

1882.

NEW ZEALAND.

CONSTITUTION, PRACTICE, AND PROCEDURE OF THE
SUPREME COURT AND OTHER COURTS

(FINAL REPORT OF THE COMMISSION TO INQUIRE INTO THE).

Presented to both Houses of the General Assembly by Command of His Excellency.

COMMISSION.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen
Defender of the Faith:

To our trusty and loving subjects, James Prendergast, Esquire, Chief Justice of the Supreme Court of our Colony of New Zealand; Alexander James Johnston, Esquire, Christopher William Richmond, Esquire, Thomas Bannatyne Gillies, Esquire, and Joshua Strange Williams, Esquire, all being Judges of the said Court; Frederick Whitaker, Esquire, Attorney-General of our said colony; Walter Scott Reid, Esquire, Solicitor-General of our said colony; Charles Dudley Robert Ward, Esquire, and John Edwin Macdonald, Esquire, Judges of District Courts in our said colony; Robert Clapham Barstow, Esquire, a Resident Magistrate in our said colony; William Gisborne, Esquire, Charles Christopher Bowen, Esquire, and John Sharp, Esquire, Justices of the Peace in and for our said colony; and to Edward Tennyson Conolly, Robert Stout, John Nathaniel Wilson, George Harper, Allan Holmes, and Albert Edward Tyrell Devore, Esquires, all being Barristers and Solicitors of the said Supreme Court,

GREETING:

WHEREAS the Governor of our said colony, with the advice and consent of the Executive Council thereof, has deemed it expedient that a Commission should be issued for the purpose of inquiring into the constitution, practice, and procedure of the Supreme Court and other Courts of the colony hereinafter mentioned, and of ascertaining by what means the administration of justice therein may be rendered more speedy and efficacious, and generally for the purposes hereinafter set forth:

Now therefore know ye that We, reposing great trust and confidence in your zeal, integrity, knowledge, and ability, do by these presents constitute and appoint you, the said James Prendergast, Alexander James Johnston, Christopher William Richmond, Thomas Bannatyne Gillies, Joshua Strange Williams, Frederick Whitaker, Walter Scott Reid, Charles Dudley Robert Ward, John Edwin Macdonald, Robert Clapham Barstow, William Gisborne, Charles Christopher Bowen, John Sharp, Edward Tennyson Conolly, Robert Stout, John Nathaniel Wilson, George Harper, Allan Holmes, and Albert Edward Tyrell Devore, to be our Commissioners for the purpose of inquiring into the constitution, practice, and procedure of the several Courts of judicature in our said colony, that is to say,—

- (1.) The Supreme Court, including the Court of Appeal;
- (2.) The District Courts;
- (3.) Resident Magistrates' Courts;
- (4.) Courts of Petty Sessions of the Peace;
- (5.) Courts held before Justices of the Peace:

And further to inquire whether any and what changes might with advantage be made in the constitution, practice, or procedure of the said Courts, or any of them, with the object of rendering the practice and procedure of such Courts, or such of them as may be thought convenient, auxiliary to one another, or for any other object or purpose; and also to inquire whether the jurisdiction of any of the said Courts (other than the Supreme Court) might be increased, restricted, or limited in any and what respect, and whether any of such jurisdictions might be abolished, and other provision made in that behalf.

And for the better enabling you to carry these presents into effect, We do authorize and empower you to make and conduct any inquiry under these presents at such place or places in the colony as you may deem expedient; and to call before you such persons or person as you may judge necessary, by

whom you may be better informed of the matters herein submitted for your consideration; and also to call for and examine all such records, accounts, books, documents, and papers as you shall judge likely to afford you the fullest information on the subject of this our Commission, and to inquire of and concerning the premises by all other lawful ways and means whatsoever.

And our further will and pleasure is that you do report to Us, under your hands and seals (with as little delay as may be consistent with a due discharge of the duties hereby imposed upon you), your opinion on the several matters herein submitted for your consideration, with power to certify to Us from time to time your several proceedings in respect of any of the matters aforesaid, if it may seem expedient for you so to do.

And We do further declare that this our Commission shall continue in full force and virtue, and that you, our said Commissioners, shall and may, from time to time, proceed with the execution thereof, and of every matter and thing therein contained, although the same be not continued from time to time by adjournment.

