ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

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ABSTRACT OF THE PROCEEDINGS

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ASSEMBLED FOR THE PURPOSE OF MAKING

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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 19th January 1875.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*

The Hon'ble B. H. Ellis.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble Arthur Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble John Inglis, C. S. I.

The Hon'ble R. A. Dalyell.

The Hon'ble H. H. Sutherland.

The Hon'ble J. R. Bullen Smith.

The Hon'ble Sir Douglas Forsyth, K. C. S. I.

DISTRESSES (PRESIDENCY TOWNS) BILL.

The Hon'ble MR. HOBHOUSE moved that the Reports of the Select Committee on the Bill to regulate Distresses for Rents in the Presidency Towns be taken into consideration. He said that the Committee had made two separate reports, and he took the opportunity on one occasion of explaining to the Council what was the subject of the first report. The second report related to a new introduction into the Bill, in consequence of a valuable suggestion received from the Association of Attornies, of a clause to provide for the transfer to the High Court of cases in which the value of the property distrained exceeded one thousand rupees. They pointed out that under this Bill Small Cause Courts would have, or might have, to deal with large amounts of money; that the property distrained was sometimes very considerable; that we should in effect be enlarging the pecuniary jurisdiction of Small Cause Courts a good deal, and that it would be more satisfactory in such cases to enable them to be removed to the High Court. The Committee had therefore inserted a section to that effect, and that was the subject of their second report. He did not know, after what had been already said about the Bill, that he need do more now than give the Council a summary of the alterations

it made in the present law. He had already explained that it swept away a great deal of antiquated law, and relieved the statute-book of several statutes which contained a great deal of matter that was of no use, as much as was useful in them being comprised in the Bill. The alterations made by the Bill were these: First, the Committee provided that no distraint should be made for rent due for more than twelve months. That suggestion had been received from the Government of Madras, who had sent in a very thoughtful and carefully considered letter on the subject of this Bill. There seemed to be no such thing as a distraint for rent in Madras, and the Government of Madras thought, and a great many excellent lawyers thought, that the whole system of distresses for rent was a mistake, and that it would be far better to abolish the system altogether. MR. HOBHOUSE was not prepared to do that. The system prevailed largely in Calcutta, and also existed in Bombay; and he thought the Council ought not to interfere with it. That it did not prevail in Madras was a subject of congratulation; but he was not prepared to bring the law in Calcutta and Bombay into conformity with the practice in Madras.

The next alteration made by the Committee was to make it clear that the property to be seized should be the property of the debtor. There were sometimes cases which gave rise to disputes and to much hardship, where the property seized was the property of some person wholly unconnected with the rent for which the distress was issued. The Committee also provided that certain articles should be exempted from distress. Such articles were now exempted in cases of execution by law, and in practice they were usually exempted from distresses for rent. We did not take a coat off a man's back, and therefore the Committee had provided that things in actual use—a man's necessary wearing apparel and the like—which were protected from being seized in execution, should also be exempted in distresses for rent. That also had been suggested to them by the Government of Madras.

Then the Bill proceeded to deal with claims and disputes which arose out of distresses. The Committee had given to the Court which decided all other questions on the subject of the distress, namely, the Small Cause Court, power to adjudicate claims of third parties, and claims for damages or compensation where the distress was unlawful. Then there was the last alteration to which MR. HOBHOUSE had already referred, that when a distress exceeded a certain value, there should be power to transfer the case to the High Court.

These were the alterations in the law which the Bill proposed to make.

The Motion was put and agreed to.

The Hon'ble Mr. Hobhouse also moved that the Bill as amended be passed.

The Motion was put and agreed to.

INDIAN LAW REPORTS BILL.

The Hon'ble Mr. Hobhouse also moved that the Report of the Select Committee on the Bill to diminish the multitude and improve the quality of Law Reports, and to extend the area of their authority, be taken into consideration, and said:—"As it is now some ten months since this matter was before the Council, it will probably be necessary that I should remind them of what has taken place, and recapitulate very briefly the objects and scope of the measure now proposed. It is the more necessary to do so, because there has been an amount of controversy raised in the papers sent in to the Select Committee akin to the controversy raised at this table; controversies, as I shewed before, quite unwarranted by anything comprised in this Bill, and to a very great extent irrelevant to it, and relevant only to a plan contemplated by the Executive Government, or to other plans erroneously attributed to it.

"Before explaining what it was that the Council were asked to do, I told them that it was only a small portion of a larger plan contemplated by the Government of India for improving the condition of the Law Reports. I explained the function of a Law Report, and shewed how it passed into and became part of the general law of the land; how important, therefore, it was to exercise judgment in the selection of cases to be reported, and to issue them with some stamp of authenticity upon them, so that only that which is useful and accurate should be looked on by the lawyer as a necessary part of his library; but that in this country the matter had been left to private speculation with only some pecuniary assistance given by Government; that consequently the public interest, which is to have nothing but good reports of nothing but useful precedents, had become entirely subordinated to the commercial interest of the publishers, which is to have the largest price at the smallest expense and trouble to themselves: that owing to the fact that all reports are received as of equal authority, one man's publications must be bought just as much as another's; and that the consequence was that we have reports bulky, expensive, and to a great extent useless, which nevertheless the profession are compelled to buy. Such is the result of the combination of the two prevailing principles; first, that law reporting is a fit subject for commercial speculation, and next that Law Reports are to be treated as binding authorities from whatsoever source they emanate.

"All this I proved in detail by evidence and authorities of various kinds; and I stated that the Government would attempt to apply a remedy by taking the business of reporting in the High Courts under their own supervision. If that were done, and done with reasonable efficiency, there would at any rate be a set of reports bearing some stamp of authority upon them, and they would be published by those who might be trusted not to allow commercial motives to outweigh their sense of the public interest. If, again, the Bar would use for the purpose of citation in Court, and the Bench would receive as authorities, only the authorized reports,—a thing entirely within their power,—the professional man, who did not desire to buy others, would not be compelled to do so.

"But such a scheme as that requires no legislation, and I explained that there were only two points on which the authority of the legislature was invoked, and that on one of those points I could hardly say that it was actually requisite.

"The point I have just referred to is that which is embodied in the third section of the Bill, which I will read to the Council.

'No Court shall be bound to hear cited, or shall receive or treat as an authority binding on it, the report of any case decided by any of the said High Courts on or after the said day, other than a report published under the authority of the Governor General in Council.'

