

12 June, 1911.]

IMPERIAL APPEAL COURT.

[7th Day.

Dr. FINDLAY : The objection we feel in New Zealand to the one judgment is probably based on an entirely erroneous assumption. It is sometimes assumed that the Member of the Committee who has least to do writes the judgment and that there is not very much discussion before the judgment is written.

The LORD CHANCELLOR : I assure you that is wrong.

Dr. FINDLAY : I realise that probably the assumption is wrong.

The LORD CHANCELLOR : It might be as well that I should tell you what happens in the interior. Sometimes before the Privy Council the cases are quite obvious, and we are all agreed at once and the judgment is delivered at once. But that is not usual ; as a rule, as you know, time is taken to consider these cases, and in the House of Lords they are mostly considered judgments for the final decision of any case. I do not mean to say for giving leave to appeal, or anything of that sort. We meet, we sit there and discuss the whole thing from top to bottom always after the case is heard and the counsel have withdrawn. We discuss it, and agree to the lines upon which the case is to be decided. If there are dissents, which there are not often (dissents are rare), the point of view of the dissentient judge is weighed, considered, and discussed. Sometimes we put it back in order to have a fresh discussion if it is necessary, and after having fully discussed it, and agreed together the lines upon which the judgment is to be drawn, one, mostly taken in rotation, of the judges who sit writes the judgment. It is then printed and circulated to all the others for their criticism. They make their criticism if they dissent from anything, and when that has been done the final judgment is reprinted, is recirculated if necessary, and then is delivered. So that there could not be more deliberation, and it is indeed quite a mistake, I assure you, to suppose that there is any sort of slackness in that business. On the contrary, I am quite certain that all those who sit have a very strong sense of their responsibility. We have given the best we can. Whether it is good enough, is another thing.

Dr. FINDLAY : I apprehend the idea is quite erroneous, but in the absence of any other judgment than the one, it is sometimes difficult to pick up from a Privy Council decision the real *ratio decidendi* of the judgment. In *Clouston v. Corry* the other day, which came before the Privy Council, it was a short judgment ; obviously there had been an agreement amongst the judges, but the reasons were not sufficiently set out in that judgment to enable us quite to understand it. If more than one judgment were delivered, or if dissenting judgments were delivered, it would help to elucidate doubtful points which might be contained in the judgment. I think we, in New Zealand, are in favour of separate judgments.

The LORD CHANCELLOR : If it is stated that that is the wish I do not suppose there would be any difficulty at all on the part of the Privy Council acceding to it.

The PRESIDENT : Not the least.

Viscount HALDANE : It is quite easy.

The PRESIDENT : If that is the general opinion of the persons affected by the judgments.

Mr. BRODEUR : Would not that be contrary to the principle of unanimity that covers all the proceedings of the Privy Council ?

The LORD CHANCELLOR : We should have to get the King's permission. It is not for me to say what his Majesty might say, but I do not suppose that there would be any difficulty of any sort made.