

7th Day.]

IMPERIAL APPEAL COURT.

[12 June, 1911.]

Viscount HALDANE—*cont.*

and the Lord Chancellor's proposal now is in substance to make only one court, but to leave the other forms until such time—it may come very soon if one is to pay attention to what has been said recently in the House of Lords itself—as the whole judicial business is excluded from that assembly and combined in one court.

Mr. MALAN : A reference has been repeatedly made to the position in South Africa, and I would just like to give the Conference the exact position as far as the Union is concerned. Our appeals are governed by clause 106 of the Act of Union, which reads as follows : “ There shall be no appeal from the Supreme Court of South Africa, or from any division thereof, to the King in Council, but nothing herein contained shall be construed to impair any right which the King in Council may be pleased to exercise to grant special leave to appeal from the Appellate Division to the King in Council. Parliament may make laws limiting the matters in respect of which such special leave may be asked, but Bills containing any such limitation shall be reserved by the Governor-General for the signification of His Majesty's pleasure : provided that nothing in this section shall affect any right of appeal to His Majesty in Council from any judgment given by the Appellate Division of the Supreme Court under or in virtue of the Colonial Courts of Admiralty Act of 1890.” The position, therefore, is this, that there is no right of appeal from our Appeal Court to any other court outside the Union. It is absolutely final.

Mr. BRODEUR : Is there any appeal from the courts of the Provinces ?

General BOTHA : Yes, to the appellate division.

Mr. BRODEUR : To the Privy Council here ?

General BOTHA : No.

Mr. MALAN : We have only one Supreme Court in South Africa with different divisions. One division is the Appeal Court for the Union, and for each Province we have another division ; but there is one Supreme Court, and there is no appeal from the appellate division of that court to any court outside the Union or to any other court. But we recognise that every subject has the right to petition his King, and we act on the supposition that the Privy Council is still exercising this power of appealing to the King in person ; and we say that, therefore, although there is no appeal as of right from our appeal court, any subject may petition the King. When a petition comes to the King here the practice now is that he sends it to the Judicial Committee of the Privy Council, and the Privy Council must then say whether they will hear the appeal, no or yes. If they give the right to appeal the case comes before them and they discuss it on its merits.

As far as the Union of South Africa is concerned we do not anticipate that there will be more than one case perhaps in five or ten years coming before the Privy Council. It will be a very special case indeed when any one will petition the King in that form.

As regards the practice at the present moment I think South Africa is fairly satisfied. We have got a representative on the Privy Council with a strong judicial mind, and when there are cases from South Africa in which we are interested he usually takes part in the decision, and as far as that is concerned we are satisfied.

Sir JOSEPH WARD : So would we be if we were in the same position.

Mr. MALAN : I am speaking now only as regards South Africa.

The PRESIDENT : How do you mean, Sir Joseph ?

Sir JOSEPH WARD : They are in the happy position of having Lord de Villiers on the Privy Council.