

REPORTS AND MEMORANDA

OF THE

JUDGES OF THE SUPREME COURT OF NEW ZEALAND,

ASSEMBLED IN CONFERENCE AT AUCKLAND,

TO HIS EXCELLENCY THE GOVERNOR.

PRESENTED TO BOTH HOUSES OF THE GENERAL ASSEMBLY, BY COMMAND OF HIS
EXCELLENCY.

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OF THE
JUDGES OF THE SUPREME COURT OF NEW ZEALAND,
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HIS EXCELLENCY THE GOVERNOR.

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REPORTS AND MEMORANDA

OF THE

JUDGES OF THE SUPREME COURT.

No. 2.

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

MEMORANDUM OF THE JUDGES ASSEMBLED IN CONFERENCE AT AUCKLAND, ON THE SUBJECT
OF LUNATICS CONFINED IN GAOLS.

The Judges of the Supreme Court having regard to the interest of Lunatics who are by law either placed under their protection or made subject to their control, as well as to the proper execution of sentences passed upon offenders, desire most earnestly to call your Excellency's attention to the present indefensible, inhumane, and probably illegal practice which still exists in some of the Gaols of this Colony of confining Lunatics along with offenders,—a practice which they cannot but denounce as utterly inconsistent with the duties of society towards both Lunatics and Criminals,—as necessarily productive of much useless misery and suffering, and subversive of the objects for which Lunatics and Offenders respectively are committed to custody.

GEORGE ALFRED ARNEY, C. J.
ALEXANDER J. JOHNSTON, J.
HENRY B. GRESSON, J.

Auckland, 3rd June, 1861.

No. 3.

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

MEMORANDUM OF THE JUDGES ASSEMBLED IN CONFERENCE AT AUCKLAND, RESPECTING THE
JURY SYSTEM.

The Judges of the Supreme Court are desirous of respectfully calling your Excellency's attention to the inconveniences and defects of the existing Jury System, and the necessity for the amendment thereof.

1. There is no extant provision for the manner in which lists of Grand Jurors or of Special Jurors are to be framed.
2. The summoning of Petty Jurors in alphabetical order is generally and reasonably complained of.

By the present system, several, sometimes the whole of the adult males of a family are taken away from their usual avocations at the same time, to their unnecessary detrement and inconvenience.

3. It would seem advisable with respect to Grand and Special Juries that some system should be adopted which will ensure the selection of fit persons, there being none in existence at present.

4. We think that the lists of Common Juries might probably be framed with convenience by taking from the Electoral lists the names of all persons residing within 20 miles of the place where the Court is held.

5. It would seem advisable, instead of taking the Common Jury panel alphabetically from the Jury lists, to select it by lot, care being taken not to summon any Jurymen a second time till the whole list has been exhausted.

6. We are of opinion that in Common Jury Civil Cases it would be convenient and would obviate some serious objections if the Jury were selected from the panel by a process similar to that which is pursued with regard to Special Juries, each party striking off a name, turn about, till twelve only remain.

7. Regard being had to the implied promise made to the Aboriginal Natives of the Colony in The Jury Amendment Ordinance, sec. 1, it seems very desirable that lists should be made out under regulations proclaimed by your Excellency pursuant to the provisions of the Ordinance of Natives, in each province, whose capability had been certified to your Excellency, to serve as Jurors on mixed Juries, on the trial of cases, Civil or Criminal, to which any Aboriginal Native is a party.

We think it should be in the option of such Native to ask for a mixed Jury, or to have the case tried by a Jury comprised entirely of Europeans.

We think the mixed Jury might be comprised of six Europeans and six Natives, and that the parties should be entitled to three challenges of each race, there being an equal number of each on the panel.

We offer these remarks to your Excellency only as suggestions of means for removing existing anomalies and deficiencies in the system.

GEORGE ALFRED ARNEY, C. J.
ALEXANDER J. JOHNSTON, J.
HENRY B. GRESSON, J.

Auckland, 29th May, 1861.

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.

No. 5.

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

MEMORANDUM OF THE JUDGES OF THE SUPREME COURT, ASSEMBLED IN CONFERENCE AT
AUCKLAND, CONCERNING THE GAOLS OF THE COLONY.

The Judges have on repeated occasions had their attention called, in the various provinces within their respective judicial districts, to the unsatisfactory condition of the gaols situated therein, to deficiencies in their construction and management, to the absence or imperfection of regulations and appliances for the *surveillance* and classification of prisoners, to the general insufficiency of the existing systems and practices for the purposes either of correction or reformation, to the unnecessary inconveniences to which prisoners for debt are in some cases exposed, and to misunderstandings respecting the duties, powers and relations of functionaries connected with the establishments.

The Judges, therefore, respectfully submit to your Excellency that it is desirable that your Excellency should, by the appointment of a commission, or by such other means as may be deemed advisable, cause an enquiry to be instituted into the condition and circumstances of all the gaols in the Colony, and a report to be made thereon, with the view of introducing a general and uniform system of management and providing such means of a reformatory and corrective character as the requirements of justice and the interests of the Colony seem urgently to demand.

The Judges cannot forbear from respectfully expressing their conviction that the desired ends will probably be unattainable in this Colony for many years unless all the convicts sentenced to protracted periods of imprisonment or penal servitude be removed to one central penal establishment, conducted on such a scale as to render it possible to adopt the classification and other important features which matured experience has recently introduced into the penal and reformatory establishments of England.

GEORGE ALFRED ARNEY, C. J.
ALEXANDER J. JOHNSTON.
HENRY B. GRESSON.

No. 6.

HIS HONOR THE CHIEF JUSTICE.

MEMORANDUM CONCERNING THE GAOLS AT AUCKLAND.

Auckland, 21st May, 1861.

SIR,—

At the last Criminal Sittings of the Supreme Court for the Province of Auckland, I felt it my duty to address to the Grand Jury some remarks upon the gaols and the gaol system of this Province, as connected with either the prevention or the correction of crime. After concluding their ordinary business, the Grand Jury consulted for a considerable time in their private room, and ultimately came into Court with the following presentment:—

“The Grand Jury Present,—

“That your Honor will be pleased immediately to bring under the notice of the proper authorities, the state of the places used as jails for prisoners, both males and females, debtors as well as criminals, in the Province of Auckland, with a view not only for the making of permanent improvement, but that the present suffering endured by the inmates of these gaols, more especially of the Gaol in the City of Auckland, should be immediately alleviated, if not entirely relieved.

“THOMAS S. FORSAITH,
“Chairman.

“March 1st, 1861.”

