

(No. 62.)



1877.

SESSION IV.

TASMANIA.

HOUSE OF ASSEMBLY.

INTERCOLONIAL COURT OF APPEAL.

CORRESPONDENCE.

Laid upon the Table by the Attorney-General, and ordered by the House to be printed, December 6, 1877.



21st April, 1877.

SIR,

THE great expense and delay attending appeals to England, and the number of cases in which there is no appeal whatever from the Supreme Court of the Colony, has given rise to the feeling in this Colony that some provision should be made for an Intercolonial Court of Appeal.

Probably in the other Australian Colonies a similar want has been felt. It has been suggested to this Government that a practicable remedy may be found in the establishment of an intermediate Court of Appeal for Crown cases reserved, as well as for civil causes, composed of a Judge from each of these Colonies; such Court to hold its sittings at least once a year, at such times and places as may be deemed most convenient to suitors generally, and to be open to the duly qualified practitioners of all these Colonies.

It is unnecessary to enlarge upon the advantages to be gained by the establishment of such an Appellate Court by a Colony such as this where the Supreme Court consists of only two Judges, either of whom differing from the other the cause before them is postponed indefinitely, and a defeat of justice is caused. The Judges themselves too, it may be presumed, would be glad of the opportunity which would be afforded to them by such a measure for the interchange of ideas and mutual intercourse.

I should feel much obliged if you would favour me with your own opinion and that of your Government upon this matter, together with any further suggestions that may occur to you.

If it seems to you and to the law advisers of other Colonies that such a project is practicable, I would further suggest that a Conference between the law officers of the various Australian Colonies should be held in some convenient place for the further and fuller discussion of the subject.

I have, &c.

(Signed)

C. HAMILTON BROMBY.

*The Attorney-General, Victoria, South Australia, Western
Australia, Queensland, New South Wales.*

South Australia,

The Attorney-General's Office, Adelaide, 7th May, 1877.

SIR,

I HAVE the honor to acknowledge receipt of your letter dated 21st April, 1877, requesting me to bring under the notice of the Cabinet the question of establishing an Intercolonial Court of Appeal, in order that you might be acquainted with the views of this Government on the subject.

The Cabinet, after considering the matter, formed the opinion that, as the subject had been many times discussed at former Conferences, and the general opinion appeared to be adverse to the establishment of such a Court, a Conference at the present time would probably not tend to advance the project.

I would also call your attention to the fact, that here we have a Local Court of Appeals consisting of all the Members of the Executive Council, except the Attorney-General, and this Court has power to overrule the decision of the Supreme Court.

If, however, the Governments of the other Australian Colonies favour the establishment of such a Court as that suggested by you, and a Conference should be deemed necessary, I have little doubt that this Government would wish to be represented.

I have, &c.

(Signed) J. C. BRAY.

The Hon. C. H. BROMBY, Attorney-General, Tasmania.

*Western Australia,
Attorney-General's Office, Perth, 6th July, 1877.*

SIR,

I HAVE the honor to acknowledge the receipt of your letter dated 21st April last, relative to the establishment of an Intercolonial Court of Appeal; in which you do me the honor to ask my opinion, and an expression of the views of this Government upon this important question.

This Government fully adopts the view upon this subject taken by our Chief Justice (Sir A. P. Burt), and expressed by him in a letter addressed to the Hon. J. J. Casey, of Melbourne, acknowledging a copy of the first Report of the Royal Commission on Intercolonial Legislation and a Court of Appeal. The letter is dated June 17th, 1875, and a copy of it is to be found in some "correspondence relating to the proposed Fugitive Offenders Bill," recently sent to the different Colonies from the Colonial Office. In the third paragraph of that letter the Chief Justice says:—"As to the establishment of a Court of Appeal, I am of opinion that the valuable privilege of an appeal in the last resort to the Judicial Committee of Her Majesty's Privy Council should on no account be surrendered by the colonists. We should endeavour by all means at our command to induce the Imperial Government so to improve the working power of that Committee as to obviate the delays now complained of, but the colonists never should forego the inestimable advantage of a final decision by a legal tribunal composed of the most eminent and experienced jurists of the age. Many questions may arise in these Colonies; the final decisions of which by local tribunals will never be satisfactory to the litigants. The establishment of the proposed Court of Appeal for Australasia, provided the decisions of such Court be not final and conclusive, will no doubt work beneficially, and in most cases render unnecessary any appeal to the Judicial Committee of the Privy Council. But I would suggest that it be left optional with the appellant to resort to the Colonial Court of Appeal in the first instance, or at once to appeal direct to the Judicial Committee. I perceive that the Commissioners in their report, and in their suggestions for a Bill to be passed by the Imperial Parliament, leave this question as to how far the decisions of the Court of Appeal shall be final for the determination of the several Legislatures."

