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978-0-521-08559-5 - The Judicial Committee of the Privy Council 1833-1876: Its  
Origins, Structure and Development

P. A. Howell

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CAMBRIDGE STUDIES  
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THE JUDICIAL  
COMMITTEE OF THE  
PRIVY COUNCIL  
1833–1876

ITS ORIGINS, STRUCTURE AND  
DEVELOPMENT

P. A. HOWELL

*Reader in History  
in the Flinders University of South Australia*



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TO MY FATHER

Alan Thomas Howell

AND IN MEMORY OF MY MOTHER

Mary Alice Howell

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## PREFACE

The idea of writing this book was a by-product of research I undertook in the early 1960s, when preparing some entries for the *Australian Dictionary of Biography*. The importance of the work of the Judicial Committee of the Privy Council in hearing appeals from Britain's overseas empire and from English ecclesiastical courts has long been recognized by historians and legal writers, and many of the Committee's reported decisions have been subjected to critical analysis. However, it appears that no scholarly examination of the founding of the Judicial Committee, the development of its constitution and jurisdiction, the provenance of its business, or the early changes in its personnel, accommodation and procedure, has previously been published. The present work attempts to fill these gaps. The year 1876 has been chosen as the terminal date for the study because all who shaped the early development of the Committee had retired, died or completed their main tasks by then, leaving the essentials of its practice settled on lines which are followed today. Even within the limits of the period 1833-76, the volume and range of the Committee's work has made drastic selection necessary. In discussing the various aspects of its operation, particular attention has been paid to the handling of colonial and Indian appeals, for these constituted the largest categories of its business.

It is hoped that this book will be of service to legal practitioners as well as to historians. In the course of my research in Downing Street, I have had the good fortune to meet present-day members of the Judicial Committee and a great many solicitors and counsel. Their questions about the background to current Privy Council practice are, I trust, fully answered below. In addition, I have set forth and

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PREFACE

corrected those errors about the Judicial Committee which have appeared in textbooks and articles widely used in law and history schools.

A previous draft of the book was accepted by the University of Cambridge in 1972 for the award of a doctorate in history. I am indebted to the University of Tasmania and the Flinders University of South Australia for the grants of financial assistance and leave from my teaching duties which enabled me to undertake and, by fits and starts, complete fulfilment of the minimum residence requirements for a Cambridge degree. I must thank the Cambridge University Board of Graduate Studies for matching the grants generously made by my college, St Edmund's House, towards the cost of commuting to the Privy Council Office and other London repositories while keeping terms in Cambridge. I am grateful to my supervisor, Dr Derek Beales, and his family, who did so much to make me feel at home in a country my ancestors quit over a century ago.

My greatest debt is acknowledged in the dedication. I am also grateful to Mr E. R. Mills, the Registrar of the Privy Council, for permitting me to use and quote the materials in the Judicial Committee's archives. He and the Chief Clerk of the Judicial Department, Mr J. K. Dixon, have read and made valuable comments on most of the following chapters; and together with other members of the Privy Council Office staff, notably Messrs L. S. Shaw and G. Glenwright and Mrs V. Dunton, they did much to assist my examination of original sources. The staff of the Public Record Office, the British Library, the Mitchell Library, the Greater London Council, Sir John Soane's Museum, and the libraries of the House of Lords, Lincoln's Inn, University College, London, and the Flinders University of South Australia were also most helpful. Many others have generously supplied advice and encouragement. I am especially indebted to Lord Wilberforce, Tun Mohamed Suffian, Ralph Hague, Roger Jennings, Ronald Wilson, Robert Heuston, Oliver MacDonagh, Daniel O'Connell, Duncan Derrett, Geoffrey Sawyer, David Yale, John Bennett, W. A. F. P. Steiner and the late Sir Owen Dixon. I would also like to thank Jean Lange, Joan



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Stephenson and Dorothy Tynski, who shared the typing of the manuscript, and the staff of Cambridge University Press. Any errors of fact or interpretation are my own responsibility.

Since my manuscript was accepted for publication, some aspects of Brougham's reforms of Conciliar appellate jurisdiction and the implementation of section 4 of the *Judicial Committee Act, 1833* have been canvassed by Dr D. B. Swinfen of Dundee, in articles published in the *Law Quarterly Review* and the *Juridical Review*. I regret that these articles did not come to my notice until the proofs of my book had been corrected. Dr Swinfen's work refers to my doctoral thesis, but in those areas where he relies on his own research there are passages, particularly those based on Lord Campbell's memoirs, which seem irreconcilable with the public records, and there is nothing in Dr Swinfen's articles which I consider requires revision of the findings presented in my book.