"Now that is only what the Courts, or at least the superior Courts, may now do for themselves if so minded. It is what the Bombay High Court, who object to this measure, say is the right thing to be done as between better conducted and worse conducted reports; such publications, for instance, as the Bengal Law Reports and the Calcutta Weekly Reporter. It is what they tell us they are themselves prepared to do as between those two publications, if only the Calcutta High Court will lead the way. But such things have been said over and over again, and occasionally Judges have been found who have tried to work the experiment. But they have never succeeded. There has not been sufficient unanimity or persistence in the attempt and there is no reason to suppose that there will be more now, if each Court or Judge is left to act entirely on his own motion. With a declaration of the legislature to support them, there will at least be a better chance. And we may by such a declaration free subordinate Courts from the terror and oppression of the numbers of obscurely reported cases with which it is said they are bombarded, so that they shall not be blamed if they refuse to receive those imperfect reports as binding authorities. Such a provision, therefore, as the one under consideration, may strengthen the hands of those who desire to have

good reports and good ones alone to guide them. And if we should succeed in supplying that essential article, a good report, and I always say we shall fail unless we do supply it, we may possibly succeed in getting it received as the only authoritative exponent of judicial law, however much others may be used for other purposes. I repeat that we may easily fail; we certainly shall fail unless the Bench and the Bar are disposed to act in the spirit of this section; but I ask the Council to pass it as embodying a principle which even opponents admit to be sound, and as giving some aid to those who desire to improve the present condition of law reporting in India.

"The other object for which the action of this Council is invoked, is not necessarily mixed up with any particular system of reporting; for it would, at least in my opinion, be desirable even if we had no such scheme of reporting as that now contemplated; and again the scheme may work well enough without any such new law. But it is connected with some system of reporting, though not with any particular system, and it naturally falls to be considered when we are dealing with the subject. It relates only to the geographical area within which the decisions of the superior Courts are to be accepted as binding authorities. At present a High Court—say the Court of Madras—may place an interpretation on a general law—say the Penal Code—and that interpretation will have no binding force out of the province. A Bengal Magistrate may disregard it or know nothing whatever about it, and *vice versâ* the Madras Magistrate is a stranger to the Bengal decisions. The reason for that state of things is to be found in the history of the country. The different presidencies had originally a very loose connection with one another, and when Crown Courts were established for them, the law which those Courts administered in common with one another was confined to the presidency towns or to the British people. At the present day all parts of British India are bound up much more closely together: they are subject to a common authority in India, both executive and legislative, and there are great Codes of Law enacted for the whole community. It is now therefore a decided drawback that when a valuable exposition of a portion of that general law has been made by one of the superior Courts, the whole community should not have the full benefit of it.

"I will mention a case which happened soon after I came to India, and which first drew my attention to the existence of this anomaly. It did not arise in connection with law reporting, and it illustrates the remark I made just now, that this portion of the Bill may rest on its own merits, independently of any particular system, and in connection with any system, of reporting.

"There are many actions committed by men, which, according to circumstances, may be crimes of a deep dye, or venial offences, or mere personal vices hardly to be classed among crimes at all. Yet for the legislature to distinguish accurately between such cases is quite impossible. The law must use some general expressions which, if they are to be very rigidly and literally interpreted, might have the effect of subjecting to severe punishment actions which ought only to be punished very lightly, or ought not to be punished by the hand of any human ruler at all. Such is the case with portions of the Penal Code. One section of it in particular, if its language be construed quite literally, visits with the liability to fine and to ten years' imprisonment, an action which in its simplest form is extremely common, which rather bears the character of a vice than of a crime, and so has usually been left by all laws other than ecclesiastical laws to carry its own chastisement with it. But under some circumstances this same action may be a crime of a most odious character, and one affecting society in a vital point. Well, it happened that a person who had committed this action in one of its simpler forms was charged before a Madras Magistrate and sentenced to a severe punishment. On appeal the High Court of Madras reversed this sentence, pronouncing a most sensible judgment, cutting down the literal meaning of the section, putting a reasonable interpretation on it, and confining its operation to what would be really grave offences. Afterwards, a similar case occurred in another province; and again the Magistrate convicted the accused and sentenced him to severe punishment. The Magistrate probably knew nothing of the Madras decision; but if he did know, he was entitled to disregard it, and he preferred the literal construction of the Code. Now, that is a serious matter. Draconian laws invariably bring the whole law into contempt, and set the sympathies of people to work against the law and in favour of offenders. The subject-matter is one on which accurate distinctions cannot be attained by the legislator, and on which I for one think that if we attempt to alter the Penal Code, we are quite as likely to mar it as to mend it. It is one, therefore, eminently fitted for judicial exposition, which can introduce a number of shades and qualifications unattainable in a statute. The thing wanted, therefore, is to bring the Madras decision home to the subordinate Courts in other Provinces, but that, as the law and practice at present stand, is impossible.

"Now I appeal confidently to all who hear me, and ask them whether it is not an inconvenient—not to say an absurd—thing, that a decision by the High Court of Madras on a very important Statute which affects the whole of British India alike, and which touches human actions of very frequent occurrence, should be received as law in Madras, and that, directly it

reaches the boundaries of that province, its authority should cease? Is it not clearly right that the whole of British India should have the benefit of an interpretation placed by a Court of the highest rank on a law passed by this Council for the whole of British India? Surely such a decision should be co-extensive with the law, and should carry with it whatever authority its own intrinsic merits and the degree of its harmony with other decisions of co-ordinate Courts may entitle it to have.

"This object, then, is aimed at by section 2 of our Bill, which I will now read.

'Every judgment delivered on or after such day by any of the said High Courts (whether by a Judge sitting alone, or by a Division Court, or by a Full Bench) and reported in the said Indian Authorized Law Reports, shall have the same authority in all subordinate Courts beyond the limits of the appellate jurisdiction of such High Court as independently of this Act it would have within such limits.'

"The Council will observe that, in this section and also in section 4, we carefully guard against giving to judicial decisions any more binding quality of authority than they have now. All we seek to do is to extend the area of their authority, and we do it by connecting it with our scheme for reports, and so securing that the decision which is to have this extended authority shall not be one reported at haphazard, but shall be as accurately given and in as useful a shape as a responsible reporter can make it.

"Well, but it may be asked whether this object requires legislation. I will not say that in any strict legal sense it does. It would, I suppose, be competent for the Courts here to say that they would receive one another's decisions as binding equally with their own, and in process of time such a practice would be recognized law, just as much as it is now law that the decision of a superior Court shall bind the Courts subordinate to its jurisdiction. Just in the same way the Courts of the United States have ruled that English decisions are binding authorities there, and that practice has passed into the law of the country; while the English Courts only receive the United States' decisions for purposes of instruction and not as binding authorities. But having regard to the history that I have referred to, and the long course of practice resulting from it, I say that that which is legally possible is practically impossible, and that unless the legislature does it, the thing will not be done at all.

"The main objection raised to this proposal is one which was indicated by my hon'ble friend, Mr. Dalyell, when the Bill was introduced, and I answered it at the time. But as it has been brought forward again in some quarters

entitled to the highest respect, I will again give an answer to it, and in somewhat more detail.

"It has been objected to this Bill that it provides no machinery to prevent contradictory rulings. But I never heard of anything that could prevent them. As long as we have independent minds giving decisions on the same subject, so long we shall have contradictory rulings. It does not seem to me desirable, if it were possible, to prevent such a result, nor, if it were desirable, would it be possible.

