

authority to abolish one of the most ancient prerogatives of the Crown confirmed as it is by several Imperial Statutes.

The proposal to alter the supreme appellate jurisdiction seems, therefore, to have been suggested by the appellate clauses in the British Judicature Act, but as those clauses have now dropped and may possibly never be revived, this motive for the proposed change has disappeared.

About four years ago, when a somewhat similar measure, the establishment of a Colonial Court of Final Appeal, was contemplated by some of the Australian Colonies on the ground of the expense and delay attending the Appeal to England, the opinion of this Department was asked upon the subject, and (after showing that the delays were mainly attributable to the parties themselves) this opinion was stated in the following terms:—

“The appellate jurisdiction of Her Majesty in Council exists for the benefit of the Colonies, and not for that of the Mother Country, but it is impossible to overlook the fact that this jurisdiction is a part of the prerogative which has been exercised for the benefit of the Colonies from the date of the earliest settlements of this country, and that it is still a powerful link between the Colonies and the Crown of Great Britain. It secures to every subject of Her Majesty throughout the Empire the right to claim redress from the Throne; it provides a remedy in certain cases not falling within the jurisdiction of ordinary Courts of Justice; it removes causes from the influence of local prepossessions; it affords the means of maintaining the uniformity of the Law of England in those Colonies which derive the great body of their law from Great Britain; and it enables suitors, if they think fit, to obtain a decision, in the last resort, from the highest judicial authority and legal capacity existing in the metropolis.”

“The power of establishing or remodelling the Colonial Courts of Justice is vested by the 28 & 29 Vic., in the Colonial Legislatures, and it is undoubtedly desirable that the Colonial Courts of Justice should be so constituted as to inspire confidence in their decisions, and to give rise to very few ulterior appeals. But the controlling power of the highest Court of Appeal is not without influence and value, even when it is not directly resorted to. Its power, though dormant, is not unfelt by any Judge in the Empire, because he knows that his proceedings may be made the subject of appeal to it.”

“It by no means follows as a necessary consequence of the powers vested in the Colonial Legislatures by the 28 & 29 Vic., that laws should be enacted which would control the exercise of the prerogative of the Crown in the exercise of its supreme appellate jurisdiction.”

These principles were adopted by Her Majesty's Government; they were afterwards quoted before a Select Committee of the House of Lords on the Appellate Jurisdiction; and they were eventually assented to as sound and just by the Governments of the Australian Colonies them-