

SESS. II.—1884.
NEW ZEALAND.

STATUTES REVISION COMMISSION

(SUPPLEMENTARY REPORT OF THE).

[In Continuation of Parliamentary Paper A.-6, Sess. I., 1884.]

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

To His Excellency Sir W. F. D. JERVOIS, G.C.M.G., C.B., &c., &c.

MAY IT PLEASE YOUR EXCELLENCY,—

1. SINCE our last report, dated the 2nd June, 1884, we have learned that a Bill, intituled "A Bill to amend the Law of Evidence in Criminal Cases, by rendering Accused Persons competent to give Evidence," has been introduced into the Imperial Parliament, and that it was reported with amendments by the Standing Committee in Law and Courts of Justice and Legal Procedure; but we have not yet been able to ascertain whether the measure has been passed and become law.

2. The provisions of that Bill are substantially to the same effect as the 432nd section of the New Zealand Criminal Code, as reported from the Joint Statutes Revision Committee of the 7th August, 1883; but they apply to all criminal proceedings at all their stages. It may be thought desirable, when the Code is again brought before the Legislature, that they should determine whether that section should be allowed to remain as it stands, or the provisions of the English Bill should be substituted—at all events, as regards the trial of indictable offences. As the Code applies to indictable offences only, it would not seem desirable that the general language of the English Bill should be adopted for the Code, which would apply to all criminal proceedings, but we think that a separate provision might be made in respect of other criminal proceedings by an amendment of the Justices of the Peace Act.

3. Should the Legislature be of opinion that it would be desirable to adopt provisions adapted from the English Bill instead of section 432 of the Code, we would respectfully suggest the following adaptations:—

- Section 432. (1.) Every person proceeded against by indictment for any crime shall be a competent witness for himself or herself upon his or her trial for such crime; and the wife or husband, as the case may be, of every such person shall be a competent witness for such person upon such trial, and may, if such person thinks fit, be called, sworn, examined, cross-examined, and re-examined as an ordinary witness in the case.
- (2.) This section shall not make a person a competent witness who would, before the passing of this Act, have been an incompetent witness for any reason other than that he is a person proceeded against by indictment.
- (3.) A person called as a witness in pursuance of this section shall not be asked, and if asked shall not be required to answer, any questions tending to show that he has committed or been convicted of any offence other than that wherewith he is then charged, unless the proof that the defendant has committed such other offence is admissible evidence to show that such person is guilty of the offence for which he is then being tried, or unless such person has given evidence of good character.
- (4.) The seventh section of "The Criminal Law Procedure Act, 1866," shall not apply to a person who is called as a witness unless the person proceeded against has given evidence of good character.
- (5.) This section shall not apply to proceedings before a Grand Jury.

4. Connected with this subject we deem it desirable to call attention again to subsection (3) of section 423, a provision respecting statements of the accused which we suggested in our report and note accompanying the draft Code. The controversy alluded to in our note to that section seems not to have been conclusively settled in England, and perhaps we may not have fully understood it. Only one point seems conclusively settled—namely, that counsel ought not to be allowed to make statements of fact which they are not prepared to establish by evidence, except hypothetically. But since our original report Judges in England have allowed prisoners to make statements and their counsel also to address the jury. Whether it is expedient that when the accused is permitted to give evidence upon oath he should be still at liberty to make statements without being sworn, and whether, if he does so, counsel should also be allowed to address the jury, seem to be questions still open; and it will be for the Legislature to determine them, and decide whether the subsection in question should be struck out, modified, or allowed to stand as it is.

5. We would again respectfully allude to the propriety of not bringing the Code into operation till a Repeal Bill can be prepared and passed.

ALEXANDER J. JOHNSTON.
W. S. REID.

Wellington, 23rd August, 1884.

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