

The LORD CHANCELLOR : Is not that one of the things which relate to the order and good government of the United Kingdom ?

Seventh Day.
26 April 1907.

IMPERIAL COURT
OF APPEAL

Mr. DEAKIN : I am bound to admit that is one of the reasons why we put this resolution forward in terms that are intentionally vague; if it were otherwise it would have seemed as if we were imposing something upon the United Kingdom, though it affects us both. I am satisfied to have put forward the proposal. I do not desire to place His Majesty's Government in a difficulty. I recognise the force of the statement of the Lord Chancellor that as yet the matter has not been matured in this country.

CHAIRMAN : Would it not meet your case if we treat it in this way : that we record this resolution as having been submitted by you and discussed; then proceed to say that the resolution proposed by the Cape Colony has also been discussed, and that the Conference thought effect should be given to its recommendations; then make the same sort of deliverance with regard to General Botha's additional resolution. That would put your resolution on record, but not bind us who feel a difficulty in the matter to any further action.

Mr. DEAKIN : In this Conference it is undesirable to attempt to bind any of its members to that to which they take exception. Might I point out that while I do not question the statement directly, or by implication, of the Lord Chancellor, as to the impartial treatment of the courts, yet, in the very constitution of the Privy Council, if my memory serves me, the enactment says that the Lords of Appeal in Ordinary shall, "subject to the discharge of their duties in the House of Lords," attend the sittings of the Judicial Committee. That distinctly places upon the Lords of Appeal a mandate for their consideration of their duties in the House of Lords before their duties in the Privy Council. Again, you pointed out the very great care with which the court of which you were a member dealt with the New South Wales case, to which reference has been made, when you said that although four members of the Judicial Committee assembled to hear it, you had a re-hearing with eight members because it was an important matter. Extremely satisfactory as this was in that case, it only emphasises the distinction between it and a case which, from the public point of view, was of immensely greater importance, affecting so many vital constitutional issues. Yet that case was finally decided by a court only half as large, after an argument which, I fear, was imperfect, in a Judgment dealing with matters which, so far as the records show, do not appear to have been argued at all. Unhappily, the members of the Board on that occasion did not seem to perceive that the issues were specially important or that they demanded a stronger Committee. I only mention that by way of illustration of the risk suitors run by not being able to secure the same very wise and considerate treatment which the court gave in the New South Wales case.

Finally, while it is perfectly true that we have to take upon our own shoulders the responsibility of having accepted in our constitution those terms out of which this judicial anomaly has arisen, it stands on record that we did so only to save the whole constitution. It was one of those choices which all practical politicians have to make. We made it with our eyes open, but none the less reluctantly, regretfully, and now remember it repentantly.

CHAIRMAN : My suggestion is this : that the finding of the Conference might run in this form :—That the following resolution of the Commonwealth of Australia, "That it is desirable to establish an Imperial

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