

1896.

NEW ZEALAND.

PUBLIC PETITIONS A TO L COMMITTEE

(REPORT OF, ON THE PETITION OF C. C. KETTLE, D.J., OF WANGANUI. WITH EXHIBIT).

Brought up 12th August, 1896, and ordered to be printed.

REPORT.

No. 103.—Petition of C. C. KETTLE, D.J., of Wanganui.

PETITIONER prays that the existing law may be amended in the direction of—(a) Raising the tenure of office of the District Court Judges from one “during the pleasure of the Governor” to a tenure “during ability and good behaviour”; (b) placing the salaries of the District Court Judges on the permanent Civil List; and that the said salaries may be made adequate and commensurate with the responsible and onerous duties which the District Court Judges are called upon to perform.

I am directed to report that, in 1894, the Committee considered a similar petition from District Judge Kettle, upon which it reported “That, in the opinion of the Committee, this petition should be referred to the Government for favourable consideration.”

Having again heard Judge Kettle’s statement of his case, and examined him thereupon, the Committee is strongly of the opinion that the Government should at an early opportunity take the whole matter into careful and favourable consideration.

In support of this recommendation, the Committee would draw the attention of the Government—(1) To the following quotation from a speech by the late Hon. J. Ballance (*vide Hansard*, vol. lxxix., page 909–910, 1890): “If there was one constitutional principle better established than any other, it was that Judges should be appointed not ‘during pleasure,’ but during ‘good behaviour,’ and that their salaries should be fixed, and not be subject to the will of the Government or the House”, and (2) to the attached “Exhibit,” headed “Independence of the Bench of Justice.”

JOHN JOYCE, Chairman.

12th August, 1896.

EXHIBIT.

[Put in by the Petitioner.]

INDEPENDENCE OF THE BENCH OF JUSTICE.

“The most sacred thing in the Constitution we live under is the independence of the Bench of Justice.”—*New Zealand Times*, 25th May, 1892.

Resolution passed by Royal Commission (Law Procedure Commission), 1881. A.6.1. *et. seq.*: “That the judicial officers presiding over local Courts of extended jurisdiction be appointed during good behaviour, with salaries fixed by Act.”

Resolutions passed by Legislative Council on the 16th October, 1894: “1. That, in the opinion of this Council, it is essential to the impartial and fearless administration of justice that—(a) The tenure of office of District Court Judges and Stipendiary Magistrates exercising extended jurisdiction should be ‘during ability and good behaviour,’ and not, as at present, during the pleasure of the Executive; (b) the salaries of such Judges and Magistrates should be adequate, and should not be liable to be reduced during the term of office of the Judge or Magistrate receiving the same. 2. That, in the opinion of this Council, the salaries at present paid to District Court Judges and such Magistrates, and especially the former, are wholly inadequate.”—*Hansard*, 16th October, 1894, page 803.

Resolution passed by the Wellington Chamber of Commerce: That, in the opinion of this Chamber, it is essential, in the due administration of justice to all classes of the community, that all District Court Judges and Stipendiary Magistrates with extended jurisdiction should hold their appointments during good behaviour, and that a copy of this resolution be sent to the Hon. the Minister of Justice.

Resolution passed by the Canterbury Chamber of Commerce, 12th July, 1895: “1. That, in the opinion of this Chamber, it is essential, in the due administration of justice to all classes of the community, that all District Court Judges and Stipendiary Magistrates with extended jurisdiction should hold their appointments during good behaviour, with salaries fixed by statute. 2. That a copy of this resolution be forwarded to the Hon. the Minister of Justice.”

Resolution passed by the Dunedin Chamber of Commerce: “Resolved, “That, in the opinion of this Chamber, it is essential, in the due administration of justice to all classes of the community, that all District Court Judges and Stipendiary Magistrates with extended jurisdiction should hold their appointments during good behaviour, with salaries fixed by statute, and that a copy of this resolution be sent to the Hon. the Minister of Justice.”

