

TO HIS EXCELLENCY THE GOVERNOR, &c., &c.

MEMORANDUM OF THE JUDGES OF THE SUPREME COURT ASSEMBLED IN CONFERENCE AT AUCKLAND, RESPECTING THE PROSECUTION OF OFFENDERS.

1. The present system of prosecution of Criminal cases, is not, in our opinion, either efficient or satisfactory except at the seat of Government.

The arrangements for the apprehension and conveyance of offenders in outlying districts are very defective; there is no person *practically* responsible for giving information, summoning witnesses, making or directing investigations, or for getting up prosecutions and conducting them in their earlier stages, and there must be, and undoubtedly are, frequent failures of justice in consequence.

2. There seem to be two courses open for the supply of these defects, and for ensuring certainty and uniformity of action. The one adopting the system existing by law (*viz.*, prosecution by two private persons directly aggrieved,) and importing some improvements into it,—the other, establishing a complete coherent and simple system of public prosecution.

3. Each of these systems has its advantages and disadvantages; and we feel unwilling to give any decided opinion in favor of one as opposed to the other—considering that the selection of one of them involves questions of social policy peculiarly within the province of the Legislature.

4. The system now existing by law—that of private prosecution—might be made less objectionable by the allowance of a scale of costs for the attendance of witnesses, fees to professional men, apprehension money, &c., which would not deter parties directly aggrieved from undertaking the responsibilities of prosecutors; and by the appointment of respectable settlers in outlying districts as Head Constables or Wardens, with specific instructions from the Government as to their duties, and having power (under proper restraints) to draw for the costs of apprehension and conveyance, and who should be amply remunerated for their loss of time.

By these means and the power of allowing or disallowing costs vested in the Judges, a considerable improvement might be effected in the present system.

5. With respect to a practicable system of public prosecution fit for the present circumstances of the Colony, we offer the following, necessarily crude, suggestions, not wishing to express an opinion that they are the best which could be adopted, but presenting them as merely an outline of a system capable of being introduced with little difficulty.

6. The whole system would be based upon the assumption that the principal Law Officer of the Crown, the Attorney-General, is the proper person on whom the responsibility should devolve of conducting or superintending criminal proceedings on the part of the Crown, throughout the whole Colony.

7. The Attorney-General might appoint a representative in the chief town of each province—who would be a professional lawyer—to act with the name of District Crown Prosecutor—as Solicitor and Counsel in prosecutions, and who should correspond with sub-divisional local agents on the one side, and, when necessary, with the Attorney-General on the other.

This functionary's services might be secured by a yearly salary by way of retainer, and a due allowance of costs in each prosecution in which costs were not disallowed by the Judge.

To this officer the police ought to give information of all accusations of indictable offences, and of charges of other offences of a certain class or character.

He might exercise his discretion as to conducting cases before the Magistrates or not, according to their importance, and subject to the allowance of the costs by a Judge.

He ought to direct the enquiries of the police in searching for information and evidence, and see to the due summoning of witnesses and securing their presence when required.

8. In other towns or villages of a province, the District Crown Prosecutor might have an agent, to be called Deputy Crown Prosecutor (a Solicitor if there were more than one in the place) whose duty it should be to receive information from the police and others; give directions for the conduct of cases before the Country Magistrates, and in some cases to appear before and assist them in investigating charges; to see that depositions were duly transmitted, and witnesses warned of the time to attend; and to despatch witnesses, with conduct money if necessary, to the place of trial.

Such Deputy Crown Prosecutor might be remunerated by fees on a fixed scale, subject to disallowance in frivolous cases or for negligent conduct.

9. In districts where the population is more scattered, an intelligent settler, armed with specific instructions, might be sworn in as District Warden (perhaps it would be well to avoid the name of "Constable") to act as occasional constable, to receive information, apprehend parties accused, and convey them to the nearest Magistrate, to procure evidence, direct and despatch witnesses to the Magistrates or place of trial, (accompanying them when he himself was a necessary witness) having power also to give the witnesses conduct money when necessary, and bound to correspond in all cases with the District or Deputy Crown Prosecutor.

Such an officer should not be paid by salary; but he ought to have liberal allowances for loss of time and travelling, subject to disallowance by the Judge at the trial.

10. We think there would be few practical difficulties in the way of instituting and carrying out such a system as this; and we believe it need entail but little if any, additional cost beyond that which private prosecution properly conducted would necessarily require, while it would prevent the growth of crime and of that indifference to its detection and punishment which must exist in many quarters under the present state of things.

GEORGE ALFRED ARNEY, C. J.

ALEXANDER J. JOHNSTON.

HENRY B. GRESSON.