And We also appoint you, the said James Prendergast, to be Chairman of our said Commission, and to convene meetings thereof by writing under your hand at such time and place as may be judged convenient; and, in case of your absence or inability to act as such Chairman on any occasion, or at any place, then that the Commissioners present at any meeting, and capable of acting, may elect a Chairman for that occasion, and so from time to time as may be necessary:

And also that any three of you, the said Commissioners (inclusive of the Chairman), shall be a quorum, and that all or any of the powers and authorities hereby vested in you, the said Commissioners, may be exercised by any such quorum sitting and acting together.

And lastly, for your assistance in the premises, We do hereby appoint Martin Chapman, Esquire, a Barrister of the Supreme Court of New Zealand, to be Secretary to this our Commission, and to hold office during our will and pleasure.

In testimony whereof We have caused these our letters to be made patent, and the seal of our said colony to be hereunto affixed.

Witness the hand of our Trusty and Well-beloved Sir Hercules George Robert Robinson, Knight Grand Cross of our Most Distinguished Order of Saint Michael and Saint George, Governor and Commander-in-Chief in and over our colony of New Zealand and its Dependencies, and Vice-Admiral of the same; and issued under the seal of our said colony, at Wellington, this seventh day of July, in the year of our Lord one thousand eight hundred and eighty, and in the forty-fourth year of our reign.

HERCULES ROBINSON.

Approved in Council.

FORSTER GORING,
Clerk of the Executive Council.

FINAL REPORT.

To His Excellency the Governor.

WE, your Excellency's Commissioners to inquire into the constitution, practice, and procedure of the Supreme Court and other Courts of the colony, and to ascertain by what means the administration of justice therein may be rendered more speedy and efficacious, and generally for the purposes in the said Commission set forth, have, in continuation of the report forwarded to your Excellency in June last, to report as follows:—

The Commission met on the 18th November, and continued to further revise the draft code of procedure already forwarded to your Excellency, and to make necessary amendments. The sittings of the Commission ended on the 25th day of November, 1881.

In order that the code of procedure in the Supreme Court might be speedily brought into operation, your Commissioners have thought it expedient to revise the draft Bills submitted to them by the Law Officers consolidating and amending the law relating to the constitution and jurisdiction of the Supreme and Appeal Courts, and other matters connected with these Courts.

The mode of constituting local Courts has been duly considered by your Commissioners, and resolutions have been passed to guide the Law Officers of the Crown in framing a Bill to consolidate and amend the existing statutes relating to the District and Magistrates' Courts.

A draft code of procedure for local Courts has, moreover, been prepared. Your Commissioners would suggest that it be passed as a schedule to the Local Courts Bill.

Your Commissioners have prepared rules for the divorce and matrimonial jurisdiction of the Supreme Court, and they are placed in the code.

Your Excellency will observe that your Commissioners have attempted to make uniform all the proceedings in the Supreme Court.

The necessity for a statute consolidating and amending the law relating to divorce is apparent, and no doubt your Excellency's Advisers will duly consider the subject.

Your Commissioners believe that, if the code they have drafted be brought into operation, the expense to suitors will be lessened, and speedy settlement of actions will be obtained.

Your Commissioners would recommend that Registrars of the Supreme Court should be professional men of experience, and this can only be provided for if the salaries paid to these officers be increased.

Your Commissioners beg to refer your Excellency to the resolutions passed by them as the expression of their opinion on matters not specially mentioned in this report.

Your Commissioners have given great attention to the subject of costs. Although the question is a difficult one, they have arrived at the conclusion that an entire change should be made in the mode of taxing and assessing costs in litigated cases. Your Commissioners are of opinion that in all cases a fixed sum should be allowed, such sum to be calculated according to the scale annexed to the code, but that the presiding Judge should have power to decide all questions of costs, not only as to the mode in which the costs should be borne, but also as to the amount of costs to be allowed. No doubt this is an innovation; but, the present practice of taxation having been found unsatisfactory, owing probably to the fact that the services of properly-trained officers have not been always obtainable, your Commissioners have seen no other course to pursue in framing rules as to costs than that which they have recommended.