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## ABBREVIATIONS AND USAGES

<i>A.D.B.</i>	<i>Australian Dictionary of Biography</i> , ed. D. H. Pike, 6 vols. in progress, Melbourne, 1966–
<i>A.P.C.C.</i>	<i>Acts of the Privy Council, Colonial Series</i> , 6 vols., ed. W. L. Grant and J. Munro, London, 1908–12.
A.P.R.R.O.	Appeals, Petitions, References, Reports and Orders, 15 vols. (Judicial Committee's Archives).
Brodrick & Fremantle	<i>A collection of the judgments of the Judicial Committee of the Privy Council in ecclesiastical cases relating to doctrine and discipline</i> , ed. G. C. Brodrick and W. H. Fremantle, London, 1865.
Clark	C. Clark, <i>A summary of colonial law</i> , London, 1834.
C.O.	Colonial Office Records (P.R.O.).
Del.	Records of the High Court of Delegates (P.R.O.).
<i>D.N.B.</i>	<i>Dictionary of National Biography</i> , ed. L. Stephen, S. Lee <i>et al.</i> , in progress, London, 1885–
Greville	<i>The Greville memoirs</i> , ed. L. Strachey and R. Fulford, 8 vols., London, 1938.
Hansard 2	<i>Hansard's Parliamentary debates</i> , 2nd series, 1820–30.
Hansard 3	<i>Hansard's Parliamentary debates</i> , 3rd series, 1830–91.
Hansard 5	<i>The Parliamentary debates (Hansard)</i> , 5th series, 1909–. <i>House of Lords</i> .
<i>H.E.L.</i>	W. S. Holdsworth, <i>A History of English law</i> , 16 vols., London, 1903–66.
<i>H.R.A.</i>	<i>Historical Records of Australia</i> , ed. J. F. Watson, 33 vols., Sydney, 1914–25.
J.C.	Judicial Committee.
<i>J.H.C.</i>	<i>Journals of the House of Commons</i> .
<i>J.H.L.</i>	<i>Journals of the House of Lords</i> .
Labaree	<i>Royal instructions to British colonial governors</i> , 1670–1776, ed. L. W. Labaree, 2 vols., New York, 1935.
L.P.	House of Lords Papers.
Macpherson	W. Macpherson, <i>The practice of the Judicial Committee of Her Majesty's Most Honourable Privy Council</i> , London, 1860.
MacQueen	J. F. MacQueen, <i>A practical treatise on the appellate</i>

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	<i>jurisdiction of the House of Lords and Privy Council</i> , London, 1842.
Minutes	The Judicial Committee's Minutes, vols. 1-8.
Moore, Special report	E. F. Moore, <i>The case of the Rev. G. C. Gorham, against the Bishop of Exeter, as heard and determined by the Judicial Committee of the Privy Council</i> , London, 1852.
P.C.	Records of the Privy Council Office (P.R.O.).
P.C. Appeals	Records of the Judicial Committee of the Privy Council in appeals from the Ecclesiastical and Admiralty Courts (P.R.O.).
P.E.A.A.	Printed Papers in Ecclesiastical and Admiralty Appeals, 36 vols. (Judicial Committee's Archives).
P.I.C.A.	Printed Papers in Indian and Colonial Appeals, folio series, vols. 19-147 (Judicial Committee's Archives).
P.P.	House of Commons and Command Papers.
P.R.O.	Public Record Office.
Reeve	<i>Memoirs of Henry Reeve</i> , ed. J. K. Laughton, 2 vols., London, 1898.
Safford & Wheeler	F. Safford and G. Wheeler, <i>The practice of the Privy Council in judicial matters</i> , London, 1901.
Smith, <i>Appeals</i>	J. H. Smith, <i>Appeals to the Privy Council from the American Plantations</i> , New York, 1950.
S.R. & O.R.	<i>The Statutory Rules and Orders Revised</i> , ed. A. Pulling, 2nd edn, London, 1904. As each section of this collection has its own pagination, the location of any Order is identified by the volume, the section heading and the page(s).

English and colonial law reports are cited by the abbreviations given in Sweet & Maxwell Ltd, *Guide to Law Reports and Statutes*, 4th edn, London, 1962.

Page references in citations to House of Commons and Command Papers relate to the official MS. pagination of the relevant volumes. In the case of House of Lords Papers, page references relate to the printed page numbers of the papers cited, because most collections of these documents lack the official MS. pagination.

Dates from 1 January to 24 March until 1752 are given in the form '20 February 1627/8' at the first mention and '20 February 1627' thereafter.

The spelling, capitalization, punctuation etc. employed in the sources are reproduced in all quotations. The names of the parties to appeals are given as in their printed cases.

The style 'Privy Counsellors' has recently become fashionable in Whitehall. I hope my friends there will pardon my adherence to the form 'Privy Councillors', which was standard in the nineteenth century, and which has been defended in the present one by H. W. Fowler and other distinguished lexicographers.