SESSION II.

1906.

NEW ZEALAND.

"THE REPRINT OF STATUTES ACT, 1895"

(FOURTH *AD INTERIM* REPORT OF COMMISSIONERS UNDER).

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

REPORT.

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

MAY IT PLEASE YOUR EXCELLENCY,—

We, the undersigned, being the Commissioners appointed under "The Reprint of Statutes Act, 1895," have the honour to submit to Your Excellency this further *ad interim* report as to our proceedings.

We are pleased to be able to state to Your Excellency that, in spite of some delay caused by pressure of judicial business in the case of our Chairman, the end of our labours is in sight, and we hope to be able to present our final report, with the accompanying Schedule of Bills, before the commencement of the next session of Parliament.

Under our scheme the statute-book, in so far as relates to the public general Acts (with which alone we have to do), will consist of about 180 Acts, contained in about four volumes of about eight hundred pages each, and absorbing over eight hundred of the present Acts. Following the examples of the Victorian and New South Wales schemes (which adopted that of the Revised Statutes of the Imperial Parliament) we propose to omit the analysis of each Act, and substitute a complete index to each volume.

As regards the various Native Land Acts, they are so complex and involve so many difficult questions of implied repeal, and, moreover, are so far-reaching in their effect on title to land, that we do not feel justified in attempting to consolidate them. We therefore propose to print them all as an addendum, inserting in its proper place in each Act, but in italic type, each specific amendment.

Our functions are limited by statute to the general public Acts, but we venture to suggest that for uniformity of system the local and private Acts should be collected and printed in a supplementary volume. If this be done, all the existing statute-books can be dropped.

The distinction between general public Acts on the one hand and local and private Acts on the other has not always been observed, and this creates a difficulty. As an example we may mention "The Nelson College Act, 1858," which is classed in the statute-book as public general, but is amended by the Act of 1882, which is classed as local. The course we propose to adopt in these cases is to treat as local or private, as the case may be, every Act which would be local or private under the Standing Orders now in force.

To facilitate the enactment of our Bills we propose to prepare an enacting Bill with two schedules, the first containing a list of all the public general Acts we have consolidated, and the second the consolidating Bills themselves. The enacting measure will contain three clauses—one repealing the Acts specified in the First Schedule, one enacting the Bills mentioned in the Second Schedule, and one containing full saving provisions.

In terms of the statute under which our Commission is issued, we beg to draw attention to certain defects in the existing Acts, which in our opinion should be remedied by legislation.

1. "THE ADOPTION OF CHILDREN ACT, 1895."

There are two points in this Act which should be made clear:—

(*a.*) Section 7 says that when an adopting order has been made, then (with certain specified limitations as to property) "the adopted child shall for all purposes civil and criminal, and as regards all legal and equitable liabilities, rights, benefits, privileges, and consequences of the natural relation of parent and child, be deemed in law to be born in lawful wedlock of the adopting parent."

Presumably the Legislature did not intend by this to abolish the natural relation of consanguinity in cases under the law relating to marriage, and it may be that the section has not that effect. The point, however, should not be left in doubt.

(*b.*) Section 9 provides for the repeal of an order of adoption, but does not state the effect of the repeal. The probable intention of the Legislature was that, subject to the terms and conditions of the repealing order, the effect should be to restore the parties to their original status, but without affecting anything theretofore lawfully done. The intention should be specifically stated.

2. "THE COMPANIES ACT, 1903."

(*a.*) The effect of section 3 of this Act is that banking companies cannot avail themselves of the provisions relating to branch registers. This is plainly a mistake, caused by incorporating "The Companies' Branch Registers Act, 1886" (which applied to such institutions), without making the requisite modification of section 3.

The section should therefore be amended by adding, after "Part VIII," the words "and also of the provisions relating to branch registers."

(*b.*) Section 120 is printed under the cross-heading "Branch Registers"; the corresponding section in the Act of 1886 was limited to branch registers; in terms it is not so limited in section 120: what is the intention?

3. "THE ELECTORAL ACT, 1905."