"It is quite true, then, that it is no part of our scheme to prevent contradictory rulings. It is also true that, when the ruling in one presidency may be quoted as binding authority in another, contradictory rulings are likely to be brought to a direct issue with one another more quickly than before. But that I look upon as one of the advantages to be gained. See the effect of the present system. You may now have two streams of decision at variance with one another, running on side by side in two contiguous territories nominally subject to the same Code of Law, and in which there is no reason why the same law should not prevail. Referring, for instance, to the cases under the Penal Code which I have just stated, we find a class of actions which may be committed with legal impunity in Madras, and just over the border may be the subject of severe punishment. And yet the Penal Code is the law in both places. Referring, again, to an instance I quoted on a former occasion, we find two adverse currents of decision going on in Bengal and in the North-Western Provinces under the same section of the Rent Act; going on for several years, until one of the High Courts alters its views and adopts the views of the other. I say that it is much more for the benefit of the public that when such differences arise, as arise they must, they should be brought face to face, and that each Court should be compelled to revise its work in the light and under the pressure of the other's decision. Of course, if the difference of opinion is found to be final and irreconcileable, it must be settled by some superior authority: either by the Privy Council, which may operate on some cases, or by the legislature, which can operate on all. But, as I have just been showing, there are many cases in which a judicial exposition, if it can be got, is far better than an utterance by the legislature, and in which, therefore, the legislature would only act when its action was found to be absolutely necessary. And in other cases the legislature is not wise enough to know in which direction to settle a dispute until it has been threshed out by a sufficient number of judicial controversies, a point which I illustrated on a former occasion by reference to the history of provisional committees in England. It is therefore in every respect better that the contradictory interpretations of a law common to all

India should be brought into collision with one another in a direct, open, and speedy way, than that they should exist in the more embarrassing form of conflicting laws for places intended and supposed to be under the same law.

"But then it is said; how is an inferior Judge to guide himself? how he is to act when he finds the decision of his own appellate superior conflicting with that of another High Court? I answer that Judges are appointed to settle doubts, and that he must act as other reasonable men act when they find themselves in the presence of a doubtful and debateable question. I know how I should act. The conflict of authority might come to me in many different shapes. It might come on a point on which I myself had a very clear opinion that my own Appellate Court was wrong, and that it would on reconsideration adopt the conflicting judgment. In that case I should follow my own opinion. It might come on a point on which I could form no very decided opinion. In that case I should follow my own Appellate Court. I might find that the opinion of one Court was that of a single Judge not assisted by Counsel, and very briefly delivered; while that of the other was given by a number of Judges, unanimous in opinion, assisted by careful arguments of Counsel, and delivered in a carefully reasoned judgment. In that case I should follow the weightier judgment. I might find that my own Appellate Court had delivered its opinion deliberately, and after full consideration of the conflicting decision. In that case I should follow my own Appellate Court. Many other cases might be put in which a man would be guided one way or another by various circumstances. But no serious practical difficulty that I see would arise: certainly none which English Judges are not in the habit of encountering, and which Indian Judges may not now have to encounter, when the Divisions of their own Appellate Courts have differed in opinion.

"There is another class of objections put forward, which, if I really have understood them aright, are somewhat surprising. We are told that there are different schools of law and different customs prevailing in different parts of the country, and that it will be very dangerous if a decision given with reference to one school and one set of customs is to be quoted as binding authority for another. No doubt it would be very dangerous: but I cannot make out how the danger is increased by this Bill. Nobody supposes that a decision about a promissory note will be quoted as an authority in a horse-cause, though the Court which pronounced it has equal authority in both cases: why then should we suppose that a decision relating only to Hindús will be applied to Muhammadans, or that one relating only to Sunnis will be applied to Shiás, or that one relating only to the Benares school will be applied to the Bengal

school, or that one relating only to Bengal customs will be applied to Bombay customs? Local and personal laws and customs are not divided according to the local area of the jurisdiction of the High Courts. The Calcutta High Court, for instance, has Hindús and Muhammadans, Shíás and Sunnis, different schools of law and different local customs, within its jurisdiction. For each set of litigants it decides according to their own law. I have not heard that any confusion is thereby created because the Calcutta decision is authoritative throughout the whole of Bengal. Why then should any confusion be created by giving it precisely the same quality of authority in Bombay? The long and the short of the matter is, that if the law is the same for the two places, there must be conflicts of opinion about it, and then it is better to bring them to issue as quickly as may be; but if it is not the same, no conflict can occur.

"Such, then, is the Bill as the Select Committee presents it to the Council; and before I go on to speak of the plan with which it is connected, I will mention what alterations have been made in Committee. There are only two, and neither is important. One is, that instead of making it come into force on a given day, we say that it shall be brought into force by notification. The reason is that arrangements have to be made with the staffs of reporters. I am not aware of any difficulty in the way of such arrangements, but there has been some delay in making them, and we thought it would be more convenient not to bring the Act into operation until they were concluded. The other is that the Bill as introduced contained a definition of the expression 'Subordinate Court,' which affected the highest Courts of Appeal in the Panjáb and elsewhere. It was not necessary; it has been objected to, and it has been struck out. The clause being gone, I do not argue about the soundness of the objections; for I have so much still to say that I avoid all unnecessary matter.

"Now, I have been very particular in explaining to the Council the precise extent and character of the contents of the Bill, because they will find that the somewhat emphatic opinions which have been expressed against it are really not directed to anything contained in it, but to a scheme that it is connected with, and to a very erroneous conception of that scheme. The main objection really is to any interference at all by Government with the present system of reporting; and that, under the notion that our object is, not the simple one of getting fewer and better reports, but the very ambitious one of getting a control over the substance of the law by means of reports. And though I have shown that the scheme may well go on without the Bill, and that

the only piece of legislation in the Bill strictly so called is to be desired independently of the scheme, yet, connected as the two actually are together, I cannot be surprised if those who object to the scheme endeavour to tack their objections on to the provisions of the Bill.

"Now it might, perhaps, be sufficient on this part of the case to say that the Council have on two occasions accepted the principle of some legislation in connection with a scheme for the supervision of law reporting by Government. When I moved for leave to introduce the Bill, I detained the Council a long time, and I have no doubt they were very weary of me, while I proved in detail the case for interference by Government; and there was no opposition to the introduction of the Bill. When I introduced the Bill and moved to refer it to a committee, there was opposition, and if the Council then incurred any danger, it was not for lack of warning. My hon'ble friend, Sir George Campbell, then occupied that empty chair, and he set forth his objections with all the force of rhetoric of which he was so great a master. The Bill was a revolutionary Bill; it was an unconstitutional Bill; it set up an irresponsible judge over responsible judges; it placed an enormous power in his hands; and in short it would be a very wrong thing to send it into committee. Nevertheless, the Council did send it into committee. I conceive that, if any principle was decided on these two occasions, it was the principle that Government was right in attempting to take the supervision of law reporting into their own hands, and that assistance in some shape should be given to them. At the same time I always feel that in this assembly we discuss matters under great disadvantages, and that on many subjects the communications made to Select Committees have more of the essentials of a public discussion than anything which takes place at this table during the two first stages of a Bill. For this reason, though the previous decisions of the Council are certainly not to be disregarded, yet I am very reluctant to use them as preventing further debate when the ground-work of the measure is attacked from without. I therefore think it right to acquaint the Council with the principal objections made to the whole scheme of reporting under the supervision of Government. I will only ask you to bear in mind the arguments I adduced in its favour and the answer I made to objections advanced here—topics which I have no intention of discussing all over again.

