

1908
NEW ZEALAND.

“THE REPRINT OF STATUTES ACT, 1895”

(REPORT OF COMMISSIONERS APPOINTED UNDER).

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

To His Excellency the Right Honourable Lord Plunket, K.C.M.G., K.C.V.O.,
Governor of the Dominion 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 report the practical completion of our labours.

Our functions under that Act are to prepare and arrange for publication an edition of all the Public General Acts, revising, correcting, arranging, and consolidating them, and omitting such Acts or portions of them as are of a temporary character, or of a local or personal nature, or have expired, become obsolete, been repealed, or have had their effect. The Act, moreover, directs us to make such alterations as may be necessary to reconcile the contradictions, supply the omissions, and amend the imperfections of the existing Acts.

We have performed these duties with all possible care and to the best of our ability, and as the result, have the honour to submit to Your Excellency an edition of 208 Public General Acts in five volumes.

These volumes are accompanied by a Bill which we have prepared in order that the edition may be enacted if the Legislature thinks fit so to do. This Bill provides that the 208 Acts the Short Titles of which are set forth in Appendix A thereto, and the full text of which is set forth in Appendix D thereto, and which are contained in the five volumes above referred to, shall be enacted as Public General Statutes of New Zealand. Provision is also made for giving effect to these Acts when passed, and for the repeal of the Acts specified in Appendix B, all of which are consolidated by the Acts contained in Appendix D. In Appendix C attached to the Bill is set forth the enactments not included in the consolidation, and respecting which some remarks will be found in a later part of this report.

In the preparation of the Enacting Bill we have not overlooked the prescription of section 2 of “The Statutes Compilation Act Amendment Act, 1905” (which contemplates two Appendices and indicates their sequence). The prescription in question is, in our opinion, purely directory, and, moreover, is applied *mutatis mutandis* (section 3 of the Act of 1903). Of the four Appendices in our Bill, the two which correspond to those prescribed are in the same relative sequence, and this, in our view, is a sufficient compliance.

In order to avoid inconvenience to the public pending the circulation and distribution of the new Acts, a clause has been inserted in the enacting Bill providing for the temporary use of forms, &c., prescribed by or under the previous Acts.

The consolidated Acts are arranged in alphabetical order; and in the margin of each section is stated in figures the original enactment from which it is derived. Short Titles, with inverted commas, have been retained in accordance with the usage in force in New Zealand prior to 1907. In England the practice has not been uniform, inverted commas being used in some cases and not in others. We think them an advantage, as they catch the eye more readily, and this, particularly in the case of lengthy or involved titles, greatly facilitates reference. We have also retained the clause enacting the Short Title. This appears to be contemplated by the New Zealand Interpretation Acts, which have always provided that an Act having a Short Title may be cited by it. Hence, where the Act contains a Short Title, it is superfluous to say it may be cited by it. Each Act also contains a comprehensive saving clause, so designed that there shall be no breach of continuity in the immediate and complete operation of the consolidated Act.

We may add that all the important departmental Bills were previously submitted to the permanent heads of the various Departments concerned for their suggestions and remarks as to arrangement, and adherence to the existing law.

It is proposed that each volume shall as soon as possible be supplied with an index to the Acts contained in it, and at a later date a fuller and more comprehensive index can be supplied if circumstances justify. Indeed, a large part of the material for such an index had been prepared, but was unfortunately destroyed in the fire at the Parliamentary Buildings.

In classifying the subject-matter of the consolidated Acts we have endeavoured, as far as possible, to keep in view their proper object, and to comprise all the statute law upon one particular subject in one Act, not leaving it scattered in many Acts; and grouping those parts together which have the closest connection, so that they may aid each other in their construction and operation. For instance, the Judicature Act now comprises the statute law as to the Supreme Court and the Court of Appeal, with each of their rules of procedure, and also several Acts affecting the practice and working of these Courts. Again, Part III of this Bill contains certain provisions of law which are applicable in *all* judicial matters.

There existed hitherto various enactments called "Law Amendment Acts," which contained provisions relating to the administration of justice generally, or the law affecting property, or mercantile matters. These have now been inserted in the Acts to which they primarily relate.

In many cases provisions of Acts have been retained, although it may be doubtful how far they are still operative, considering that if still operative the right course has been taken, and if not operative Parliament can easily pass a repealing measure to deal with such instances. In other instances we have felt that mistakes exist, but have not deemed it to be within our province to make what we consider proper provision, especially where amendments would revive an express enactment or alter its existing terms.

As recited in the Enacting Bill, Appendices B and C contain together a complete list of all the Public General Acts printed as such in the statute-books up to the close of the last session of Parliament and then not specifically repealed. Under our scheme those in Appendix B are consolidated and repealed, whilst those in Appendix C are not dealt with.

