

is used vexatiously in many of the applications composing the large aggregate above referred to, merely with the view of forcing, from the apprehensions of expense, and delay, a reduction in the amount awarded by the court to the successful party below, and that it is not uncommon for the successful litigant though it is believed that he would eventually succeed in dismissing the appeal, to forego under such circumstances a part of his demand rather than run the disproportionate risk of costs and experience the certainty of a considerable loss, and also of the law's delay. It is stated that practical experience shows that it takes between two and three years from the delivery of a final judgment in a local court to reach the ultimate conclusion of a case appealed to the Privy Council, in many of which cases, it is to be remembered, the appellant is anxious to protract rather than to expedite the proceedings.

I am, my Lord,

Faithfully yours,

Edward Blake.

Here is another memorandum—private and confidential also—from Mr. Blake, addressed to the Law Officers of the Crown in the Imperial Parliament. I take three lines from it:

The late provinces of Upper and Lower Canada freely exercised since 1791 an unlimited—

Mark the words:

—unlimited power of making such provision as they thought expedient upon the subject of the appeal to the Queen in Council, and the Dominion stands in a still higher rank than the late provinces.

Mr Blake continues also:

Turning with these general observations to the quotation referred to, it commences by an acknowledgment that the appellate jurisdiction of the Queen in Council exists for the benefit of the colonies, and not for that of the Mother Country; but adds that it is impossible to overlook the fact that the jurisdiction is a part of the prerogative which has been exercised for the benefit of the colonies from the date of the earliest settlement of the country, and that it is still a powerful link between colonies and Crown of Great Britain. The jurisdiction existing for the benefit of the colonies, and not for that of the Mother Country, Canada should be permitted, in this aspect of the case, to judge for herself, as there is no doubt she is the best judge; and to decline what she may conceive to be no longer an advantage.

It is presumed that the statement that the appeal is a powerful link between the colonies and the Crown is thought to be supported by the observations immediately following. No aspect occurs to me under which the jurisdiction can fairly be considered such link. It is said to secure to every subject of Her Majesty throughout the Empire, the right to claim redress from the Throne. Not so. The subjects of Her Majesty in Great Britain and Ireland do not possess this supposed privilege which is thought to be so valuable. In British history is recorded the patriotic and successful struggles of Englishmen against the interference directly by the Crown in the administration of justice.

Hon. Mr. CASGRAIN.

That is in answer to Mr. Belcourt saying that in England, or here, every suitor has access to the foot of the Throne and can submit his claim there. That right does not exist; the Throne always administers through the courts of law, and there is no case for centuries back where the King has interfered in any way with the courts. Now here is an important statement in Mr. Blake's memorandum, which deals with local prepossessions—which means that our judges would be impartial:

The quotation states that the appeal removes cases from the influence of local prepossessions. This can only mean that the impartial administration of justice is not accomplished in consequence of these so-called local prepossessions. That I must deny, believing, as I do, that justice is impartially administered in Canada. It is true that cases are by this appeal, removed beyond the influence of local knowledge, of local experience, of local habits of thought and feeling, of much of that learning and training, not strictly legal, which is yet essential to the formation of a sound judgment. These are unquestionably very great disadvantages. As Lord Brougham said. "The jurisdiction extends over various countries, peopled by various castes, differing widely in habits, still more widely in privileges, great in numbers. . . . and from the mere distance of the colonies, and the immense variety of matter arising in them foreign to our habits and beyond the scope of our knowledge, any judicial tribunal in this country must of necessity be an extremely inadequate court of review. What adds incredibly to the difficulty is that hardly any two of the colonies can be named which have the same law; and in the greater number, the law is wholly unlike our own." These difficulties certainly far more than counter-balance the alleged advantage of a freedom from local prepossessions.

It simply says that even if our judges were a little bit partial in certain cases—which is denied—still their intimate knowledge of our usage and customs and so on would make them better judges of our cases than people across the water, who do not know very much about it except what they hear from the lawyers in each case.

An Imperial Act was passed in 1791 dividing Quebec into Upper and Lower Canada:

Provided for the making and effect of local laws and for a Local Court of Appeal, subject to the like appeal therefrom as formerly existed, "but subject nevertheless to such other provision as might be made in this behalf by Local Act assented to by His Majesty."

Here is another clause which I think has some importance. It says that the courts are established not for the benefit of judges but for the benefit of suitors:

It is said to be "much more important to the suitors in colonial courts to have access to this supreme jurisdiction; for courts of justice exist not for the interest of the judge, but of