

Seventh Day.
28 April 1907.

IMPERIAL COURT
OF APPEAL.
(The Lord
Chancellor.)

I will say a word about the arrangement for Colonial judges sitting, in a moment, and simply say this to Mr. Deakin, that I like, and I am sure we all like, free and open criticism, and that we are all the better for it, I have not the least doubt. Really, if he will believe it, taking appeals to the House of Lords instead of the Privy Council would be a great disarrangement of our system, and would really mean coming before the same people in another place, and you would not have the advantage, which I should like to have (without an Act of Parliament altering the whole thing) of the presence of an Australian judge; you would not have the advantage of some of the very distinguished men like Sir Arthur Wilson, who are ornaments to any court. You would limit the number of judges from whom the selection could be made to hear your cases. But I hope this will satisfy Mr. Deakin. I can assure him not merely that we have taken every pains that we can, but that we will do our level best to give his cases, as all the other cases, strong and adequate courts just as good as we shall be able to give our own people. Remember this as regards number; I know in some countries—in France where they have a great genius for jurisprudence, and they may be right—in some of the Courts of Appeal they have a great number of judges. In England the custom has been all through our history to limit the number. We think that five is quite large enough—understand in saying “we” I speak for everybody—and is by many of us regarded as quite as many as you ought to have in a court. Seven have sat sometimes, but, as a rule, we think that is too great a number, but if it is a very special case we would have seven or eight, just as in the case I referred to just now. The genius of our jurisprudence is to pick your best men; to see you have first-rate men, and not to have too many. Perhaps that is wrong; but that has always been the custom, and you will find that the greatest decisions in the history of England, which have made history, so to speak, have been decisions given by quite a limited number of judges—but they have been of the very best. We will try to do our best in that respect.

Let me now come to what Mr. Deakin said with regard to the limitations of appeal. In 1900, Mr. Chamberlain went the length of stating in Parliament that he had contemplated the creation of one court, the House of Lords being fused with the Privy Council into one great court. I think it was found there was very great difficulty in carrying out that project. If you think of it intrinsically there is a great difficulty in it. Let me take it by stages. When we speak of an Imperial Court of Appeal we do not always make it quite clear what we have in our minds. In the first place, there is a suggestion, such as is made by Sir Joseph Ward, namely, that one or more of the judges from New Zealand, or from any other part of the British Dominions, should come and sit in the Court of Appeal on the hearing of a New Zealand case or in a case from their own country. I unreservedly agree to Sir Joseph Ward's proposal. I have had experience myself. I remember an Australian case relating to sheep, about great tracts of land and the mortgaging of it, and so forth, and when I was arguing this case before the Privy Council I was stopped by Chief Justice Way who happened to be present, who put in a piece of local knowledge which I am afraid exploded my contention about sheep farming and sheep management—knowledge which we did not possess. That is only an illustration. It is also true that there may be points of law, even though the law in New Zealand be the same as our own law, in which we should be much the better for having assistance, and very glad to have assistance. I do not think any matters of importance in regard to law are left out by Counsel, and we find it out for ourselves too. I unreservedly agree, and heartily think it would be a good thing if each of the different parts of the British Dominions, each for the hearing of their own cases, could send to us one of their distinguished judges, and I need not add it would be a great pleasure and honour to receive him amongst us.