

REPORT OF THE JUDGES

UPON THE

CONSTITUTION OF A COURT OF APPEAL FOR THE COLONY.

WHEREAS the Judges of the Supreme Court of New Zealand, assembled in Conference at Preamble. Auckland, were requested by Your Excellency to report upon the Constitution, Jurisdiction, and Procedure of a Court of Appeal for the Colony ;

We, the Chief Justice and the Puisné Judges of the said Court, have the honor of presenting to Your Excellency the following

REPORT.

INTRODUCTION.

1. The recent "Court of Appeals" of the Colony, consisting of the Governor for the time being, and the Executive Council (excepting the Attorney General), was established by the "Supreme Court Amendment Ordinance," Session VII., No. 3, "until (sec. 3) there shall be within the Colony a sufficient number of Judges to constitute a Court of Appeals"; but that tribunal has ceased to exist since the "Supreme Court Act, 1860," came into operation.

2. As there are now a Chief Justice and two Puisné Judges of the Supreme Court holding their appointments by a permanent tenure, the time seems to have arrived when the community may reasonably expect that a tribunal, such as seems to have been contemplated by the Ordinance, should be established, and when the Judges of the Supreme Court may reasonably be called upon to undertake the additional labours and responsibilities of Judges of a Court of Appeal.

CONSTITUTION, &c.

3. With respect to the Constitution of such a Court, we think it should be composed of the Chief Justice and the Puisné Judges for the time being, whatever their number, and whether appointed, and holding office during good behaviour, or appointed for a temporary purpose, during the Governor's pleasure, under the 7th section of the "Supreme Court Judges' Act, 1858"; that the Chief Justice should preside in such Court; and that the judgment of the Court should be according to the majority of voices.

4. While there continue to be but three Judges of the Court, we think that, in case of illness or unavoidable absence of one of the three, the two others should have power to act; but in order to provide for cases in which the two Judges so acting differed in opinion, power should be given them to reserve their judgment, and state a case in writing for the opinion of the third Judge, and to cause judgment to be given, after the expression of the opinion of such third Judge in writing, according to the opinion of the majority.

5. It would be premature to provide for the case of an equality in the number of voices, when the number of the Judges shall have been increased; as it is but reasonable to contemplate the probable necessity for emendatory legislation in the course of a few years, arising from changes in the circumstances, and from the newly accruing requirements, of a young and rapidly progressing community.

We take the liberty of referring your Excellency to a Memorandum accompanying this report, expressing our opinion as to the present position of the Judges, and their sufficiency in point of number for the present wants of the Colony.

6. With respect to the time for holding the sittings of the Court, we are of opinion that, regard being had to the extent, character and variety of jurisdiction with which we are prepared to recommend that the Court of Appeal should be invested, the full benefits to be expected from the tribunal could hardly be secured to the public without providing for two sittings at least in the year; but we think that for the present, considering the means of communication and the expense, a single sitting in the year might be sufficient. We are of opinion that certainty as to the time, as well as the place of meeting, is indispensable to the wholesome and beneficial operation of the Court. The times fixed should be such as not to clash with any of the proclaimed sittings of the Circuit Courts in the various Provinces, and also such that business arising from the proceedings of the Circuit Courts last held might be then disposed of.

Moreover, it seems very desirable for the sake of the Judges, the profession and the public, that a period of vacation such as is contemplated by the existing Rules of the Supreme Court, and which now extends from the 20th March to the 30th April, should not be interfered with. Persons conversant with the profession in England are well aware to what extent the Bench and the Bar are dependent upon the "long vacation," for that refreshment of mind and body which is essential in order to enable them to perform their duties to the public with certainty and vigour.

If, for some time to come, there should be but little business brought into the Appeal Court, the meeting together of the Judges for the purpose of conference, would, of itself, be of great utility both to them and to the Colony.