

JUDICIEEL ETABLISSEMENT.

Rapport van de minderheid van het Committee

Uw comitéte heeft u om te overwegen of schikkingen niet konden worden gemaakt waardoor een administratieve en justitie van grote of grotere krachtigheid bekomen zouden worden tegen zesen kleine uitleg dan thans bestoeltig wordt, heeft de onderscheidezen raken hant betrekkelijk onderzocht, en is tot het volgend rapport overgekomen:

In de vervulling van den pligt aan hetzelfde opgedragen, is uw committee overgegaan tot het onderzoeken van zoodanige getuigen als beschouwd werden veelal ondertekend te kunnen geven, en de minsten van ingewonnen getuigenissen, met een ophangsel veel afzonderlijke stoffe bevattende, worden met dit rapport gesubmitteerd. Voor te totte: die bylagen, zal men zien, dat uw committee onderzoekt heeft de drie regters van het hoge gerechtshof, zo heeten de hoofdhebbers van dien, hoe beroer, dan hy onschuldig vandaag, toe voet genomen, dat genoegzaam zoudt zyn voor den koninklijke en aduindiale stelsel te veranderen, en dat genoegzaam zoudt zyn voor den koninklijke en aduindiale stelsel te veranderen, door de kolonie bekomen kunnen worden.

Uw committee is genield te twijfel te trekken of de genoemde en civiel gerechtsvervoering behoudt pleite, te hebben in de uitwyzing van civile zaken i waarin verzuim, alhoewel tot de mondelijkheid dat indien al die regters plechtig regters tot het traject van regters op circuit erkeert, wat committee de mondelijkheid dat indien al die regters plechtig regters tot het traject van regters op circuit erkeert, wat noedelbaar antemerken dat, by deze verandering van de der twee distrikts alle veranderingen, even toepasselijk op beide, buit de herkenning mochten vinden gelaten. Het is alleen uit de posten noedelbaar elkeen al dat daarover betrekkelijke kosten kunnen worden beraapt. De uo committee is genield te vermoeden, dat, by een nauwkeurig onderzoek van het tegenwoordig stelsel van een hoge gerechtshof, van die regters, en twee rongangen in het jaar, met het voorgesteld stelsel van vry regters, met hunne establementen, twee rongangen in het jaar al gegeven, men berden dat dat lastigsteinde de meeste kosten vorderen zal.

Tot welke dienst moet eens sekere, en, enkelyk de eerste instantie uitgewerden worden door achtens?

Dit zendeen achtens, enkele gevolgen, dat de eerste instantie uitgewerden worden door achtens?

Deze eerste instantie uitgewerden worden door achtens?

THE ZUID-AFRIKAAN

CAPE TOWN, NOVEMBER 25, 1845.

Our readers will observe that we have devoted the columns of our present number exclusively to the insertion of the Report of the Judicial Committee of the Legislative Council, i. e., that proposed by Mr. PORTER, as an amendment on the Report of Mr. MONTAGU, to be found in our number of Tuesday last.

If ever, we presume to have no reason now, to beg the pardon of our readers for occupying their attention with a subject which inquisitive critics may style wearisome, but which cannot fail to be perused with marked interest by all those taking at heart the welfare of the Colony.

The conclusion of the report now published, together with the "dissent" of Mr. Advocate CLOETE, will be given in both languages, by way of a Supplement to our paper of Friday next.

Br'the *Lady Flora* we have received our files of English papers up to the 13th September last. They contain no matters of importance beyond accounts of the cordial reception which Her Majesty the Queen experienced throughout her journey on the continent. Her Majesty had again visited the King of the French.

Except a few slight disturbances in the papal and German states, arising from the present religious agitation by the adherents and opponents of the reformer RONGE, the peace of Europe seems to stand on a sound and lasting foundation.