"Neither will I detain the Council by reading the opinions of those who think the measure a right and good one. I will only say that the High Court of Calcutta and some eminent district officers in Bengal approve of its principle; and that the only body in India which has actual experience in

the business of law reporting, namely, the Calcutta Council, has cordially acted with the Government from the outset of the scheme. I will now refer to the objections, and first I take those which come from Madras.

"The High Court of Madras have not sent in any collective opinion. But I hold in my hand a Minute written by Mr. Justice Innes, who first states the objection arising from the differences of local laws—an objection I have already dealt with. He then proceeds thus—

'Nor do I believe that the evil aimed at will in the least degree be diminished. The Government Reports will be so scanty that the Profession and the public will demand more, and the demand will certainly be followed by the supply. It is useless for the law to say that the High Court shall not be bound to receive anything as authoritative but what is in the Government authorized Reports, if other Reports are still sold and consulted, and though not publicly quoted, still used as guides to a decision.

'The Government Reporters under a Central Editor, practically uncontrolled, will determine what to report and what to leave unreported. Important decisions adverse to and disapproved of by the Government may thus be excluded. Nor does there appear to be the smallest guarantee for the qualifications of the Reporters being equal to the delicate duties they will have to perform. I strongly disapprove of the Bill.'

"Mr. Justice Kindersley writes thus:—

'I object strongly to the third section, which places it in the power of the Government to exclude from the law any decision of which it disapproves. The matter is quite beyond the proper scope of legislation; and in my opinion the Act cannot fail to be mischievous.'

"And the Government of Madras say as follows:—

'His Excellency strongly deprecates the institution of the office of Central Editor with the powers of control and selection suggested for him. He is of opinion that, if a High Court interprets the law contrary to the intention of the legislature, the proper remedy is for the latter to pass a declaratory Act.'

"Now the Council will observe that Mr. Justice Innes makes two objections to the whole plan. The first is, that it will fail in checking the multitude of reports. I have already said that in my opinion it may easily do so, and certainly will, if treated hostilely by the Bench and the Bar; and I think that such a failure will be the worst that can come of the attempt we are about to make. The second objection is, that the scheme will not fail; it will not only not fail, but will be so terribly efficacious that no rival will exist in its presence; that the Government will become the sole mouth-piece of judicial law, and will be able to mould it as they please. And in this objection Mr. Justice Kindersley and the Government of Madras express their concurrence.

"Now, I wholly agree with Mr. Justice Kindersley in thinking that to place it in the power of the Government to exclude from the law any decision of which it disapproves is strongly objectionable, and is a matter quite beyond the scope of legislation; and with the Government of Madras in thinking that the proper remedy for inconvenient decisions (at least when they are final) is legislation. But I do not see how those opinions constitute any objection to the scheme of this Government, because it is absolutely certain that no such operations as they imply are contemplated, or will be attempted, or could succeed if they were attempted. But before I go further into the matter, I will read the opinion of the High Court of Bombay, who have enlarged somewhat more upon it—

'We agree in the opinion of the Government of India that it is desirable to diminish the quantity and improve the quality of the reports published for forensic use in British India; but while perfectly satisfied of the excellence of the intentions and single-mindedness of the Government of India in the matter, we think that the proposed legislation is unnecessary, objectionable in principle and unprecedented.

'Law reporting is, in a certain sense, a branch of legislation. Decisions in the Superior Courts of Justice in the United Kingdom and its Colonies, which endure the test of time and free discussion, no doubt become additions to the law; but it does not thence follow that law reporting should be, in any respect whatever, under the superintendence of the most frequent litigant in the Courts of this country, namely, the Government itself, or that the Reporters should be nominated or controlled by that litigant. A proposition more completely contrary to sound principle than that the Reporters should be either under the influence or control of Government, it is difficult to conceive. It is most undesirable to leave room for the belief that Government has secured to itself, or its nominees, the power of preparing or suppressing the reports of decisions which it may suppose to be hostile to its interests or policy. It may be said that it is not to be supposed that Government would stoop to make an improper use of such opportunities. We ardently hope that would be so; but if there be any part of the British Empire in which such a power would be objectionable, it is in India, where the Government is more completely despotic than in any other country under British rule, and where it has not always the most favourable construction placed upon its acts. The legislators, in the case of what Bentham styles 'Judge-made law,' are the Courts, and if the circumstances of this country at present are such that law reporting cannot flourish as a private enterprise, and ought to be supported at the expense of the State, and, with a view to improvement in quality and diminution in quantity, to be placed under some control or superintendence, it manifestly should be placed under the control or superintendence of the Courts, and not of the Government. The tribunals which pronounce the decisions must know best whether or not they are correctly reported, and to what extent it is desirable that they should be reported.

'Honourable and pure as we are assured that the motives of the present Government of India must have been in introducing this Bill, and suggested, as legislation on the subject of law reporting very probably was, by persons not members of Government, yet it is manifest that, as regards law reporting, Government is in the position of Cæsar's wife,

and that no Government, present or future, ought to be subjected either to the temptation or the suspicion of being able to suppress the publication of decisions adverse to it or involving principles which it may deem likely, at some future time, to be inconvenient. The nomination and dismissal of the Reporters ought to rest, as does that of all other officers of the High Courts under the Charters, with the Chief Justice of each High Court, and should not be vested in Government, nor ought it to take any part in the preparation or selection of the cases to be reported. Those who are acquainted with the earlier or later history of British India are not unfamiliar with the exhibition, by executive officers of Government, of jealousy of the Courts of law of this country, and it is an untoward, although of course merely a fortuitous, coincidence, that while Government, at the suggestion of such officers, is, on the one hand, seeking, so far as may be, to exclude by legislation the jurisdiction of Courts of law in matters of revenue, it is, on the other hand, by legislation also, essaying the establishment of a monopoly of all authentic law reporting, whereby (although we cannot suppose its intention to have been so) it will be empowered to suppress at pleasure the publication of the decisions in such Government cases as may still remain within the cognizance of those Courts, and as may be obnoxious to Government. It is said that it is in its Legislative Department that the Government of India is to undertake this new charge; but it is not and could not be asserted that the Legislative Council itself will exercise any supervision in the matter; and it would be wholly unsuitable that it should take any part in it. Law-reporting under this Bill would in fact be in the hands of nominees of the Executive Government, and the circumstance that the chief of those nominees might also be named by that Government to assist the Legislative Council in the performance of its duties, would not remove any one of the objections which exist to the proposed scheme.'

"Then the Government of Bombay, in forwarding this opinion, say as follows:—

'I am to state that these Reports seem to His Excellency in Council to raise many weighty arguments against the measure, and that he is constrained to express his entire concurrence in the objections taken to the centralization in one series of Reports of the decisions given in all parts of India, and to the right of control over the acts of the Reporter, which it is proposed to vest in the Executive Government, instead of in the Courts of Law.'