Resolution passed by the Auckland Chamber of Commerce: “That this Chamber indorses the resolution of the Dunedin Chamber of Commerce—‘that District Court Judges and Stipendiary Magistrates should hold office during good behaviour, with salaries fixed by statute.’”

Resolution passed by the Wanganui Chamber of Commerce on the 6th August, 1894: “That,

in the opinion of this Council, it is absolutely essential, in the interests of the people as a whole, that all Judges of the Courts of Justice of the colony should have a secure tenure of office."

Resolution passed by the Committee of the New Plymouth Chamber of Commerce on the 12th September, 1894: "That, in the opinion of this Committee, it is essential that Judges of a Court having such extensive jurisdiction as the District Court should have as secure a tenure of office as the Judges of the Supreme Court."

Resolutions passed by the Hawera Borough Council: "1. That, in the opinion of this Council, it is highly desirable, in the interests of the community as a whole, that the Bench of Justice should be placed in a position of absolute independence as regards tenure of office and remuneration. 2. That this Council desires to record its approval of the action recently taken by Mr. District Judge Kettle to secure the independence of the Judges of the District Court. 3. That copies of these resolutions be forwarded to the Government and members of the House of Representatives on this coast."

Resolution passed by the Palmerston North Borough Council, 12th June, 1895: "1. That this Council wishes to express its approval of the action taken by District Judge Kettle to have the Judges of the District Court placed in a position of absolute independence. 2. That the Council indorses the resolutions on this subject passed by the Legislative Council on the 16th October, 1894, and by most of the Borough Councils, local bodies, and chambers of commerce on this coast. 3. That copies of these resolutions be forwarded to the Premier and to His Excellency the Governor."

Presentment of Grand Jury at Supreme Court sittings, Wanganui, 26th September, 1894: "The Grand Jury desire to present to this honourable Court that in their opinion it would give the public greater confidence in the proper administration of justice if the tenure of office of the Judges and Magistrates of the inferior Courts was made more secure than at present."

Report of Public Petitions Committee upon Judge Kettle's petition *re* tenure of office, &c., of District Court Judges: "Referred to the Government for favourable consideration." 28th September, 1894, petition No. 6.

EXTRACT FROM JUDGMENT OF MR. JUSTICE WILLIAMS IN ATTORNEY-GENERAL *v.* EDWARDS
(9 N.Z. L.R., p. 376).

"In the present case, until such time as the matter may be finally dealt with by Parliament, the position will undoubtedly remain most unsatisfactory. The Judge is absolutely dependent upon the Ministry of the day for the payment of any salary, and has to come before Parliament as a suppliant to ask that a salary be given him. It is difficult to conceive a position of greater dependence. No Judge so placed could, indeed, properly exercise the duties of his office."

EXTRACT FROM JUDGMENT OF LORD HERSCHELL IN BUCKLEY *v.* EDWARDS (L.R., Appeal Case 1892, A.C. 396).

"Their lordships need not dwell on the importance of maintaining the independence of the Judges. It cannot be doubted that, whatever disadvantages may attach to such a system, the public gain is, on the whole, great. It tends to secure an impartial and fearless administration of justice, and acts as a salutary safeguard against arbitrary action of the Executive."

EXTRACTS FROM SIR R. STOUT'S ARGUMENT IN ATTORNEY-GENERAL *v.* EDWARDS. (Reported in Blue-book, Sess. II., 1891, H.-13.)

(P. 73): "I shall also show that this is admitted: that, without such permanency, and without a permanent vote, there is no independence of the Bench."

