

*7th Day.]*

IMPERIAL APPEAL COURT.

[12 June, 1911.]

The PRESIDENT : The present practice is due to the fact that it is supposed to be a Committee of the Privy Council which makes a report to the King; it is not the judgment of a court, in fact; until the King has by Order in Council given effect to it there is no judgment at all. It is a mere report. That is the theory.

The LORD CHANCELLOR : That is the origin of it.

The PRESIDENT : It ought to be easily met, of course.

The LORD CHANCELLOR : There ought to be no difficulty in meeting that. I have tried to give to you the nature of the tribunal and the work they have to do in a succinct way. I do not mean to say that I have covered every point or mentioned every person, but I have given, broadly speaking, the effect of the present system,

Now let me try to come to the question of the principle on which I think we ought to decide all these things. The principle to my mind is that each constituent part of the Empire ought to judge for itself as to what kind of tribunal it wishes, and what ought to be the composition of that tribunal, and, including of course in that the United Kingdom, we, like the other Dominions, are entitled to have our own court according to our own view. Therefore whatever Court of Final Appeal in England is desired by any of the Dominions, their wishes ought to prevail so far as we can give effect to them, and there will be no difficulty made by us in trying to give effect so far as we can to the wishes of each Dominion with regard to its own appeals. If we all want the same kind of court and the same kind of judges, then so much the better. It would be very easy then to get a tribunal which would have final jurisdiction all over the Empire. But then the question is, do we all want the same kind of court and the same conditions, or do we not? Of course, the idea of any pressure or constraint is wholly inadmissible, and all we want to see is whether we are all agreed as to what we severally and individually desire.

Let me take the Privy Council first. Do you wish British judges to sit in the Privy Council? Do you wish only British judges to set in the Privy Council? If so, and you will tell us so, we will try to provide a court of that character. Do you wish Indian judges to take part in your final appeals from the Dominions? Do you wish that there should be a permanent judge from each Dominion to hear all the Privy Council Appeals? That is to say, do you desire that the Privy Council shall consist partly of British judges and also shall comprise a Canadian, Australian, New Zealand, South African, and Newfoundland judge as well? If I may say so, you have to make up your minds as to what it is you desire with regard to its composition, and each Dominion making up its own mind as to what it wants, it would be so much the better if we all agreed. There has been an idea put forward of a judge coming from each Dominion not to sit upon all appeals; for instance, a judge coming from South Africa not to sit upon Canadian or Australian or New Zealand appeals, but only to sit upon South African appeals. Now if that is so, you would see that some of the judges who came from these Dominions would have hardly anything to do. If you look—I merely take the last year, 1910, as a specimen—the Canadian judge would have something like 21 cases.

Mr. BRODEUR : 21 out of 33 cases?

Sir JOSEPH WARD : I think that would be a hopeless proposal and make it perfectly worthless.

The LORD CHANCELLOR : I am going to make a suggestion about it, Sir Joseph, in a moment. I do not think that would do, because the Australian judge, for instance, would only have, I think, four cases in the year, and the New Zealand judge would only have one.

Sir JOSEPH WARD : Sometimes one and sometimes two.