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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1875.

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 24th March 1874.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding*.
His Honour the Lieutenant-Governor of Bengal.
Major-General the Hon'ble Sir H. W. Norman, K. C. B.
The Hon'ble A. Hobhouse, Q. C.
The Hon'ble E. C. Bayley, C. S. I.
His Highness the Mahárájá of Vizianagram, K. C. S. I.
The Hon'ble Rájá Ramánáth Tagore.
The Hon'ble R. A. Dalyell.
The Hon'ble B. D. Colvin.

PRIVY COUNCIL APPEALS BILL.

The Hon'ble MR. HOBHOUSE moved that the final Report of the Select Committee on the Bill to consolidate and amend the law relating to the admission of appeals to Her Majesty in Council from judgments and orders of the Civil Courts, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill as finally amended be passed.

The Motion was put and agreed to.

BURMA MUNICIPAL BILL.

The Hon'ble MR. HOBHOUSE also moved that the Report of the Select Committee on the Bill to provide for the appointment of Municipal Committees in Towns in British Burma, and for other purposes, be taken into consideration. He had explained on the last occasion the only points which seemed to him to be of importance, and which the Select Committee considered it necessary to bring to the attention of the Council in their report of the alterations made in the Bill.

The Hon'ble MR. DALYELL said when his hon'ble and learned friend presented the Report of the Select Committee on this Bill, he explained the circumstances under which it had been deemed advisable to restrict the amount of taxation for the general purposes prescribed by the Bill to the actual amount of town taxation now levied in British Burma. On that occasion, he (Mr. Hobhouse) gave several good and valid reasons in favour of the course adopted, but he did not, so far as MR. DALYELL could recollect, mention a statement which had been made by the Chief Commissioner in a letter which he had addressed to the Committee on the subject of the Bill. In that letter, Mr. Eden stated that no fresh taxation was intended or desired, but merely the regulation of the existing taxation and the bestowal on the people of some share in the administration of the affairs of their towns which now rested in the hands of the Government officials. When MR. DALYELL told the Council that the present town taxation of British Burma, which apparently was levied entirely at the will of the executive and without any express legal sanction, had been raised in ten years from two to five lákhs, he thought they would agree that there were strong reasons for Mr. Eden's moderation, and that the Select Committee had exercised a wise discretion in limiting the amount of taxation for general purposes to the amount at present actually collected in the towns. He also found by reference to a valuable report on the taxation of British Burma from the pen of Colonel Duncan, the Secretary to the Chief Commissioner, which was circulated to the Council last year, that as regards the incidence of local and imperial taxation, the inhabitants of British Burma were at a disadvantage with other parts of the empire. Colonel Duncan also stated that the well-to-do people in most towns now paid a tax of from seven to ten rupees according to the size of the town, and that in Rangoon a petty shopkeeper paid as much as eighteen and a half rupees as municipal taxation: and there were additional grounds for the course which had been taken with regard to this Bill. Further, the Council would recollect that at a recent meeting of the Council, an hon'ble member, who was not in his place to-day, when alluding to the Bill in its original form and to the Burma Fisheries Bill, stated it as his opinion that neither of those measures were such as were likely to foster or encourage the advancement of a young province like British Burma which had, he thought, a great future before it, and he indulged the hope that nothing like legislation of a repressive or discouraging character would be carried out. MR. DALYELL then expressed his general concurrence with the opinions expressed by his hon'ble friend, and if the Bill now about to be passed had involved an increase of taxation in Burma, he would not have supported it. As the Bill now stood, he would have much pleasure in seeing it take its place in the Statute-book.

His Highness THE MAHÁRÁJÁ OF VIZIANAGRAM said the Council had heard from his hon'ble and learned friend, Mr. Hobhouse, the objects and reasons of this Bill. No doubt any new taxation was very distasteful to the Natives of India in general. But as the Bill now proposed did not in any way increase the burden of taxation in British Burma, but was only intended to legalize and regulate the existing taxation, as had hitherto been done by the laws designed for other parts of India by the hon'ble Mr. Hobhouse and his predecessors, he had much pleasure in giving his assent to the motion before the Council.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE then moved that the Bill as amended be passed.

The Motion was put and agreed to.

ASSAM CHIEF COMMISSIONER'S POWERS BILL.

The Hon'ble MR. HOBHOUSE also moved that the Report of the Select Committee on the Bill to provide for the exercise of the powers hitherto exercised by the Lieutenant-Governor and Board of Revenue of Bengal in the territories forming the Chief Commissionership of Assam, be taken into consideration.

