ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

# LAWS AND REGULATIONS.

VOL 13

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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.

## 1874.

## WITH INDEX.

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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.*

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The Council met at Government House on Tuesday, the 10th March 1874.

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 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.

## KULLU SUB-DIVISION (PANJÁB) APPELLATE POWERS BILL.

The Hon'ble MR. HOBHOUSE moved that the Report of the Select Committee on the Bill to invest the Assistant Commissioner in charge of the Kullu Sub-division of the Kángra District with certain appellate powers, be taken into consideration.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

## PRIVY COUNCIL APPEALS BILL.

The Hon'ble MR. HOBHOUSE also presented 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. He said this was a matter which had been once or twice before the Council, both in the time of his predecessor and in his own time. The Bill was now put into a shape which was acceptable to the Judicial Committee of the Privy Council. The Secretary of State had been in correspondence with the Judicial Committee at our desire, and they had approved of the Bill as it

stood, except that the Committee had since made one or two small alterations in matters on which the Judicial Committee would not think it necessary to form any opinion.

The small alterations since made were these. We had provided that the appealable value of the suit must be rupees 10,000, both as tested by the matter in dispute in the appeal and as tested by the matter in dispute in the original suit. As the law stood, it was doubtful whether a person having an appealable claim for less than rupees 10,000 might add the costs of suit so as to bring it within the amount, and so get the appeal as of right. We thought it better that there should not be that element of uncertainty in the appealable value.

Another alteration which had been since made was for the purpose of giving further freedom to the High Courts in moulding the proceedings upon appeal. The Bill contained some rules of practice which had been laid down for the Non-Regulation Provinces. They were, in fact, very much the same as those which prevailed in the High Courts. There were however various small matters, such as the preparation of the copy of the record, which might be usefully moulded from time to time by each High Court for itself according as convenience dictated. We had, therefore, thought it better to give the High Courts some discretion in the framing of this copy and in other such matters.

The only other alteration made was a verbal alteration which MR. HOBHOUSE need not mention to the Council.

## BURMA MUNICIPAL BILL.

The Hon'ble MR. HOBHOUSE also presented 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. He would call attention to the principal additions made by the Select Committee. The Bill, when before the Council on the last occasion, provided that the Act might be extended to any town, the population of which exceeded five thousand. It was thought better not to have a hard and fast line of that sort, but to leave it to the discretion of the Local Government. The Local Government contended that it was wise to give such a discretion, and after discussion the Committee came to that opinion, and the Bill was framed as it now stood. The principal alteration made by the Committee regarded the maximum of taxation fixed by section 12 of the Bill. We found that the maximum rates proposed by the Bill were fifty per cent higher than the rates which now prevailed, and besides the maximum provided by clause 12, the Bill provided for some additional taxation on certain events. For instance, if the Committee desired to light the town, they might charge lands and buildings a two per cent. rate: if they decided

to carry water to the town, they might charge a rate to the extent of two per cent. more. That was four per cent. for light and water. The prevailing maximum was five per cent., and therefore where rates for light and water were added, it might nearly double the taxation. Then there was a general clause at the end providing that a higher rate of taxation might be imposed with the consent of the Governor General in Council. That was a clause similar to those put in other Municipal Acts, for the reason that it was impossible to say what was the best mode of imposing taxation in every place, and that it was desirable to have an elastic provision which might be adjusted from time to time according to the wants of the people. Considering also that the invariable tendency of a maximum was to become the minimum, the Committee thought it more appropriate to fix the maximum of ordinary taxation at the rate which a Municipal Committee could impose at the present ruling maximum, instead of making it fifty per cent. higher than the present rate. Our attention was called by a petition from Maulmain (and one or two official gentlemen expressed the same opinion) to the fact that there would be danger of over-taxation if we put the rate as it stood before. We therefore thought it better to proceed as we had done.

We were also pressed by the Local Government to insert a clause in the Bill, giving the Municipality greater control over private markets. In looking into the reasons assigned for that proposal, we found that the principal reasons resolved themselves into this, that the vendors at some markets exposed for sale food which was not fit for human consumption. We thought that the Penal Code provided sufficiently for offences of that kind, and that it was not desirable to put into the hands of Municipal Committees any further and arbitrary powers of control which might have the effect of altogether superseding private markets.

