"section of the last mentioned Act, along with a Memorandum of the Order of the "Supreme Court thereon, certified by the Judge who pronounces the same; and the "said Court of Appeal, on hearing the parties or their Counsel, or such party orthe "Counsel of such party, as shall appear before it shall proceed to adjudicate upon "such case, and its judgment thereon shall be final."

60. There remain the cases to which also we adverted in our prefatory observations, in which the District Judge may think that the questions involved in proceedings before him, were of such importance that it would be desirable to have them carried at once to the Court of Appeal, without being first taken to the Supreme Court. Appeal direct from District Court to Court of Appeal.

Such a course of proceeding ought not to be unnecessarily encouraged; and the District Judges ought not to give leave to appeal directly to the Court of Appeal, except in cases of considerable difficulty or importance.

The following clause, altered from "The District Courts Act, 1858," s. 102, will probably meet the requirements of the case:—

3. If either party in any cause in any District Court shall be dissatisfied with the "determination or direction of the Court in point of law, or upon the admission or "rejection of any evidence and shall intimate the same, and state the ground or grounds of "dissatisfaction to the Judge of the said Court, either at the hearing of the cause or "within [ ] days after such determination or direction, and the Judge shall certify, "under his hand, such ground or grounds of dissatisfaction, and that such ground or "grounds seem or seems in his opinion, to involve some question of law of considerable "difficulty or great importance, the party so dissatisfied may appeal directly to the Court "of Appeal; and on notice of such appeal, and of such certificate and grounds being given "to the other party or his Solicitor, and also on security being given as in the 102nd "section of the said Act is provided, such proceedings shall be had, such case stated and settled, "and such judgment or order shall be made by the said Court of Appeal, as if the said "Appeal had been made under the provisions of that Act to the Supreme Court; and the "judgment of the Court of Appeal on the said Appeal shall be final. Proposed clause.

61. Then, inasmuch as the Court of Appeal ought not to be called upon to consider the case unless the party appealing appear to support his Appeal; and if such party (10) do not appear, the other party appearing ought to have costs, the following provisions should be made in respect of the (2) previous sections.

4 "If the party appealing under either of the last two sections do not appear in "person or by Counsel before the Court of Appeal, such Court shall affirm the order or "judgment appealed against; and if the party appealed against shall appear, in person or "by Counsel, the Court of Appeal may in its discretion, make an order that the costs of "the Appeal shall be paid by the appellant; and the judgment of the said Court of "Appeal shall have the same effect and consequences and the same proceedings may be "taken therein as if the judgment had been given in the District Court and the said last "mentioned Court had jurisdiction to give such judgment." Judgment of Court of Appeal where appellant does not appear.

NOTE.—The last words seem necessary in case the amount recovered by the judgment along with the Costs should be more than the District Court could give judgment for, exclusive of the costs of that Court.

PART III.

Criminal Jurisdiction.

I. PRELIMINARY.

62. The Criminal jurisdiction of the Court of Appeal now claims our attention; and we feel that in reporting upon it on this occasion, we ought to guard your Excellency against the supposition that our suggestions embrace all, or any very large proportion of the topics connected with the Criminal Law and its administration, which we contemplate as subjects proper for the consideration of the Legislature of the Colony either at the present time or hereafter. Introductory.

63. A report which we had the honor of presenting to your Excellency in May 1859, referred to certain matters of practical and urgent importance with respect to the institution and conduct of prosecutions, to which we need not further advert at present, except for the purpose of observing that if any measure founded upon it, should be introduced into the Legislature contemporaneously with the Court of Appeal Bill, it will be necessary to take care to secure harmony in the provisions of the Acts. Report, May 1859.

64. With regard to the many moot points which have recently been raised and ventilated in England by Advocates of Criminal Law Amendment, such, for instance, as the abolition of the distinction between felonies and misdemeanours, the granting of new trials in cases of felony, Lord Brougham's proposal for the admission of the evidence of parties accused, upon Oath, and so forth; we believe it would be premature in us to offer any opinion or suggestions at present. We feel that it would be presumptuous in us to decide upon these questions—without some urgent reasons—till we see the results of the labours of those learned and experienced persons in England, who have devoted so much of their time and talents to the elucidation and settlement of these interesting topics. Besides they do not necessarily belong to the subject of a Court of Appeal. Proposed amendments of Criminal Law in England.

Note.—This would probably be a change beyond the powers of the Colonial Legislature, inasmuch as it would affect the rights of the Crown.