Sign Manual, or otherwise, so far as the same shall be applicable to the circumstances of the Colony."

Our object in recommending this enactment is to obviate difficulties which have occurred, and might otherwise occur again, with respect to the issuing of Commissions, jurisdiction by *scire facias* to repeal patents, &c., and power to deal with the affairs of Lunatics, Infants, &c., in a manner not coming properly within the *equitable* jurisdiction of the Court of Chancery.

4. Instead of section 9, which provides for the Seal of the Court, we would suggest the adoption of a clause allowing the Registrar of each Province to have a Seal of the Court.

Practically, there are different Seals now used in different Provinces; whether they are copies or not of the Chief Seal we are not aware.

5. Note.—The 10th section of the Ordinance is repealed by "The Supreme Court Judges' Act, 1858."

6. The 16th and 17th sections of the Ordinance, as far as they apply to Solicitors, will be unnecessary if a Solicitors' Act be passed, as is contemplated. If such Act be not passed, it will be necessary that the Supreme Court Act should contain some such sections; but as to Barristers, the first clause of the 16th section must be re-enacted at all events.

7. In re-enacting the 25th section, which enables the Judges to make rules, it would seem desirable to use larger words, introducing such words as "all civil actions, suits, and proceedings, as well as," &c.; but it seems to us unnecessary to re-introduce the provision which requires that the rules should be submitted to and approved by the Governor in Council.

This provision seems unnecessarily to hamper the Court in the exercise of its incidental powers. It seems also questionable whether there is any necessity for providing that the rules shall remain in force till the end of the next Session of the Assmbly only. It would seem more convenient and more consonant with the English practise to leave them to their operation till repealed by fresh rules or by statute.

It might however be provided, in connection with this part of the subject, that the rules in the Schedule to "The Supreme Court Procedure Act, 1856," except as repealed, altered, and added to by the rules in a Schedule (which should contain the rules we have now made, "Regulæ Generales, May, 1859," and those which we may make at our next Conference before the meeting of the Assembly) shall, till revoked, amended, or added to, be the only rules in all matters to which they are applicable.

The clause should enable the Judges not only to "make," but also "revoke, repeal, amend, alter, and add to the rules."

8. It seems advisable that Statutory power should be given to the Judge acting in each District to make such rules as we have suggested in our new rules, as to the business in the District, in case of any doubt as to his power to do so without a Statutory enactment.

9. It would be desirable to provide that the Court shall take judicial notice of the Seal of the Colony.

10. Power might be given—in order to save doubts—to the Registrar or Deputy Registrar, to adjourn Circuit Courts, in the absence of the Judge.

11. It seems to us very important that a provision should be made to the same effect as that of the 16 and 17 Vic. c. 30, s. 9, in order to insure the attendance of criminal prisoners in any prison as Witnesses before any tribunal without the expense and trouble of a *Habeas Corpus ad testificandum.*

12. We think that the law with regard to the Execution of Capital Sentences is so vague that it would be desirable either in this Bill, or in a Gaoler's Bill, to provide :—

"That the Gaoler shall not proceed to execute sentence of Death till he has received an intimation of the Governor's pleasure with respect to such sentence; and that it shall be his duty within (3) days after receiving an intimation that it is the Governor's pleasure that such sentence shall be carried out, to execute the same."

13. We are of opinion that power should be given to each Judge of the Supreme Court to appoint by commission, fit and proper persons residing at any places within the District in which such Judge shall be acting at the time, for taking of affidavits in all matters or causes depending or to be depending in the Supreme Court, or in any District Court within the District in which such Judge shall be acting at the time. It is at least questionable whether such power exists at present.

14. We are also of opinion that power should be given to the Court to issue Commissions for taking the evidence of persons *out* of the jurisdiction of the Court similar to those provided for in the 1, W. 4, c. 22, s, 4. It does not appear that the Court possesses this power at present. The power of taking the evidence of witnesses *within* the jurisdiction, granted by the same clause, is adopted by rule 340 of the Rules of Procedure; but it would seem desirable that both the powers should be included in the new Supreme Court Act. The section in question might therefore be adopted in both respects, *mutatis mutandis.*

15. We also think—without expressing any opinion as to how far "The abolition of Fines and Recoveries Act" (3 and 4 W. 4, c. 74) is applicable to New Zealand—that each Judge should have power to appoint Commissioners within his District for taking such acknowledgements of married women as may be required by law.

GEORGE ALFRED ARNEY, CH. J.,
ALEXANDER J. JOHNSTON,
H. B. GRESSON.

To His Excellency
Colonel THOMAS GORE BROWNE, C.B.,
&c., &c., &c.