"From that last expression 'instead of in the Courts of Law,' I gather that the Bombay Government are labouring under a mistake. There is no control vested in the Courts of law; it is proposed to vest it, though not by this Bill, in the Government instead of in nobody.

"But to go on with the main objection as stated by the learned Judges. I accept with all sincerity their disclaimer of imputing any sinister motive to the Government. But then, what is the meaning of all this that I have been reading? Spotless as we are, what is the danger to be feared from us? Either all this must mean nothing at all, or it must mean that we are going to do a very wrong thing; that, being the most frequent litigants in the country, we

shall be tempted, and, in spite of all our purity and innocence, shall fall; that we shall garble reports; that we shall palm off our base coin upon the public as the true issue of the judicial mint.

"Now, if I were of a querulous disposition, I should complain a little of our friends in Madras and Bombay, that they have dealt us somewhat hard measure, for while they impute to us schemes of daring ambition, they do not credit us with as much common sense or worldly wisdom as would suffice to conduct the business of a retail haberdasher. I will not avail myself of the generosity of the Bombay High Court, but will suppose that, instead of being spotless as snow, we are very leopards or Ethiopians, and that we entertain nefarious designs of advancing our own interests through right and through wrong. What is it supposed that we shall do? First, it must happen that some evilly-disposed branch of Government finds that an inconvenient decision has been passed against it: the matter is of importance, but it is not advisable to appeal, nor to attempt any alteration of the law. But the bright idea occurs to them, that if they can only prevent the case from being reported, it will do them some good, though they must obey the decree, and though they must know that the same point, when it occurs again, will probably be determined the same way. So they apply to the Editor of the Reports, and the two conspire together to suppress the decision, though otherwise worthy to be reported and sent up by the Reporter as such. All this is done to gain what? Just the barest chance that the decision may be forgotten, and that when the same point happens to occur again, it will come before another Court who may decide it another way. But what is the risk run? If the decision is of the slightest importance, will the Court, the Bar, the vakíls, and the public forget all about it? The chances are a hundred to one against it. And then, what will become of our scheme? It will immediately become known that we are using reports to give onesided views of the law; the character of our reports will be blown upon; nobody will be content with authorised reports, because they cannot be trusted to give the really important cases; and reporting on the commercial principle will, by our own folly, be fixed on a firmer basis than ever. In fact, it is a matter of the greatest surprise to me how such an objection can be made otherwise than in the heat of debate and on the spur of the moment; and I feel it difficult to address myself with due gravity to so chimerical an apprehension.

"Well then it is objected that the scheme of the Government is not embodied in the Bill; but that objection does not proceed from any one who is friendly to the scheme. Members of Council have in their hands copies of some rules intended to shadow forth the sort of way in which the Government

proposed to start the work of supervision. They will observe that the whole thing depends very much on the relations between the Editor, the Reporters, and the Judges, which must be adjusted from time to time, perhaps at short intervals. At the present moment circumstances point to our learned Secretary as the fittest person to be Editor; but whether that can be a permanent arrangement cannot be told till after actual experiment. In fact it is a new thing, and there is no part of it which it may not be necessary to mould afresh according to circumstances. There is not the least reason why a process of pure administrative detail should be embodied in a law, and if I were asked how to ensure failure for the scheme, I should say that the best plan was to make it rigid and inflexible by law.

"Now I come to the only alternative scheme proposed by those who object so strongly to ours. It will be remembered that the Bombay High Court agree with us that it is desirable to diminish the quantity and improve the quality of the Law Reports. They only object to our method, and they say that the proper course is for the High Courts themselves to undertake the supervision of the reports. They write as follows:—

'We think that the statements of facts and of the arguments, and the head or marginal notes, should be submitted to and revised by the Judges who have presided in each reported case, as well as the judgments, which are, and for a long time past have been, so submitted and revised; and under this being done, we think that the reports should be stated on the title-page to be published under the authority of the Court. The first of the above alterations will subject the Judges to some additional labour, but it is a duty which we are perfectly willing to undertake. Looking to the position of the Editor of the Reports as an officer of the Court, we have no doubt that we have full power to make those alterations in the system at present existing here, and that the Reporter will be perfectly ready to carry our views into effect.'

"Well, that is a proposal often made and never, so far as I know, acted on with any persistency. We cannot make the Judges do this work. We have no such offer from any other High Court, and from what I learn from conversation with Judges here, I do not believe that they would, or properly could, undertake the business. And I must say that I feel a little sceptical about the time at the disposal of the Bombay High Court, with all their good-will. I hear of them sometimes in connection with other things besides Law Reports. I remember their making an application for an additional Judge on account of the arrears of business, which application was successful. I am not sure that there are no arrears now. I observe that their letter on this very subject concludes in these terms:—

'We must apologise for the delay in replying to your Excellency's communication as to the Bill, the subject of our letter. The pressure of our ordinary business is such that we have much difficulty in finding time to write upon new projects of legislation.'

"The letter is a very full and very able one, and it must have cost thought and time; but I fancy that it is a less laborious business than the supervision of a volume of reports. Therefore I cannot help feeling my doubts. At the same time, if the Judges of that Court will be so good as to give attention to the matter, and find that their more immediate business leaves them leisure for it, I most freely and frankly admit that it is sure to be better done than it could possibly be otherwise: their assistance will, I am sure, be most heartily welcomed; and the Editor will probably enjoy almost a sinecure as regards the Presidency of Bombay.

"Indeed, the Bombay Judges give us to understand that their reports are even now to a great extent supervised by them and are on a par with the best reports elsewhere. They may be very good, and if so, it is certain that there will be exceedingly little interference with them. But I still think they would be better for some amount of supervision, and will give an illustration of the way in which I conceive that supervision would work.

"I have not to consult Indian reports very often, and it so happens that, of the Bombay reports, I have only looked at one since I read the letter of the High Court. I wanted to ascertain the exact terms of the decisions on a particular point, and this case was mentioned in a text-book as bearing on it. Well, I read the head-note, which made the decision refer to quite a different point. On dipping into the report, however, I found that the head-note did not state as being decided the point which really was decided, but did mention as the decision that which was only a dictum not necessary for the decision: and I further found that the statements of fact by the Reporter and by the Judge were at variance. Now, those are matters in which supervision would be of use. We are told that unless the Editor has understanding of the special matter reported on, he cannot supervise a report. I think he can usefully do so if he is familiar with reports, and keeps before his eyes the points to be attended to in framing them. In the case in question, I had no special knowledge of the subject; but I could see that neither the head-note nor the statement of facts corresponded with the judgment. If I had been Editor, I should have sent the report back to have a proper head-note affixed, and to have the facts correctly ascertained and stated. How much of such supervision is desirable will be found out by experiment, and it will differ in different places and at different times.

"But I will not pursue the scheme into further detail. I have presented to the Council the main features of the case. I can see that there is dislike and suspicion of the Government plan in some quarters, but I cannot see that there are any valid grounds for it. And I trust that the Council will be of the same opinion."

