

“summarily according to the law of New Zealand, and to regulate the trial and punishment of such offences.”

Such are the powers conferred upon the Provincial Legislatures, subject always to the proviso that they shall be null and void, under section fifty-three of the Constitution Act, so far as they may be repugnant to or inconsistent with any Act of the General Assembly.

The prohibitions by which the powers of the Provincial Legislature, in respect of offences and Courts, are restrained are these:—They are prohibited from changing the criminal law as to creating offences, otherwise than by creating offences within the limits of the Act of 1856, and from creating or abolishing or altering the constitution, jurisdiction, or practice of any Court of Criminal Jurisdiction, except Courts for trying and punishing offences punishable summarily by the law of New Zealand; and they are prohibited from establishing or abolishing any Court of Civil Judicature, or altering the constitution jurisdiction or practice thereof, except in so far as they may alter the civil jurisdiction of any Court of Summary Proceedure having jurisdiction in all suits or proceedings where the debt or damage claimed shall not exceed £20.

Having thus ascertained the extent of the powers and disabilities of the Provincial Courts created by the Imperial Act and the Colonial Act, I proceed to examine the provisions of “The Blenheim Improvement Act, 1864,” the validity of which depends upon the question, whether it comes within the powers or the prohibition above defined.

The preamble of the Act recites the expediency of making provisions for making and repairing roads and streets, and other public works, and for draining and otherwise improving and managing the town of Blenheim.

In order to carry out this object, a Board of Works is constituted by the Act, being in the first instance a Board originally constituted by a Provincial Act, called “The Picton Improvement Act Amendment Act.” The vacancies in this Board, after the passing of the Blenheim Act and the reduction of the number below five (5), are to be filled up by the election of persons qualified to vote, by the votes of ratepayers who had paid their rates, at an annual meeting to be held for the purpose, or in certain cases, at a special meeting for the purpose of filling up vacancies.

The chief duties of the Board are to raise and expend a rate for the purposes of the Act.

The rate is to be determined on at a meeting of the Board to be held within a month from the annual election. It is to be made for the following year; it is to be made on the value to sell of the lands within the town, exclusive of any improvement; it is not to be less than one halfpenny nor more than fourpence in the pound.

It is desirable to look at the terms of the fourteenth section more minutely than they are set out in the case, and also to mark the provisions of the fifteenth section.

“14. The Board may from time to time by warrant under their hands or of any three of them appoint one or more fit person or persons to be assessor or assessors to assess all such lands and such assessor or assessors shall within thirty days after the delivery to them of the warrant of their appointment return to the Board an assessment for the said town or such part thereof as shall be named in such warrant and the assessment shall specify the full and fair value to sell of all lands exclusive of improvements comprised in such assessment and the names of the owners and occupiers where known.”

“15. When the assessment of the whole town shall have been made or amended to the satisfaction of the Board the assessor or assessors shall attach his or their names thereto together with the date of making or amending such assessment and a certificate to the effect that such assessment so made or amended is a fair and just assessment according to the best of his or their judgment and the chairman of the Board shall sign the same and in some newspaper or newspapers published or generally circulated in the Province of Marlborough shall cause public notice to be given and the said assessment so made or amended may be inspected at the office of the Board of Works for the period of twenty-one days during the usual office hours by every owner or occupier of property included in such assessment.”

The provisions of the sixteenth section for appealing against the assessment, have already been read at length; the only other section, to the precise terms of which it is necessary to refer is the forty-sixth, respecting the mode of suing and being sued, which though not set out in the case was much discussed at the argument.

“46. The said Board may sue and be sued in the name of their clerk or any member of such Board for the time being and legal or equitable proceedings taken by or against the Board in the name of any one of the Board or their clerk shall not abate or be discontinued by the death or removal of such clerk or member but the clerk for the time being or any member of such Board shall always be deemed to be the plaintiff or defendant (as the case may be) in any such proceedings. Provided always that the said Board and their clerk respectively shall in no case be personally liable nor shall the private estate and effects of any of them be liable for the repayment of any moneys or costs or otherwise in respect of any contracts which shall be made by them or any of them or for any act deed or matter done or executed by them or any of them in their or his official capacity and on the public service.”

Among the various definitions and distinctions of Courts to be found in the books, I have not met with any one which specifically defines “a Court of Judicature” as distinguished from other courts. I am keenly alive to the danger of attempting definitions of words of so much importance, but I do not well see how one can form any clear opinion on the question with which I am now dealing, without having in one’s mind a definite idea of the meaning to be attached to the words in question.

It seems to me that a Court of Judicature might be described as an institution consisting of one or more persons appointed by or through and responsible to the Sovereign power of a State, and authorized by such power, and obliged—on the motion or suggestion (according to duly prescribed forms) of persons claiming the right to set it in motion—to declare and interpret the law of the State if, and as it may be, applicable, and if applicable to apply it, to particular circumstances alleged, (either already ascertained or to be ascertained in manner prescribed by law, either by the Court itself or by some ancillary tribunal). Or, more concisely, it might be said that a Court of Judicature