Advices have also been received by the above arrival, of the formation of a Company in England, for the purpose of establishing a railway between Cape Town and Simon's Town. This Company appears to owe its origination to the establishment of a line of steam packets between England and India via the Cape, and the prospect of a fair return from the intercourse which will consequently arise between these two parts of the colony.

INSOLVENT ESTATES.

According to the *Government Gazette* of the 21st instant, the following Estates have been placed under sequestration, of:

Mathys Godlieb de Jager, of Beaufort, Wagonmaker.

Thomas Morris, of Wythe.

Wilhelm Franz Jacob von Ludwig, of Tulbagh.

Floris Pieter Brand, of Fransch Hoek, Division of Stellenbosch.

Johan Gottlieb Kilian, of Cape Town, Shopkeeper, and

Frederik Engels, of Tulbagh, Apothecary.

Released,—the Estates of:

Charles Fuller, of Graham's Town, Division of Albany.

Heribert Pieter Herman de Wit.

William Wright, of Cape Town.

Nathan Lawton, and

Elizabeth Maria Munnik, separated wife of Jan Andries van Reenen.

Original Correspondence

To the Editor of "De Zuid-Afrikaan."

HARD ROAD TO HOUT BAY.

—Permit me to make an observation on the letter of your Correspondent, siging himself "A Corn Farmer," who seems to be dissatisfied that the roads in this part of the district have been so much improved, and even new lines laid down before much of importance has been done for other parts of the District. "Corn Farmer" should consider that the road across the flats at Jan Biesje Kraal, though not in, nevertheless leads to Koerberg, and requires considerable expense; that this part equally shares in the tax on Koerberg, and we too far and deserve to have something for our money. The remark of Corn Farmer—"make nothing for what there is no need"—I should gladly desire to be taken into account by the District Board, especially before they proceed to compel a peaceable citizen, either by a law suit or placing a judge in each, one which has been strongly supported in committee. It has been supported chiefly upon the ground as your committee consider, that it would considerably shorten the delay before trial in all cases, criminal and civil, and that it would remove great and daily increasing difficulties connected with the means of transport for the judges upon their present circuits. That these things would be very advantageous can admit of no doubt. The sooner a man is tried (provided he have had sufficient time to prepare for his trial) the better; since, if innocent, he is sooner liberated, and, if guilty, the sooner punished. In the same manner it may readily be shown that no avoidable delay should take place in the determination of civil cases; in which delay always leads to expense, and often to injustice. And in regard to the transport of judges on circuit, your committee acknowledge the possibility that, if each of five local judges were to perform the circuit of his own district, and no more, some arrangements might be made respecting the number and supply of the necessary wagons and horses, which would be both cheaper and more convenient than any system which can be devised for conveying the judges, with a due attention to their comfort, over so long a circuit as that of the entire colony.

But, neither these nor any other advantages which have been suggested, have satisfied your committee that the public welfare, which is inseparably bound up with an intelligent, impartial, and uniform administration of law would be contributed by breaking up the present supreme court for the purpose of substituting five separate judges, divided separately in five separate places, three of those places being remote villages, in which there is not, nor is likely soon to be, a public press, or a public opinion, or professional aid.

Your committee are aware that two safeguards against the mistakes or misconduct of the local judge were meant to be provided; one, that he should try no question of fact without the assistance of a jury; and the other that three out of the five judges should assemble once a year in Cape Town, for the hearing of new trial motions and appeals. Under such circumstances, it is supposed that the local judge committed would be precisely in the situation of the existing magistrate, whose duty it is to understand the law, and apply the evidence. As soon as any man is committed, it is the duty of the attorney general to consider the evidence taken; and should it appear insufficient, to order the man to be discharged. And, finally, twice every year there is a general goal delivery. Your committee cannot admit that, under such circumstances, it is necessary to break up the supreme court, and to incur an additional expense, in order to have such general goal delivery oftener than twice a year.

