

THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

put it out of sight until some time afterwards.

In the year 1828, Lord, then Mr. Brougham, in a powerful speech in the House of Commons, pointed out among other evils in our judicial system those resulting from the imperfect constitution of the Court of Delegates, and in August 7, 1832, a statute (2 & 3 Wm. IV. cap. 92.) entitled "an Act for Transferring the powers of the High Court of Delegates both in Ecclesiastical and Maritime Causes to his Majesty in Council" was passed to remedy them. This statute repealed the Acts of Henry and Elizabeth, and enacted that from February 1, 1833, the powers of the High Court of Delegates should be exercised by the king in council; and that no commission of review should be therefore granted. At the time these powers were transferred to the "King in council," this body—for it consisted only of a portion of the Privy Council—formed a most important Court of Appeal. In the language of Lord Brougham, in the speech already quoted,* they discharged "as momentous duties as any of the judges in this country, having to determine not only upon questions of colonial law in plantation cases, but also to sit as judges in the last resort of all prize causes. The point," Mr. Brougham went on to say, "to which I more particularly address myself on this head, is that they hear and decide upon all our plantation appeals. They are thus made the supreme judges in the last resort, over every one of our foreign settlements, whether situated in those immense territories which you possess in the east, where you and a trading company rule together over not less than seventy millions of subjects—or established among those rich and populous islands in the Indian Ocean, and which form the great Eastern Archipelago—and have their stations in those lands, partly lying within the tropics, partly stretching towards the Pole, peopled by various castes, differing widely in habits, still more widely in privileges, great in numbers, abounding in wealth, extremely unsettled in their notions of right, and excessively litigious, as all the children of the New World are supposed to be, both from their physical and political constitution. All this immense jurisdiction over the rights of property and person, over rights political and legal, and over all questions growing out of so vast and varied a province is exercised by the Privy Council unaided and alone." Appeals in prize causes used to be heard by "certain persons, members of the Privy Council, together with others, being judges and barons of his majesty's Courts of Record at Westminster," and the Indian and Colonial Appeals before a Committee of his majesty's Privy Council, who used to make a report to his majesty in council, whereupon the general judgment or determination used to be given by his majesty.†

This extensive jurisdiction thus vested in the Privy Council was not, as may be supposed, very satisfactorily exercised. The Privy Council did not then, as now, consist of many great lawyers, and the few that there were had other duties to discharge and could not attend to the Council. Causes of any constitutional importance used doubtless to receive a great deal of attention, and were soon decided in favour of the "powers that be," but those involving points of law, either from India or the Colonies, moved on at a very slow pace indeed. It was at last found necessary to improve the machinery of the court, and with that view Lord Brougham carried through Parliament a measure which afterwards became the Statute 3 & 4 Wm. IV. c. 41. This Act enacted "that the president for the time being of his majesty's Privy Council, the Lord High Chancellor of Great Britain for the time being, and such of the members of his majesty's Privy Council as shall from time to time hold any of the offices following—that is to say, the office of Lord Keeper or First Lord Commissioner of the Great Seal of Great Britain, Lord Chief Justice, or a Judge of the Court of King's Bench, Master of the Rolls, Vice-Chancellor of England, Lord Chief Justice, or Judge of the Court of Common Pleas, Lord Chief Baron or Baron of the Court of Exchequer, Judge of the Prerogative Court of the Lord Archbishop of Canterbury, Judge of the High Court of Admiralty, and Chief Judge of the Court of Bankruptcy,* and also all persons, members of his majesty's Privy Council, who shall have been presidents thereof, or held the office of Lord Chancellor of Great Britain, or shall have held any of the other offices hereinbefore mentioned, shall form a committee of his majesty's said Privy Council, and shall be styled the Judicial Committee of the Privy Council; provided, nevertheless, that it shall be lawful for his majesty from time to time, as, and when he shall think fit, by his sign manual, to appoint any two other persons, being Privy Counsellors, to be members of the said Committee." Authority was given to the king to refer all matters he might think fit to the Judicial Committee, and to direct, by his Order in Council, that appeals from India and the Colonies should be heard by the Committee, and the Judicial Committee was provided with necessary powers to constitute it a regular Court of Justice. By Orders in Council, dated the 9th and 10th days of December, 1833, his majesty gave the necessary directions.

The first meeting of the Judicial Committee

* To these have been added, by 5 Vict. c. 5 s. 24, the Vice-Chancellors appointed in pursuance of that Act; by the 14 & 15 Vict. c. 83, s. 15, the Judges of the Court of Appeal in Chancery, by 20 & 21 Vict. c. 77 & 115, the Judge of the Court of Probate. As to cases under the Church Discipline Act, 3 & 4 Vict. c. 86, s. 16 of that Statute enacts that Archbishops and Bishops, members of the Privy Council, should be members of the Judicial Committee, on all appeals under this Act. See McPherson's "Practice of the Judicial Committee. London. H. Sweet. 1880. We are indebted to Mr. McPherson's valuable book for the particulars of the statute cited above.

* See Speeches of Henry Lord Brougham, Vol. II., p. 356, Edinburgh. A. and C. Black, 1838.

† See Preamble, 3 & 4 Wm. IV. c. 41