crimes, created by the legislature of Quebec under and by virtue of s. 92, § 15 of "The British North America Act, 1867." But whence did the Quebec Legislature draw authority to *amend* and alter the law of procedure in criminal matters as is attempted by 34 Vic. c. 2, ss. 148—199?

It is submitted that all the sections of that Act, having reference to procedure are null, void, and of no effect, having been passed in violation of the provisions of "The British North America Act, 1867."—Wm. H. Kerr. —*La Revue Critique.*

COURT OF APPEAL FOR AUSTRALASIA.

The following is the report of the Royal Commissioners of Victoria, concerning the establishment of a Court of Appeal for the Australasian Colonies:

This subject has been frequently mooted. The arguments in its favour are the increased facilities for the hearing of appeals, the promptness of decision, conformity of law, and considerable reduction in the cost of appealing that will be thereby afforded.

A Court of Appeal has become almost a matter of necessity. The number of appeals from the vast dominions of the Crown is greater than it appears the Privy Council is capable of dealing with.

Independent of the difficulty in getting appeals heard by the Privy Council, it is thought that it would be more satisfactory to litigants if their cases were decided by judges who were familiar with the policy of Australian laws. Take, for instance, disputes affecting our pastoral and mining interests, which are based upon laws almost peculiar to Australia. Another difficulty presents itself in the case of appeals in criminal cases. In New South Wales, after a conviction for murder, the prisoner appealed; the conviction was sustained, but after so long a delay between the sentence and the decision of the Privy Council the judgment of the Court could not be carried into effect. In another case that occurred in Victoria, the Privy Council ordered, on a technical point, a new trial; but after so long a lapse of time, the witnesses had disappeared, and the prisoner, although previously found guilty, was allowed to go free.

It has been urged that it is not competent for a colony to establish a Court of Appeal which may exclude the appeal at common law to the Queen in Council, and that the Imperial Government would view any attempt in that direction with great jealousy. That objection can scarcely be urged now so far as it is a question of law, as it has been decided years ago.* An Act was passed by the Imperial Parliament, 28 & 29 Vict., c. 93, s. 5, which enacts "That every colonial Legislature shall have and be deemed to have at all times to have had full power within its jurisdiction to establish Courts of Judicature and to abolish and reconstruct them and to alter the constitution thereof, and to make provisions for the administration of justice therein."

In South Australia a Court of Appeal has been in existence for some years, consisting of the Governor and Executive Council, excluding the Attorney-General. In New Zealand there is also a local Court of Appeal, whose decisions appear to have given satisfaction, for there has been for many years but one appeal to the Privy Council from the Supreme Court of New Zealand. In Canada [alluding to the Province of Ontario] there is a Court of Error, created out of the two Superior Courts, the Queen's Bench and the Common Pleas. [The Commissioners omit the Court of Chancery.] There are, however, occasional appeals to the Privy Council, and it is now proposed to create a Canadian Court of Appeal, and the Governor-General in opening Parliament 1870, made special reference to the proposal in his speech.†

Considerations of grave importance suggest the expediency, if not the necessity, that a Court of Appeal, formed of colonial Judges, should be established for the Australasian colonies. The cost and delay occasioned by appeals to the Privy Council would be removed. Judges conversant with colonial life, manners and laws would adjudicate on matters

* That the right of the King in Council to hear and determine appeals from the colonial Courts on every subject and of every amount in value is one of the most ancient and undoubted prerogatives of the Crown. No prerogative right of His Majesty, much less one that is calculated as this is for the relief and protection of the subject in distant countries, can be abridged or abrogated except by the most direct and express words of an Act of the General Legislature. The King himself cannot derogate from his own right or refuse to exercise his own prerogrtive for the benefit of the subject. The King has no power to deprive the subject of any of his rights; but the King, acting with the other branches of the Legislature (in this case the Legislature was that of Lower Canada), as one of the branches of the Legislature has the power of depriving any of his subjects, in any of the countries under his dominion, of any of his rights (*Cuvillier* v. *Alwyn*, 2 Knapp's, Privy Council Case, 70). Where in the East Indies the Supreme Courts had authority to 'allow or deny appeals,' it was decided by the Privy Council that the common law right of appeal had been taken away (*Regina* v. *Alloo Paroo*, 3 Moore Jud. App. 488). Lord Brougham said, the Crown may abandon a prerogative, however high and essential to public justice, and valuable to the subject, if it is authorised by statute to abandon it. In *Christian* v. *Cowan*, 1 P. Wms. 329, it is said that, even if there be express words in the charter, excluding the right of the subject to appeal, these words shall not deprive him of his right. 'To this doctrine the Privy Council refused to assent, citing *Ash* v. *Rogle*, 1 Vern. 357; but, for the reason given above, they said, even if it were true, it did not apply to the case before them.'

† In 1834, the Appeal Court of Canada consisted of the Governor or the Chief Justice, with any two or more members of the Executive Council. A similar Court was constituted at Antigua; there, however, the judges may attend and assign reasons, but could not act as members of the Court. The Bahamas had a Court similar to Canada. At Barbadoes the Governor in Council acts; the judges are members of the Court, but no judge is allowed to sit or vote on cases where the appeal is from his own decision. Bermuda has a Court the same as at Barbadoes. In Dominica the Court is constituted as at Antigua, except that the number of the Council is limited to five. At Grenada same as at Dominica, and three members of the Council. In Jamaica the Court is established as a Court of Error, and is similarly constituted as in Canada.—*Clark on Colonial Laws*, passim.