To His Excellency the Governor,
Colonel Gore Browne, C.B.,
&c., &c., &c.

In order that I might be in a situation to comply fully with the request of the Grand Jury, I have made it my business to visit the Stockade at Mount Eden, and the Gaol in Auckland, and to minute more particularly the result of my inspection of those places.

THE STOCKADE.

Upon this establishment I forbear from writing at any great length. If indeed it were intended as a permanent reformatory or place of penal servitude, it would be my duty to say much. The separation, or even classification, of prisoners therein is impracticable. All ideas of reformation, of moral or religious improvement, of social development, or of industrial training, will be dispelled from the mind of the visitor upon merely entering the Stockade. Imprisonment within its circuit endures so long only as a prisoner lacks ordinary ingenuity to scale the palisades. Penal servitude therein is a mere name.

The area, upon which the buildings are erected, is surrounded by a palisade of insufficient height. The buildings themselves comprise two main blocks constructed of wood, in one of which sleep those criminals who are under sentence of penal servitude, whilst those condemned to

imprisonment with hard labor are confined at night in the other. An interval is left between the palisade and these wooden structures. If these were built or placed in a triangular position, a single guard, posted at the point of either angle, might keep some sort of watch down two sides of the space covered by the buildings themselves; and two guards, placed in positions proper for the purpose might command a view of the whole space between the external walls of the cells, and the outer palisade. But, as the buildings now stand, four guards at least are required to watch even the interior of the Stockade; yet the whole force of guards numbered, until lately, six only; and although the force is raised to seven, one of the seven is (very fairly) allowed to sleep out at night, and the whole of this penal establishment is confided nightly to the surveillance of a single labour-fagged watchman. The superintendent has no residence provided for him within the circuit of the Stockade, but he inhabits a house at a short distance outside the palisades, and within view of the entrance gate. Of the two main piles of building, one is devoted to the superintendent's room, to apartments for the guards, the convicts' mess-room, &c., and to a set of cells for convicts under sentence of penal servitude. The other contains the imprisonment with hard labor department, as also the hospital and surgery at one end of the ground floor, and the kitchen, with two solitary cells, at the other,—the mess-room being midway on the ground floor of the building.

PENAL SERVITUDE DEPARTMENT.

In this building are twenty-four separate convict cells, viz., six on the lower floor, and six on the upper floor, immediately over those below, facing to the west, with a corresponding arrangement facing the east. They are respectively entered from, and separated by, two passages, which run, one on each floor, between the cells. These passages also are one immediately above the other, and at the end of the upper passage is the guards' sleeping room.

Each of these convict cells measures eight feet by six, and is seven feet six inches high. When the doors are closed at night, the ventilation is conducted, and may be estimated, as follows: The outer wall of each ground floor cell has a small open grating, the aperture measuring nearly nine inches by six inches and a half. The volume of atmospheric air which might enter by this confined aperture, especially so far as that volume might be increased by the lateral circulation, is further diminished by the thickness of the walls, and the bars of the grating. The upper cells are even worse accommodated. The number of cubic feet within the walls of the upper cells is lessened by the fact, that the ceiling is shelved by the formation of the roof. The aperture for admission of the atmosphere, being perforated through this shelving roof, is necessarily glazed, in order to exclude the rain. The only space through which the external air can penetrate measures about nine inches in length by one inch in depth. If this space opened upwards to receive the pressure even of the atmospheric column of one inch diameter, the rain would penetrate. It therefore is opened downwards at the bottom, and outside the ledge of this aperture in the wall, and is not easily discovered by the inmate of the cell. But, if I allowed your Excellency to conclude that the convicts enjoyed all these advantages of independent ventilation, I should mislead, and should not complete their presentment from the Grand Jury of this Province. If indeed the occupants of the upper cells have less direct ventilation than their fellow-convicts below, an ingenious scheme of compensation and of inter-communication has been contrived, by which the cells are simultaneously volatilized, while the heat and stench of one cell may be circulated among those around and above it, and the same cell may be reciprocally compensated through the return of the accumulated heat and stenches of the whole twenty-four. For the atmosphere which has penetrated the cells through the narrow apertures above described, after being used and corrupted, is passed through the inner partition walls of the cells, by open gratings of larger dimensions, into the passages. That which escapes from the lower cells into the lower passage, ascends freely through open gratings in the planking, which forms the ceiling of the lower and the flooring of the upper passage, into the latter. It here mingles with the corrupt evaporations which have escaped in like manner from the upper cells into the upper passage. From this passage the combined vapours ought to circulate round the guards' sleeping room (if the guards dutifully lay with their door open) and thence returning again ascend through an open grating in the ceiling of the upper passage (an aperture eighteen inches by twenty) into the roof of the building. But, as this roof is securely shingled, whatever portion of these vapours fails to escape between the shingles is free to redescend into the passages and cells, there to mingle and be recirculated among the inmates, until it may, if possible, return through those narrow inlets, by which it originally entered, back to the open air. In the guards' sleeping room have been nightly bedded five guards. The intention is, that they sleep with their door open, and the reasons for such intention are obvious. For although each convict is necessarily accommodated with a night-pan in his own cell, still a convict may be taken suddenly or even fatally ill, and require that the guards should hear his calls for their assistance; and another convict may be effecting his escape, while his watchers sleep and hear not,—as I am informed one convict has recently effected his escape by aid of a common gimlet only. However, two of the guards informed me that they are often unable to exist in the atmosphere which comes from the cells up the passage into their chamber, and are driven to close their door, being thus foully defeated, and shut out of hearing of the prisoners, whom they are supposed to watch and ward.

HARD LABOUR DEPARTMENT.

In the building devoted to prisoners under sentence of imprisonment with hard labour, the accommodation is more free. It contains six spacious cells, measuring respectively thirty-one feet by eight feet nine inches each, all being eight feet six inches in height. Here the hard labor men

sleep in groups of five, seven or eight to a cell ; or in larger numbers if the prison be crowded, according to the number who may from time to time be undergoing sentence. The few Maori prisoners have a cell to themselves. There are also two solitary cells, comfortable rooms, such as a penal servitude convict might envy, but suited for anything better than for the punishment of refractory prisoners by solitude and silence.

HEALTH OF THE PRISONERS.