His Honour THE LIEUTENANT-GOVERNOR said that, as he had not had an opportunity of discussing or carefully considering this Bill, he was not in a position to speak of it in detail. As regards the form of the Bill, he was inclined to doubt whether a change made in Committee was expedient. He believed that the Bill as originally introduced provided that it should be in the power of the Governor General in Council to decide by what authority, whether by the Lieutenant-Governor of Bengal, the Government of India, or the new Chief Commissioner of Assam, any matter pending at the time of the transfer should be decided. Apparently, as the Bill now stood, that power of enabling either authority to decide pending questions had been restricted to questions arising under the Gáro Hills' Jurisdiction Act. He had only to suggest that a doubt arose in his mind whether other questions of a similar character might not occur; but he felt he might safely leave the matter in the hands of his hon'ble friend Mr. Hobhouse. HIS HONOUR had no doubt that Mr. Hobhouse had taken good care that there should be no practical difficulty hereafter.

There was only one other point to which he would wish to refer, and that was this. He would submit to the Government of India and to the Council that, in matters of spelling, some uniform course should be adopted. The districts which were the subject of the present Bill were lately the subject of a notification of the Governor General in Council in the Home or some other Department, which he could not well recollect, but it was certainly some other than the Legislative Department, and in that notification they were spelled quite differently from the spelling in the Bill. He would only say that whichever might be right or wrong, it was almost, he might say, indecent that the Government of India in the different Departments should ostentatiously spell the names of well-known places in so many different ways; that one Department should adopt the well-known spelling which was adopted by people in general, and another should enter into the elaborate system by which these names were very much disguised. He was glad to learn that the long-suffering of the Members of the Committee of this Council, who had submitted to a good deal in this respect, was at last exhausted. He was glad to observe the spelling of the word "Cachar", which was formerly spelt "Kachhár" in the Bill, was now restored to its original shape, C-a-c-h-a-r. That "K-a-c-h-h-á-r was too much for the Select Committee, and it was restored to its original spelling. But apparently a compromise was made in respect to the spelling of other districts in regard to which the change was not so flagrant, and which were left to the mercy of the Legislative Department, as to the regulation of the spelling. Now, in this matter of spelling, a considerable latitude had been left to the Local Governments, and by what he might call a sort of consensus of those Governments, the spelling of well-known districts had been preserved; the old well-established spelling had been retained. That had been done in the North-Western Provinces and in Bengal, and he had no hesitation in saying that if Assam still belonged to Bengal, that would have been done in Assam. The Chief Commissioner now established by the Government of India had not had full opportunity of considering the matter. He would submit that it was not desirable that in this interregnum the Legislative Department should step in and alter the names of places which were not only the names of well-known districts, but also the names of a large number of Tea and other Companies well-known in the London Stock Exchange. Such a course might, amongst other things, cause a depreciation of shares in such well-known Companies as the Nowgong, Durrung, and several other Tea Companies. Were the names of those Companies to be severed from the names of the well-known districts with which they were associated, such a course might create a panic in the money-market, and it seemed most undesirable that we should depart from the well-recognized spelling of the names of those districts.

The Hon'ble MR. BAYLEY said there was only one point in regard to which he wished to make a few remarks, namely, the notification from the Home Department to which the Lieutenant-Governor had referred. He believed that notification had carefully kept to the exact spelling which the Government of India had authorized. Without the notification before him, he did not remember what that spelling precisely was. In the Bill some compromise had certainly been made as to the spelling of the names "Durang" and "Naugáon," and he believed that, whatever the change from the authorized spelling might be, it was very slight. So far as the new Province was concerned, he did not see why they should be left to make this not very important reform.

The Hon'ble MR. HOBHOUSE said that, with regard to the first point which was mentioned by His Honour the Lieutenant-Governor, the Bill was introduced in the form in which sections 1 and 2 stood now. It was an earlier draft to which the Lieutenant-Governor referred. It was afterwards found that some arrangements were pending for making compensation to zamíndárs under Act XXII of 1869. That was the only point in which the Bill as it now stood varied from the Bill as introduced. What was new in the Bill was the power given to the Lieutenant-Governor of Bengal to carry out the arrangements made with the zamíndárs and others in the Gáro Hills. Some arrangements were actually pending, and it would be very inconvenient to take them out of the Lieutenant-Governor's hands. He thought His Honour might rely on it that the matter had been carefully considered both before and since the introduction of the Bill.

