

Seventh Day.
26 April 1907.

IMPERIAL COURT
OF APPEAL.

Dr. JAMESON : The point I wanted to know about is this question of our depriving ourselves of the right of appeal to the Privy Council. Do I understand we could only do that by Imperial legislation or an Imperial Order in Council?

The LORD CHANCELLOR : You could not do it by Imperial Order in Council because it would be interfering with your own affairs. By the Imperial Parliament it could be done if the Colony asked that it should be done—and it would be done. It is rather a novel point. My present impression—and I am sure you will not tie me to it if I am wrong—is that the Parliament of a self-governing Colony with the Royal Assent could regulate that as well as anything else.

Mr. DEAKIN : Is not there power by Order in Council to restrict the conditions of appeal?

The LORD CHANCELLOR : When the constitution is set up the King has no power whatever to interfere with, or derogate from it.

Mr. DEAKIN : Surely he rules in his own court?

The LORD CHANCELLOR : Yes, the King might be advised to say by Order in Council that he would not undertake such and such an appeal. After all, we are now getting upon constitutional methods of carrying it out. The machinery is not so important, after all, as the object. May I suggest to Dr. Jameson that if he reads these three resolutions closely, he will find they are not quite consistent, because if in No. 3 you keep the right of any person to apply to the Judicial Committee of the Privy Council for leave to appeal to it from the decision of such Appeal Court, and you say that is not to be curtailed, it is inconsistent with abolishing the appeal in particular cases.

Dr. JAMESON : No, this is abolishing the appeal from the present Supreme Courts of the various States of South Africa direct to the Privy Council, because this would be constantly going on, and our new Court of Appeal might have nothing to do. We want to abolish that, and, as far as South Africa is concerned, we want this new Appeal Court to be the final Appeal Court, except in stated cases to be mentioned in the Statute creating the court. Then we say we know the prerogative of every British subject is the right of final appeal to the King, and we want that safeguarded, so that, outside of that, any subject could come to the Privy Council, but he has then to ask for leave to appear before the Privy Council. What we want out there is that any case must go to the Appeal Court in South Africa before it can go to the Privy Council.

The LORD CHANCELLOR : I think I see your point. Then there are General Botha's resolutions, the substance of them having been explained by Dr. Jameson. I think Sir Wilfrid Laurier merely suggested an amendment to one of the Cape resolutions : "This Conference recognising the importance to all parts of the Empire of the maintenance of the Appellate jurisdiction."

Dr. JAMESON : I am willing to take the words out. If they had never been in I should not mind, but taking out something looks like weakening the idea.