



THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

John deP. Wright

JAMES MORRIS WROTE OF A HILL TRIBE IN INDIA who were in dispute with their government about local land rights in the days of Empire. The elders of the tribe were discovered sacrificing a kid to propitiate a distant but omnipotent deity: “We know nothing about him but that he is a good god and that his name is the Judicial Committee of the Privy Council.”¹

“The Judicial Committee of His Britannic Majesty’s Privy Council,” the “The Judicial Committee” or simply the “Privy Council” (the “J.C.P.C.”) as it was known in legal circles, was not a god, but at one time it was the final judicial tribunal for those in the British Empire outside of Britain itself. A former American Senator, Judah Benjamin, described this “court” to a friend as one “above all others in Christendom in which one can practice law like a gentleman.”²

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¹ James Morris, *PAX BRITANNICA: THE CLIMAX OF AN EMPIRE* (Harcourt, 1979), p. 194.

² John T. Saywell, *THE LAWMAKERS, JUDICIAL POWER & THE SHAPING OF CANADIAN FEDERALISM* (University of Toronto Press, 2002), p. 63. This quality is high-

The Judicial Committee of the Privy Council was the final venue of appeal for Canadians until such appeals were abolished in 1949. It still exists and it remains the final appellate tribunal for parts of the Commonwealth, but I write principally of the Judicial Committee Canadians knew before 1949.

In a Westminster-style democracy, the Privy Council, in theory, is the body that advises the Monarch. In fact, the Monarch is advised by the Cabinet, a subset of the Privy Councillors.

The Judicial Committee of the Privy Council was (and is) not a court. Proceedings did not go to it as “appeals” in the formal sense but as petitions for justice “to the foot of the Throne.” The petitioner asserted that he had gone through the court system and had not received justice. The Monarch appointed “a Committee of my Privy Councillors” to investigate. The members of the committee did not wear robes. They sat in ordinary suits, although counsel appearing before them appeared in robes and wigs. The members did not sit on a dais. They sat at a table on the same level as counsel. At one time they sat at a long table with an empty chair at the end for the Monarch, who never joined them. Under Lord Haldane, this table was replaced by a semicircular table,³ and there is no longer an empty chair.⁴ The decisions of the Committee were not “judgments,” they were “advice” to the Monarch, and were handed down in the form of an Order In Council – tied with a red ribbon and bearing the Great Seal. Historically, only one judge delivered rea-

lighted by a delightful Australian story. Counsel from Australia were brought in by the ushers in a famous Privy Council case of the mid to late 1940s. Having reached their positions and having placed their papers and books in place, Counsel One turned to his junior and said, *sotto voce*, “Who’s the old bastard at the end?” Much to his great surprise (and no doubt some others), the reply came from His Lordship at the end saying “Actually, I’m du Parcq!” Private communication from His Honour Judge Anand Satyanand, Wellington, New Zealand.

³ For a picture of the horseshoe table see Constance Backhouse, *THE HEIRESS VS. THE ESTABLISHMENT: MRS. CAMPBELL’S CAMPAIGN FOR LEGAL JUSTICE* (Osgoode Society For Canadian Legal History, 2004), p.117.

⁴ R.V.R. Heuston, *LIVES OF THE LORD CHANCELLORS 1885-1940* (Oxford, Clarendon Press, 1964), p. 218.

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sons for judgment, and, until 1966, no dissents appeared on the face of the Judicial Committee's record, in accordance with a standing order going back to 1627 prohibiting the disclosure of dissenting opinions.⁵

Reform of the judicial functions of the Privy Council was effected by Lord Brougham in 1833. Because the membership of the broad Privy Council was drawn from amongst members of Parliament and others, there was no guarantee that the members would be lawyers. A judicial committee of the Privy Council was deemed advisable, and one was created at that time.⁶

The membership of the new judicial committee consisted of the President of the Privy Council, the Lord Chancellor, the Master of the Rolls, the Chief Justices of the three common law courts, and others who had held high legal office. The Crown was authorized to appoint two other persons, and to summon others as required.⁷



The Judicial Council of the Privy Council pre-dated the creation of modern Canada by some three decades. In 1867, the British colonies of New Brunswick and Nova Scotia united with the colony of "Canada" (what is now Ontario and Quebec), creating the Dominion of Canada. This union was brought about by the Imperial Parliament passing the British North America Act.⁸ The new nation was to be ruled by a federal government consisting of a Governor General appointed by the Imperial authorities, a Senate appointed by the Governor General on the advice of the Prime Minister and his cabinet, and an elected House of Commons. There were also provincial governments consisting of a Lieutenant Governor appointed by the Governor General on the advice of the federal Prime Minister and his cabinet and an elected legislature. The powers of each level of government were set out in sections 91 and 92 of the

⁵ Id. at p. 178.