(P. 78): "According to Hearn it was absolutely necessary that, if the Judges were to be independent, their salaries should be ascertained and established, and be removed beyond the control even of Parliament. . . ." (P. 79): "On every ground Hearn lays down the principle that, in order to secure the independence of the Bench, two things are necessary—first, a *fixed tenure*; and, secondly, a *fixed salary*. That is the view of all our constitutional writers. . . . Story, in his book on the 'Constitution of the United States' (3rd ed., p. 473, par. 1627) says: 'It is observable that the Constitution has declared that the Judges of the inferior Courts, as well as of the Supreme Court of the United States, shall hold their office during good behaviour. . . .' Paragraph 1629 quotes from the *Federalist*: 'Next to permanency in office nothing can contribute more to the independence of the Judges than a fixed provision for their support. . . . In the general course of human nature a power over a man's subsistence amounts to a power over his will, and we can never hope to see realised in practice the complete separation of the judicial from the legislative power in any system which leaves the former dependent for pecuniary resource on the occasional grants of the latter. Enlightened friends to good government in every State have seen cause to lament the want of precise and explicit precautions in the State Constitution on this head.'"

"It may be said that in England this law was passed to preserve Judges from interference by the Crown. No doubt in those days that was the evil to be avoided. . . . But I submit that, although the power of the Crown has been lessened, there is just as good reason now for insisting on the independence from Crown control, and that can only be accomplished by carrying out the principle laid down in the Act of Settlement. . . . I submit there is a concurrence of constitutional authorities as to what is necessary for the due independence of the Bench."

(P. 92): "I need not submit to the Court that this is a most important case as far as affecting the Supreme Court Bench is concerned, because if it is held hereafter that an Executive is to have the power to multiply Judges of the Supreme Court without any provision being made for their salaries, and that those Judges so appointed have to depend on an annual vote of Parliament, or, as it turned out in the session of 1890, no vote of Parliament, then the independence of the Supreme Court Bench is gone—there is no such thing in existence. It is all very well for the other side to say that what had to be guaranteed against in the old days was the interference of the Crown. That was so. But I submit that in these latter days there is—and the Americans have seen it, and have wisely provided for it—just as much need, perhaps more need, of having the judicial Bench looked upon as an independent part of the State authority as there is for having

the Parliament independent of the Executive. It is, in fact, I submit, even more important now. . . . In order to make the Supreme Court Bench independent—to be removed above party struggles and party feeling—it must have the salaries of the Judge made independent of Parliamentary vote. . . . If, however, it be held that the defendant is right, and that he still remains a Judge of the Supreme Court Bench, then the dignity and honour and independence of the Supreme Court Bench in New Zealand have vanished.”

(P. 135): “Further, I say it is both for the benefit of Judge Edwards, as well as for the benefit of the Bench and the colony, that these proceedings should have been taken. . . . I submit that it is for the benefit of the colony because, if it be allowable to appoint Supreme Court Judges without a tenure and without a salary, leaving the Judge dependent upon the vote of the House, it is a most unconstitutional position; and, if it be legally possible, it is well that the colony should know it, and that the people should take steps to see that the law is altered.”

EXTRACT FROM STEPHENS'S COMMENTARIES ON THE LAWS OF ENGLAND (6th Ed., Vol. 2,
p. 506, *et. seq.*).

Mr. Serjeant Stephens, in his commentaries on the laws of England, referring to the necessity for securing the absolute independence of the Judges, says: “To the head now under consideration must be also referred the provisions which have been made to secure the dignity and political independence of the Judges. It is enacted by the Statute 12 and 13, Will. III., c. 2, that their commissions shall be made (not as formerly, *durante bene placito*, but during good behaviour, *quamdiu bene se gesserint*; but that it may be lawful to remove them on the address of both Houses of Parliament. And afterwards by the Statute of 1 Geo. III., c. 23 (enacted at the earnest recommendation of the King himself from the throne), the Judges are continued in their offices notwithstanding any demise of the Crown, which was formerly held to vacate their seats; and their full salaries also are absolutely secured to them during the continuance of their commissions. It deserves particular remark that in this distinct and separate existence of the judicial power in a peculiar body of men, nominated indeed, but not removable at pleasure by the Crown, *consists one main preservative of the public liberty*; which cannot consist long in any state, unless the administration of common justice be rendered secure from the improper influence of the Executive power, a danger which (as shown by the ‘History of the Court of Star Chamber’) is not by any means imaginary.”

EXTRACT FROM ARTICLE IN “ECONOMIST” (8th JUNE, 1895).

