Enclosure in No. 4.

MEMORANDUM respecting proposed Court of Appeal Bill.

1. The Judges of the Supreme Court having been severally invited to express their views respecting a Bill proposed to be introduced to the General Assembly during its approaching Session, with a view to simplify and render less expensive the proceedings of the Court of Appeal, take advantage of their meeting at the sitting of the Court of Appeal now being held at Wellington, to express their united opinion upon the subject in question.

2. They are fully aware of the obstacles which the paucity and irregularity of the means of conveyance from one centre of population to another throughout the Colony present to the usefulness of the Court of Appeal, although they have to remark that the profession and the suitors in the Supreme Court have but very rarely invited the Judges to reserve cases to be determined by the Court of Appeal, without argument of counsel, under the provisions of the 33rd section of "The Court of Appeal Act, 1862."

3. It might perhaps be advisable to give further facilities for this mode of appealing to the Court, and to enable a Judge of the Supreme Court to reserve a case after argument, and either before or after judgment in the Court below, upon the request of either party, to be determined by the Court of Appeal, without the presence of counsel, unless both parties should agree to be heard by counsel. If the parties should not agree to be heard by counsel, it might be provided that the case should contain a brief statement of the points relied upon on either side.

4. The Judges are convinced that a measure such as that proposed by the Bill, whereby the opinion of each Judge would be taken on a case stated by parties without any oral argument, or any consultation among the Judges, would be found impracticable, unsatisfactory, and mischievous.

5. The opinion of the Judges so taken would be of comparatively little judicial value, and could not serve as precedents for the declaring, interpreting, and applying of the law, which is one of the highest and most important functions of a supreme tribunal.

6. The Judges believe that the practical results of such a mode of proceeding would not give satisfaction to litigants. They are also confident that in the large proportion of cases, where the judgment would be subject to terms and conditions, the ascertainment of the net result of the opinions of five Judges so taken would be almost impossible, or at least so difficult as to create fresh disputes and protracted litigation.

7. They do not believe that the expense to the parties of the mode of proceeding proposed by the Bill would be materially less than that of such reserved cases as above mentioned.

8. With regard to the avoiding of delay, the Judges must point out how nugatory it would be for the Legislature to pass such an enactment as the proposed clause No. 8, as it might be physically impossible for them to comply with it, for the sittings of the Circuit Courts and of the Court of Appeal must from time to time engross their attention for considerable continuous periods. Moreover, during their judicial attendance at places not possessing a Law Library they could not with any safety or confidence discharge the duties imposed upon them.

9. If the Court of Appeal sits twice a year with at least three Judges present, it seems to us that by cases reserved for its consideration, as above-mentioned, litigants may procure quite as cheaply (and it would appear without more delay than the requirements of the proposed scheme would involve) regular judicial determinations more satisfactory to themselves, and of far more importance to the public, without such a radical innovation as would seriously affect the status of the Supreme Court and its Judges, and derogate from its proper character and its real utility, without bestowing any substantial boon upon the community.

Wellington, 17th June, 1872.

No. 5.

The Hon. W. GISBORNE to the ATTORNEY-GENERAL.

MR. PRENDERGAST,— 19th June, 1872.

Is the Law Society going to express an opinion on this subject? Would you read and remark on this, and then let Mr. Fountain have it for the Hon. Mr. Fox.

W. GISBORNE.

No. 6.

The ATTORNEY-GENERAL to the Hon. W. GISBORNE.

To the Hon. the Colonial Secretary. 20th June, 1872.

No opportunity has occurred of considering the matter formally, but all the members of the profession at the Court of Appeal to whom I spoke, and I believe I spoke to all, hold the same opinion, that the proposal ought not to be adopted.

J. PRENDERGAST.

No. 7.

MEMORANDUM on Mr. MACCASSEY'S proposed Bill to introduce a new method of Appeal to the Five Judges. (Transmitted in a semi-official letter to the Hon. W. Gisborne by His Honor Mr. Justice Chapman, with whose permission it is published.)

THE principal objections to the proposed method of submitting a case to the Judges, not collectively when assembled together (for that is already provided for) but individually, and then taking the decision of the majority as the final decision, appear to me to be the following:—

1. The loss of the advantage of that complete and thorough judicial investigation which arises when each party, by his skilled counsel, presents the strongest points of his own client's case and