With regard to the matter of spelling, the Lieutenant-Governor could not attack any one more willing to be defeated than MR. HOBHOUSE. As far as he was concerned, his sympathies were with the Lieutenant-Governor. The citadel had a traitor inside. But he (MR. HOBHOUSE) really knew very little of the matter. What he did know was his mother-tongue, and he had a great prejudice against seeing English letters used to represent sounds which they never by any chance represented to the English eye; for instance, he did not like to see a tub spelt "t-a-b." He must leave the matter to be fought over by those who were more learned than himself. All that he could say was that if the exertions of the Lieutenant-Governor did result in putting oriental names and words into a more familiar occidental shape; if he did succeed in bringing them into a shape more intelligible to English ears and eyes, it would be a very good thing.

Major-General the Hon'ble SIR H. W. NORMAN concurred in the observations of the Lieutenant-Governor in regard to the matter of spelling.

He would observe that it was quite contrary to the Resolution of the Government of India that any alteration should be made in the spelling of the names of Cantonments from the ordinary spelling which had prevailed for years past. He thought that one or two of the names in this Bill were the names of Cantonments. They were spelt quite differently from the usual practice: perhaps the Legislative Department would bear that in mind.

His Excellency THE PRESIDENT observed that it would be inconvenient to pass this Bill if there was any doubt as to the proper way in which the names of the several districts were spelt. It would therefore be advisable to postpone the passing of the Bill in order that the spelling might, if necessary, be altered in accordance with the views of the Government of India.

The consideration of the Bill was then postponed.

EUROPEAN VAGRANCY BILL.

The Hon'ble MR. BAYLEY presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to European Vagrancy. He said the Select Committee had made some changes in the details of the Bill which had almost all been made in accordance with the suggestions of the Local Governments. None of these changes materially affected the general principle of the Bill. There were one or two matters which needed explanation, although they did not refer to the amendments introduced by the Select Committee, but related rather to the general principle of the Bill and the plan upon which it was framed. It would be better, however, to defer his remarks as to these until the time when the Report of the Select Committee would be taken into consideration.

BOMBAY REVENUE JURISDICTION BILL.

The Hon'ble MR. HOBHOUSE, in the absence of the Hon'ble Mr. Ellis, asked leave to postpone the presentation of the preliminary Report of the Select Committee on the Bill to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the Land-Revenue.

Leave was granted.

INDIAN LAW REPORTS BILL.

The Hon'ble MR. HOBHOUSE introduced the Bill to diminish the multitude and improve the quality of Law Reports, and to extend the area of their

authority, and moved that it be referred to a Select Committee with instructions to report in two months. He said that he had explained to the Council on the last occasion that the quantity of legislation required on this subject was small, and they would be glad to see that the Bill was a short one. He must now explain to them the lines upon which the Bill was laid down. In the first place, they would observe that a late day was fixed for the Bill to come into operation, namely, the 1st January 1875. The object of that was to give those who were now engaged in the publication of reports time to wind up their affairs, such as the Bengal Law Reporters. If they were allowed to the end of this year, they would be able to place their affairs in a satisfactory footing. Then, coming to the substance of the Bill, he should like, in the first place, to read a few remarks which had been furnished to him by a learned Judge of the High Court, Mr. Justice Markby, respecting the operation upon which we were engaged, remarks which conveyed a very useful warning and caution to us. He said:—

"The *authority* of a judicial decision has never been recognized, as far as I am aware, by the legislature in any country except in a very limited degree, and under peculiar circumstances. The *responsa prudentum* were not judicial decisions, but resolutions upon doubtful points by certain persons *quibus condere jura permissum erat*. The *arrêts* of the *Cour de Cassation* are confined to the corrections of faulty procedure and of any contravention *expresse du texte de la loi*, i. e., of the Code; and the *Cour de Cassation* is established *auprès du Corps Legislatif*, and may correct erroneous decisions, whether the parties choose to appeal or not. The Sadr Díwání Adálat could issue 'constructions' upon the Regulations (our *texte de la loi*) which were final and conclusive (Regulation 10 of 1796, s. 3), but when this Regulation was passed and until long after, the Sadr Court was presided over by the Governor General or by a Member of Council, and was in close relation to the legislature."

Then after referring to some other opinions he continued:—

"A consideration of all this leads me to doubt whether more good than harm would be done by legislating on this subject. The Mofussil Judges are no doubt far too prone to see in every dictum of a High Court Judge a rule for future guidance, and your proposition would, it is true, separate off and reject a number of decisions or expressions of opinion which they ought not to be bound by. But will not the actual authority of cases selected for publication be too much increased? Increased to some extent it will be I cannot doubt; and I am not prepared to see too much rigidity given to the decisions of even a Full Bench."