(*a.*) The Act of 1905 re-enacts the Act of 1902. The Act of 1902 was a consolidation Act, and incorporated with the Electoral Acts proper various other enactments—*e.g.*, Representation, Corrupt Practices, Election Petitions. By an oversight, however, these enactments have been lost sight of at times in the drafting, and consequently provisions which originally applied to the Electoral Acts proper have been repeated in their original form and, in their language, appear to apply to the whole Act, although they are not intended to touch those enactments. The whole of Part VI of the Act of 1905 is a case in point.

(*b.*) Part V (relating to election petitions and corrupt practices) should be recast. In its present form it seems to assume that corrupt practices can only be dealt with in connection with election petitions. This, of course, is not so.

(*c.*) In the definition of "corrupt practice," in section 3 of "The Corrupt Practices Act, 1881," the words "law of Parliament" are used. In the corresponding definition in the Act of 1905 the words "the statute law of New Zealand" are substituted. The two expressions have an entirely different meaning, and the effect of the alteration is to greatly limit the meaning of the term defined and the scope of the offence. If this was not the intention of the Legislature, the original language should be restored.

4. "THE HOSPITALS AND CHARITABLE INSTITUTIONS ACT, 1885."

The definition of "district" is defective in cases where a borough neither adjoins a county nor is situate within the geographical boundaries of a county.

5. "THE INTERPRETATION ACT, 1888."

Section 21, in dealing with the effect of the repeal of an Act, does not cover all cases that may arise. We therefore suggest that the following clause from the Imperial Act of 1889 be inserted as subsection (4A) of section 21 of the New Zealand Act:—

"The repeal of an Act shall not revive anything not in force or existing at the time when the repeal takes effect unless a contrary intention appears."

6. "THE LAND TRANSFER ACT, 1885," AND "THE PROPERTY LAW ACT, 1905."

The Property Law Act says (section 122) that its provisions are to be construed so as not to conflict with those of the Land Transfer Act. Hence the two Acts are to be read together, the Land Transfer Act prevailing to the extent of any conflict.

This creates a difficulty, especially in cases where both Acts deal with the same matter. For example, both contain a list of covenants to be implied in mortgages. In some instances the covenants vary slightly in form and effect. Again, both contain provisions for the sale by mortgagees through the Registrar. Here also the provisions vary in form and effect; moreover, in the Property Law Act there are requirements that do not appear in the Land Transfer Act—*e.g.*, that the mortgagee shall value his security, and in case of sale the consideration expressed shall be not less than such value. Do these requirements apply under the Land Transfer Act?

We suggest that, where both Acts deal with the same matter, the language should be identical.

7. CLAIMS UNDER PUBLIC WORKS ACT AND LAND FOR SETTLEMENTS ACT FOR LANDS ACQUIRED BY THE CROWN.

To prevent dispute or difficulty in the settlement of these claims, we suggest that it be enacted that, in the absence of any order of the Court or agreement to the contrary, the place of payment be the Government bank nearest to the residence of the claimant if he resides in New Zealand, and the Treasury at Wellington if he has no New Zealand residence or is absent from New Zealand.

8. "THE TESTATORS' FAMILY MAINTENANCE ACT, 1900."

There have been conflicting decisions as to the meaning of section 2 of this Act. It has been held by the Chief Justice that, in ordering provision for wife, husband, or children to be made out of the estate, the Court might order a lump sum to be paid in cases where it thought fit. The Court of Appeal, however, has by a majority decided that the only order that can be made is for an annuity, and, further, that it must be payable first out of the residue. It follows from this statement of the law that the residuary beneficiaries must lose their shares before specific

beneficiaries are affected; also that it may be necessary to postpone the distribution of the estate during the continuance of the annuity. If this was not the intention of the Legislature the Act should be amended so as to empower the Court to grant a lump sum, and direct a proportionate abatement of the shares of all beneficiaries under the will.

9. "The Workers' Compensation for Accidents Act, 1900."

Section 9 provides that, where the claimant, instead of claiming under the Act, elects to sue but fails in his action, the Court may assess the compensation to which he would have been entitled under the Act, and give a certificate as to the amount thereof after deducting the costs of the action. Section 10 provides that the certificate shall "have the force and effect of an award under the Industrial Conciliation Act."

This does not, in terms, say that the certificate shall be deemed to be an award, and hence the question arises whether jurisdiction to deal with it remains with the adjudicating Court or is transferred to the Arbitration Court. The point is of practical importance, as in the latter case the Arbitration Court would have power to vary the certificate by ordering payment of a lump sum in satisfaction of a weekly sum.

