

1880.

NEW ZEALAND.

REVISION OF STATUTES COMMISSION

(REPORT OF).

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

To His Excellency Sir HERCULES GEORGE ROBERT ROBINSON, G.C.M.G., Governor of the Colony of New Zealand.

MAY IT PLEASE YOUR EXCELLENCY,—

We, the Commissioners appointed under “The Revision of Statutes Act, 1879,” have the honor to report as follows :—

Preliminary.

1. On receiving our appointment on the 23rd day of January last, we proceeded to consider the scope and extent of the duties upon, and the fresh powers granted to, the new Commission.

2. Those duties and powers refer to three different subjects—

(a.) The consolidation, amendment, and arranging for publication of the statute law of the colony now in force.

(b.) The selection, arrangement, and publication of such portions of the statute law of England applicable to and binding in the colony as seem to us to be of general importance and interest.

(c.) The propriety of adopting, and adapting for the colony, the Bill for establishing a code of indictable offences and the procedure relating thereto, recently introduced into the Imperial Parliament.

3. It will be convenient that we should report first concerning the last-mentioned subject—namely, the consolidation of the law of indictable offences.

Criminal Law Consolidation.

4. We have examined the Bill in question, and have taken trouble to ascertain the history of its progress and the position at which it has arrived, according to the latest intelligence, and we are satisfied beyond any doubt that it would be premature to attempt at present to adopt it and go through the necessary labour for adapting its provisions to the circumstances of the colony; and that it will be most desirable—especially as there can be no urgency in the matter—to wait, not only till the measure has been finally accepted and made law by the Imperial Legislature, but till some experience of the practical working of the new provisions which it contains, and which are yet untried, has tested their value.

5. It is well known that the original author and proposer of the English codification measure is Sir James FitzJames Stephen, who had devoted his attention specially to the subject for a quarter of a century, and had produced as one of the monuments of his learning and industry “The Digest of Criminal Law,” published in 1877.

6. In 1878, after a draft Bill intituled “The Criminal Code Indictable Offences Bill, 1878,” of which Sir J. F. Stephen was the author, had been prepared, a Royal Commission was issued to three Judges—Lord Blackburn, Mr. Justice Barry, and Mr. Justice Lush (who were relieved for the time being of their ordinary official duties, with slight exceptions)—and Sir James FitzJames Stephen (since Mr. Justice Stephen).

7. The Commissioners devoted themselves for about five months *de die in diem* to a deliberate and minute criticism of the whole scheme, and made a most valuable report, to which was appended a draft code embodying the suggestions of the Commissioners. This became the subject of the Bill of 1879.

8. That Bill was introduced in the House of Commons on the 3rd of April, 1879, was read a second time on the 5th of May, but was not passed.

9. In the recent session of the Imperial Parliament the Bill was introduced again, and passed its second reading in the House of Commons, and it may be assumed that it has again been presented, with or without alterations, for the consideration of the new Parliament in its first session.

10. While the Bill was before the House of Commons in 1879, the Lord Chief Justice of England addressed a letter to the Attorney-General (which was published, by order of the House of Commons, on the 10th June, 1879) in which he minutely criticised it, pointing out a variety of matters in respect of which it was, in his opinion, imperfect and its provisions questionable; and he promised further letters, of which, if yet published, we have not been able to procure copies. His Lordship expressed his approbation of the great amount of labour of the Commissioners, and the great learning and research displayed by them, and his astonishment that they should have done so much in so short a time.

11. He admitted in his letter that the Commissioners had collected abundant materials for a complete and perfect code; but he said he could not concur in thinking that they had as yet presented such a code, adding, "I am bound to say that, in my opinion, a great deal remains to be done to make the present code a complete and perfect exposition or a definite settlement of the criminal law."