These remarks appeared to MR. HOBHOUSE to have a great deal of truth and wisdom in them. It was quite true that it was a new thing, as far as he was aware, for the legislature to recognize in terms the authority of judicial decisions; and he agreed that it would be a bad thing if we were to take away from judicial decisions that quality of flexibility and adaptibility which they

now had and to give them the same rigidity as Statutes, so that every word of them must be weighed by Judges before they could decide a case. But there remained the fact, and a very important fact, in our constitution, it was, that the law was being constantly moulded by judicial decisions, which operated very much as they were reported, and we should hardly err if we recognized that fact and treated it as established without endeavouring to alter its nature. Now the Bill endeavoured to follow that principle, and not only was language used in the early part of it which merely referred to judicial decisions and their authority as existing facts, but section 4 contained an express caution that "save as provided by section 2, nothing herein contained shall be construed to give any judicial decision any further or other authority than it would have had if this Act had not been passed." Then, what was done by section 2? It was not a long one, and he would read it to the Council:—

"Every judgment delivered on or after the said 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."

So that the Council would see that the authority of decisions was, as regards its quality or nature, left it as it stood before, and the Bill only extended the geographical area of its operation. He thought we might feel confident that, in the hands of an intelligent man, a law framed as this was would not be construed amiss, that the Judges would render an intelligent and loyal obedience to the decisions of the superior Courts according to the essence and spirit of those decisions when applicable to the cases before them, and would not, any more than now, be slaves to the letter, and regard every by-word which fell from a superior Court as sacred, or as intended to express the full and deliberate mind of the Court and to operate as a guide to the rest of the world.

The Council would also observe that in that section the Bill only mentioned subordinate Courts as those to be bound by the authority of judicial decisions. The reason was that there was considerable nicety of distinction in the various phases of the High Courts, and in the amount of authority to be attributed to the decisions of a single Judge, a Division Court, or a Full Bench; and it was better that the High Courts should settle these things for themselves. Moreover, it was not the case, as he had seen it supposed in several communications upon this subject, that we aimed at binding any one High Court to follow the decisions of any other High Court. At the present moment, the High Court might change its mind and differ from itself: it had

a degree of freedom which, in MR. HOBHOUSE'S opinion, was quite necessary for the due working of our judicial system, and which he did not wish to encroach upon. The main and primary object of the section was to give a more efficient and regular guide to the subordinate Judges, so that when we got a valuable decision in one Province, it might be used to guide the Judges in another. He thought that this system might safely be left to be worked out to its proper result by the High Courts themselves. Practically, though indirectly, it would secure greater uniformity in the decisions of the High Courts, because it would, if only for the purpose of testing what subordinate Judges had done, compel the High Courts to give adequate consideration to one another's decisions; and this would lead to greater uniformity, and also to the prevalence of those decisions which were found on discussion to be most reasonable and expedient.

The remaining section of the Bill, section 3, was as follows:—

"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."

He knew that there were many who would say that this section was not stringent enough, but that we ought to prohibit the citation or even the publication of any unauthorized reports. As regards publication, MR. HOBHOUSE had already given his reasons for thinking that the publication of reports was an excellent object, and for wishing well to all such publications as the public could be induced to read. With regard to citation, it seemed impossible to prohibit the citation of voluntary reports any more than the citation of any other work which did not carry with it binding authority. It was impossible to say beforehand what might or what might not be suitably cited in the course of a forensic argument; and if any work not professing to have authority might be cited, so might volunteer reports. It was easy to conceive cases in which such reports might be exceedingly useful to illustrate a position or to point an argument. The utmost we could do was to free the subordinate Courts from the shackles which practice and custom now imposed upon them, and to say that as a Judge might listen to a passage from Hamlet or Paradise Lost, or Hallam's Constitutional History, or Preston on Abstracts, or any other work, technical or not technical, and as if he listened to it, he might either adopt or reject the conclusion which was pressed upon him, so he might deal with a volunteer report. The objection might be raised that this was only what the Judges might do now, and that the Bill was idly telling them no more than they knew without it. Of the superior Courts that might be true in terms.

Of the subordinate Courts it was not true even in terms, for a subordinate Court would find itself in a very false position if it refused to hear, or be bound by a work which its appellate Court was in the habit of receiving as authority. We could therefore relieve a subordinate Court from the terror of being held wrong and having its judgment reversed, because some obscure case was cited before it which it refused to receive as binding authority. Even as regards the superior Courts, the proposition was not practically true. It required much more effort and unanimity than had ever been found in a large body of men not guided or supported by any declaration of the legislature or act of the State, to treat unauthorized reports uniformly and persistently as being without authority, and put their citation on the same footing as the citation of other general matter. If, however, we gave them that which was published under proper authority, we might hope with a reasonable amount of skill and care, and at the same time told them they were not bound to receive anything else as of authority, we might hope for good results. MR. HOBHOUSE acknowledged that in this matter we were in the hands of those who might and ought to regulate the conduct of legal business, but by doing what we proposed, we might hope for the assent of all reasonable men, and he did hope they would, in the course of time, settle the practice on a more reasonable and satisfactory footing than that upon which it was now.