Another matter which we were asked to introduce in the Bill, was to impose liabilities on the shipping for the purpose of making them properly contribute to the support of their seamen taken into the hospitals of the town, a difficulty having been felt in adjusting charges incurred on account of the treatment and support of sick seamen. We thought it better not to put such a provision into a Municipal Bill, but rather to introduce a Bill for the amendment of the Port-dues Act, which would be the subject of a subsequent motion. Those were the principal points upon which the Bill had been altered.

## ASSAM CHIEF COMMISSIONER'S POWERS BILL.

The Hon'ble MR. HOBHOUSE also presented 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.

## INDIAN LAW REPORTS BILL.

The Hon'ble Mr. Hobhouse, in moving for leave to introduce a Bill to diminish the multitude and improve the quality of Law Reports, and to extend the area of their authority, said:—

"The quantity of new law which I have to propose to the Council is exceedingly small: so small that I expect to be laughed at when the magnitude of the proposal is compared with that of the subject we have to deal with. Yet it is a necessary part of a plan for dealing with a subject of much importance and difficulty. And in order to give the Council a clear understanding of the subject they are asked to handle, I must say something about Law Reports in general and Indian Law Reports in particular.

"As to the nature of a Law Report, everybody knows thus much: that it is an account of a decision by a judicial tribunal; but I suppose that, beyond those who are professionally concerned in the matter, very few have set themselves to know accurately what is the office of such a Report, or how it should be constructed.

"Now, a Law Report may be looked on in two wholly different aspects, according to the object at which it aims. You may have a matter of public interest, such for instance as the Tichborne case, where people like to know what is going on. There are a great many cases which the readers of newspapers like to see reported in greater or less detail. Or, for the purpose of ulterior proceedings, the parties interested may wish to have a full account of what has taken place in Court. There is no case which may not properly be the subject of such Reports as these; and all that is required of them is that they shall be accurate enough for their purpose. But with reports for these purposes we have at present nothing whatever to do.

"We are concerned only with the other aspect of Law Reports, that is to say, so far as their object is to show how the decision bears upon the general body of law. This is what I may call the legislative aspect of the case. Every judicial decision is an authoritative declaration of the legal result of the facts before the Court. If the facts are such as to call for some new application of principle, if former applications of principle are disturbed by the decision, or if having been seriously questioned they are re-affirmed, in such cases some addition has been made to the body of the law, which may be of little or may be of great importance. Little or great, all Courts subordinate to that which uttered the judgment are bound to follow it in similar cases.

"I will give an instance which will be familiar to a large number of Indian officials. The well-known Act X of 1859 provided that occupancy-rights

should not be acquired if there was a written contract containing an express stipulation contrary thereto. The question then arose whether a lease for a definite term of years was such a contract. One High Court said yes; another said no. During this conflict each had added a gloss to the text of the statute, which materially affected its operation, and which all their subordinate Courts were bound to obey. After some discussion the two Courts came into agreement, and so the law was settled one way.

"It will be seen then that the law is in a continual state of growth and flux by the accretion of judicial decisions. Such a decision may affect one way or another a great number of the transactions of mankind. And so far as this effect of a decision goes, the Judge does something more than settle the dispute between the parties; he lays down law for the whole country and decides in anticipation cases for other and future litigants.

"Now for the settlement of the particular dispute there is no need of a report; the Judge's opinion is equally conclusive whether it is reported well or ill, or not at all. But as regards its effect on the law, everything depends on the report. If not reported at all the decision is usually forgotten. Unreported decisions are like the heroes who lived before Agamemnon, of whom we are told that they lived indeed, but are unwept, unknown, sunk in eternal darkness, for lack of a sacred bard. If a decision is reported, and reported badly, it may hold out false lights for many years, and so cause mischief to innocent wayfarers. In short, the Judge in his capacity of lawgiver speaks to the world through his Reporter, and he affects the law nearly in proportion as his cases are well or ill selected for report, and as the reports of them are well or ill executed.

"To illustrate the power which has fallen into the hands of Reporters, I will refer to a statement made by the late Lord Campbell. At one time of his life he was a Law Reporter, and he then kept a separate drawer labelled 'Bad Law,' into which he put the decisions he disapproved. So that we have as the outcome of Lord Ellenborough's decisions, not what he decided, but what his Reporter selected. If in one case he laid down a broad principle, and in the next case qualified it, his Reporter may have thought the qualification wrong, and have given to the world the principle as stamped with Lord Ellenborough's authority, but without the qualification which the same authority would have added.

