

THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

for the hearing of appeals took place on November 27, 1833, and the Committee continued to discharge its duties satisfactorily enough for some time. Sir Edward Hyde East, Chief Justice of Calcutta, and Sir Alexander Johnstone, Chief Justice of Ceylon, both retired judges, were summoned to attend, and, as Mr. Knapp says, attended the meetings of the Judicial Committee, upon all appeals from the East Indies, and most of the other appeals.*

It does not appear from Mr. Knapp's book who were the judges who usually composed the Committee. The names of Mr. Justice Parke and the Vice-Chancellor of England, frequently occur, but there can be no doubt that four Privy Councillors† at least attended the sittings of the Committee. The business of the Committee was conducted under this statute of William IV. for about ten years, and it was then found that further legislation was necessary to facilitate the hearing of the appeals. On July 28, 1843, an Act was accordingly passed (6 & 7 Vict. c. 38), whereby it was enacted that appeals, &c., brought before the Committee might be heard by not less than three members of the Privy Council. This was a very important change in the constitution of the members of the Committee, for by the Statute of William IV., four Councillors formed a quorum, and we must presume that the reason of the alteration was the difficulty that then existed in finding the requisite number of judges to form the court. This Act further enacted that:

"Subject to such rules and regulations as may from time to time be made by the said judicial committee, with the approval of Her Majesty in Council, and save and in so much as the practice thereof may be varied by the said Acts of the reign of his majesty or by this Act, the said causes of appeal to Her Majesty in council shall be commenced, within the same times, and conducted in the same form and manner, and by the same persons and officers, as if appeals in the same causes had been made to the Queen in Chancery, the High Court of Admiralty in England, or the Lords Commissioners of Appeals in prize causes respectively."

On August 6, 1844, another act was passed to amend the Act of 3 & 4 Wm. c. 41, and to extend the jurisdiction and powers of the Committee. In 1851, a third Act was passed, to improve the administration of justice in the Judicial Committee, and a fourth Act, passed in 1853, completes the series of statutes relating to the Committee. The Act of 1851, enacts that the Judges of the Court of Appeal in Chancery, if Privy Councillors, shall be members of the Judicial Committee, and that no matter shall be heard by the latter, unless three members are present, exclusive of the Lord President. The Act of 1853 merely removes doubts as to the powers of the Registrar of the Privy Coun-

cil to administer oaths, and provides for the performance of the duties of the Registrar in his absence.

Lord Brougham's chief object in establishing the Judicial Committee was to have judges in the Privy Council "who should be men of the largest legal and general information, accustomed to study other systems of law besides their own, and associated with lawyers who have practised or presided in Colonial Courts." He also "expected that the judges should be assisted by a Bar, limiting its practice for the most part to this Appeal Court; at any rate making it their principal object." And, most important of all, his idea was that "to counteract in some degree the delays necessarily arising from the distance of the courts below, and give ample time for patient inquiry into so dark and difficult matters, *the Court of Review should sit regularly and at all seasons.*"* Has the Committee realised Lord Brougham's object? Are Colonial judges and lawyers associated with the Committee? Is there a Bar "limiting its practice, for the most part, to this Appeal Court?" And, lastly, does the Committee—Brougham's Court of Review—sit regularly and at all seasons? Nay, constituted as the Committee is, is it possible for it to sit regularly and at all seasons "to counteract the delays, &c., &c.?" And, if not, what remedy had better be adopted to make it do so?

It will be observed that in the foregoing questions we have assumed that Brougham's ideal is the best possible ideal under the circumstances. We believe it is really so. A court of justice sitting regularly, and not by fits and starts; depending not upon migratory but stable judges, whose only duty should be to hear the cases coming before their own court, assisted by a Bar, the members of which should as a rule, confine their practice to the court, and conducting its business in a legal, proper, and decorous manner, appears to us to be the best court of justice that could be devised. And Brougham's court was nothing more or less than the court we have described. But to proceed.

It has been the good fortune of this Committee to be spoken highly of by very eminent authorities. Sir Roundell Palmer, speaking in the House of Commons on "The Administration of the Law," says:†

"Every one who knows how the business of the Judicial Committee of the Privy Council is administered will, I think, admit that the difficulties arising from having to deal with different laws have been by them most successfully grappled with, and that, upon the whole, a regard for substantial justice rather than mere technical accuracy has grown out of the fact that they have to administer justice in accordance with many different systems."

* 2 Knapp's Privy Council Reports, p. 4.

† In Mr. Edmund F. Moore's continuation of Knapp's Reports, the names of the Vice-Chancellor, Mr. Justice Bosanquet, Baron Parke, and the Chief Judge of the Court of Bankruptcy frequently occur.

* See Speech quoted at p. 301, and Mr. McPherson's preface, p. vi. The italics are ours.

† Hansard, Vol. 135, pp. 842–864. This speech was afterwards published in pamphlet form by Messrs. Butterworth headed "Our Judicial System."