Notwithstanding the defective arrangements of the convict cells, the health of the prisoners is reported good. So long as that number remains at its present average, this immunity from sickness will probably continue. For your Excellency will observe that the hard labor men (being seldom less than three-fourths of the entire number) enjoy at present ample accommodation ; while the number of penal servitude men is so small, that only one-half of the number of cells appropriated to that department are or have been occupied. Moreover, the situation of "The Stockade" is pre-eminently healthful, the labor is easy, the rations liberal, and the prisoners may be said to pass the entire day, from six a.m. to seven p.m. in the open air. I should also observe, that since I have presided over the Supreme Court in this Province, I have rarely passed a sentence of penal servitude ; and of those prisoners whom I have so sentenced, one has escaped, and never been recaptured. Meanwhile the sentences of imprisonment with hard labor have in most instances not exceeded twelve months. In England, and in most civilized countries, the old barbarism of lengthened punishments has been superseded by the more humane and more politic practice of shorter sentences, accompanied, however, by conditions, which are wholly ignored in this Province, and (as I am informed) throughout New Zealand : viz., rigid discipline, reformatory instruction and industrial training. I will not trouble your Excellency with my reasons for adopting the experiment of lenient sentences ; but the effect of that course upon the present condition of the "Stockade" is intelligible. Thus, the penal servitude convicts sentenced before my arrival in this Colony have in several instances worked out their time, or been discharged under remission of the residue of their punishment, and their cells have not been reoccupied by fresh convicts, so that half of those cells have been till very recently unoccupied, and the ventilation is proportionally relieved. The hard labor men have also been generally discharged as fast or faster than their places have been filled by fresh arrivals, and thus the accommodation in this department has proved sufficient. But it is my duty to warn your Excellency and those authorities who are responsible for the management of the gaols, that, had I continued to inflict the former and ordinary length of punishment, even with the recent standard of population and of crime, the Stockade would already be crowded to suffocation, those narrow convict cells would each now probably contain more than one inmate, and the Stockade itself would, I believe, have become already a scene of disease. With the increase of population an increase of crime must be expected. The number of prisoners already committed for trial is unusually large. Troops are arriving and are being located in Auckland and its neighbourhood, whose numbers bear a large proportion to the adult male population of the district, and if the number of prisoners should increase in anything approaching the like proportion, the gaols cannot contain them. Even since this report was begun, five military convicts have been added to the penal servitude ; and I have every reason to anticipate that the heats of next summer will find two, if not three convicts, seething within a single cell, of which the dimensions and ventilation have been above described.

STAFF OF OFFICERS.

I will not enter on details which appertain to the visiting Justices, to whom may be left complaints such as that one razor and one towel only have been allowed for twelve men, that they have for a time wanted hair-combs, and such matters,—as the visiting Justices would, on complaint, order to be corrected. But the defective supervision of the prison requires notice. The guards complain of the paucity of their numbers, and that their wages are low, with no scale of increase as a reward for long service. I have informed your Excellency, they have till lately numbered only six, and the addition of one only to the staff will afford little relief. They are on active duty about the Stockade with little opportunity to sit down during thirteen hours daily, viz., from 6 a.m. till 7 p.m. But, as these are matters to be attended to before the cells are opened of a morning, the guards rise and commence their duty at 5 a.m. : and thus are ordinarily on duty fourteen hours per diem. The night duty is divided between two guards—one continuing from seven till midnight, and the other, who relieves him, watching from midnight till five in the morning. Thus it appears, that, about every third day, each guard is on duty during nineteen hours out of the twenty-four. Their wages are £100 per annum each. It is alleged that superior intelligence is required to discharge certain duties, e.g., the apportioning and measuring of work, and that a scale of wages ought to be adopted. But my object at present is to shew your Excellency to what kind of supervision this important establishment is confided. The superintendent and the guards express themselves as living always at the mercy of the prisoners ; and, while they are consciously incompetent to prevent escapes, they are only grateful for the forbearance which they receive from the prisoners by whom they are held in charge.

ESCAPES.

Escapes from the Stockade form the rule rather than the exception. The prisoners might, indeed, at any moment, rush the guard or the palisade, and by a single push might prostrate either,

and walk over the fragments. I am, moreover, informed that the palisade wall rocks in the wind, but, as the situation is sheltered, this erection probably will not be blown down at present; and it is quite unnecessary for the prisoners to adopt desperate measures, considering that a mess-room-form or an empty hand-cart suffice for their ascent of the walls, and, perchance, an errant convict, if dissatisfied with his rations, may quietly walk out at the gate. Thus, it is not long since a convict did walk out at the gate, in open day, before the warder (who had the gate open) could arrest him. The warder dared not follow the escape lest the body of prisoners might follow the warder; but was obliged to put up with the escape of one in order to retain the rest. On another occasion a prisoner simply upset one of the hand-carts used for carting stones, and, resting the shafts against the palisade, he ran up them, reached from the cross-bar to the top of the paling, and at once sat astride his prison walls. Thence he dropped easily on its outer face, and disappeared from the gaze of two guards, who stared at an adventure which they were too bewildered to prevent, although they held one a loaded carbine and the other a six-chambered revolver, supplied to them for that purpose. So easily was this escape effected, that, in less than one minute, the loaded guards stood prisoners, and the unarmed prisoner wandered free. It must, however, be admitted escape from the Stockade by day is so far difficult that the prisoners prefer, of the two, an escape by night; for not only is their ultimate concealment guaranteed by the darkness, but they enjoy then the advantage of escaping in fellowship, perchance in groups of two or three or even four at a time. The last group escaped on the night of the fourth or morning of the fifth of this present month. By aid of a gimlet, and with a division of labour, the inmates of a hard labour cell easily remove a board or two from the ceiling, floor, or wall, (as their plan may require;) and even this trouble is barely necessary where the boarding itself springs from the scantling under the action of time. Having once gained the yard, they assist each other over the palisade. Thus escaped four prisoners together, during the stormy night of the 4th of May, in face of the superintendent and of the night guard, who were alarmed and hastened to the spot but hesitated to fire upon the decamping prisoners. To sum up this part of the report, suffice it to say that in about ten months ten prisoners have escaped. The nature of their crimes, their sentences, the date of their convictions, and the times of their escape, appear on the following Table:—

Name.	Crime.	Sentence.	Conviction.	Escape.
Holland ...	Forgery 2 convictions, a third case was not pressed.	1. Six months' imprisonment, hard labour 2. Four years' penal servitude	1st June, 1858	1st July, 1860
Jones	Rape and Burglary Stealing from person	15 years' penal servitude 4 years' penal servitude	18th December, 1858 1st June, 1859	1st July, 1860
Galway {	(4 previous committals for minor offences)			27th March, 1861
Burrows...	Breaking prison Stealing in dwelling house	2 years' penal servitude 2 years' imprisonment, hard labour	1st June, 1860 1st March, 1860	20th February, 1861
Brewer ...	Burglary	2 years' imprisonment, hard labour	1st March, 1860	20th February, 1861
Webster...	Larceny	6 months' hard labour	22nd December, 1860	20th February, 1861
Carr	Stealing a boat	12 months imprisonment, hard labour	1st September, 1860	4th May, 1861
Wilkinson	Forgery (3 cases all convicted)	2 years' imprisonment, hard labour, in all	1st December, 1860	4th May, 1861
Lowe	Seaman, deserter	6 months' hard labour	31st December, 1860	4th May, 1861
Grant	Seaman, deserter	6 months' hard labour	24th January, 1861	4th May, 1861

Of these ten prisoners three have been recaptured; but the remaining seven have escaped altogether. Such is the Stockade to which, under directions from Her Majesty's Secretary of State, conveyed through your Excellency, I have just been called upon to gravely "order, under my hand and seal," that five stalwart soldiers be removed and sent as to a place (rightly called) of "intermediate custody."