These were the three objects of the Bill. They were to give the reports a larger area of authority than they now possessed; to prevent unauthorized reports being brought forward in such a way as to constitute binding authority on the Judges, and at the same time to provide a caution against the Courts attributing undue weight to those reports which were authorized reports. It would be for the Council to consider whether a measure with these objects should pass into Committee.

The Hon'ble RÁJÁ RAMÁNÁTH TAGORE said he had gone over this Bill very carefully, and he thought that a law of this kind was absolutely necessary for the purpose of placing the Indian Law Reports on a proper footing. After the able and lucid manner in which the Hon'ble Mr Hobhouse had explained to the meeting his reasons for introducing the Bill, RÁJÁ RAMÁNÁTH TAGORE had very little to say on this important question. But in looking over the Bill, he observed that there was no provision or scheme laid down to enable the Government to confer the necessary authority upon any particular reports. If the omission to which he had referred was a defect, which he hoped it was not, it would no doubt be supplied by the Select Committee. In all other respects, he entirely approved of the Bill.

The Hon'ble MR. DALYELL said the difficulty which had been adverted to by his hon'ble friend, Rájá Ramánáth Tagore, had occurred to him when looking over the Bill this morning. He did not see who was to be the authority to decide as to what were to be authorized reports. For instance, who was to decide between the High Courts of Calcutta and Madras on a ruling which possibly might not be precisely the same, though upon the same subject? Which of those rulings was to be reported? He did not think the Madras High Court would be satisfied to agree to every ruling of the Calcutta High Court, and similarly the Calcutta Court might not agree to every ruling of the Madras Court. Yet whichever of these was accepted in the authorized report, would be binding upon the subordinate Courts of both provinces. If a ruling of the Calcutta Court in which the Madras Court did not agree became an authorized report, then all the Madras subordinate Courts would be obliged to attend to that ruling, although their own High Court might not concur in the propriety of the decision. That seemed to MR. DALYELL to be a difficulty, but possibly the hon'ble member in charge of the Bill might have some means of disposing of it. He merely threw it out as a point for the consideration of the Select Committee: he thought it advisable that the authority to whom the task of selection was to be entrusted should be laid down in the Bill.

His Honour THE LIEUTENANT-GOVERNOR said it was perfectly true that, as the hon'ble and learned member had said, this was a short Bill, but it was not an innocent Bill. The importance and effect of the Bill was in inverse ratio to its length. A short Bill might make a very radical change in the law without providing any safe-guards, and as he should not have the opportunity of considering this Bill in its later stages, he would wish now to express his opinion that the Bill was not a satisfactory Bill, and was not such a one as he could agree to. The great blot in this Bill was that which had been stated by the hon'ble members who spoke before him. No safe-guard was provided; no machinery was provided: we were told nothing as to the manner in which the decisions were to be selected, or the process by which some decisions were to be converted into authorized decisions, and others were to be rejected. Therefore, it seemed to him that the Bill in the shape in which it was put was a Bill not only of enormous importance, but that it was a radically unconstitutional and revolutionary Bill. It placed nominally in the hands of the Government of India, but really in those of some one else, the power of selecting from the very numerous decisions of all the High and other Courts, and declaring which should be reported as authorized reports and should be cited and be binding upon the subordinate Courts, and which should be rejected, and, as it were, snuffed out, put aside, and put out of Court altoge-