These objects have already been stated. That they are of paramount importance your committee cannot perceive, and in reference to one of them, namely, the speedier trial of criminal and civil cases, they can perceive as little how these objects can be easily attained. But that they are of considerable importance your committee cannot perceive, and in reference to one of them, namely, the speedier trial of criminal and civil cases, they can perceive as little how these objects can be easily attained.

For what objects, then, should a certain, and, as you committee believe, a considerable additional charge be placed upon the public revenue, and all the cases now decided in the first instance by three judges, be decided in the first instance by but one?

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With two circuits in the year, the average detention of prisoners before trial in the circuit courts may be stated to be about 12 days. Two circuits in the year through the district of the local judge would give the same average detention in every place except his place of residence. Upon this supposition nothing is gained except in reference to prisoners at that place. In order to shorten the detention in the other places, the judge must either cause the prisoners and witnesses to be brought to his residence, or he must go circuit more frequently than twice a year, and in either way much additional expense must be incurred. If a sense of what is due to untried men requires that we should incur that additional expense, let it be incurred. But when it is remembered that England there are but two circuits in the year to try men committed by magistrates who are not always stipendiary, and men whose case no disinterested and responsible public prosecutor examines, it will be admitted that the practice in this colony cannot be justly deemed regardless of what is due to the liberty of the subject. No man can be committed for trial in this colony except upon evidence that satisfies a salaried magistrate, whose duty it is to understand the law, and apply the evidence. As soon as any man is committed, it is the duty of the attorney general to consider the evidence taken; and should it appear insufficient, to order the man to be discharged. And, finally, twice every year there is a general goal delivery. Your committee cannot admit that, under such circumstances, it is necessary to break up the supreme court, and to incur an additional expense, in order to have such general goal delivery oftener than twice a year.

Your committee are disposed to think that, considering the paucity of criminal cases in this colony, and particularly in the country districts, criminal sessions may possibly be held less frequently. Except in so far as by the trial and punishment of offenders, the minds of the mass are educated into a state in which, anterior to all reasoning about consequences, crime comes, by a sort of moral instinct, to be regarded as a thing not to be committed, trials and punishments eat it almost useless amount of suffering and expense. The trial, therefore, as well as the punishment, should be public, and should be witnessed by the public. When solemn trials are held at intervals, during which such a number of cases have arisen as will attract an audience and fix attention, salutary lessons may be given, which could not be inculcated if cases were to be disposed of pretty much as they come in, in the presence merely of the parties interested, the officers of the court, and such loungers as might straggle in.

Your committee do not advocate long imprisonment previous to trial. But it is only to innocent men, or to speak more properly, to men who are duly acquitted, that such prolonged imprisonment is really a hardship. The returns before the committee go to show that in this colony the number of acquittals amounts to less than 9 per cent. of the commitments. By parliamentary returns for 1834 and 1835, which are all that your committee have had an opportunity of consulting, it appears that the commitments in England and Wales in those years amounted to 43,182, and that the acquittals were 12,412 being rather more than 28 per cent. of the commitments. This difference, arising, as your committee conceive, from the exercise of the office of public prosecutor, should not be neglected when we are reasoning about the evils of confinement before trial.

Your committee would also observe, that whenever trial by jury in civil cases shall be introduced in any part of the colony, the principles of our law, and the nature of our pleading, will require, in every instance the decision of a previous question, viz., whether or not, and, if so, what questions in the particular case are

proper to be tried by a jury; and that, when the decision of this question, which one of deficiency may rest with a single judge, who is liable to the suspicion of either undue partiality, or of negligence, or of getting up, in unity of individual responsibility, it will necessarily become peculiarly difficult.

Viewing, therefore, the courts referred to as they would exist without trial by jury in civil cases, your Committee consider that the expediency of any extensive alteration of the administration of justice, will be disposed to reduce, as disproportionate the amount now devoted to that object. It appears to your committee that your endeavours should be directed, not to lessen the annual charge of the judicial establishment, but to devise, if possible, the means of making that establishment more efficient.