2. THE JAIL IN THE CITY OF AUCKLAND.

The area of this gaol is divided into three divisions, viz.: the Airing Yard, the Debtor's Yard, and the Hard Labor Yard. The buildings devoted to the officers of the prison, and to the criminals and debtors respectively, are irregularly disposed around the two first-mentioned yards. Some of the cells in each of these yards are constructed underneath the flooring of the Supreme Court and its offices. A plan is appended to this Report shewing their relative positions. This prison contains—besides the offices of the gaol—all prisoners awaiting their trial whether male or female, together with all men, women, or children committed for want of sureties; women under sentence of penal servitude, or imprisonment with hard labour; debtors, male and female; drunkards, prostitutes, vagrants, and persons of unsound mind, committed during Her Majesty's pleasure. Of the cells, as exhibited in the plan, those from No. 1 to No. 11, inclusive, open into, or communicate with, the airing yard. The cells from No. 2 to No. 7, inclusive, are respectively appropriated for stores, as a provision room, for the use of certain officials, and as a surgery. Even here I should remark that No. 7, in which a turnkey sleeps, is one of the worst in the prison,

measuring only eleven feet four inches by four feet one inch, and six feet ten inches high. It is not fit for a decent man's occupation. And during the late rains the wet has poured in and turned the turnkey from his bed. All these cells communicate, through the day-room, (No. 1), with the airing yard. There remain only three cells, viz., Nos. 8, 9, and 10, for the ordinary occupation of criminal prisoners. No. 8 has been lately occupied by an insane prisoner, whose state of health absolutely required an airy cell—and No. 8 measures eleven feet six inches by ten feet six inches, and is ten feet in height. No. 9 measures eleven feet three inches by ten feet six inches, and is of the same height as No. 8. In these two cells I yesterday found thirteen persons sleeping, viz., seven in No. 8, and six in No. 9. They are all men waiting for trial, and peradventure one or more may be returned innocent by a Jury. No. 10 measures about twelve feet by eleven feet, and this cell, with Nos. 8 and 9, comprise all the accommodation provided for male felons and misdemeanants awaiting their trial. But if these three cells are all used by persons waiting for trial, there are two insane prisoners who must be bedded among them, unless, (as is sometimes the case,) these cells are so crowded in hot weather that the two insane prisoners are of necessity removed into the two cells intended for prisoners committed by the Resident Magistrate for petty offences. These last-mentioned two cells measure respectively eight feet eleven inches by nine feet, and ten feet by nine feet, and are severally six feet three inches high. But even thus, if it happens—and it occasionally does happen—that men are brought into the prison in a state of mad drunkenness, they require to be fastened by handcuffs or otherwise secured in one or both of the last-mentioned cells; and the insane convicts must be reconveyed to share the cells of prisoners waiting for trial. Contiguous to these cells, (viz., Nos. 14 and 15, which are commonly appropriated to men sentenced for petty offences,) there are, on one side, Nos. 12 and 13, used as mess-rooms for men and women respectively, and, on the other side, Nos. 16 and 17, which are dark punishment cells, and measure each of them ten feet by four feet five inches, and are six feet three inches high. The whole of these cells, from 12 to 17, inclusive, are constructed beneath the flooring of the Supreme Court Offices. There remains for notice cell No. 11, opening upon the airing yard. This cell has been variously described, viz.: as a lock-up room for refractory women, and a cell for the reception either of persons committed for want of sureties, or of such debtors as cannot be accommodated in the debtor's department, to which I shall presently allude. But cell No. 11 is, in fact, called in aid of any purposes which circumstances may demand. Mr. McElwain informs me that he is compelled to shift and change the inmates of the criminal department as their numbers, health, conduct, or the terms of their committals may require. With the best economy of his space, he informs me that frequently the male prisoners are forced to sleep from four to seven or eight in one cell, and that he has had as many as fourteen sleeping in one cell. It is seldom practicable to appropriate an entire cell to the insane prisoners; and complaints have been made to myself of the sufferings which the complainants endured through the occasional violence, noise, or filthy acts of these poor creatures, their fellow-prisoners, during the night. Much, however, of the cleanliness which prevails in this department is due to the eccentric industry of one of these unfortunates; for, when he is not rambling upon the mysteries of religion, he indulges his propensity to sweep away or gather up every particle of incumbrance from the ground of the airing yard or the flooring of the rooms; and certainly the madman shewed himself not inferior to other men in this Province in perception when he complained of, what he called, the "infamous carpentering" of the gaol, and could only be pacified by my repeated compliments to himself upon the neatness of his quaint costume and the perfect cleanliness of his cell. I should complain more earnestly of the incarcerating insane prisoners in this scene of wretchedness, but I am assured, (with what truth I know not,) that the Provincial Lunatic Asylum is a confined and melancholy place. I cannot, however, close this part of my Report until I have called specific attention to the atmosphere of cell No. 10. No whitewashing of the walls or scouring of the floor suffices to purify the corrupt atmosphere therein. Even when the door remains wide open during the day, the smell is offensive; but the gaoler and turnkey assure me that when they were called in during the night to relieve a sick prisoner, they were compelled, on opening the door, to fall back from the entrance until the atmosphere had become sufficiently changed to admit of their going in.

DEBTORS' DEPARTMENT.

