

THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

Mr. McPherson, no mean authority, in the same way says that :—

“The Committee comprises men of eminence in every department of legal study, it sits regularly at stated periods, and every case which is ready to be heard is sure of an early and patient hearing.”

We unhesitatingly subscribe to the eulogium passed upon the Committee. The ability and patience of the judges will bear the most favorable comparison with those of any other set of judges in the world. But we cannot help remarking that the constitution of the Committee is radically defective. With the exception of two retired Chief Justices of the Calcutta Supreme Court, the Committee does not now possess a single colonial judge.—It hears appeals from the courts of Canada, where the French law prevails, from those of British Guiana and Ceylon, where the Dutch law is administered, from the courts of the Channel Islands, where a peculiar system of their own exists, and yet no judge, at least no retired judge, from any one of these courts is a member of or assessor to the Judicial Committee. With regard to the Indian judges, too, it is to be remarked that the Supreme Courts having no jurisdiction out of the presidency towns, they, although well versed in the law which obtains in the interior of the country, have not that intimate knowledge of the people themselves, which a long practice in other places than the presidency towns can alone impart, and which, we confess, appears to us to be necessary to ensure a due administration of justice. Then, again, as to the Admiralty Appeals. There is only one member of the Committee who is well acquainted from long practice with Admiralty law—we mean, the Judge of the Court of Admiralty. He does not naturally sit to hear appeals from his own court, and they are therefore heard and determined by judges who, however theoretically they may know the law, have had no practical knowledge of it.

We repeat that we do not intend to throw any aspersions upon the learned judges who usually compose the Judicial Committee. Their decisions have been very satisfactory; and they have, we may presume, at immense pains to themselves, endeavoured to arrive at correct conclusions. But, we ask, is it possible for the colonists to have much confidence in the Committee? It may be said that the number of appeals that come from the colonies satisfactorily shows that the answer to our question must be emphatically in the affirmative. It would be very agreeable to us individually to believe that such was the case, but we are painfully aware of the fact that, whether a Court of Appeal is competent or not, suitors rush into appeal and take their chance of a good wind blowing in their favour, without stopping to consider whether the Appellate Court is likely to lay down sound principles of law or not. It is enough for them that they

have lost, and that there is a Court of Appeal for them to take their case to. To them all law that stands against them is bad law, and they leave no stone unturned, if they possess the means, to get it upset. However much it may offend the *amour propre* of the profession, we cannot help thinking that the majority of the suitors who come before the courts are of the same stamp as George Eliot's “Mr. Tulliver,” one of the cardinal points of whose belief was that the lawyer Wakem and all his compatriots were descended from “Old Harry.” But suppose that the present constitution of the Committee is satisfactory; suppose that, although none of the members ever practised in French law, they are competent authorities to reverse the decisions of judges who have studied it from their youth upwards; suppose that the judgments of the Committee give satisfaction to the colonies—suppose all this, the fact still remains that the greatest possible difficulty is experience to form a court. The Committee only sit three times a year, that is to say, once after Hilary Term, once after Trinity Term, and once after Michaelmas. Its sittings last about a month each time, and in this short space of time it has to decide cases from all parts of the globe. But how is it formed? Sir Roundell Palmer in the speech already quoted, says, (p. 856)—

“Nothing could be more excellent than the materials I have described, *provided of course, that they can be brought to bear with sufficient regularity, convenience and despatch.* We have men of great learning, great experience, and important position. *But its judicial force is not such as to secure adequately the regularity of the administration of the Court.*”

Take the case of the retired judges, &c. &c. &c. You cannot expect that retired judges, however mentally able and willing, should long be physically able to give a constant attention to duties of this description. They have come to a time of life, when they either already do, or soon must, require the rest which they have fairly earned. You cannot rely on more than occasional and precarious assistance, as a general rule, from that source. Then with regard to your present judges. The Chief Justices, and Chief Baron, and the Admiralty and Probate Judges are so occupied in their own courts, that their attendance is generally impracticable. The Lord Chancellor and the ex-Chancellors are wanted in the House of Lords. With regard to the other judges of the Court of Chancery, the Master of the Rolls, and the Lords Justices, they have been accustomed to give a good deal of their time to that court (Judicial Committee). In Lord Langdale's time the Rolls Court used to be shut up for long periods together, while his Lordship attended the Judicial Committee. That does not so often occur now; but the Lords Justices have been often withdrawn from their own court to attend the Judicial Committee.”

Indeed, it may now be said that the Judicial Committee is kept on foot by such of the judges of the Court of Chancery as are members of the Privy Council. During the sittings after Trinity Term, 1868, the Lords Justices