The following papers are forwarded to your Excellency herewith:—(1.) The Minutes of the Proceedings of the Commission. (2.) Supreme Court Bill. (3.) Supreme Court Code of Procedure. (4.) Local Courts Code of Procedure.† (5.) Court of Appeal Bill. (6.) Court of Appeal Rules. (7.) Law Amendment Bill. (8.) Criminal Law Bill.

These last two Bills do not in any way alter the existing law, but are put into the present form in order to separate enactments relating to substantive law from those affecting procedure only.

JAMES PRENDERGAST.

ALEXANDER J. JOHNSTON.

C. W. RICHMOND.

THOMAS B. GILLIES

(Subject to memorandum).

JOSHUA STRANGE WILLIAMS.

FRED. WHITAKER.

W. S. REID.

J. E. MACDONALD.

R. C. BARSTOW.

ROBERT STOUT.

GEORGE HARPER.

W. GISBORNE.

A. DEVORE.

JOHN N. WILSON.

C. D. R. WARD.

ALLAN HOLMES.

MARTIN CHAPMAN,

Secretary to the Commissioners.

RECOMMENDATION BY THE COMMISSIONERS OTHER THAN THE JUDGES.

Your Commissioners are fully aware that, by the code proposed by them, increased labour and responsibility will be thrown upon the Judges of the Supreme Court, and, although they are aware that the Judges will cheerfully accept the additional burden thrown upon them, still your Commissioners think it right to express to your Excellency their opinion that, if, as your Commissioners apprehend, the facilities afforded by the measures proposed are largely taken advantage of by the public, two questions will at once arise: (1) Whether the salaries of the Judges shall not be increased; (2) Whether the number of the Judges shall not also be increased.

Considering the salaries paid to the Judges of the Supreme Courts in the Australian Colonies, and the additional duties which will be cast upon the Judges

* The Bills are printed separately, in the usual form for laying before Parliament. The Supreme Court Code of Procedure and the Local Court Code are appended in the form of Schedules to the Bills to which they severally relate.

† The Local Courts Bill was drafted since the Report of the Commission was sent in, and is included among the Bills mentioned in the previous note.

in consequence of the proposed alteration in the law, your Commissioners would respectfully recommend that the salaries of the Judges should be increased at once.

ROBERT C. BARSTOW.	A. DEVORE.
ROBERT STOUT.	J. N. WILSON.
GEORGE HARPER.	C. D. R. WARD.
W. GISBORNE.	ALLAN HOLMES.

MEMORANDUM BY HIS HONOR THE CHIEF JUSTICE, HIS HONOR MR. JUSTICE JOHNSTON, AND HIS HONOR MR. JUSTICE RICHMOND.

We desire to state that, though we join in the report recommending the adoption of the whole code of procedure, there are new methods proposed to be introduced in some of which we are not confident. Seeing, however, that the recommendations were adopted by the great majority of the Commissioners after ample discussion, we are not prepared to refuse to recommend that a trial should be given to the new proposals.

JAMES PRENDERGAST.
ALEXANDER J. JOHNSTON.
C. W. RICHMOND.

MEMORANDUM BY MR. JUSTICE GILLIES.

I concur with the memorandum of His Honor the Chief Justice, Mr. Justice Johnston, and Mr. Justice Richmond, but dissent from that paragraph of the report which expresses a belief that the bringing into operation of the proposed code will lessen expense to suitors and obtain speedy settlement of actions. Subject to this, I have signed the report.

THOMAS B. GILLIES.

MEMORANDUM BY HIS HONOR MR. JUSTICE WILLIAMS.

I was absent from the colony during the greater part of the period over which the deliberations of the Commission extended, and I have not been able since my return to go carefully through the recommendations of the Commission or to revise that part of the work done before my departure. My signature to the report, therefore, must be taken not as expressing an opinion as to the details of the scheme of the Commission, but merely as assenting in the main to the larger principles which the report affirms.

JOSHUA STRANGE WILLIAMS.

MEMORANDUM BY THE HON. MR. WHITAKER.

I have signed the report, but desire to state that I must not be understood to express any opinion on the proposal contained in the thirteenth section of the draft Supreme Court Bill, to alter the superannuation allowances of the Judges. This is a subject which I shall have to consider in Cabinet, and I must not be deemed to have prejudged it.

FRED. WHITAKER.