Justice and Politics in Victoria.—“It is unfortunately the fact that the Judges of the County and other subordinate Courts of Victoria are very much at the mercy of whatever political party may hold office, and if some of them have not displayed a striking amount of independence little wonder can be felt. These subordinate Judges hold office during good behaviour. They can, it is true, only be removed upon an address of both Houses of the Legislature, but their salaries are paid out of annual appropriations which are exclusively in the power of the Lower House. The Law Officers of the Government, who have to put the salaries of these Judges upon the estimates, as well as the Premier himself, often practice in the Insolvency and other Courts, and the Judges are therefore very much in the hands of politicians. And yet they are to some extent the tribunals by which the rights of English and colonial creditors are supposed to be protected. In these circumstances one cannot but feel grateful for the side-light which has been thrown upon the system by Judge Molesworth, as reported in the Melbourne papers. . . . Public attention has been called to this subject none too soon, and if the Victorian legislators are wise and self-respecting they will lose no time in putting an end to a system which is little creditable to the public life of the colony.”

NOTE.—In New Zealand, District Court Judges hold office during the pleasure of the Government.

ADDRESS ON BEHALF OF THE VICTORIAN BAR.

The Melbourne Bar assembled in full force at the Supreme Court, Melbourne, on the 26th July last, to bid farewell to Mr. Justice Hood, who was about to visit Europe for the benefit of his health. Mr. Purves, Q.C., in the course of his address on behalf of the Bar, spoke as follows: “Now, I occupy perhaps as independent a position as any man can possibly claim to do, and I am one of the strongest and perhaps earliest advocates of retrenchment in all branches of the public service. In connection with your temporary retirement and well-deserved holiday that subject necessarily crops up, and I may say here now—doubtless these words may be reported, and, I trust, considered—that retrenchment in a proper fashion, and in a reasonable degree, will always be advocated by me, and I think by the profession; but there is retrenchment and retrenchment, and, in regard to the position which you and your fellow Judges occupy, you and each of you, as I know by my personal knowledge, have accepted it at a great personal and pecuniary sacrifice. You are supposed by so doing to have secured for yourselves not merely a large stipend, but a sufficient provision to render you absolutely independent. In the case of the individual Judges who now sit on the Bench we know that their courage, integrity, and honour would be sufficient to prevent any possible danger in the direction I indicate; but inasmuch as we have to regard, not merely the individuality of the Judges, but also the office which they fill, I may say here, and I believe my colleagues will agree with me, that a *high, courageous, and independent Bench is the very centre of our national existence*. It is the standard by which we are judged by those who have to enter into relations with us. The outside world and commercial people in other countries look to our Bench, and that Bench is different from any other portion of the great machinery that we require to manage our national affairs. It is and should be a permanent institution, and it is secluded and apart from every other institution in the State. It differs from every other branch of the government of the State in this: that you have to exercise your mental faculties to administer the laws that are provided by Parliament, and to administer them in the interests of the general people, and to enable you to do this you should be unfettered and untrammelled, and should be relieved from any of those pecuniary anxieties which have lately pressed so much on all other members of the community. You should be, as you are, honest, independent, courageous; but, in addition to that, in order

to secure the services hereafter of men similar to yourselves, those who fill the high and responsible office of Judge should be freed as far as possible from those anxieties as to the material welfare of themselves and their families which otherwise could not but detract in the long run from their efficiency and independence and from the character of their work.”—*The Argus*, 27th July, 1894.

IN THE LEGISLATIVE COUNCIL, VICTORIA.

The question of the independence of the Bench of Justice was discussed in the Legislative Council (Victoria) on the 19th June, 1895, when the Minister of Justice (Mr. Cuthbert), in speaking on the subject, said, “Honourable members would feel, he thought, that the Judges should be placed in a position of independence. The Act of 1884 did not, in his opinion, go far enough; and it would have been well to give the County Court Judges fixity of salary as well as fixity of tenure. The Judges waited upon him in March last and represented this, and he promised to do all he could to get a Bill introduced for the purpose stated.”