12. Since the appearance of this letter, Sir James FitzJames Stephen, in an article in a magazine called the *Nineteenth Century*, for January of this year, replied to the Chief Justice's criticisms, vindicating the action and report of the Commissioners in many respects, but ingenuously admitting that the work was necessarily imperfect in some of the particulars to which the Chief Justice referred; and there seems to be a probability of no little controversy before the matter is finally settled, even as a tentative and partial codification and consolidation of the common and statute law relating to indictable offences only.

13. There is no pretence that we are aware of for any haste in the matter, as the few novelties introduced by the Bill of 1879 are, to say the least, of a questionable kind. The examination of the accused, for instance, is a matter on which the Commissioners themselves report, "As regards the policy of a change in the law so important we are divided in opinion."

14. It may be well to remark here that the English Criminal Consolidation Acts of 1862, from which the New Zealand Acts of 1867 are derived, have given rise to very few questions for the decision of the Court for Crown cases reserved.

15. Under these circumstances it has seemed to us that it would be premature and inexpedient, if not presumptuous, and probably useless, for us to do more at present than prepare ourselves for undertaking the task of the adaptation to the colony of the English code after it has been finally sanctioned by the Imperial Parliament.

16. Had we commenced our labours under the Act of 1879 by a report and adaptation of the Criminal Consolidation Bill, we should have been unable to finish that portion of them before the commencement of the approaching session of the Assembly, even if we had devoted our attention exclusively to it. The review of the whole of the New Zealand and Imperial statute law necessary for purposes of repeal alone must be minute and searching, and must occupy a very considerable space of time, even if we take upon trust from the English Bill those portions of the code which are supposed accurately to represent the common law relating to the various subjects comprised in it.

Consolidation.

17. According to our understanding of the language of the Legislature in "The Revision of Statutes Act, 1879," it is our duty to collect, arrange, and reproduce in a consolidated form the whole of the statute law enacted by the Legislature of the colony since its establishment, which still remains in force—that is, has not been repealed or superseded, or has expired or become obsolete.

18. But we understand that we are further empowered and bound to make alterations, amendments, omissions, and additions in matters of form, language, and arrangement (without altering the meaning or affecting the operation of the enactment), in order that the consolidated law may be as simple and intelligible to ordinary readers as possible.

19. Further powers are accorded to us, enabling us to indicate such Acts or parts of Acts as in our judgment ought to be repealed, and to recommend the passing of such new enactments as may in our judgment be necessary; but we have no power to consolidate with existing enactments such new enactments as we might deem desirable.

20. Before proceeding to the practical work of consolidation, we agreed upon general principles which ought to be ordinarily followed in making alterations, by omission, addition, or substitution, in the language of the Acts, so as to render their style as uniform as possible; and in doing so we have been guided to a great extent by the rules and suggestions to be found in Bentham's "Treatise on Nomography" (or the expression of law).

21. The great object of all such rules is to make each particular enactment as easily intelligible as possible to every person who derives a benefit from it or is subjected to any charge by it.

22. To this end nothing is more conducive than that the provisions of every statute should be subdivided as much as possible, and arranged in such sequence as most easily to carry the mind of the reader from one enactment to another.

23. Tautology is of course to be avoided ; and, in order to prevent repetitions, interpretation clauses specially fitted for the particular statutes are of great service.

24. It is always desirable to bring the subject of an enactment as near to the predicate as possible, in order that the mind of the reader may not be kept unnecessarily in suspense.

25. Sentences should be shortened where possible ; and it is in general desirable, if practicable, that there should be no more than one enacting verb in one sentence. If there is necessity for it, a modification of the enactment may be added in a second paragraph in the same section.

26. These are among the most obvious means of avoiding obscurity, ambiguity, complexity, and difficulty of comprehension, which we have kept constantly in view in the course of our work.

27. We have not thought it necessary or desirable to allude specifically in our reports on each particular Bill to mere omissions of redundant words, or transposition of words, or alteration of arrangement of clauses, which will be at once discernible on comparing our draft Bills with the original enactments, to which we have always afforded a reference in the margin of our drafts. It would have involved much trouble and expense in printing to have indicated all such alterations, without any real practical benefit.

