

53. The provisions of the 154th section of the Common Law Procedure Act might be modified as follows, since there is no existing practice in Error in New Zealand to be got rid of. Common Law Procedure Act, 1852, s. 154

11. "In case Error be brought upon a judgment given against several persons, and one or some of them only shall proceed in Error, the memorandum alleging Error, and the note of the receipt of such memorandum shall state the names of the persons by whom the proceedings are taken, and the proceedings shall be continued in *their names*; but if the others elect to join before the case is set down for argument in the Court of Appeal, they may give notice thereof to the Registrar, who shall thereupon enter a suggestion to that effect, and they shall then become "Plaintiffs in Error." Error by several joint parties.

54. The 155th section provides for bringing the Judgment Roll into the Court of Error. The following would be an analagous provision:— Common Law Procedure Act, 1852, s. 155

12. "Upon the receipt by the Registrar of the Supreme Court of the joinder in Error, he shall cause the case to be set down for argument in the Court of Appeal at its next practicable sitting, and he shall, as soon as may be, transmit to the Registrar of the said last mentioned Court the pleadings and judgment and all other proceedings in the action or matter within the custody of the Court; and the Court of Appeal may and shall thereupon review the proceedings, and give judgment as it shall be advised thereon; and such proceedings and judgment, as altered or affirmed, shall be re-mitted by the Registrar of the Court of Appeal to the Registrar of the Supreme Court, by whom the same had been transmitted; and such further proceedings as may be necessary thereon shall be awarded by the Supreme Court." Argument and judgment in Error.

N.B.—A rule of practice ought to be made by the Judge to provide for furnishing the Judges with copies of the proceedings and grounds of Error.

55. The 156th section of the English Act gives the Courts of Error power to quash proceedings &c., but it refers to the jurisdiction which they would have had, if the proceedings in Error had been commenced by Writ of Error, and any reference of this kind in a New Zealand Act would cause embarrassment and complication much to be deprecated. It would probably be found quite sufficient for the purposes of the Colony if instead of the 156th and 157th sections of the Act, a section were introduced to this effect. Common Law Procedure Act, secs. 156-7-

13. "The Court of Appeal shall have power to quash the proceedings in Error in all cases in which Error does not lie, or where they have been taken against good faith; and it shall have power in all cases except as hereinbefore provided, to give such judgment, and award such process as the Supreme Court ought to have done, without regard to the party alleging Error." Quashing of proceedings and judgment by new Court of Appeal.

56. The 158th section provides for proceedings in Error in fact, and directs proceedings to be had after suggestion as formerly after allowance of a Writ of Error. This kind of legislation by reference, will not, we think, suit the requirements of the Colony; and a special provision must be made for this branch of the subject. But inasmuch as this is Error which in England would be *Coram nobis*, or *vobis*, and might be dealt with by the Court in which it arose, not being the Error of the Court, it would seem that this may be dealt with by the Supreme Court itself; and although for that reason, the provisions in respect of it might with propriety have been introduced into the Supreme Court Act; yet as this Bill deals with the whole subject of Error, it seems desirable to introduce them here; and the following Clause might be adopted:— Common Law Procedure Act, s. 158.

Error in fact.

14. "Either party alleging Error in fact may deliver to the Registrar of the Supreme Court a memorandum in writing intituled in the Court and Cause, and signed by the party or his Solicitor, alleging that there is Error in fact in the proceedings, together with an affidavit of the matter of fact in which the alleged Error consists, (which the Registrar shall then file in the said Court,) and may serve upon the other party a copy of such memorandum or affidavit; and such other party may demur or plead to the matter contained in such memorandum, and the pleadings after such memorandum, shall be conducted in the same manner as if the said memorandum were the first pleading in an action, and every issue of law or fact arising in such pleadings shall be disposed of in the same way as issues of law or fact in the ordinary course of an action, and after such issue or issues of law or fact or both has or have been disposed of, the Court shall give judgment of affirmance or reversal, or cause a *venire de novo* to issue, or give such other judgment as the circumstances of the case may require." Proceedings on Error in fact.

57. The remaining sections of the Common Law Procedure Act of 1852 on the subject of Error, being sections 159 to 167 inclusive may be adopted with so slight changes that it is not necessary for us to call special attention to them. Remaining sections of Common Law Procedure Act, secs. 159-167.

The form of them may be as follows.

(a) "The Plaintiff in Error, whether in fact or law, shall be at liberty to discontinue his proceedings, by giving to the Defendant in Error a notice, headed in the Court and Cause, and signed by the Plaintiff in Error or his Solicitor, stating that he discontinues such proceedings; and thereupon the Defendant in Error may sign judgment for costs of, and occasioned by, the Proceedings in Error, and may proceed upon the judgment on which the Error was brought." Plaintiff may discontinue Proceedings in Error.

(b) "The Defendant in Error, whether of fact or Law, shall be at liberty to confess Error and consent to the reversal of the judgment, by giving to the Plaintiff in Error a notice, headed in the Court and Cause, and signed by the Defendant in Error or his Solicitor, stating that he confesses the Error, and consents to the reversal of the judgment; and thereupon the Plaintiff in Error shall be entitled to and may forthwith sign a judgment of reversal." Defendant may confess Error and consent to reversal of Judgment.