⁶ See Peter McCormick, *CANADA'S COURTS* (James Lorimer & Co., 1994), p. 73.

⁷ Saywell, *THE LAWMAKERS*, at p. 64.

⁸ 30 & 31 Vict., c. 3 (1867) (Eng.).

B.N.A. Act. Following the American decision in *Marbury v. Madison*, there was never much doubt that the courts would rule upon jurisdictional disputes between the federal government and the provincial governments. Ultimately these rulings might go to the Judicial Committee for final adjudication.

The prevailing wisdom in Canada today is that, over the years, “activist judges” (using the language of the present) on the J.C.P.C. refashioned the nature of Canadian confederation through their interpretation of the B.N.A. Act.

The union that created Canada occurred at the end of the American Civil War. The current understanding in Canada is that the original “Fathers of Confederation” were appalled at the loss of life and treasure caused by the ambiguity of “States’ Rights” in the American Constitution and they resolved to create a nation where there would be no doubt about the supremacy of the federal government over the provincial governments. As the Imperial Government was to Canada, so would the Federal Government be to the Provinces.

A superficial reading of the B.N.A. Act seems to confirm this intent: Where the Governor General was appointed by the Imperial authorities, the Lieutenant Governors of the Provinces were appointed by the federal government; the courts of the provinces were to be under the jurisdiction of the provinces and administered by the provinces, but the judges who presided in the provincial superior courts were to be appointed by and paid by the federal government; laws passed by provincial legislatures could be “reserved” by the Lieutenant Governor, referred by him to the federal government, and disallowed (vetoed) by the federal government.

The preamble to section 91 of the B.N.A. Act says:

It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is

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hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say

Then follows a list of 29 subjects that are exclusively within the purview of the federal government. Section 92 contains a list of 16 subjects that are exclusively reserved to the provincial government including “Generally all matters of a merely local or private Nature in the Province.”

As the years passed, the Judicial Committee interpreted the B.N.A. Act as if it were a contract, giving precedence to the specific, enumerated areas of jurisdiction rather than the general “Peace, Order and good Government” clause and favouring the enumerated provincial authority listed in section 92 over those areas of federal authority listed in section 91.

People who like to trace the influence of individuals in the development of the law point to the influence of Judah Benjamin in diverting (some would say perverting) the interpretation of the B.N.A. Act.

Benjamin was born a British subject but grew up in the United States. He studied law in Louisiana where he was exposed to French and Spanish law as well as English law, an exposure that was to stand him in good stead later in life. In 1859 he was appointed a Senator for Louisiana and spoke for States’ Rights in the Senate. During the Civil War he was the Attorney General for the Confederacy. Following the war, he traveled to England where he was admitted to the Bar. After a slow start, he found his niche arguing colonial appeals before the Judicial Committee, where his knowledge of French and Spanish law gave him a tremendous advantage.⁹

Benjamin, who was the author of many learned law texts, wrote authoritatively and argued in a manner that left one with the impression that there was no other answer. It is said that on one occasion he was arguing before the House of Lords when one of the

⁹ 2 *DICTIONARY OF NATIONAL BIOGRAPHY* (Leslie Stephen & Sidney Lee, eds.) (Oxford University Press, reprinted 1973), pp. 222-25.

learned Lords (it is thought to have been Lord Selborne) ejaculated the word “nonsense!” Benjamin stopped, tied up his brief, bowed and retired. A conciliatory note followed him and the hearing continued.¹⁰

Benjamin remained a firm adherent to the cause of The South all of his life, arguing for it successfully in the form of stronger (Canadian) provincial governments. The legal folk-lore is that he communicated his abhorrence of a strong federal government and the wisdom of strong local governments to members of the Judicial Committee, whose lack of personal experience with the functioning of a federal state left them unable to critically evaluate his arguments.

With each J.C.P.C. decision that appeared to favour the provincial governments at the expense of the federal government, there was increasing talk amongst those who espoused the federal interest of responding to the Judicial Council’s encroachments on federal authority by curtailing “appeals.” However, there can be no doubt that in the early days of the small country it was beneficial to have a final judicial tribunal that was aloof from local politics given that all the Canadian Superior Court judges (who would otherwise have been the court of last resort) were appointed by the federal government.