The Hon'ble MR. DALYELL was prepared to admit that the hon'ble mover of the Bill had, in the observations which he had made, in a great measure met many of the objections which had been advanced against this Bill. But still, when we remembered the high quarters from which those objections emanated, and the very forcible manner in which they had been urged, he thought the Council were bound to exercise the very greatest caution before committing themselves to the measure, and to satisfy themselves that the advantages to be gained by passing this Bill would largely counterbalance the difficulties which, he could not help feeling, must inevitably occur if it became law in its present shape. His hon'ble friend was correct in telling us that most of the objections had been levelled rather at the Government plan of operations under the Bill, than at the provisions of the Bill itself. But he questioned whether his hon'ble friend was equally correct in the opinion which he apparently held that that plan could be carried out without this Bill. No doubt the Government could establish a system of law reporting under a central editor without any enactment on the subject, and it would possibly be within their competence to take under their immediate superintendence the present staff of reporters which was attached to the several High Courts; but the reports published under such a system would have no more authority than the present reports, and two out of the three objects of the Bill would fail to be secured. Under such a plan the reports might be improved in quality, but they would neither be diminished in quantity, nor would the area of their authority be extended. He very much questioned whether it would be worth while to carry out such an expensive plan for the purpose of securing so very partial and probably problematical a benefit. His hon'ble friend had reminded the Council that when the Bill was introduced their late colleague Sir George Campbell had spoken of it in no flattering terms. He had characterized it as a little Bill, but not an innocent Bill, and as one the importance and effect of which was in inverse ratio to its length. He and other members of the Council had also then expressed the opinion that some indication of the mode in which the Bill was intended to be carried out should be given in the Bill itself. The Bill gave power to the Executive Government to authorize the publication of certain reports, which would then be placed in a superior position to all other reports, inasmuch as the subordinate Courts

would not be obliged to permit the quotation of any reports other than these authorized reports. But nothing was said in the Bill as to the mode in which these reports would be authorized, or under what provisions or restrictions (or, as Sir George Campbell expressed it, "safe-guards") this power was to be exercised. It was evident that the effect of the Bill would depend entirely upon the mode in which these reports would be authorized, and MR. DALYELL still thought that the Bill was defective in leaving these matters to be determined in the rules which were to be drawn up by the Executive Government, instead of making distinct provision regarding them in the Bill itself. When we remembered this omission in the Bill, he thought the Council would agree with him that the objections which had been raised, although they did not apply to the Bill itself, but rather to the plan or rules under which the provisions of the Bill were to have effect, were deserving of careful consideration.

So far as he was concerned, however, he had some doubts whether even the Bill itself in its present form was altogether unobjectionable. He questioned whether the Government should take this power to which he had referred—whether, in fact, law reporting in this country should in any way be under the control of the Government? The days of personal Government had passed away, at any rate in the greater part of the country. The reign of law had commenced, and he for one was decidedly of opinion that anything which could possibly be interpreted as an interference with the decisions of the law Courts should be avoided. He submitted that, if this power of giving special authority to certain reports were taken, and was exercised, as it must be, by devolving the duty upon some official or set of officials in the ordinary employment of the Government, it would be quite possible, and not at all improbable, that the outside public might suppose that some sort of interference with the decisions of the Courts was to be attempted. The Council were aware that the subordinate Courts were bound by the decisions of the superior Courts. Now if the persons who reported these decisions of the superior Courts were under the control of the Executive Government and not under the orders of the Judges who pronounced the decisions, there was no safe-guard that some judgment which contained views adverse to those entertained by the Executive would not be omitted from the reports, and a control be thus exercised over the decisions of the subordinate Courts on the same subject. His hon'ble friend laughed at the idea of anything of the kind occurring, and MR. DALYELL did not suppose that it would occur; but still it would be possible, and some of the public might think that it did take place. At any rate, it might often happen that a decision would not be reported in such a manner as to give it that precise bearing which was intended by the officer pronouncing the judg-

ment. When his hon'ble friend asked permission to introduce the Bill, he gave some instances of the power of the law reporter in England. He told us that we had not, in the reports of Lord Ellenborough's decisions, what that learned Judge had decided, but what his reporter, who afterwards became Lord Campbell, had selected. If our reporters were altogether independent of the Judges, we might find ourselves in the same position in India. We might find in our law reports, not what the High Courts decided, but what the reporters, aided by the central editor, selected. His hon'ble friend would no doubt reply that it would be very easy to provide in the rules that the Judge pronouncing the decision should have some control over the report. But MR. DALYELL'S answer to that would be that the rules might at any time be altered without any legislative sanction being required.

As far as he could recollect, in the original scheme which had been proposed for the improvement of the law reports, it was intended that the Judges should take a much more active part than appeared in the plan which was now set forth; and in spite of what his hon'ble friend had said that day, MR. DALYELL still thought that the only way of getting over the whole difficulty would be to induce the High Courts to become responsible for their own law reports. He could not help thinking that they would do so if the Bill were framed somewhat differently; if instead of giving the Executive Government the power of determining what should be authorized reports, the Bill merely declared that the reports issued by the authorized Reporter of each High Court, and no others, should be binding on the Courts below. A Bill in this shape would have the double advantage of clearing up the doubt, whether at present a law report had any binding authority at all, a point which section 4 of the present Bill expressly left untouched, and of putting an end altogether to the unauthorized reports, which at present were a bugbear equally to the judicial officers who administered the law and to the professional gentlemen who practised in the Courts. Such a measure, too, would secure most completely many of the objects of the Bill. The multitude of law reports would be most effectually diminished. Their quality in all probability would be more likely to be improved by placing them under the direct supervision of the highest judicial authorities in each quarter of the empire, who were well acquainted with the law and customs of the place, than by leaving the supervision to any single official, no matter how conspicuous might be his ability. Their authority would be strengthened in all respects save as regards local limits; and although he had carefully considered the arguments which had been advanced, he still thought that the difficulties which would be involved in extending the area within which each set of reports was now sup-

posed to be binding were very great, and counterbalanced any advantages that might be gained by giving the lower Courts a larger range of authorities, or by bringing into prominence any differences of opinion between the superior Courts of different presidencies. He ventured to believe, too, that such a scheme would obtain the cordial co-operation of all the High Courts in carrying out its provisions; a co-operation which, as his hon'ble friend had told the Council that day, was essential to the successful working of any scheme of law reporting.

MR. DALYELL did not know that he need go further into the objections raised to the Bill and to the plan by which it was proposed to carry the Bill into effect, as those objections would be found fully detailed in the papers which had been printed in connection with the measure; but if he was not out of order, he would venture to ask His Excellency the President that the final discussion on the Bill might be deferred to the next meeting of Council, as he believed that further communications on the subject were likely to be received from the Governments of Bombay and the North-Western Provinces, and also as His Honour the Lieutenant-Governor of Bengal was not in his place that day to express in words the objections which he had taken to some of the provisions of the Bill in his Secretary's letter which had been circulated to the Council.