Entertaining views generally favorable to the present system in its fundamental principles, your committee are induced towards the adoption of any extensive alterations of which the expediency may reasonably be doubted. Believing that few administrative questions are more difficult than those which relate to the constitution, distribution, and gradation of courts, your committee are of opinion that no changes regarding such subjects should be made in a system which has been long tried and which is not unpopular, except after the most cautious inquiry, and upon the clearest reason. Upon the other hand, it will be the duty of the council to take care that no proved abuse shall be permitted to continue, and that all evident improvements shall be carried into effect.

Your committee will now proceed to arrange under separate heads the several matters upon which they deem it proper to report; and in so doing they propose to advert, first, to the constitution, distribution, and jurisdiction of the superior and inferior courts; secondly, to the system for the prosecution of crime in those courts respectively; thirdly to the mode of executing the civil and criminal process of those several courts; and lastly, to the important subject of police. In pursuing this order, your Committee believe that, all the remarks and suggestions which they have to offer to the council, save those relating to trial by jury in civil cases, will be not inconveniently arranged; and in concluding this report, they will separately advert to that important subject.

In the opinion of your committee the present constitution of the supreme court should remain unchanged. They deem a court composed of three judges to be better, at least in a colony like this, than a court composed of any larger number, and, without referring to the peculiar circumstances which have limited the supreme court of a few colonies, to two judges, and those of a greater number to but one judge; your committee, as not prepared to recommend any alteration which would reduce the number of judges more forming our present system.

Two projects connected with the points now in question have been considered by your committee; one, that of withdrawing a judge from the court of Cape Town, in order to form a separate but subordinate court at Graham's Town; and the other, that of adding two to the number of judges, and those of a greater number to but one judge; your committee, as not prepared to recommend any alteration, are disposed to question whether the inhabitants of Albany, your committee have reason to conclude that whether the court is placed at Graham's Town or Cape Town is to them a matter of indifference. But that the non-local court, to which they have recourse, should be composed of three judges or one, is by no means a matter of indifference.

Your committee while they have no doubt that the inhabitants of Albany would gladly possess a court of equal efficiency with the present supreme court, are of opinion that the removal of the court from Cape Town to Albany would not have the effect of preventing those functionaries from gradually losing whatever law they might originally have possessed.

But if the circuit courts, as they stand, have advantages which the suggested local courts would not possess, the constitution of the supreme court, as it now exists, would be the establishment of those local courts, be wholly changed. It is intended that it should be a court of appeal from the local courts, and nothing more. The supreme court is now a court of final appeal in all cases, before which all cases may be brought to the first instance, if the parties agree, all cases brought in the supreme court, no matter from what part of the colony, may be tried determined. If the question be one merely of law, the case can, by either party, be always retained there.

If facts be disputed, and the witnessess absent, so that they may more easily be heard elsewhere, the case is referred to the most convenient circuit court, to come back, if need be, to the supreme court for further argument, and final judgment.

Motions in bankruptcy, postponed cases, &c., special verdicts in criminal cases, and matters of alike nature, are decided in Cape Town by three judges, —in the absence of a bar, —in the presence of a public, at least, committee, —and under the observation of a vigilante.

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Your committee recommend that the jurisdiction in civil cases in which the cause does not exceed twenty pounds in value, in the country districts the resident magistrate cannot decide cases involving an amount of more than ten pounds. Your committee are of opinion that if any jurisdiction should exist between the jurisdiction in Cape Town, and the jurisdiction in the country districts, the jurisdiction should be greater in the country than in town; because while the supreme court is always open to such诉ors, the court of the resident magistrate, as cannot proceed before the resident magistrate, unless he can, when so disposed, combine in a great degree, the cheapness of a local inquiry into facts with the advantage of a more remote but, at the same time, a more satisfactory determination of the law.

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