

REPORT OF THE SUB-COMMITTEE APPOINTED TO PREPARE A CODE OF PROCEDURE.

THE Sub-Committee of the Commission of Inquiry into the constitution, practice, and procedure of the Supreme Court and other Courts of the colony, appointed by the following resolution, passed at the first sitting of the Commission, viz. "That a Sub-Committee of Mr Justice Williams, Mr Stout, and Mr Holmes be appointed to draft rules of procedure in Appeal, Supreme, and local Courts, and that, if possible, they be embodied in one code," have to report as follows:—

1 They have prepared a code of civil procedure which they hope will be found applicable to all Courts of civil jurisdiction in the colony. The code is annexed to this report, and is now submitted to the Commission for consideration.

2. His Honor Mr. Justice Williams, having left the colony on leave of absence towards the end of February, was able to attend only the meetings of the Sub-Committee at which the rules up to Rule 384 were considered, the remaining members of the Sub-Committee are, therefore, alone responsible for the subsequent rules. The general scheme of the code had, however, been considered by the Sub-Committee before his Honor's departure, and approved of by him.

3. In preparing the code the Sub-Committee have endeavoured to adhere as nearly as possible to the resolutions passed at the first sitting of the Commission.

4. In order to do this satisfactorily it appeared to the Sub-Committee necessary to devote special and careful attention to framing the code in such a manner as to secure the following results, viz. (*a.*) That the laws of the colony shall be administered as one organic whole, irrespective of any division into law and equity (*b.*) That in every case such relief shall be given to the parties before the Court as they shall prove themselves entitled to, irrespective of defects in the form in which they have invoked the assistance of the Court. (*c.*) To simplify as much as possible the mode of approaching the Court by persons seeking relief or assistance. (*d.*) To secure uniformity in the practice of all Courts, and in all matters brought before the Courts, to the greatest possible extent. (*e.*) To lessen the delay and cost of proceedings.

5 As to the first point, it is hardly necessary to urge anything in the way of argument. The desirability of bringing about a fusion of the systems of law and equity is now admitted to be the chief object that ought to be kept in view in any attempt to reform civil procedure.

The framers of the existing rules of procedure and practice in the Supreme Court seem to have recognized the great importance of this, and have indeed done so much towards bringing about the desired result that your Sub-Committee can only be considered as following in their footsteps. In England, as the Commission are aware, the recent important changes in the law of procedure have also been made principally with the same object.

Your Sub-Committee consider that, as the chief obstacle—arising from part of the law being administered by one class of Courts and part by another class of Courts, as formerly in England does not exist in this colony, there should be no insuperable difficulty in accomplishing this object.

It will accordingly be found that in the code no reference is made to the division, and that it is drafted throughout on the assumption that they will be so administered.

All that seems necessary to complete the work is an Act providing for the cases in which there is any conflict between the rules of the two systems, and section 5 of "The Law Amendment Act, 1878," appears to your Sub-Committee sufficient for this purpose.

6. The second point is of even greater importance, indeed, to it all other amendments must be subsidiary

The Sub-Committee have endeavoured to provide for it partly by giving very full powers to the Court in the exercise of their jurisdiction in particular cases, but principally by Rule 276, which provides that "the judgment shall award to the parties or persons before the Court such relief as, on the facts proved to the Judge, if the action was tried by a Judge, or found by the jury, if the action was