ther. He believed the effect would be, that not only nine out of every ten but ninety-nine out of every hundred decisions would be put out of Court altogether, and that by an authority altogether unknown to the Court and the public, so far as we yet saw. The reporter would have the power of sitting in judgment on the Judges and of saying which should be taken as good and binding decisions, and of snuffing out and making altogether uncitable ninety-nine hundredths of the decisions which were passed. To understand the enormous effect of a Bill of this kind, we must consider the nature of the superior Courts of this country. If they consisted, as in most civilized countries, of well-recognized and concentrated Courts of the highest authority, whose decisions were of very great weight, we might delegate to the Reporters the power of selecting what were important and what were unimportant decisions. But that was not the case here. Not only had we a great variety of High Courts, but they were not single Courts of themselves. The High Court of Calcutta was half a dozen Courts, each sitting and deciding independently of one another; for many purposes as many Judges as there were, so many Courts were there. Moreover, there were a good many Judicial Commissioners and Financial Commissioners, all of whom exercised the authority of a High Court. The consequence was, that we should have at least twenty or thirty, probably more, High Courts of co-ordinate authority, all deciding each in their own way: and we had unfortunately in this country no Court where those decisions could be brought under review and revised by a full and sufficient tribunal. Such being the fact, if you put into the hands of any one authority the power of deciding which of these decisions should be treated as authoritative, and which were to be rejected and snuffed out, you gave that authority an enormous power over the superior Courts of the country: you made him in fact Judge over the Judges, and so far as HIS HONOUR could see, the authority exercising this enormous power was to be irresponsible. HIS HONOUR had always held that, in this country, a very large power should be exercised by the supreme executive authority of India; and he would be quite willing to accept the dogma set forth in the Statement of Objects and Reasons accompanying the Bill, that law-reporting should be regarded as a branch of legislation, and that judicial decisions should be reported by sufficient authority. If the law was really to be settled by the Government of India he should not object. But it seemed to him that, practically, this Bill in no degree moved in that direction. If the Government, acting in its executive capacity, might set forth the interpretation of the law, he should be perfectly ready to accept a system of that kind; but in reality, although this Bill proposed to give that power to the Government of India, it was not to be exercised by the responsible Government, but, as he gathered from one of the papers bearing on this Bill, by an individual who was to be called

"the Chief Law Reporter," and HIS HONOUR understood that some very able and estimable lawyer was to be provided with that place. As far as the Bill was concerned, all that the Council knew was, that the Government would create the man and would do nothing more, and having created him, he would be the person who was to sit in judgment over the Judges, and who was to decide what was good and what was bad law. HIS HONOUR should like to give an illustration of the manner in which a system of this kind was likely to work. He would take a case which had been already in many occasions referred to as being a case to which a system of this kind might be applied. He alluded to what was known as the great Rent Case. Let us take the history of that case. It was a case in which the questions involved were of enormous importance, affecting the whole agricultural population of great Provinces, and upon which depended the decision of a large mass of cases. A decision was arrived at by one very eminent Judge, one of the most eminent Judges in fact who had sat in the High Court. That decision startled people: it went a long way in one direction; it was a clear authority and apparently settled the law. Presently, cropped up other decisions of other co-ordinate Courts, and they decided in a different manner. Consequently, it became apparent that there was a great variety and difference of opinion amongst the Judges of co-ordinate Courts: a case was then taken up, and all the fifteen Judges of the High Court sat. The result was that fourteen Judges came to a decision adverse to the opinion of that one eminent Judge, who still retained his own opinion. Now, what must have happened if this Bill had been law? Either the decision of the eminent Judge who first passed a decision on the point would have been accepted by the Law Reporter, and would have been promulgated as binding authority, and other decisions which were opposed to it would have been put out altogether; or the Law Reporter would have selected any other of those decisions, and put it in the place of the other, and we should have had no opportunity of this great question being thoroughly discussed, and coming to the decision which eventually settled the matter. The settlement which we should have had of this great question would have been a settlement by the Law Reporter, and not by the fifteen Judges sitting in solemn conclave on the whole matter.

On one point he entirely agreed with the Hon'ble Mr. Hobhouse in the view which he had taken. It was most undesirable that the lower Courts should be burdened with too many authoritative decisions. It was not desirable that the Judges should act by a mere *memoria technica*. So far, something was necessary to be done in regard to the present system of law-reporting. But he also said that the latter part of the Bill which gave binding authority to the authorized reports as distinguished from

other reports, was most dangerous, inasmuch as it indirectly placed these authorized reports in a much higher position than that which any reports now held. It even went to the length of providing that the decision of one High Court should be binding upon the subordinate Judges of the other provinces. He altogether denied that the decisions of the High Court at Calcutta were binding even on the subordinate Courts of the Lower Provinces. At present the decisions of a High Court were binding upon the subordinate Judges of its province, merely so far as they affected the reason of the Court below. The Court might properly look at the decisions of the higher and more experienced Courts for their guidance. But the decisions of the High Court had no absolute authority to bind the decisions of the Courts below, and they had the same authority in the North-Western Provinces, or Madras or Bombay as they had in the Courts of the provinces subject to its control. Inasmuch, however, as the subordinate Judges might look for promotion to the Judges of the High Court and might consequently pay more respect to those decisions than they would otherwise do, in that respect, of course, the decisions of the High Court might be of more binding authority. But otherwise they would have no greater authority in the Lower Provinces of Bengal than in any of the other Provinces of India. The effect of the Bill, although not directly expressed, would indirectly be that the authorized reports would have complete and absolute authority to bind the subordinate Courts all over India and would, in fact, regulate the whole administration of justice. Section 3 was the section which shut off and disposed of the whole of the decisions which were not accepted by the Law Reporter, that was the section which, whilst it gave undue authority to the authorized reports, took away all authority from unauthorized reports. His Honour must express his own view that this Bill ought not to be referred to a Select Committee in the form in which it was put before the Council. He would have the consideration of the Bill postponed, in order that the hon'ble member in charge should deprive it of the character it now bore; that it should be made more distinct, and that he should declare what his views really were, and then the Council would be in a better position to judge whether the system should or should not be carried out.