28. Each Bill is accompanied by a report calling attention to the changes we have made ; and any substantially new provision which we have suggested for enactment is printed in the Bill in italics.

29. We have been able, during the short period which has elapsed since our appointment under the present Act, to prepare consolidated Bills absorbing sixty-four Acts of the Assembly, the following being the subjects :—

1. Adulteration Prevention	Consolidating	3 Acts.
2. Aliens	"	3 "
3. Animals Protection	"	2 "
4. Arms	"	5 "
5. Banks and Bankers	"	7 "
6. Bills of Exchange	"	2 "
7. Building Societies	"	2 "
8. Companies	"	6 "
9. Cruelty to Animals	"	1 "
10. Deaths by Accidents	"	2 "
11. Juries	"	5 "
12. Marriage	"	5 "
13. Married Women's Property	"	2 "
14. Mercantile Law, consolidating—		
The Mercantile Law Amendment Act, 1860	}	11 "
The Mercantile Law further Amendment Act, 1878		
The Advances to Agents Act, 1861		
The English Acts Act, 1856 (so much as relates to bills of lading)		
The Carriers Act, 1866		
The Delivery of Goods and Lien for Freight Act, 1869		
The Interest on Money Act, 1868		
The Partnership Law Amendment Act, 1866		
The Special Partnerships Act, 1858		
The Restriction on Marine Re-assurance Removal Act, 1869		
The Warehoused Goods Act, 1876		
15. Chattel Securities, consolidating—		
The Wool and Oil Securities Act, 1858	}	8 "
The Bills of Sale Act, 1867		
The Bills of Sale Act, 1868		
The Mortgages of Stock Registration Act, 1868		
The Bailments of Stock and Chattels Registration Act, 1869		
The Agricultural and Produce Lien Act, 1871		
The Wool and Oil Securities Act Amendment Act, 1871		
The Bills of Sale Act Amendment Act, 1875		

64 Acts.

30. There are some heads of law to which we should have directed our attention at the commencement of our labours but for the understanding that there was a probability of the Government introducing measures on these subjects during the approaching session.

31. We hope to be able to prepare a few more Bills at a period so early in the session as to make it possible for the Legislature to consider them before the close of the session.

32. In concluding our observations on the subject of consolidation, we desire to call attention to the expediency of avoiding any repugnancy or contradiction arising from fresh legislation during the session in which consolidated Bills are introduced ; which might, in many cases, be effected by the introduction of the proposed new enactments into the consolidated Bills.

Selection and Reprint of Imperial Statutes apparently affecting the Colony.

33. The Commissioners under the Act of 1878 having made preparations for the purpose of selecting and reprinting Imperial Acts of general interest and importance, we have been able to commence this portion of our labours and make considerable progress in it; but the pressure on the Government Printing Department has rendered it impossible for us to complete the work before the commencement of the session. There is a considerable amount of the matter now in the hands of the printers.

34. The few sheets already printed, and attached hereto, will afford a fair specimen of the mode in which we purpose to carry out the selection and reprint.

35. It is, of course, to be understood that the whole of the Imperial statutes still in force in the colony are not to be reprinted; and we have followed the directions of the statute by omitting such Acts as do not seem to us of interest or importance to the general community.

36. Although we have tried to avoid the introduction of any Acts about the applicability of which to the colony there could be any serious doubt, it is to be remembered that the insertion of any Act in this selection cannot be treated as involving an authoritative decision that it is applicable.

We expect to be able to include the whole of the selected Imperial Acts in one moderate-sized volume, the subjects being arranged alphabetically; and we shall be ready to carry it through the Press as soon as the printers can undertake it.

All of which we humbly submit to your Excellency's gracious consideration.

As witness our hands this twenty-seventh day of May, one thousand eight hundred and eighty.

ALEXANDER J. JOHNSTON,
W. S. REID,
Commissioners.

By Authority: GEORGE DIDSBUCK, Government Printer, Wellington.—1880.