The Hon'ble MR. BAYLEY said that, after so full a statement as that made by the hon'ble mover of the Bill, he should ordinarily not have thought it necessary to add any remarks; but as he had personal experience of the evils of the present system of reporting both in a judicial capacity and as one of the original members of the Council of law reporting, he ventured to offer a few remarks upon the subject.

The crying evil of the existing system was that it ministered to the vicious practice of the members of the Mofussil Bar, who regarded law reports, not so much in the light of guides to show the real condition of the law, as stores from which they could cull precedents to support any view of the law which suited the position they were engaged to maintain—in short, their aim was, usually, not to assist, but to confuse, the Court.

The more numerous and imperfectly stated the decisions were, the better they suited the purpose of the lower class of Mofussil vakils, and the result of the commercial system of reporting had no doubt favoured the growth of this evil. MR. BAYLEY had himself been often pressed with decisions which were apparently contradictory. Occasionally, by close examination of the reports, he had been able to find clues which shewed the real drift of the decisions quoted; sometimes, when cases happened to be among the records of his own

Court, he had been able to send for the original file and ascertain how far the facts and issues of law were really on all-fours with the case before him, but he had not unfrequently also been compelled to abandon all attempt to draw assistance from the precedents set before him and to decide without any reference to them. He thought that this was not a condition to which the Judges of our Courts, the least of whom held a most responsible position, should be exposed.

As regards the ability of the Courts themselves to issue and superintend the reports, MR. BAYLEY would point out that in fact this had always been within the competence of the Courts, who had indeed made occasional attempts to carry out such a system, but scarcely with success.

The reports of the old Sadr Courts were, he believed, prepared by the Judges themselves and were edited by the Registrar. Unquestionably many of the decisions were of very great value, and conveyed the matured opinions of gentlemen of great experience, some of them perhaps ranking among the ablest who ever came to India.

Nevertheless their reports could hardly be called on the whole successful; arguments of Counsel were rarely, if ever, given; the statements of fact were usually of a somewhat meagre description. A gentleman, whose friendship MR. BAYLEY had formerly the honour to enjoy, the late Mr. Morley, had endeavoured to make a Digest of these cases, but though he laboured at the work with much assiduity for many years, and although he was well known within and without the legal profession for his ability and his acquirements both as a scholar and as a lawyer, his Digest was certainly not received by any means as a satisfactory work. And this result was owing, MR. BAYLEY believed, not so much to any fault of the compiler of the Digest, as to the unsatisfactory character of the reports with which he had to deal.

It might, however, be said that these reports were the production of untrained men, and that it was not fair to accept them as examples of the existing style of law reporting.

But what was the case in the old Supreme Courts? The Judges of those Courts made no special effort to secure good reporting. He believed that almost from the earliest institution of the Supreme Courts the decisions of those Courts were left to the unassisted efforts of private reporters. Reports were no doubt published; some of them good, some of an inferior quality, and there were periods, MR. BAYLEY believed, for which no reports at all existed, and during which there could be no doubt many valuable decisions passed altogether unreported.

After the establishment of the High Court of Calcutta, a special Reporter was sanctioned for the appellate side of the High Court, who was salaried by Government; but it was not long before that arrangement broke down, and after various attempts to meet the desired object, the establishment of the Council of Law Reporting in Calcutta was encouraged, if it was not actually suggested, by the late learned and able Chief Justice, Sir B. Peacock. He did not wish in the least to disparage the Bengal Law Reports; on the contrary he believed that they had done a very useful work very well—quite as well, probably, as any law-reporting had been done in India before, and in a way most creditable to the gentlemen employed, and it was probable that the work of Government reports under the new law would be done much on the same lines and by the same Reporters. The Government reports would, however, have the further advantage of being subjected before publication to strict supervision and skilful professional criticism.

Still the Bengal Council for Law Reporting themselves admitted that the result was not what they aimed at. In a letter addressed to Government by that body they said: "The Bengal Law Reports have not yet attained the high standard of excellence which their originators hoped for;" and they attributed this in part to "the necessity of departing from the principle of selection," going on to explain that this necessity arose from the Council of Law Reporting being compelled to defer to the "commercial principle" to which the hon'ble mover of the Bill had more than once alluded, and which induced them to meet the vicious demand for numerous cases by reporting many which in themselves were such as should not have been reported. In fact the Council may almost be said in the same letter to have suggested the present measure, for they said "it is hardly a less important part of the duty of the Government to publish that part of the law which is enunciated by its tribunals, than to promulgate its legislation."

So far, therefore, as past experience was any guide, there was not much to be looked for from the persistent action of the Courts themselves, even if the Government could be assured of the continued willingness and leisure of the learned Judges to superintend the reports of their judgments.

No doubt objections had been raised and urged with much force, both by his hon'ble friend who last spoke and by the High Court of Bombay, as to the danger of putting so much power into the hands of Government, and it might be conceded that a corrupt Government, aided by corrupt reporters, might attempt to misreport or suppress a case; but the answer to that objection was, no doubt, that the attempt would so certainly be futile, and the attendant danger

and disgrace would be so great, that, practically, no such attempt ever would be made.

As regards the conflict of decisions, MR. BAYLEY would also wish to say a few words in further illustration of the argument used by his hon'ble friend the mover of the Bill. The effect of the provisions in the Bill would not be to aggravate such conflicts, but to accelerate their termination. It might be in the remembrance of some of those who heard him that for a long time a series of opposing decisions on the effect of the law of limitation had been passed by the Courts of Calcutta and of the North-Western Provinces. The legislature did not intervene, for it was not clear that any intervention was necessary. It was only after many years that the point arose in a case of sufficient importance to bring it before the cognizance of the Privy Council, who then upheld the view of the Calcutta Court as being in accordance with the wording of the law. The effect of that decision, authoritatively pronounced, was no doubt to settle the real state of the law, and the Government then stepped in and amended the law in the sense of the North-Western Provinces decision, as being most in accord with public convenience.

Again, not long ago, a question arose as to the construction of a law of a general application, by which certain officers of Government were guided in the performance of their duty. Some of these officers applied accordingly through their Local Government for instructions. On reference to the Government Law Officers it was found that the point raised had twice come before the High Court of Calcutta; had twice been fully argued, and in both cases the decision was the same, a decision moreover known to be in entire accordance with the intention with which the law was framed. The Government of India accordingly referred the officers to the decisions in question. But it then was found out that, in another High Court a single Judge, on a reference from a lower Court, and without any argument before him, had expressed a contrary opinion, which had been reported as a precedent, and which, therefore, Courts in his province were, as the law now stood, bound to respect; and thus, in a matter in which uniformity of action was not only desirable but important, no such uniformity was possible, until one Court or other on its own motion reviewed its existing decisions, for which no opportunity might arise for years.

But under the provisions of the present Bill, the Judge of any subordinate Court having the opportunity of following whatever precedent commended itself to his judgment, the conflict was sure at once to be brought under the attention of the Superior Courts, and to be fully argued. It was to be hoped that in the majority of these cases the law would settle itself; but if it should in any

instance prove otherwise, the remedy of appeal to the Privy Council or of legislative interference would still be as available as before, only the necessity of one remedy or the other would be more promptly shown. MR. BAYLEY, in conclusion, requested the Council to excuse the length to which his expression of opinion had extended.