The (so called) Debtor's Yard is separated from the Airing Yard by a palisade; but the gate of communication is necessarily open all day, not merely for general convenience, but to enable women and others to come to the pump, situate in the airing yard, for water, or to their mess-room for meals; as also for the debtors themselves to resort occasionally to that yard. The building in the debtors' yard, appropriated to male debtors, contains an entrance-room or day-room out of which lead four cells, Nos. 19, 20, 21, and 22. Of these, one cell is necessarily devoted to a warder, and one to stores. The other two cells, measuring respectively about nine feet by nine feet, and eight feet in height, are all that remain for the exclusive use of prisoners for debt. Probably not more than two or three debtors are in general confined in one of these cells, although, I am informed, as many as four have been sometimes sleeping in one of them. Yesterday they were sleeping three in one cell and two in the other. If the number becomes too great to be accommodated, the remainder may be removed to cell No. 11, before mentioned in the Criminal Department: provided that cell be not pre-occupied through a press of criminal committals, or by women already locked therein as disorderly or drunken. Perhaps, indeed, a debtor suffers less inconvenience when crowded by other inmates of his narrow cell than when he chances to be without companions in debt. For, in the latter case, he can only vary the monotony of his incarceration either by

associating, as far as the gaol regulations may admit, with the male criminals in the airing yard, or by pacing the confined area of the dank debtors' yard and there conversing with female felons or misdemeanants, prostitutes, vagrants, and incorrigible female drunkards. I confess to your Excellency that, when I lately visited a young man just started into life, who is by birth, education, and habits, a gentleman, but, having failed in his first enterprise, had been, under an order of the Supreme Court, made a prisoner for debt, I felt ashamed and grieved at the spectacle.

FEMALES.

It is in this yard that accommodation is provided for female debtors. It consists of three cells. One, the area of which measures eleven feet nine inches by ten feet ten inches, and which is the principal resort for the female prisoners of every class, is a rickety lean-to, built on to the main pile, and is numbered 23 on the plan. At its highest elevation it rises about six feet ten inches to the ceiling. The ventilation is varied through a grated window, the glazing of which is destroyed, and which opens directly over a filthy ditch. Into this ditch are poured the drainings from two privies in the debtor's yard, and from a third (a few yards higher up) in the hard labor yard, of which the contents are conducted by square wooden trough-drains into the ditch in question, and there left to ooze into or over the bottom of the ditch, past this female apartment, unless a favorable fall of rain should flush the ditch, and sweep along this portion of the prison drainage, blended with the accumulated offal and sewage of the surrounding neighbourhood. During nine months of the past year, from lack of rain, this foul corruption accumulated, and saturated the soil around the gaol. In this cell I have seen five, six and seven women squat on the flooring by day, and am informed that as many as six and eight have at times slept therein at night, with a child or two, as it may happen, at the breast. There are, however, two other cells in the "Debtor's Yard," under the flooring of the Supreme Court, Nos. 24 and 25, which are expressly complimented as the "Female Debtors' Cells." They measure each eleven feet nine inches by five feet two inches, and are six feet from floor to ceiling. Sometimes three, but not unfrequently two women sleep in one of these dank dens, with sometimes a child. I yesterday found three women and one child sleeping in each of them. There have been, I am informed, seventeen women at a time, accommodated in this prison. But no general statement can convey to the mind of your Excellency a clear comprehension of the degrading tendency of the present system. I will therefore select three instances which came lately within my own experience, as illustrative of it. One female I found privileged to occupy one of the last-mentioned cells alone. She was in a sad state of disease, arising partly from an imprudent life, and it became absolutely necessary that she should sleep alone. She was imprisoned for debt, and lay in gaol about four months. Being wholly destitute of means, she wrote me a letter explaining her distress, and I must have held a Court in the gaol for the purpose of liberating her, had not a gentleman kindly consented to act as her solicitor, and bring her before the Supreme Court. Another example was that of a married woman, far advanced in pregnancy, and committed in respect of a debt incurred by her before her marriage. This woman I found herded with the characters above described, and, having obtained the certificate of the Provincial Surgeon, I felt justified in causing her to be removed to the Provincial Hospital. The third instance is that of the woman "F.," now undergoing her sentence of two years' imprisonment with hard labour (so expressed) for a wholesale larceny. When committed she had an infant at the breast, and this infant she was allowed to retain with her in prison, until the child languished, and was (with the consent, reluctantly yielded, of the mother) at length removed to save its life. The larceny in which "F." participated was committed at the time of the great fire in Auckland in 1858, but she was not brought to trial till March, 1860. During the intervening two years she had continued to cohabit with one "M.," the father of her child, and who doubtless was the principal actor in the crime. They were esteemed man and wife, and it appeared to me that "F." had so behaved as to be respected by reputable women, at whose houses she had lodged. Her case was precisely one of those in which a reformatory discipline, with some little moral and religious training, might renew the character. But this woman has completed little more than one half of her sentence, and for more than twelve months she has been left either to pine in speechless idleness, or to cheer her imprisonment by watching the loose gestures, and listening to the obscene jests, and studying the profligate lives of the lowest, but doubtless not the least communicative, of her sex. And such studies are furnished to her by the authorities fresh and fresh, for she shares the only prison and the only cells which Auckland provides for female convicts; and, considering that women are committed to this gaol from the Resident Magistrate's Court from time to time, it may be anticipated that "F.," by the time she has completed her sentence, will have gained the combined experience of all the worst women in this Province. If she could have retained her child, the development of the maternal instinct might have tended to solace and improve her, and the criminal might have been saved in the mother; but the unwholesomeness of the prison has defeated this only attempt at reformation, and it has become a necessity, in the Province of Auckland, to hasten the ruin of a mother in order to save a child. The same law, which is thus promiscuous of bad women, steadily refuses to admit the influence or even the assistance of a good one, and accordingly your Excellency should be informed that no matron or female attendant is allowed to enter this gaol. Visitors indeed of every shade and character may enter, and bring with them spirits or other articles, despite the gaoler, turnkeys and the "Regulations." For these men very properly shrink from examining the clothes of females, and their number is too small to leave it possible for them to watch visitors after they are admitted. Lastly, if any female prisoner should, from any cause, require the aid of one of her own sex, whether by night or by day, there is neither an

apartment to which she can withdraw, nor one female assistant to attend her. Where humanity is disregarded, decency will seldom be respected, nor does it surprise a visitor to find that this yard, frequented by debtors and females, and through which all the criminals pass to and from the hard labor yard, is precisely the spot selected for double unmasked privies, built in one small block, under one roof, separated by a thin partition, and entered by doors placed in juxtaposition, so that men and women brush each other as they enter or return from these resorts, under the gaze of a prison public.

HEALTH OF PRISONERS.—STAFF OF OFFICERS.