The Hon'ble Mr. Hobhouse said he would take the objections which had been raised in the order in which they had been made. First, the Hon'ble Rájá Ramánáth Tagore, as Mr. Hobhouse understood him, objected that the Bill made no provision for giving the Executive Government authority to institute a system of law-reporting. The answer to that was that no such provision was necessary. It was perfectly within the competency of the Executive

Government to do that either with or without this Bill. MR. HOBHOUSE had explained on the last occasion that the Bill was only in aid of a system proposed to be established by virtue of the authority of the Government. That system would have no authority of itself. The authority given to the reports was not given by this Bill, nor by any executive action of the Government. It was given by the constitutional action of the Judges which would be left entire and untouched by the Bill. As for the proposed system of reporting it would not affect the essential authority of the Judges. It was only for the purpose of giving to the public in a proper shape so much as of judicial decision as materially affected the law.

Then the Hon'ble Mr. Dalyell seemed to think that some difficulty might arise in the case of contradictory rulings. But in truth there would be no more difficulty than there was now. It was a mistake of the whole plan to suppose that the Reporter was to judge for himself of the goodness or badness of the law contained in each decision, and to take the good and reject the bad. He must report it if it was of sufficient importance; and that was exactly what Reporters did now. Supposing he got two adverse decisions on an important question, he would report both. In the very case put by the Lieutenant-Governor, where he said there was a great difference of opinion amongst competent authorities, it would be the duty of a good Reporter to report the decisions on both sides; and unless the case was one in which the legislature thought proper to interfere, the Judges must take that which they thought was best or most binding on them. MR. HOBHOUSE would illustrate that by a matter with which some present might have been concerned. We were most of us old enough to remember the time when a great number of joint stock companies were started by means of what were called provisional Committees. It was an entirely new thing in the history of England, and raised a great number of new problems of law. The result was a variety of decisions—decisions in the Queen's Bench, in the Court of Exchequer, in the Common Pleas, in the Court of Chancery, conflicting with one another on a variety of important points, and for some time no one could tell with any certainty how the law stood. The legislature did not interfere, and very rightly, if they had, they would certainly have made a hash of it and created greater confusion than ever. It was necessary to place the law on a reasonable footing, such as would satisfy men's sense of justice, and prevent continual struggles to escape from bad rules. But no man was wise enough to see what that footing was. It required many discussions, conducted with reference to concrete cases, and under all the responsibility of having to decide those cases before it was seen on what lines the law should be laid down. Well, the decisions on all sides were reported.

Reporters did not refuse to report what they might happen to think was bad law, but reported all important cases, and gradually by means of appeals and the exercise of the judicial powers of the House of Lords, the law became settled. There were some years of controversy and confusion during which no man was wise enough to see how the law ought to stand. It wanted a great deal of discussion, and when that had occurred often enough, the law got settled on a reasonable and satisfactory footing, and has remained so ever since. The same thing would be done under any good system of reporting. The object of a report was simply to tell people what judicial decisions there had been on any subject; and if any Reporter chose to take it upon himself to say of any decision otherwise fit to be reported that it was bad law and that he would not report it, MR. HOBHOUSE thought, notwithstanding the anecdote of a great man he quoted on the last occasion, that he would not be doing his duty as a Reporter.

The Lieutenant-Governor said we were making a great and a radical change. Where did he find that change? Not in the Bill, not in the Statement of Objects and Reasons, not in the documents connected with the Bill, amongst which there was a letter circulated to the Local Governments containing the views of the Government of India on this matter. The Lieutenant-Governor indeed said that the decisions of the High Courts had no authority in the Lower Provinces, but were only entitled to be received with respect. If that were so, MR. HOBHOUSE thought the Lower Provinces of Bengal differed from the rest of India and from England in that respect. But suppose it was the case that the decisions of the High Court at Calcutta were not binding on its subordinate Judges, the Bill would only continue that practice, and such respect as those decisions were received with would be rendered to them in the North-Western Provinces, in Bombay, and in the other provinces. For the Bill distinctly provided that except as to geographical area, no judicial decision should have any further or other authority that it would have had without the Bill. If, therefore, it were true that the decisions of the High Courts had no authority, then the Bill was a sham and ought not to pass, because it would be of no use whatever. But he would take issue with His Honour in this matter, and he said that it was just an integral part of our constitution, as any other unwritten part of that constitution, that the subordinate Courts were bound to obey the decisions of their superior Courts, and the subordinate Judges would commit a grave error if they refused such obedience and would expose themselves to censure.