The Hon'ble MR. HOBHOUSE had a few observations to make in answer to the remarks which had fallen from his hon'ble friend Mr. Dalyell. One point he mentioned was, that he considered the outside public would be suspicious of the correctness of the reports if they were conducted by the Government. We were told, too, elsewhere, that the Government must be like Cæsar's wife, above suspicion. But probably when Cæsar was speaking of his wife, he was thinking of the opinion of reasonable men who formed their judgment on reasonable grounds. Even Cæsar must have known that the tittle-tattle of the Roman boudoirs was beyond control. So MR. HOBHOUSE supposed that, by the outside public, his hon'ble friend meant those who paid attention to the subject and took an interest in Law Reports. To that, all that need be said was, that if an outside public of that kind were dissatisfied with the Law Reports, the remedy was in their own hands. All they would have to do was to get some painstaking person like Mr. Sutherland to publish the judgments of the High Courts.

The object of the Government in supervising reports would be completely frustrated if intelligent persons suspected the thoroughness of the product. As for any other outside public, MR. HOBHOUSE suspected that they would never know or care anything about the matter.

Then his hon'ble friend said there was no safeguard provided by the Bill. MR. HOBHOUSE had not heard what safeguard his hon'ble friend would propose. MR. HOBHOUSE could not think of any mechanical safeguard nor had any been suggested. The true safeguard was to get men of intelligence and honour to undertake the work, whose interest would be to frame good reports.

Then his hon'ble friend made some observations as to the power of the Law Reporter. But that power existed now, as MR. HOBHOUSE had been at pains to show, and it was one of the things which rendered it desirable to have Law Reporters under public and responsible supervision. Such supervision as was exercised by Lord Campbell over the decisions of Lord Ellenborough was doubtless very beneficial to the public. In that case a strong lawyer with a reputation of his own at stake made selections from judgments of which some were useful and some otherwise. In other hands the process might not be so useful. But the power of selection must be

somewhere, and the object was to have it in a quarter where there was every motive to exercise it well. If it were not exercised well, he again said that the whole plan must fail, and the lawyers would continue to be burdened with a number of reports that were useless to them.

The hon'ble Mr. Dalyell had said, again, that our object should be to induce the High Courts to become responsible for the reports of their decisions. MR. HOBHOUSE did not know how we could induce them to do so. If they were ready to do it, he admitted that that would most completely meet the object in view. His hon'ble colleague, Mr. Bayley, had just shown by referring to instances how difficult it was for the High Courts to perform that duty with sufficient promptitude and persistency, and MR. HOBHOUSE had nothing more to add to what had already been said.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill as amended be passed. He would give two reasons against the proposal to postpone the passing of this Bill. It was true that His Honour the Lieutenant-Governor was not present in his place, but that was not of itself an objection to the passing of the Bill. The letter sent to the Committee on behalf of Sir Richard Temple dwelt a great deal on the mischiefs of the present system, and mentioned the objections to the plan of the Government in a very brief and cursory manner. There was nothing in the letter which led MR. HOBHOUSE to believe that the Lieutenant-Governor wished to oppose the passing of the Bill. He had not read the letter to the Council because it touched only very lightly on objections which he had to-day stated fully as they were put forward by others. It was true that an alternative suggestion was made, but that, as MR. HOBHOUSE understood it, amounted to something like a reconstitution of the business of the High Courts; a very large and difficult arrangement, which would take long to effect, and was beyond the scope of the Council's business. Moreover, if Sir Richard Temple had wished to take part in this debate, he would have said so for himself. With regard to the Civil Appeals Bill he had expressed such a wish, and MR. HOBHOUSE had immediately acceded to it, and made arrangements not to bring on that measure until a time when Sir Richard Temple could conveniently be present. Otherwise he should have brought the Civil Appeals Bill before Council at an earlier date. But with regard to the present Bill Sir Richard Temple had been silent, and MR. HOBHOUSE declined to accept from his hon'ble friend Mr. Dalyell a suggestion about Sir Richard Temple which he had not made for himself.

The other consideration on which MR. HOBHOUSE objected to a postponement was personal to himself. These matters could not be taken up without a good deal of labour. He was responsible for the conduct of the business, and he was always liable to have questions asked him upon any point of difficulty that occurred. In order to be able to answer any question or objection with the requisite promptitude and accuracy, it was necessary that he should prepare himself, and the consequence was that, in every case in which he thought it possible that questions could arise, he always made it a rule to read through all the papers the day before the Council met. The result was this. It was the practice, when no amendment was made, to pass a Bill at the same sitting at which the Report was taken into consideration, there being opportunity then for full discussion. The practice was a very convenient one. To justify a departure from it, a good reason should be given, and MR. HOBHOUSE thought that none such had been given. He should, therefore, ask that the motion might be put.

The Hon'ble MR. DALYELL said that his hon'ble friend Mr. Hobhouse had omitted to mention two other grounds which had been advanced in favour of the postponement of this motion, namely, that communications were expected from Bombay and the North-Western Provinces. They had as yet had no representation of any kind from the North-Western Provinces. He believed that some of the Judges of the High Court of the North-Western Provinces were very strongly opposed to the Bill.

The Hon'ble MR. BAYLEY explained that the rules to be framed under this Bill, which were circulated to hon'ble members, had been confidentially circulated some time since to the Judges of the High Courts: objections might be received regarding those rules, but he did not think that, after such a length of time, they might expect to receive further objections to the Bill itself.

His Excellency THE PRESIDENT said:—"I am sure the general feeling of the Council always is, that if any member wishes any particular measure to be postponed for a short time, in order to give further opportunity for discussing its details, such postponement should be acceded to. At the same time we must all feel that the manner in which business has to be transacted by my hon'ble friend, Mr. Hobhouse, deserves every possible consideration. Of course it would be a very great convenience to him that this Bill should be disposed of in order that his whole mind may be applied to the other Bill to which he has referred as standing for consideration at our next meeting. I should, therefore, be inclined to suggest to my hon'ble friend, Mr. Dalyell, that if he

does not desire to propose any substantial amendment to the Bill, it would be more convenient that it should be passed to-day."

The Hon'ble MR. DALYELL said that, if the objections to delay were put upon the personal grounds to which His Excellency the President had adverted, he was willing to withdraw his proposal for the postponement of the motion before the Council.

The Motion was put and agreed to.

MERCHANT SHIPPING ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill for the further amendment of Act I of 1859 (for the amendment of the law relating to Merchant Seamen), and for other purposes.

SIR JAMSETJEE JEEJEEBHOY'S LOAN BILL.

The Hon'ble MR. ELLIS asked leave to postpone the motion for leave to introduce a Bill to secure the repayment of a loan by the Government of India to Sir Jamsetjee Jeejeebhoy, Baronet.

Leave was granted.

The Council adjourned to Tuesday, the 2nd February 1875.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 19th January 1875.

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