Health.—Fortunately, it seldom happens that prisoners are confined in the Auckland Gaol long enough to test its influence upon their health. Many remain only a few days; while three months is, with certain exceptions, the limit; and even this length of imprisonment is in general suffered only by debtors, who, how unjust soever be their treatment, are not crowded more than three, or at most four, in a room of nine feet six inches by nine feet three inches. The female criminal “F.” has indeed been incarcerated nearly fifteen months, and her health, she informed me, had not been strong, while that of her child languished seriously. One of the lunatics also appears to be sinking into a profound melancholy, and his appearance is painfully changed. This gaol, however, is laid at the lowest level, and no one, who observes its site, the dampness of the debtors’ gaol, and the discolored rottenness of its ruinous buildings, can think it either politic or humane to continue the use of such a place as a public gaol. I may indeed speak to your Excellency on this subject from recent personal observation. Yesterday, the prisoners being too numerous to take their meals in the mess-room (at least those waiting for their trial) were, when I was in the gaol, eating their dinners in the two cells which they occupy at night, while the melancholy lunatic lay cast upon his pallet in the adjoining cell. The cells were less crowded than at night, and the men had only been locked in for a short time, for the purpose of taking their meal. The cells and the men appeared clean, but the close atmosphere and stench were intolerable. To this account I may add that I have been in the habit, as well as the Registrar of the Supreme Court, of using chambers just above the cells Nos. 12 and 13 for the discharge of Supreme Court business, and both Mr. Outhwaite and myself have frequently experienced lassitude, vertigo, and a total prostration of bodily and mental vigour, produced by the atmosphere which, even by day, has penetrated through the flooring. What must be the suffering of the poor inmates, when shut into cells, like those below, during a hot summers night?

The Staff.—The officers consist of the head gaoler, Mr. McElwain, (who, I believe, is also responsible for the Stockade, Mount Eden) and three assistants, viz., two turnkeys, and an overseer. Practically, this gives one officer to each yard. But the two turnkeys attend each to a separate gate at different parts of the prison, out of sight of each other; viz., the head turnkey at the entrance gate, Victoria Street, and the other at the gate of the debtor’s yard, which communicates with a lane at the south side of the Supreme Court. Meanwhile the overseer ought to be superintending the work which is supposed to constitute “hard labor” in the hard labor yard. The prisoners are thus necessarily left to intermix at pleasure, and visitors cannot be watched. The head turnkey receives £120 per annum for wages, and the other turnkey and overseer, I am told, only £100 per annum. There being only three, one of them is necessarily “up” to watch every third night.

BOTH PRISONS.—THE REGULATIONS.

From the above details your Excellency will perceive, that the Auckland Prisons do not accomplish and are not adapted to accomplish, any one object, of such institutions. It is not worth the while of an inmate in the Auckland City Gaol to risk escape and recapture, in the midst of a city population. But were it otherwise, nothing could be easier than for a prisoner or two to peel off the palisades from the scantling, which is in parts too rotten to hold a nail. Neither the Stockade nor the Auckland Gaol however are places of safe custody, or of reformatory discipline. Mutiny and escapes at one, and the promiscuous intermixture of men and women, Criminals and Debtors, at the other, are facts to be regretted. At the same time, no attempt is made at moral, religious, or industrial training. Men or women come in and go out worse criminals than before. All this while however, your Excellency, and the Judges of the Supreme Court, and Sheriff, and Superintendents, and all the crowd of their appointees, become and are continued as abettors in that system of delusion which is characteristic of Colonial policy. The pomp of printed “Regulations,” posted on the walls of these prisons, is continued. They are doubtless conceived in a good spirit and directed to good objects, but they exhibit a satire even on their own provisions. Thus your Excellency is made to establish Convict Prison Regulations, some of which are of the following kind, and with the following results:—

1. “Penal Servitude men shall be kept to hard labour within the precincts or in the vicinity of their prison,”—but the prison itself facilitates the convicts going beyond those precincts and escaping as above described.

2. They are to be classified according to good conduct, and the better behaved “shall, after their usual labour be allowed to work at some occupation, &c., and the proceeds of such work shall be deposited in the Auckland Savings Bank, in the names of the Viviting Justices for the time being. The sum so deposited shall accumulate for the benefit of the prisoner”;—and then follow provisions for the forfeiture by the prisoner for misconduct, with a *post obit* interest in the Pro-

vincial Government! This regulation is conceived in that spirit, which becomes a representative of Her Majesty; but I am sure your Excellency would be grieved, if the fund to arise therefrom constituted the principal source, either of wealth to the Savings Bank, of income to the Visiting Justices, or of solvency to any Provincial Government whatever. The truth is, there are no tools, implements of trade, or other means of applying this regulation, and convicts have earnestly complained to me upon the subject.

3. The Punishment Regulations respecting escapes have their commentary above. As to destroying the property of the Government, the Government seems to have little property to destroy, unless it be either the "tools," &c., (which albeit carefully locked up, are easily reached by prisoners taking up a board from their cell flooring, and then using the lock-up tools to facilitate their own escape,) or perhaps, *the Prison buildings themselves, the destruction of which in the case of the Auckland Gaol, would be a blessing to the community.*

4. Cleanliness is strictly enjoined, on paper;—but the Prisoners at the Stockade have little water, and no conduit, are left to dabble in what utensils they can get about the yards for cleanliness, with (when I visited there a short time since) one towel, one razor, and no comb to clean and shave twelve convicts.

5. Religion and Divine Service are special objects in the Regulations;—but, I am informed, the Government supplies neither clergy, nor bible, nor prayer books, a few of which only have been gratuitously presented by unpaid Ministers of the Gospel.

6. "The Regulations" are careful to preserve from injury (by the prisoners) all books, whether of religious or secular instruction, and are scrupulous that all books must be first approved by the Visiting Justices; but the Government offers no books for the Visiting Justices to approve, and of secular instruction there is none.

Debtors' Rules.—The Judges of the Supreme Court have also gone through the ceremony of framing "Debtors' Regulations." The powers given to the Supreme Court Judges by the Prison Ordinance (Sess. 7, No. 7) are ample, whereby the Judges may "make Rules and Regulations for "the Management of such Gaols as now are or hereafter may be used for the Imprisonment of "Debtors, and for the Control of the Debtors therein." Accordingly, in May, 1859, we provided Rules that—

1. The Debtors should be "kept quite separate from all Felons and Misdemeanants undergoing "their sentences, and all persons waiting for trial, and all Lunatics." But I have shewn your Excellency that those are precisely the persons with whom the Debtors of this Province are herded together.