"In Lord Campbell's hands both Lord Ellenborough and the public have probably fared well enough. In other cases, results have not been so happy; for example, the decisions of one of the greatest of Equity Judges, Lord Eldon, have lost much of their value from the slovenly mode in which his principal Reporter did his work.

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"It has been alleged of the Reporter Vernon, that he had a spite against a Chancellor whose decisions he reported, and so adjusted his reports as to exhibit the judgments in a bad light. I remember on one occasion a case being cited from Vernon's reports, when Lord Justice Turner, admitting that it had been received as law for a century and a half, thought it so wrong that there must be some mistake. He stopped the argument, sent for the record, and found that the facts were misreported and the case was not any authority for the proposition indicated by the Reporter. So people found that, instead of a true divinity, they had been worshipping a stock or a stone, and that, under the guise of a divine afflatus from the oracle, they had only been listening to the uninspired utterance of its priest.

"Now if all these things are borne in mind; the power of the Reporter; the binding authority of the reported decision over subordinate Courts; its influence with co-ordinate Courts; if also we remember that a very large portion of the law of the country will be found not in written statutes, but in judicial decisions, we shall feel the great importance of having our reporting done well. And the Council will probably agree with the spokesman of the Council of the Bengal Law Reports, Mr. Pitt Kennedy, when he says that 'it is hardly a less important part of the duty of Government to publish that part of the law which is enunciated by its tribunals than to promulgate its legislation,' and with my predecessor, Mr. Stephen, when he says that reporting should be regarded as a branch of legislation.

"Such being the importance of the work, how has it been performed?

"In this country, indeed, the Government did, previously to the establishment of High Courts, publish and distribute reports of the decisions of the Sadr Díwání Adálat; and many of those reports are exceedingly well done. In England the matter has gone very much at haphazard. In earlier times no reports could be published, except such as were approved by the Judges. Afterwards it got to be considered that there was some magic in reports published by a Barrister, and the principle was accepted, indeed is said to have been openly enunciated by a Judge of great eminence, that 'every gentleman at the Bar 'is entitled to report a case, and to have it cited as authority as reported by him.' At the same time, it has been considered that the excellence of reports may be subjected to a commercial test, like that of wine or piece goods, and that those which sell best are best. In India the Government has interfered to the extent of subsidizing certain reports, but has not, at least of late years, assumed any responsibility for them. We have slid into the loose English practice, and have allowed reports published by anybody and in any way to be scattered broadcast about the country, each just as authentic as another, and all alike claiming the implicit obedience of the subordinate Courts.

"Now the consequences of the principles I have mentioned are obvious enough, and we have reaped a full harvest of them both in England and in India. If all reports are to carry authority with them, reporting may be made a very easy business, and a lucrative one as well. A volume may be published, half full of rubbish, half full of inaccuracies, yet the profession must buy it, because it can be cited as binding authority, and no one in ignorance of its contents can be sure that he is advising his client rightly, or arguing his case efficiently, or, if he is a Judge, deciding the case before him soundly. So it becomes an object with a Reporter to publish a great quantity of cases; if he gets some which his rivals have not got, then his volume has more law in it than theirs, and so it must be bought. That is called free-trade. It has been forgotten that in this matter free-trade could not possibly supply what was wanted; for, in the first place, the very foundation of free-trade is wanting, the freedom of the purchaser to take or to refuse the wares offered to him; and, in the second place, the vendor is under the strongest temptation to select the cases which give him the least trouble, and which fill up the greatest space.

"I will now show by other evidence than my own how this system, if system it can be called, has operated on the quantity and quality of our Indian Reports. I quote from Mr. Stephen's elaborate Minute on the Administration of Justice, and the Council will easily pardon me if I read at some length what is there stated in a more forcible and interesting way than is attainable by me. Mr. Stephen has just mentioned the proceedings of the four High Courts and the Chief Court of the Panjáb. He then speaks thus—

"'The decisions thus continually pronounced by five independent Courts are carefully collected and re-published in the form of reports. These reports are of very different degrees of merit: some are very good, others very bad indeed, consisting merely of reprints of the written judgments of the Judges, with no statement of the facts of the case, or of the arguments of the advocates. These reports, however, are now increasing in number so rapidly that a complete set of them at the present moment would consist of upwards of 60 thick volumes, which are growing at the rate of four volumes a year at least.

