

*7th Day.]*

IMPERIAL APPEAL COURT.

[12 June, 1911.]

The LORD CHANCELLOR: Practically this would be a Court of Appeal sitting in two separate divisions, but the amalgamation of the two is a matter which would very easily follow if you found that all the Dominions and the United Kingdom agreed to it afterwards. That is the way in which the matter stands I think.

Viscount HALDANE: The great point of the Lord Chancellor, as I understand it, is that you would have the whole strength in each division at a time; it would not be the personnel divided into two divisions sitting concurrently, but you would have the whole strength for an average case in the Privy Council for a period, and for a period you would have it in the House of Lords, so that it is a mere question of form and name.

The PRESIDENT: That would meet the complaint which I myself in old days when I used to practise a good deal before the Judicial Committee used to hear. I used to be in a good many New Zealand cases, and a great many Australian ones, and the complaints we used to hear from our clients out there were that it was what they called a "scratch" court, that the judicial strength was in the House of Lords, and that the Privy Council got what was left over. They complained also, and I think sometimes not without reason, that the court was too few in number. We have argued these cases in old days before three judges, and that is very unsatisfactory when you are appealing from a body like the Supreme Court of New South Wales it seems to me.

The LORD CHANCELLOR: I think there is a change with regard to that. I think the court is now always constituted fairly strongly, although I should be glad to have the additional strength I have referred to—two more judges—which would be very valuable.

Viscount HALDANE: It would give six or seven.

The LORD CHANCELLOR: Yes.

Mr. FISHER: I think I have heard some very injudicial language from judicial persons on that very point as to the strength of the court.

Dr. FINDLAY: Your predecessor.

The LORD CHANCELLOR: All I can say is that we try, for instance, to make a fair division of our strength when we have to divide. For instance, to-morrow the Judicial Committee is sitting and so is the House of Lords, and I will tell you the composition of the two bodies; this has arisen and it will give you an illustration. In the House of Lords to-morrow there will be Lord Atkinson, Lord Gorell, Lord Robson, and myself; and in the Judicial Committee of the Privy Council, which is taking Indian cases, there will be Lord Macnaghten, Lord Shaw, Mr. Ameer Ali the Indian Judge, and Lord Mersey. When the Dominion cases come on Mr. Ameer Ali does not sit and Lord Haldane will take his place. Now I think that is a pretty fair division of the judicial strength.

Mr. BATCHELOR: Is it not possible that the same point of law might come up before both those courts and different decisions be given?

The LORD CHANCELLOR: It never has happened. That, of course, is incidental to any court that is sitting in two divisions, but that never has happened. I do not know and I do not believe there is such a thing.

Sir JOSEPH WARD: What Mr. Batchelor says would mean that the one case would require to be brought before two separate courts in England and in practice that could not be.

The LORD CHANCELLOR: That would not happen.