We suggest that the jurisdiction be distinctly transferred to the Arbitration Court by enacting that the Registrar or Clerk of the adjudicating Court shall file an office copy of the certificate with the Clerk of Awards, and thereupon the certificate shall be deemed for all purposes to be an award of the Arbitration Court.

10. Rules and Regulations made under Statute by Supreme Court Judges.

The existing statutory provisions on this subject are not uniform, and we suggest that in every case where under any Act the power to make rules or regulations is conferred on any Judges of the Supreme Court such power shall hereafter be exercised by any three or more of the Judges, of whom the Chief Justice, or, in his absence, the senior puisne Judge, shall be one, and the rules and regulations shall be subject to the approval of the Governor in Council.

11. Previous Suggestions.

Of the various suggestions made in our previous reports, some have been adopted, and, of the others, we consider ourselves justified in again submitting the following:—

(1.) *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.

(2.) *The Criminal Code Act.*

In our opinion the Act might with advantage be amended on the following points:—

(*a.*) 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.

(*b.*) 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.

(3.) *Deceased Persons' Estates Duties Act.*

(*a.*) The existing Acts made no provision as to the mode of assessing duty in the case of contingent gifts. Under the Imperial statutes (sections 36 and 37 of "The Succession Duty Act, 1853," and section 17 of "The Legacy Duty Act, 1796") the contingent gift is to be assessed as if absolute, but with provision for adjustment of the proper duty when ascertained.

(*b.*) The existing statutory provisions for determining the value of real property at the date of death are ambiguous and unsatisfactory.

Under section 5, (*a*), of the Act of 1881, as amended by section 8 of the Act of 1885, the value as appearing on the valuation roll in force at the time of the death is taken, with power to the Commissioner to add the value of all buildings and improvements put on the land between the date of the last assessment and the date of the death. No provision, however, is made for a deduction where buildings have been destroyed. Section 6 of "The Government Valuation of Land Act Amendment Act, 1903," provides that where, for the purposes of the Deceased Persons' Estates Duties Acts, a valuation of land is required as at a date subsequent or prior to the last valuation thereof, the Valuer-General shall, on the application of the Secretary for Stamps, satisfy himself as to the then value of the land, and, if necessary, make a new valuation thereof. It may well be that the Legislature intended this section to supersede the former provisions, but it does not distinctly say so. We suggest that the point be made clear.

(4.) *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.

(5.) "*The Marriage Act, 1904.*"

Section 19 of this Act requires that a minor shall not marry without the consent of the parent or guardian. Section 20 empowers a Judge of the Supreme Court to dispense with the parent's consent where the parent is *non compos mentis*, or with the guardian's consent where it is withheld unreasonably or from undue motives. Thus there is no power to dispense with the parent's consent where it is withheld unreasonably or from undue motives. This power existed under "The Marriage Act, 1854," but appears to have been inadvertently dropped in the Act of 1880, of which the Act of 1904 is a compilation.

We suggest that the Act be amended by extending the powers of the Judge under section 20 to every case where the consent is withheld unreasonably or from undue motives, or the parent or guardian whose consent is required is *non compos mentis*.

(6.) "*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.

(7.) "*The Stamp Act, 1882.*"

(*a.*) This Act provides for the appointment of Deputy Commissioners, who stamp documents and perform other departmental duties in various parts of the colony. The Commissioner himself, however, is a responsible Minister of the Crown. The Act was framed on the Victorian statute, but there the Commissioner was the permanent head of the Department, not a Minister. We suggest that the anomaly be removed by altering the title of the Minister to "Minister of Stamps," and the title of the Secretary to "Commissioner," thus following the analogy of the Land and Income Assessment Acts.

If this alteration is made, then, for uniformity, the Commissioner of Customs should become "Minister of Customs."

(*b.*) Appeals from assessments: Under the existing law the Crown must pay costs unless the Commissioner's assessment is sustained as a whole; hence where it is confirmed in part only he pays costs. It seems to us to be equitable that the costs should be in the discretion of the Court, having regard to the extent to which the assessment is confirmed or otherwise, thus following the analogy of other cases.

Respectfully submitting the foregoing matters for Your Excellency's consideration,

We have, &c.,

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

Wellington, 23rd August, 1906.

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