Years later, in 1900, when the abolition of appeals from Australia was being debated in the British House of Commons, the expatriate Canadian, Edward Blake, speaking in favour of such appeals, said:

I speak from experience; because I know that in the country whence I came, while a different set of circumstances obtains and there are different provisions, there is yet a written federal constitution; and it was found with us that where bitter controversies had been excited, where political passions had been engendered, where considerable disputations had prevailed, where men eminent in power and politics had ranged themselves on opposite sides, it was no disadvantage, but a great advantage, to have an opportunity of appealing to an ex-

¹⁰ Id. at p. 225.

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ternal tribunal such as the Judicial Committee for the interpretation of the constitution on such matters. (*Hansard*, 4th Series, v. 83, pp. 773-4)¹¹

Proponents of the J.C.P.C. argued that its prestige could never be matched by a native Canadian tribunal. Others argued that the prestige of the J.C.P.C. was greatly over-rated.

By 1870, with 329 appeals pending and general agreement that the Judicial Committee was a disgrace, the [British] government restructured the Committee by adding four paid judges who had served either as a judge in a superior court or as a Chief Justice of the High Court of Bengal, Bombay, or Madras. The first four to be appointed were Sir George Colvile, a former Chief Justice of Bengal, who had been appointed in 1865 to hear Indian appeals; Sir Montague Smith, a one time Conservative M.P. and a judge since 1865; Sir Barnes Peacock, who had succeeded Colvile in Bengal; and Sir Richard Collier, a Liberal M.P. whom Gladstone had made a judge for 2 days to enable him to qualify. In attendance, if not in writing the decisions, these four dominated the hearings on Canadian appeals for more than a decade.

Additional reforms in 1875 created the Lords Of Appeal in Ordinary, chosen from the judges of the Supreme Courts or members of the bar with 15 years standing of England, Scotland and Ireland.¹²

Notwithstanding some illustrious members of the Committee, Nova Scotia counsel, Wallace Graham, who appeared before the Committee in 1887, reported “The judges are all kinds, deaf and impatient, talkative and jumping at conclusions, keen and sarcastic in a humourous way.”¹³

Jack Clyne, a former Canadian superior court judge who studied law in England as a Rhodes Scholar, recorded in his memoirs:

¹¹ Quoted in Margaret A. Banks, Edward Blake (letter to the editor), 3 Law Society Gazette (1969), pp. 183-84.

¹² Saywell, *THE LAWMAKERS*, at pp. 64-65.

¹³ *Id.* at p. 64.

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During the winter months the Privy Council chambers were inclined to get somewhat chilly. To ward off the cold, Lord Shaw [of Dunfermline] always had a plaid shawl over his stooped shoulders and another one over his knees. At half past 11 every morning one of the ushers would bring him a glass of what I took to be hot water and lemon. One morning I asked the usher why he brought hot water to Lord Shaw in the middle of the morning. “Sh” he replied, “it’s not hot water, it’s hot gin.”¹⁴

Bert MacKinnon, later a judge of the Ontario Court of Appeal, who attended the J.C.P.C as counsel, subsequently wrote that one of the most important cases in Canadian Constitutional Law “was determined by the [casting] vote of Sir Sidney Rowlatt, a taxation judge, who ... sat throughout the 1937 hearings in his overcoat making neither note nor comment.”¹⁵

Saywell notes that “Cases in the House of Lords were far more prestigious and noteworthy than those in the Judicial Committee, and well into the 20th century ‘the complaint could still be heard that the Law Lords treated their duties on the board as a holiday from their duties in the House.’”¹⁶

As already seen, the surroundings in which the J.C.P.C. worked were very unprepossessing.

During the debate on the Australian constitution, one M.P. said that he had inquired of his friends, “Where is the Privy Council?” and no one knew. “He then conceived the idea of starting at the top of Parliament Street and knocking at every door and inquiring if the Privy Council was at home, and in the course of his peregrinations he came to a door at which a policeman was standing, who, in answer to his inquiry directed him up a small back staircase, and upon entering a small room on the second floor he found himself in the presence of the august assembly.”¹⁷

¹⁴ Id. at p. 66.

¹⁵ B.J. MacKinnon, To the Editor, 34 Canadian Bar Rev. 115 (1956), p. 117.

¹⁶ Saywell, THE LAWMAKERS, at p. 67.

¹⁷ Id. at p. 63.