The latter Appendix contains all the existing Acts relating to Native-land law and the administration of the affairs of Natives. Of the others, most are Local or Personal in character, as appears by their titles, and the remainder are Public General Acts which are spent or obsolete, but are inserted so as to exhaust the statute-books. We desire to offer some remarks on these several classes of Acts :—

(a.) *As to the Native Acts.*—In the report we had the honour to make to Your Excellency in July, 1904, we referred to this subject in the following terms : "Native Land Acts: These Acts involve title to land, and raise many difficult questions of implied repeal which should be settled by the Legislature. We therefore suggest that the Government introduce a consolidating measure." Further experience has only strengthened the views we then expressed. The

subject is exceedingly complex, and can only be effectively dealt with by a comprehensive consolidating and amending enactment, which should be prepared by some person skilled in Native law both customary and statutory.

(b.) *As to the other Acts in Appendix C.*—At present the New Zealand statute-book is arranged in separate divisions—one comprising Public General Acts, and the other Local and Personal Acts, but prior to 1877 this arrangement was not in force, nor indeed has it been always observed since that date. The majority of the Acts in this Appendix would be properly classed as “Local and Personal,” or even as “Private” Acts. Respecting many of them it would require much investigation and inquiry to ascertain how far they are still operative, or have had effect and can be treated as spent. On the whole we deemed it more in accordance with the terms of “The Reprint of Statutes Act, 1895,” to omit these enactments from consolidation, judging that the Legislature would, if it deemed it advisable, adopt measures to ascertain how far they are still in force, or have had effect, and what steps should be taken to clear the statute-book from obsolete enactments.

In a supplementary report which is now being prepared, and which we hope to submit to Your Excellency at an early date, we will mention some of the difficulties we have met with as regards particular statutes, and the action taken by us thereon, and will also explain other matters of detail to which we desire to draw attention.

Our labours have extended over a long period of time, and though we do not feel that we are in any way upon our defence, we think it not out of place to indicate some of the difficulties of our task.

Having regard to the responsible nature of the work, the greatest care has been necessary, and this we have given. A reference to the Acts will show that not only is there extensive rearrangement, but that in many cases, as, for instance, a large portion of the Rating Act, there is entire redrafting. Some Acts—*e.g.*, The Financial Arrangements Acts, The Local Government Voting Reform Act, The Law Amendment Acts—have wholly disappeared in the process, their provisions being embodied in other Acts. Difficult questions of implied modification or repeal had to be dealt with. The effect of one Act on another depends in many cases on their dates, and, as under our scheme all the Acts come into operation on the same date, constant care had to be exercised to prevent the alteration in date producing an alteration in the law. Then, again, the legislation of each session has necessarily affected work we had already done, thus compelling us to revise what we had finished, and often, indeed, to do it over again. The difficulties referred to were inevitable, but there were others which, though accidental, none the less led to delay.

During the last year our work has been more or less interrupted by the absence from Wellington of two of our members, our Chairman, Sir Robert Stout, being often away in the North on the business of the Native Land Commission, and Dr. Fitchett being absent for several months on official duty in England. At the outset, too, we were entangled in much needless labour, owing to the suggestion of the Government that we should adopt a printed volume of consolidated statutes that had been prepared by our Secretary, Mr. Jolliffe, in his capacity of Law Draftsman. We took this volume, but found it a hindrance instead of a help. It was more in the nature of a code than a consolidation; and although in itself an excellent piece of draftsmanship, we found that Mr. Jolliffe had given himself a latitude far in excess of anything authorised by the Act under which we were appointed. And in departing from the language of the statute he had in many instances departed from the law. Even where alteration in language did not necessarily result in altering the law, we found that in many of his Acts, particularly those dealing with mercantile contracts, such as the Bills of Exchange Act, the Chattels Transfer Act, and others, the provisions of which are the subject of legal decisions, there were changes which we could not allow to stand. We had, therefore, to spend much time and trouble in revising and restoring the text. Moreover, as was natural, Mr. Jolliffe did not enter very heartily into the task, and it was not until we were well outside the range of his volume that

we obtained the full benefit of his services. We are glad to say, however, that when this point was once reached he co-operated loyally in our work, and we found his skill as a draftsman both in language and arrangement of the greatest value to us.

We desire to express our appreciation of the services rendered by Mr. Redward, Assistant Crown Law Officer. He possesses an accurate knowledge of the statutes, together with a special gift of method, and has served us with conspicuous ability and zeal.

To the Government Printer also, and his staff, we are under many obligations. Considering the mass of the work, and the constant revision of the matter which the Commission furnished him, owing to the changes necessitated from time to time by the action of the Legislature and otherwise, he is to be congratulated that he and his staff have been able to overtake the duty imposed on them by the Commission and bring it to a satisfactory conclusion.

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

We have the honour to be

Your Excellency's obedient servants,

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

Wellington,

28th July, 1908.

Approximate Cost of Paper.—Preparation, not given; printing (1,500 copies), £2 1s

By Authority: JOHN MACKAY, Government Printer, Wellington.—1908.

Price 3d.]