2. "In respect of diet, exercise, and prison discipline, Debtors shall (at least) be put on the "same footing as first-class Misdemeanants not sentenced to hard labor." But, as to diet, the Debtor has either to maintain himself or break stones for his rations. Exercise he takes among the company of the Debtors' yard. Misdemeanants are not classified; and discipline there is none.

3. As to the facilities which, we rule, should be given for Debtors to work at their trades while in prison, Your Excellency will refer to the description given above of the Debtors' cells, and thence estimate those facilities—what they are likely to be.

I believe, I have now presented to the notice of your Excellency the principal facts, which the Grand Jury of this Province would wish me to present. In so doing, although I have avoided multitudinous detail, I have yet framed this Report more as an Inspector of Prisons might do, than as appertains strictly to the judicial office. But I am aware that general statements, whether of fact or of opinion, are often contradicted or impugned, when particular details remain unimpeached and unimpeachable. The greater portion of the above statements I have personally ascertained to be true. What may be the state of other Gaols or Lock-ups in this Province I have been unable to ascertain, save from rumour. Probably your Excellency's advisers are better informed than myself thereon. The remaining observations I beg leave to add as from myself, inasmuch as I am not authorized to present, as from the Grand Jury, any opinions, but merely to represent the condition of the Prisons, and their defective organization. But I feel assured that I should have the sanction of the Grand Jury in testifying to your Excellency my belief that the evils above set forth are attributable rather to the system than to any neglect or misconduct in the Prison authorities. So far as I am informed, I believe that His Honor the Superintendent, with the most benevolent intentions, under the present system, can by no possibility meet the requirements of the Law. The Prisons, such as they are, appear admirably kept; the Gaolers I believe to be men of humanity and of experience; and the other officers, albeit under-paid and over-worked, seem to discharge their duty with promptitude, temper, and discretion.

The administration of the Law is seriously embarrassed by the defective Prisons. Even in Civil actions a Creditor may, and, I fear, sometimes does, delay bringing his action in the Supreme Court till he has reason to believe his Debtor is about to quit the Colony, perchance on that Debtor's ordinary business, and with full intention to return. He then holds his Debtor to bail, under a Writ of Arrest: and the horrors of imprisonment in Auckland Gaol, even for 48 hours, till bail can be procured, may well extort from the Debtor the full amount of an excessive demand. If the Debtor cannot procure bail, his friends, and sometimes even strangers, are moved to pay or compromise the demand, rather than allow the party arrested to be condemned to such a place, even till the action can be tried and justice obtained. But illustrations are not needed. It is self-evident that the State fails in its duty to the subject, if it allows him to be arrested and, in default of bail, to suffer more inconvenience than is absolutely necessary. In Criminal cases, a Judge of the Supreme Court is perplexed with the consciousness that his office, the Law, and himself, are made instruments of cruelty to the Criminal, and of wrong to the community: for he

knows that the sentence, which is pronounced partly, at least, for the reformation of the Prisoner, will but aggravate that Prisoner's ruin. It is hardly conceivable that a man should not learn more crime in the Stockade. The remedy for the present state of things rests with the General Assembly. It cannot be expected that each Province can erect, organize, and maintain a reformatory establishment, with such a staff and appliances as are requisite to carry out any scheme of secondary punishment. Nor, I venture to submit, ought it to be left either in the power or to the discretion of Provincial Councils. Not to their power, for it is clear that, in order to organize any Prison system, a revenue must be raised, and the General Assembly alone should have power to tax the people for such a purpose;—not to their discretion, for the present accommodation in the Gaols proves in what matter alone that discretion will be exercised, even in the midst of a thriving community.

It would seem moreover to be more consistent with constitutional principle that the supreme control of the Gaols should be lodged in the supreme power of the State. The punishment of Criminals, with the discretion to carry out or remit portions of sentences, or to grant either a free or conditional pardon, all the process of enforcing the Criminal Law, belongs peculiarly to the Crown. Even, therefore, if the time should come when Gaols and reformatory Prisons can be built and maintained out of funds raised within certain sectional divisions of the Colony, it is to be hoped that the ultimate control over the management of those establishments will be held and exercised by a Government responsible to the General Assembly, and acting in the name and on behalf of the Crown. But it is premature to discuss the subject here. I trust your Excellency will forgive my alluding to it. I do so merely because I have been requested to invite the attention of the proper authorities to the Gaols, not merely with a view to temporary relief, which I have been from time to time informed was already in contemplation, but also with a view of making those *permanent improvements* which must require time, money, and system to effect.

I have, &c.,

GEORGE ALFRED ARNEY,
Chief Justice.

PRESENTMENT BY THE GRAND JURY.

To His Honor Chief Justice Arney.