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Eventually, the Committee was located at 9 Downing Street.

A quiet little room in Downing Street, rather dingy, with no pretence about it, where [there were] sometimes six or seven, sometimes four or five gentlemen, without wigs, without gowns, dressed in morning apparel, not sitting under the names of judges but hearing the prosy arguments ... and dealing with questions arising under the laws of very nearly seventy distinct political communities, each flying the British flag, in Europe, in Africa, in Asia, in America, in Australia, and including in their systems various laws, law from the ancient custom of France, the old customs of the Monarchy, the Civil law, the Roman Dutch law, the Brahminical laws, and the laws of the Mohammedans – all disposed of in this dingy room. I know of no greater, no more practical, no more significant proof of the vitality of the British Empire.¹⁸

He [Jackett] remembers the hearings at 9 Downing Street, where lawyers were gowned but the law lords, who sat in a semicircle at the floor level, were not. There was a single lectern for use by counsel and the lawyers spoke down to them – Only physically, however!¹⁹

Sometimes careless slips stirred unease in the hearts of even the most avid P.C. fan, e.g.: when they referred to the currency of Canada throughout a decision as “rupees”²⁰ or when they began a decision: “This is an appeal from a judgment of the Court of Queen’s Bench in Canada affirming a judgment of the Superior Court of the Province of Montreal.”²¹

When there was eventually talk of abolishing appeals to the Judicial Committee, there was a serious question whether it was possi-

¹⁸ T.D. Regehr, *Elite Relationships, Partnership Arrangements, and Nepotism at Blakes, a Toronto Law Firm, 1858-1924*, in *INSIDE THE LAW: CANADIAN LAW FIRMS IN HISTORICAL PERSPECTIVE* (Carol Wilton, ed., Osgoode Society, 1996), p. 227.

¹⁹ Richard Pound, *CHIEF JUSTICE W.R. JACKETT: BY THE LAW OF THE LAND* (Osgoode Society, 1999), p. 74.

²⁰ Philip Girard, *Living within the Law*, *Literary Rev. of Canada* (July/Aug. 2003).

²¹ *A.G. Quebec v. Queen Insurance Co.* (1878) 3 App. Cas. 1090, 1096 (Jessel M.R.).

ble to do so, the “appeals” technically not being appeals at all but rather an exercise of the Monarch’s prerogative to respond to petitions from her subjects. This right was considered to be very important, a similar right, the right to petition Parliament, having been guaranteed by the Bill of Rights of 1689. As a first step towards the ouster of the J.C.P.C., the Canadian federal government created the Supreme Court of Canada in 1875.

When the bill was introduced to create the Supreme Court of Canada there was legislation pending at Westminster which would have led to the creation of a new Imperial Court of Appeal and the abolition of the Judicial Committee. The proposed new Imperial Court of Appeal, however, would not similarly cast the prerogative into doubt, and it was thought that appeals to the J.C.P.C. could more easily be abolished.²²

Aemilius Irving, the Liberal member from Hamilton, [Ontario] was not disposed to leave the abolition of appeals [to the Privy Council] until some future time. Late in the debate, [on the Supreme Court of Canada bill] he moved an amendment that the decision of the Supreme Court “shall in all cases be final and conclusive” and there could be no appeal to any court established by the British Parliament, “saving any right which Her Royal Majesty may be graciously pleased to exercise as her Royal Prerogative.” Fournier stated at once that the government accepted the amendment, and after a short debate it [Clause 47] passed 112 to 40. . . .

Clause 47 presupposed that the new Imperial Court of Appeal, which was not a prerogative court, would replace the Judicial Committee. But the Disraeli government did not pass the expected legislation and the Judicial Committee, which entertained the prerogative appeals permitted by the amendment, remained alive.²³

The concept of an Imperial Supreme Court of Appeal for both Britain and the Empire was raised again in 1901²⁴ and from time to

²² Saywell, *THE LAWMAKERS*, at p. 57.

²³ *Id.* at p. 58.

²⁴ Eric A. Walker, *LORD DE VILLIERS AND HIS TIMES* (London, 1925), p. 119.

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time thereafter, but it was never accepted, leaving the J.C.P.C. as the effective court of last resort for those portions of the Empire (later the Commonwealth) beyond the United Kingdom.