From this it will be perceived that the Government of this Colony would be prepared to concur in the establishment of such a Court as you propose, provided that its establishment neither deprived litigants of their right to a final appeal to the Privy Council, nor interfered with their right to appeal direct to the Privy Council, if they preferred that course. Inasmuch, moreover, as this Colony has but one Judge in its Supreme Court, we should be unwilling to bind ourselves to contribute to the judicial staff of the proposed Court.

Should your project of calling together a Conference of the Law Officers of the different Colonies be carried out, I trust that you will kindly make me aware of the circumstance, in order that I may have the opportunity, if it should be thought advisable, of attending it, or in the alternative, expressing my views at greater length upon this important question.

I have, &c.

(Signed) HENRY H. HOSKING.

The Hon. the Attorney-General, Tasmania.

Crown Law Offices, Brisbane, 5th July, 1877.

SIR,

I HAVE the honor to acknowledge your letter of the 21st April, calling attention to the question of the establishment of an Intercolonial Court of Appeal in the Australian Colonies.

I have brought the matter under the consideration of the Government, who concur generally in the suggestions of your letter, and will be prepared to give such assistance as may be in their power towards carrying them into effect.

In the event of the other Colonies also concurring, I shall be glad to be informed of the time and place at which it is proposed that the Conference should be held.

I have, &c.

(Signed) S. W. GRIFFITH, *Attorney-General.*

*The Hon. the Attorney-General,
Hobart Town, Tasmania.*

Attorney-General's Department, Sydney, 28th May, 1877.

SIR,

In reply to your letter of 21st April, relative to the expediency of establishing an intermediate Court of Appeal for Crown cases reserved, as well as for civil causes, composed of Judges representing the different Australasian Colonies, I have the honor to inform you that this Government is in favour of establishing such a Court, and is of opinion that a Conference between the Law Officers of the various Colonies should be held in some convenient place for the further and fuller discussion of the subject.

In the event of the other Colonies concurring in the expediency of holding a Conference on the subject, I presume further communications will take place between us with a view to agreeing upon a time and place for the proposed Conference.

I have, &c.

(Signed) WILLM. C. WINDEYER,
Attorney-General.

The Hon. the Attorney-General, Tasmania.

Attorney-General's Office, 20th July, 1877.

SIR,

I HAD the honor to address a letter to your predecessor in office dated April 21st, in the present year, calling his attention to the want existing in the Australian Colonies of an Intercolonial Court of Appeal, and proposing a Conference upon the subject. At the same time I wrote to the other Australian Colonies to the same effect. I have received favourable answers from New South Wales, South Australia, and Queensland, but no answer from your Government.

I should be glad to hear your views upon the matter, and to receive any suggestion as to the most convenient time and place for holding a Conference if in your opinion such a course is advisable.

I have, &c.

(Signed) C. HAMILTON BROMBY.

The Hon. the Attorney-General, Victoria.

Attorney-General's Chambers, Melbourne, 21st September, 1877.

SIR,

I HAVE the honor to acknowledge the receipt of your letters of the 21st April and 20th July respectively, and in reply to say that, I regret that the present time does not seem favourable for the entertaining of your suggestions as to the establishment of an Intercolonial Court of Appeal.

I have, &c.

(Signed) ROBERT LE POER TRENCH,
Attorney-General.

The Hon. the Attorney-General, Tasmania.
