

1904.
NEW ZEALAND.

“THE REPRINT OF STATUTES ACT, 1895”
(SECOND *AD INTERIM* REPORT OF THE COMMISSIONERS UNDER).

Presented to both Houses of the General Assembly by Act.

REPORT.

To His Excellency the Right Honourable Lord Plunket, K.C.V.O., Governor of the Colony of New Zealand.

MAY IT PLEASE YOUR EXCELLENCY,—

We, the undersigned, being the Commissioners appointed by Your Excellency's predecessor under “The Reprint of Statutes Act, 1895,” have the honour to submit to Your Excellency this our second *ad interim* report as to our progress and proceedings.

We have thus far dealt with forty-three (43) consolidated bills, comprising one hundred and seventy-two (172) of the existing Acts, but, as indicated in our former report, do not propose to submit any to Your Excellency until the consolidation of the whole of the statute-book is completed, so far as relates to the public general Acts.

In the course of our work we meet with numerous difficulties and defects in the existing enactments. With many of these we can deal ourselves, and it is therefore unnecessary to refer to them. Others, however, are not within the scope of our authority, and with respect to them we suggest that they be dealt with by special legislation, so that the result may be incorporated by us. Amongst them the following have so far come under our notice :—

1. The Animals Protection Acts.—The existing Acts are imperfect in many respects. Moreover, the amending Act of 1900 repealed some earlier provisions which apparently should not have been repealed. We therefore suggest that a consolidating and amending Bill be introduced on lines that will make the law simple and workable.

2. Education Reserves Acts.—The leasing provisions of these Acts are of old date and moreover are conflicting. We suggest that they be recast on uniform and modern lines.

3. Copyright Acts.—“The International Copyright Act, 1886” (Imperial) is in force in New Zealand, but it has been judicially decided that it does not by implication repeal the New Zealand Copyright Ordinance of 1842. There are thus two conflicting enactments in operation. To remove this anomaly we suggest that the whole copyright law be consolidated by adapting the provisions of the Imperial Act so far as applicable.

4. Native Land Acts.—These Acts involve title to land, and raise many difficult questions of implied repeal which should be settled by the Legislature. We therefore suggest that the Government introduce a consolidating measure.

5. Civil Service Acts.—These Acts contain many provisions which, though no longer applicable, are not within our power to repeal or alter. For example, the original Act of 1866 was based on a classification scheme which has never been carried out, and cannot now be given effect to, owing to the subsequent legislation on different branches of the Service. Moreover, many of the existing provisions require amplification to cover contingencies constantly arising in a growing service. For these reasons we think the Government should deal with the matter.

6. Public Works Acts.—The street-widening provisions of these Acts have led to much litigation, and the Court of Appeal has not been unanimous as to their true meaning. We suggest that the Government remove all doubt by legislation.

7. Criminal Code Act.—In our opinion the Act requires amendment on the following points :—

- (a.) Sections 194 and 196 (carnally knowing young girls) : The question should be settled whether, on an indictment for a completed offence, the accused may be found guilty of the attempt.

We also submit for the consideration of the Government whether the limit of one month fixed by section 196 for commencing a prosecution should not be extended to two or three, at all events where the girl is under twelve years of age.

- (b.) The existing provisions for substituting one place of trial for another are based on the assumption (which no longer holds) that the jurisdiction of the Judges is limited to specified districts. We suggest that these provisions be dropped, and the Court of commitment be made the Court of trial, with power to that Court to change it on cause shown.
- (c.) The existing mode of proving a previous conviction is often needlessly cumbersome and expensive, as it involves a fresh trial before a fresh jury. We suggest that the proof be left to the Judge (as it is merely a matter of producing the record and proving the identity), with provision that any question of disputed identity shall be determined by a jury. This would dispense with the necessity of a second trial, except where the identity of the prisoner is disputed.

8. Rules of Court.—Under the existing law rules of Court are made in various ways. We suggest that a uniform system be adopted by legislation.

9. New Zealand Loan Acts.—Under the existing practice, each Loan Act contains all the machinery provisions relating to the loan. It would, we think, be an advantage if these were comprised in a standing Act, which would apply to every loan hereafter authorised to be raised. The authorising Act would thus be confined to a single clause, specifying the amount authorised.

10. "The Rating Act, 1894."—As the result of judgments of the Court of Appeal it would appear that the decision of the Assessment Court is final on the question of value only, and not on the questions whether the property is rateable or the objector is liable as occupier. This view is consonant with reason and convenience, for the latter questions may turn on fine points of law with which the Assessment Court is not as competent to deal as is the Supreme Court. The Act, however, is not quite clear on the point, and we suggest that it be made clear by amendment.

11. "The Supreme Court Practice and Procedure Acts Amendment Act, 1893."—Under this Act the Registrar is empowered to exercise the jurisdiction of a Judge in Chambers. The powers which a Judge may exercise in Chambers as if he were in Court are, however, expressly excepted. The Act has generally been construed as empowering the Registrar to grant administrations, and many have been granted accordingly. It is however questionable whether this power is not one of those excepted from the Act, for by the Administration Act the jurisdiction to grant administrations is conferred upon the Court, and it may therefore be argued that when the Judge exercises it in Chambers he does so "as if he were in Court." As in numerous instances estates have been distributed under administrations granted by Registrars, we suggest that a Bill be introduced to validate what has been done and to determine the practice for the future.

Our work is progressing as fast as circumstances permit; but at best our progress is slow, for, apart from the magnitude of the task in itself, its important and responsible nature necessitates our closest personal attention, both collectively and individually. In the case of each consolidating statute, it is first collated by our Secretary, Mr. Jolliffe, then perused separately by each member of the Commission, and finally settled by the Commission as a whole. All this involves much time and trouble, but we are hopeful that our completed work will be satisfactory to Your Excellency when we have the honour to submit it to you in the form of a consolidated statute-book.

As witness our hands, at Wellington, this 21st day of July, 1904.

ROBERT STOUT,
FRED. FITCHETT, } Commissioners.
W. S. REID, }

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