While some former Judges with experience in India had sat on the Privy Council (see above) the first colonial judge to be appointed was Sir John Henry De Villiers of Cape Town, who was sworn in on July 7th 1897.²⁵

Other judges followed. For example, The Canadian Law List of 1929 mentions ten “judges from the Dominions beyond the seas” who were members of the J.C.P.C. These included the Canadians, Sir Charles Fitzpatrick, Mr Justice Lyman Poore Duff, C.J. Francis Alexander Anglin, and C.J. Sir William Mulock of Ontario.²⁶

Not everyone was happy with the inclusion of colonial judges on the Judicial Committee. When the suggestion was made that the Chief Justice of Canada be appointed notwithstanding the abolition of Canadian appeals,

Napier, the Permanent Secretary, drafted Jowitt’s response. It might be a “good Commonwealth policy” to appoint the Chief Justice of Canada to the Privy Council, but it would be little help in the work. It was possible that Australia and New Zealand might allow the Chief Justice of Canada to sit in its appeals, but “neither would tolerate the presence on the board of the Chief Justice of any other dominion.” To this, Jowitt added: “It has always been interesting to me to observe how insistent they all are, as was Canada herself in the old days, that appeals should not be heard before a board comprising judges from other dominions.”²⁷

The fear of the insertion of colonial judges into the Privy Council was enough for Australia to insist later in that year [1955] that its appeals should always be heard by 5 English

²⁵ Id. at pp. 89, 312.

²⁶ Backhouse, *THE HEIRESS VS. THE ESTABLISHMENT*, at p. 279.

²⁷ Robert Stevens, *THE INDEPENDENCE OF THE JUDICIARY: THE VIEW FROM THE LORD CHANCELLOR’S OFFICE* (Clarendon Press, 1993), p. 148.

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Law Lords. Kilmuir [the Lord Chancellor] made that commitment.²⁸

With the major dominions moving towards the abolition of appeals to the Judicial Committee, the suggestion was made that the Committee should become a peripatetic court, sitting in the country from which the case had arisen. This met with resistance.

On the 5th of December, 1945 Mr. Justice Barlow of the Supreme Court of Ontario wrote to Lord Goddard: "Psychologically it would lose its appeal if the Throne came to the litigants. The tradition, the ceremonial and the distance, the fact that the court sits in the centre of the Empire would all be lost. The august, learned, elevated Judicial Committee would lose all its mystery if it came to sit in the dominions."²⁹

The court did not become peripatetic.

In Canada, an appellant could bypass the Supreme Court of Canada and petition directly from the decision of a provincial Court of Appeal. The J.C.P.C. heard a total of 667 Canadian appeals, 253 from the Supreme Court, and 414 directly from the provincial Courts of Appeal.³⁰

The judges of the Supreme Court of Canada were rather cynical about this. "As Strong angrily observed during the argument on the McCarthy Act reference, 'Our judgment will not make any difference there: [at the Privy Council] as a matter of fact, they never do. They do not appear to be read or considered there, and if they are alluded to, it is only for the purpose of offensive criticism.'"³¹

²⁸ Id. at p. 156.

²⁹ Id. at p. 152, n. 93.

³⁰ Peter McCormick, *SUPREME AT LAST: THE EVOLUTION OF THE SUPREME COURT OF CANADA* (Toronto, Lorimer, 2000), p. 9.

³¹ Saywell, *THE LAWMAKERS*, at p. 63. Years later these sentiments were echoed by A.P. Herbert in his humorous essay, "Why is the House of Lords? sub nomine *Inland Revenue v. Haddock*," reporting that the Master of the Rolls said:

Whatever our decision, it is certain that an indignant appeal against it will be directed to the supreme tribunal

In these circumstances, at the end of a long and fatiguing term of appeals, we do not feel called upon to consider this particular appeal with

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Canadian counsel with cases before the Judicial Committee had to travel to London. Some kept a wig in London,³² while others had to rent one for the occasion.³³ After some discussion, Canadian Queen's Counsel were recognized and accorded precedence.³⁴

our customary care. But a few general observations upon our appellate system may not be out of place, and will at least satisfy the public that they are receiving full value from this distinguished court.

The human mind is admittedly fallible, and in most professions the possibility of occasional error is admitted and even guarded against. But the legal profession is the only one in which the chances of error are admitted to be so high that an elaborate machinery has been provided for the correction of error – and not a single error, but a succession of errors. In other trades to be wrong is regarded as a matter for regret; in the law alone is it regarded as a matter of course

Now this is strange. The institution of one Court of Appeal may be considered a reasonable precaution; but two suggests panic. To take a fair parallel, our great doctors, I think, would not claim to be more respected or more advanced in their own science than our greatest jurists. But our surprise would be great if, after the removal of our appendix by a distinguished surgeon, we were taken before three other distinguished surgeons, who ordered our appendix to be replaced; and our surprise would give place to stupefaction if we were then referred to a tribunal of seven distinguished surgeons, who directed that our appendix should be extracted again. Yet such operations, or successions of operations, are an everyday experience in the practice of the law.

