

## APPENDIX B

### THE HISTORY OF THE PRIVY COUNCIL AS A LEGAL TRIBUNAL OR COURT

[NOTE: After the reading of the paper "Another Supreme Court," Mr. Justice Riddell was requested by the Association to supplement the paper by an account of the history of the Privy Council as a Court—the following is accordingly furnished.]

The King's Privy Council is a "Common Law" body, that is, it was formed by a process of evolution when the common law of England was in the making and not *uno actu* by decree of Monarch or Act of Parliament.

The precise origin of the Privy Council is of little importance, historically or otherwise: we know that before times which are in the full sense historical the King could not see to it personally that all his subjects had justice done to them; and he had therefore the assistance of a body of men chosen by himself, a Council.

To this Council was entrusted the administration of justice; in course of time, formal courts were formed from the Council, the Courts of King's Bench, of Exchequer, of Common Bench, with special functions and apparatus for the performance of these functions. But thereafter there remained no inconsiderable part of the original jurisdiction of the Council unallotted and this continued to be the case on the crystallization of the Court of Chancery. The Privy Council continued from time to time to exercise "a kind of extraordinary and corrective jurisdiction to prevent violence, corruption or intimidation; and especially combination and conspiracy to obstruct or prevent the course of justice."

This was the case before the creation of the Court of Star Chamber in 1487 by 3 Henry VII, c. 1, the name of the Court being taken from the Chamber wherein the Council was accustomed to sit—the Court of Star Chamber, as Hallam points out, was in fact a Judicial Committee of the Privy Council.

After the statute, the Privy Council continued to sit on occasion under its original Common Law jurisdiction and quite independently of the statute: but most of the business was done in the statutory court.

The Court of Star Chamber was abolished in 1640 by the act 15 Car. I, c. 10, which provided that neither the King nor the Privy Council should have jurisdiction over the estates of any of the subjects of the kingdom but that all questions respecting the same should be tried and determined by the ordinary course of law in the ordinary courts.