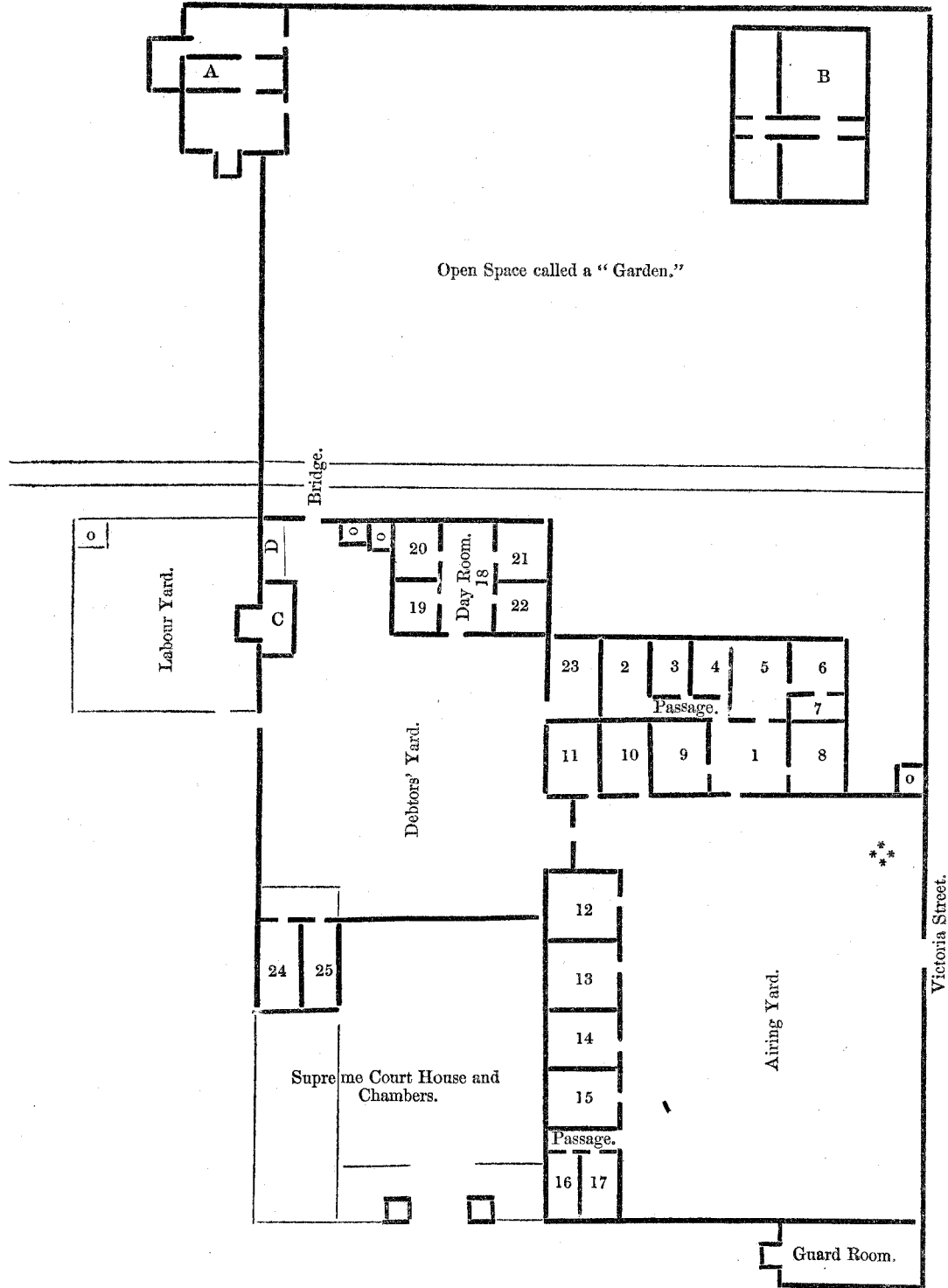
The Grand Jurors having read the Report written by your Honor, and founded upon their presentment dated 1st March, 1861, desire—

Firstly, To thank your Honor for the very able and satisfactory manner in which their views have been expressed.

Secondly, To express their entire concurrence with the views set forth by your Honor, in the latter part of the Report, relative to the only efficient remedy for the existing evils, and their earnest hope that the General Assembly, having these evils clearly presented to them, will at once address themselves to the task of removing them.

Auckland, Grand Jury Room,
3rd June, 1861.

THOMAS S. FORSAITH,
Foreman.



REFERENCE.

- CRIMINAL.
- No. 1.—Day Room.
2 and 3.—Stores, provisions, &c.
4.—Overseer's Room.
5.—Cooking-room.
6.—Surgery.
7.—Turnkey's Bed-room.
8.—Cell for prisoners committed.
9.—Ditto.
10.—Ditto.
11.—General Cell, originally intended as a Lock-up Room for women.
12.—Mess-room for Men.
13.—Ditto for Women.

- Nos. 14 and 15.—Cells for prisoners convicted of petty offences.
16 and 17.—Punishment Cells.
- DEBTORS.
- 18.—Debtors' Day-room.
19.—Warder's Room.
20.—Debtor's Cell,
21.—Stores.
22.—Debtor's Cell.
- WOMEN.
- 23.—General Cell for all classes, day and night.
24 and 25.—Female Debtors Cells.

A.—Original Head Gaoler's House.
B.—Present ditto.
C.—Kitchen.
D.—Shed used for Washing.
[o].—Privies. *** The Well
 The Ditch.

MEMORANDUM OF THE JUDGES OF THE SUPREME COURT ASSEMBLED IN CONFERENCE AT AUCKLAND, TO HIS EXCELLENCY THE GOVERNOR, RESPECTING THE SUPREME COURT ESTABLISHMENT.

We the Judges of the Supreme Court, assembled in conference, observing from the Journals of the House of Representatives that a resolution was passed on the 25th day of October, 1860, by that House, to the effect that the administration of Justice may be effectually provided for without the establishment of District Courts as at present constituted, and that the machinery of the Supreme Court (with such additional Judges as may be considered necessary), and of other tribunals therein named are capable of efficiently disposing of the judicial business of the Colony, beg respectfully to make the following remarks—suggested by our experience, respecting the carrying out of the resolution in question.

We are of opinion that the present Judges of the Supreme Court will probably be found sufficient in number for the present requirements of the Colony, certain rules of practice being adopted, which would permit many interlocutory applications of a merely formal character to be made and decided, or at least dealt with by conditional orders, by the Registrar of the Court, in the absence of a Judge; and further facilities being given for settling issues in provinces where there is no resident Judge. Moreover, statutory powers, with proper checks, might be given to Resident Magistrates or Registrars to enable them to issue *interim* injunctions in cases of irreparable damage.

We think that the present Judges, notwithstanding the great increase of labour imposed upon them by the Land Registry Act of 1860 and other recent Acts of the Legislature, and the probable addition of the functions of a Court of Appeal and of jurisdiction in Bankruptcy or Insolvency, would be able to deal with all those grave portions of the District Court business which alone could with propriety be brought into the Supreme Court, however numerous its Judges might be, and which would be unfit to be disposed of by Resident Magistrates or Justices of the Peace.

We would further respectfully submit to your Excellency that an addition to the number of Judges would scarcely be justifiable at present of the effect—besides the tendency to identify them with local interests, parties, and feelings, which is so undesirable—were likely to prevent the Colony from being able to make those improvements in the position of the present Judges and the efficiency of the present establishment of the Court which seem urgently called for; as the Judges are not at present so adequately remunerated for their services as to enable them to maintain their position in society without experiencing pecuniary cares and anxiety detrimental to their efficiency, and as the buildings, offices, and other appliances of the department are in a condition, and on a scale unworthy of the Colony.

We feel justified in calling your Excellency's attention to the fact that the fees now paid by Suitors in the Supreme Court are generally on a low scale and might very properly be increased in number and, in some instances, in amount.

Our attention having been called to this subject by the Registrars of our respective districts, we propose at an early period to alter and extend the existing scale by virtue of the powers conferred upon us by law.

We believe that with the great increase of business which may be expected to be generated by recent and proposed legislation, and the establishment of a fair and moderate scale of fees for all proceedings in his Court and its offices, the aggregate amount received will soon go far towards defraying the expenses of the establishment.

GEORGE ALFRED ARNEY, C. J.,
ALEXANDER J. JOHNSTON,
HENRY B. GRESSON.

Auckland, May, 1861.