The moral, I think, is clear. A doctor may be wrong and he will admit it; but he does not assume that he will be wrong. In difficult or doubtful cases he will accept, and may even seek, the opinion of a colleague more experienced or expensive; but if he had to pronounce every opinion with the knowledge that in all probability it would be appealed against and publicly condemned as erroneous, there would be little confidence in the consulting-room on one side or the other, and few medical men would consent to continue in practice

A.P. Herbert, *STILL MORE MISLEADING CASES* (Methuen & Co., 1933), pp. 39-41.

³² John T. Arnup, *MIDDLETON, THE BELOVED JUDGE* (Osgoode Society, 1988), p. 23.

³³ "One point of interest, is the process of renting a wig in London. I was dispatched by our London agents to see a most impressive gentleman in a wig shop near Grey's Inn. He took a wooden device with many spokes going inside a square frame which he put around my head. Then he pushed in the spokes until they all touched my head in a dozen or so places. I present some challenge in that respect.

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On the opening day it was necessary to arrive early for rehearsal on how to enter the room to appear before the Judicial Committee. That was a very formal process and the Registrar was plainly dubious that we had the wit to master it. The process started with all the Judicial Committee seated at their table in the room and all counsel outside in the hall. You then entered one at a time, in strict order of seniority. You took ten steps into the room to a point where a brass plate was inset into the floor. You stopped and bowed. Then you took another ten steps to a second brass plate, bowed again and then turned left if an appellant, and right if a respondent and went to your seat.³⁵

In the old days July was a great meeting time for Counsel from all over Canada, who usually arranged to have their appeals set down for the July sittings of the Privy Council, so that they could combine business with pleasure. This really worked out remarkably well, because our High Commissioner was always able to arrange for us to get into the Royal Enclosure at Ascot and also secured us invitations to the garden party at Buckingham Palace, and one of the Inns of Court always gave a banquet for Canadian Counsel. In addition to this Sir Charles Russell [the eldest son of Lord Russell of Killowen] whose firm of solicitors were, and still are, the agents for the Justice Department at Ottawa, always gave a private dinner at Claridges. In the early years he used to ask the wives of counsel to dinner also, and I can well remember these delightful entertainments and the amusement we got af-

But he showed no sign of despondency as he placed the spokes against the various planes, points, knobs and angles of my head. He went away and a few moments later arrived with a wig with the strings inside all adjusted and dropped it on my head; it was a perfect fit. Fortunately I didn't offer money; I gave him my card with the London Agent's name written on the back. Gentlemen don't discuss money. When everyone had his wig, Bill Morrow produced a photographer who was singularly lacking in talent. The photograph he took now hangs in the Court House at Calgary. We all look like we had had bad clams for lunch." Private Communication from The Hon. Herb Laycraft, 30 March 2002.

³⁴ Stevens, *THE INDEPENDENCE OF THE JUDICIARY*, at p. 157.

³⁵ Private Communication from The Hon. Herb Laycraft, 30 March 2002.

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terwards by the introduction of Houdini, the magician, who always entertained us.³⁶

In 1932, the Statute of Westminster confirmed in law the fact that Canada and the other self-governing dominions were independent of Great Britain. Over the more than 60 years since Confederation, the Canadian nation and its institutions had matured. Criminal appeals to the J.C.P.C. were abolished by an amendment to the *Criminal Code* in 1933.³⁷ Civil appeals were abolished as of 1 January 1950.³⁸ Proceedings commenced prior to the abolition dates could still go to the Judicial Committee, though, and it continued to hear Canadian appeals for many years.

India and Pakistan also abolished appeals to the Judicial Committee about the same time. And so the hill people of that subcontinent were deprived of recourse to their great god, The Judicial Committee of the Privy Council.



³⁶ D'Alton Lally McCarthy autobiography, quoted in Backhouse, *THE HEIRESS VS. THE ESTABLISHMENT*, at p. 277, n. 5.

³⁷ S.C. 1883, c.53 s.17.

³⁸ 1949 (Can. 2d sess.) c. 37, s. 3.