What did the Lieutenant-Governor suppose was done under the present system? He said we were taking a great deal of power into our hands. If he

had been able to be in his place on the last occasion, he would probably have been convinced that we were only dealing with a power already existing in the hands of irresponsible persons. MR. HOBHOUSE was then at great pains to show the power actually in the hands of the Reporters, and how a Judge might be, as His Honour said, snuffed out by a bad, or a malicious, or an inefficient Reporter, and how unimportant judgments which ought never to have been reported might be brought into undue prominence. Now, the question was whether, finding that system existing, we should leave it where it was, or entrust it to hands which were likely to conduct it better, with more skill and under greater responsibility. Now, the work of law-reporting was conducted with a view to sale, on a commercial system. The reports were made to sell, and the result was a very large number of bad reports. Under the Government system, it certainly ought to be, he believed would be, conducted with a view to provide the Courts and the profession with the best reports of the most important decisions. That alone was the difference between the two systems, and he must put it to the Council which of those two was the better system.

No doubt the Lieutenant-Governor was entitled to argue that, however much we tried to avoid giving an additional quality of authority to the authorized reports, we could not avoid it. It was a perfectly legitimate argument to contend that though we should not be doing it directly, we should be doing it by a side wind. MR. HOBHOUSE admitted the reality of the danger, and he had commenced to-day by laying before the Council a weighty opinion and warning on the subject. That, however, was the opinion of a gentleman who had not seen this Bill which indeed was not then in existence. What MR. HOBHOUSE did not admit was that the danger was sufficient to deter us from action, or that it could not be sufficiently guarded against. He himself thought the Bill would avoid that danger, which he fully admitted, would, if it really occurred, cause some mischief. He thought the Bill provided against the danger, and that we might trust intelligent men to understand the matter aright. It was for the Council to decide whether they would accept the risk of that one danger of giving too great rigidity to judicial decisions, or would allow the present system to continue of heaps of reports being thrown upon the subordinate Courts and oppressing the subordinate Judges with a pretence of authority which they were never intended to have. The Bill was intended to help the establishment of a better system of law-reporting than the commercial system which was now in vogue, and as such, he thought it ought to go to the Select Committee on the lines upon which it was based.

His Excellency THE PRESIDENT said, "I think the Council can have no doubt of the importance of this Bill, although a short one. It seems to me

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that the points raised to-day form a subject both for consideration by the Select Committee, and probably for future discussion in Council. They are both points of some consequence. I should be sorry at the present time to express any decided opinion upon them, without hearing more from those who have taken pains to go carefully and accurately into the whole of the details. In regard to the first point, I believe that the Bill does not attempt in any way to choose between conflicting judicial decisions, or to give any authority to one as against the other. Both would, I presume, retain whatever value they would have if the Bill were not passed.

"The second point, which was raised by His Honour the Lieutenant-Governor, is one, no doubt, of great consequence, namely, whether any steps should be taken to guard against want of judgment in selecting the cases which ought to be reported, whether it is advisable that any special provision to meet the case should be introduced in the Bill, or whether it is possible to provide for it in any other way.

"That point may, I think, be left to the Select Committee to consider, and it can afterwards be discussed by this Council.

"Any idea which might be entertained that the Bill was intended by the Government to provide for any selection, on their behalf, between the different decisions of different Judges upon matters of law, on account of any opinion which might be entertained by the Government as to the merits of those decisions, would be entirely erroneous. Mr. Hobhouse has already sufficiently explained that no intention whatever of the kind is contemplated by the Bill. I believe that the object which the Bill has in view is of very great utility, and I entertain a confident expectation that the result of its consideration by the Select Committee and of our further proceedings in Council will be successful in making a salutary change in the present system of law-reporting."

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to diminish the multitude and improve the quality of Law Reports, and to extend the area of their authority——The Hon'ble Mr. Bayley, the Hon'ble Rájá Ramánáth Tagore and the Hon'ble Mr. Dalyell and the Mover.

The Council then adjourned to Tuesday, the 7th April 1874.

CALCUTTA,
The 24th March 1874.

WHITLEY STOKES,
Secretary to the Govt. of India,
Legislative Dept.

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