IN THE HOUSE OF REPRESENTATIVES, NEW ZEALAND.

Mr. George Hutchison, M.H.R., moved, on 28th August, 1895, “(1). That, in the opinion of this House, it is essential to the well-being of the colony that all classes of the community should have implicit confidence in the impartial and fearless administration of justice in the Courts of the colony. (2.) That, apart from the personal character of the Judges, it is essential, in order to inspire the community with that confidence, that the Judges should be independent and absolutely free from any possible Executive or political influence. (3.) That the tenure of office of District Court Judges and Magistrates with extended jurisdiction should be during ability and good behaviour, and not, as at present, during the pleasure of the Executive. (4.) That the salaries of such Judges and Magistrates should be adequate, and fixed by Act of Parliament.”

Mr. Willis asked the Minister of Justice, on 12th July, 1895, Whether the Government intend to give effect to the opinions which have been expressed—(1) by local bodies in various parts of the colony; (2) by Chambers of Commerce; (3) by Grand Juries; (4) by the Legislative Council; (5) by the Petitions Committee of the House; (6) by Judges and other legal authorities; and (7) by the Press throughout the colony—affirming the necessity of placing the Bench of Justice in a position of absolute independence, both as regards tenure of office and remuneration? He wished to point out to the Minister the very great interest that has been taken by all sorts and conditions of people relative to the desirability of the Judges and District Court Judges being placed in a position independent of the Ministry. He hoped the Minister would give a favourable reply to the question, because he was quite satisfied it was one that was considered of great interest throughout the country, and in asking it he was only the mouthpiece of a very large majority of the people of the colony.

Mr. Reeves (Minister of Justice) said he could not give a favourable answer. Personally he agreed with the honourable gentleman, but the Government did not; and he must say, although he agreed with the honourable gentleman, he did not think, so far as he knew, that any particular wrong or inconvenience had resulted from the present state of affairs, though in theory he thought the honourable gentleman was quite right.—*Hansard*, 12th July, 1895, p. 504.

DISTRICT COURTS JURISDICTION EXTENSION BILL.

Mr. Reeves (Minister of Justice), in moving the second reading of this Bill, said, “The really important section was section 3, which gave jurisdiction to the District Courts in claims or demands not exceeding £500, and also in cases of partnership-account disputes in which the amount in dispute did not exceed £500. It was with the object of enabling an action in which a moderate sum was involved to be brought in a District Court, and it saved the trouble and expense of an action being brought in the Supreme Court. The work of the Supreme Court Judges had grown, and by common consent it was admitted that the Judges were now the hardest-worked men in the colony, and, unless they faced the question of appointing another Judge, it was desirable to provide that as much work should be transacted as possible by the inferior Courts.”—*Hansard*, 4th September, 1893.

EXTRACT FROM “THE SUPREME COURT ACT, 1882.”

Sec. 9. It shall be lawful for Her Majesty, upon the address of both Houses of the General Assembly, to remove any Judge of the Supreme Court from his office, and to revoke his commission, and for the Governor in Council to suspend any such Judge upon a like address.

Sec. 10. It shall be lawful for the Governor in Council, at any time when the General Assembly shall not be in session, to suspend any Judge from his office, and such suspension, unless previously removed, shall continue in force until the end of the then next session of the General Assembly and no longer.

EXTRACT FROM THE MAGISTRATE’S COURT BILL (introduced by the Hon. Sir P. A. Buckley, Attorney-General, Session 1893).

Sec. 15. . . . All Magistrates appointed to exercise the extended jurisdiction of the Court shall hold their appointments during good behaviour, and shall be paid like salaries at a uniform rate.*

* This clause was approved by the Statutes Revision Committee, and passed through Committee in both Houses, but at the last moment it was recommitted, and the clause altered as follows: “All the Magistrates appointed to exercise the extended jurisdiction of the Court shall hold office at the pleasure of the Government.” (See *Hansard*, Vol. 82 (1893), p. 908.)