With regard to the second question, we think it might be proper, in case the District Judge should be of opinion that the party wishing to appeal had a ground of appeal involving a question of considerable difficulty or importance, that the Judge should have power to grant the party leave, subject, if necessary, to his giving security for costs, and for the execution of the judgment if adverse to him, to appeal in the first instance to the Court of Appeal.

Summary.

20. To sum up, therefore, We think the Court of Appeal ought to be a general Court of Error and Appeal in matters both Civil and Criminal;—that it should have concurrent jurisdiction with the Supreme Court in the matters hereinafter specified;—that it should entertain cases reserved by the Judges of the Supreme Court;—that it should have power to review the exercise of discretion by single Judges in particular cases;—and specially have conclusive jurisdiction in striking Barristers and Solicitors off the Rolls;—and that it should be empowered to hear appeals from the District Courts directly, under certain circumstances.

What provisions to be made by Statute, and what by rules. Many formal and practical matters to be provided for by Act.

21. In considering the details of the jurisdiction and procedure of the new Court of Appeal, it is not easy to lay down any general maxim as to what ought more properly to be the subjects of express statutory provisions, and what of rules of practice to be settled by the Judges. Everything necessary to define the jurisdiction, at all events, ought to be contained in the Act of the Legislature; but there is also much besides, of a formal and practical character, which it seems desirable to introduce into it, rather than to provide for by ancillary rules. For instance, to enact merely that the Court of Appeal should be a Court of Error, and to leave it for the Judges to determine by rules everthing connected with the practice of the Court, might be very inconvenient; and, with respect to several of the subjects of appeal, it would be far from easy to distinguish, for this purpose, the formal from the substantial. We are the more willing to recommend specific provisions in the Act with respect to the practice and procedure of the Court, because we find that, with regard to several parts of the system of appeal, adaptations from the provisions of the English Common Law Procedure Acts of 1852 and 1854 may be advantageously adopted for the Court of Appeal of New Zealand.

N.B.—It will be found that in many instances when we come to specific practical suggestions, we have thrown them into the shape of proposed clauses ; but we wish it to be understood that we do not offer them as maturely settled provisions, ready for adoption by the Legislature, but rather as rough drafts indicative of the provisions which we deem desirable.

Division of subjects.

22. In proceeding to the division of the subjects which we have to consider, we think it will be found convenient to treat the *Civil Jurisdiction* first, and the *Criminal* afterwards.

Civil Cases. Order of subjects.

With respect to *Civil Cases*, we shall consider them in the following order :—

(1.) Matters in which we propose that the Appeal Court should have concurrent jurisdiction with the Supreme Court;
(2.) Appeals from the Supreme Court in respect of matters not subjects of "Error";
(3.) Cases reserved by the Judges of the Supreme Court ;
(4.) Final jurisdiction in striking Barristers and Solicitors off the Rolls of the Supreme Court;
(5.) "Error," and proceedings thereon ; and
(6.) Appeals from the District Courts.

PART II.

Civil Jurisdiction.

I. JURISDICTION CONCURRENT WITH SUPREME COURT.

1. Concurrent jurisdiction with Supreme Court. In what cases.

23. The first question to be considered under this division of the subject, is, to what extent the Court of Appeal ought to have concurrent jurisdiction with the Supreme Court in civil matters.

The cases in which this jurisdiction might beneficially be given, would be, chiefly, such as the Superior Courts of Common Law at Westminster entertain at their sittings *in banco*, or Courts of Equity deal with in the final stages of a Suit ; but it would be by no means necessary or desirable to give the Appeal Court jurisdiction in all such cases, or otherwise than by consent of the parties.

Rules *nisi*.

Rules *nisi*, should, at all events, in all cases, be moved before the Supreme Court in the first instance, subject to the right of appeal hereafter to be provided for in case of refusal.

Shewing cause in the Appeal Court in the first instance.

24. It might be very proper, in many cases, that the parties, if willing, should have an opportunity of arguing questions raised by such rules, in the Appeal Court, without cause having previously been shewn in the Supreme Court ; but we think there ought to be some efficient check to prevent parties from unnecessarily occupying the time of the Court of Appeal with questions of a frivolous or unimportant kind.

On the whole, it seems to us it might be fairly provided, that on a rule *nisi* being granted,—if both parties should intimate to the Judge, before the time for shewing cause, that they are desirous of having the case argued before the Supreme Court in the first instance, the Judge might, if he considered the question at issue of sufficient importance, remove the case to the Appeal Court, which should then adjudicate on the matter in the same way as the Supreme Court would have had power to do,—with the exception, of course, that its decision should be final as regards the tribunals of the Colony.