

COMPLAINTS AGAINST THE JUDICIARY

the wisdom of the course advised. Accordingly, sittings of the Executive Council, presided over by the Governor, were held for the purposes of this enquiry. It lasted eight days, and was conducted with decorum and impartiality. The charges against Judge Boothby were proved, and, pursuant to the provisions of the statute, his removal from the bench was ordered. The judge purposed to avail himself of the privilege of appealing to the Queen in Council, but before he could arrange to do so, his troubled career was terminated by death.

This case is instructive. It points to the need for the utmost care and circumspection in attempting to commence an enquiry into the conduct of a judge, whose tenure of office is beyond the reach of executive control. And it affords ample grounds for the belief that the ends of justice are more likely to be satisfied by a resort to the simple and expeditious remedy afforded by the Imperial Act of 1782, rather than by initiating trials—involving the delicate questions of judicial independence, and of the indefeasible rights of persons accused—before a popular assembly, liable to be influenced by party, and naturally impatient of delay, in the pressure of public business urgently claiming its attention. While, on the other hand, the credit of the Bench demands that accusations, which may prove to be utterly groundless, should not be permitted to remain undisposed of a moment longer than is absolutely necessary, lest the reputation and usefulness of the accused should be unwarrantably impaired.

Moreover,—in the event of a colonial Parliament insisting upon the exercise of its undoubted constitutional right of initiating proceedings against a judge within its own walls,—we learn from this case, that Her Majesty would still be advised that the trial must be reviewed by the highest legal tribunal in the Empire, before the consent of the Crown to the removal of a judge could be granted. This position is confirmed by a

memorandum on Privy Council practice in the removal of colonial judges, presented to the Imperial Parliament in 1870, which states that “all the forms of suspension or removal which are in use lead by different roads to the same result, viz :—a hearing before the Privy Council.”

In commending this subject to the thoughtful consideration of persons who are interested in a matter of such gravity and importance, I would in conclusion quote some further pertinent observations from the official memorandum above cited :—

“It is scarcely necessary to add that, in Colonies having Legislative Assemblies, those Assemblies cannot be deprived of their undoubted constitutional right to address the Crown for the removal of a judge; and the exercise of this right is altogether independent of the course which the Governor of the Colony may think fit to adopt. When the charges against a judicial officer originate with Assemblies, the form of address or petition is perhaps the most correct, though not the most convenient form of proceeding. When the action for removal originates with the Governor, he has the power to give effect to it in his own hands, subject to the control of the Home Authorities.

“The experience of the Lords of the Council,” however, is “strongly *in favour* of proceedings by the Governor, subject to a review by the Secretary of State or the Privy Council in England, and they have invariably found, that in the cases in which proceedings have originated with the Local Assemblies, the delay, uncertainty, and expense have been greatly augmented.

“At the same time, when the misconduct charged is purely judicial, and therefore not properly amenable to the decision of the executive authority, acting on the advice of law officers or advisers of inferior rank, it would seem that the due maintenance of the independence of judges requires that judicial acts should only be brought into question before some tribunal of weight and wisdom enough to pronounce definitely upon them; and this function appertains with peculiar fitness to the Privy Council, which, as a Court of Appeal, has to review the decisions of all the Colonial Courts.”

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