"'No one who is acquainted with the course which has been run by English law under the English system of reporting, will be surprised by the course which the matter has taken, and is taking, in India. Law books on the regular English pattern are numerous. Such a law book is usually a mere repertory of cases tacked on to some Act or set of Acts, and as incapable of being read or remembered as a dictionary or any other book of reference. Such books, in fact, are mere indices, and, in my opinion, do more to prevent people from gaining rational or general notions of the law than all other causes put together. For instance, a Magistrate wishes to acquaint himself with the Code of Civil Procedure. The Act is a long one, containing 398 sections; but, by carefully reading it through, a good general knowledge of the whole system may be obtained. The published editions, however, are not intended to give any sort of general notion of the subject, still less are they meant to state the principles on which the

Code is founded, or to point out the objects which it is intended to effect. Their one purpose is to serve as arsenals of precedents by which the parties to a suit may attack each other and embarrass the Judge, and that purpose they effectually carry out. Mr. Wilkinson's edition of Mr. Broughton's edition of the Code of Civil Procedure and of the Acts which amend it, quotes about 2,500 cases on that subject alone. The Indian Digest published last year, and containing notes of the cases decided by the four High Courts down to the time of its publication, is asserted by its editors to be a summary of 37 volumes of reports of cases decided in eight or nine years. It contains 808 large octavo pages printed in small type and in double columns. The mere names of the cases fill 90 such pages. There are about 100 cases in each page, so that at least 9,000 cases would appear to have been decided upon various matters in the course of the eight or nine years over which the work extends. It may, indeed, be said, speaking roughly, that the additions which the Courts make annually to the law are about four volumes containing about 1,000 decisions. I do not know what a complete set of cases on Indian Law would cost, but I am informed that it would cost about Rs. 250 a year to keep it up.

"'This can hardly be regarded as otherwise than a most mischievous state of things, and one which ought not to be permitted to continue. I believe that most of the Judges of the High Courts share in this opinion. Some of the most distinguished of them have expressed themselves to me most strongly as to the mischief which is done by the enormous multiplication of reports, the indiscriminating manner in which they are accepted as of authority co-ordinate with that of Acts of the legislature, and the very poor quality of many of the reports. They have told me in particular that the effect of this state of things upon the Native bar is peculiarly bad. The Native pleaders and vakils are said to have plenty of quickness and excellent memories, but to be wanting in power and grasp of understanding. On persons of this temper a vast mass of precedents is apt to produce a most injurious effect. It diverts their minds from the object of obtaining any real comprehensive knowledge of law to that of amassing a number of isolated unconnected rulings with which they can pelt their antagonists.'

"He then distinguishes between cases which are worth reporting and those which are not, and continues—

"'If reporting is taken up as a mere private commercial speculation, every case is worth reporting because there is no case which may not, under some circumstances or other, be used as a precedent useful to some one or other in some argument or other. The Reporter's object, if the reports are allowed to be a mere private commercial enterprise, is to sell his reports; and, on the one hand, he naturally wishes to make them as complete as possible, in order that others which are more complete may not supersede or compete with them; whilst, on the other hand, as the purchaser is practically obliged to buy the reports for fear his knowledge should fall behindhand, it is the obvious interest of the Reporter to bring out as much matter as he can.

"'A vast number of these reports are of such a nature that their publication is in the highest degree mischievous, as tending to overload the law with needless precedents, and so to confuse and hamper the whole administration of justice. In many cases no really new point of law is decided, but merely a question of fact between two or more parties. In other instances, points of law are decided or remarked upon incidentally and hastily, and in such a manner as not to express the careful and deliberate opinions of the Court. Thus, the High Court of Calcutta is divided into division Courts of two Judges each. All their judgments are

published just as they are delivered (generally without any proper statement of facts to render them intelligible). Without any disrespect to the Court, it is surely clear that to convert every judgment so delivered into a binding precedent, that is to say, into a law, is to attach to them a degree of importance which they are very far from deserving.

"'In other cases the point decided is so minute, so peculiar, or so much dependent upon the particular facts of the case, that it is not worth recording.

"'In almost every case the length of the report is out of all proportion to its importance. To print everything at full length, and to leave the reader to pick out what he wants, is always the easiest of all ways of reporting a case, is the most profitable to the publisher, and the most expensive to the public.

"'Reports published as a private speculation must appear at stated intervals, and the customer is apt to think that, if he has not good measure, he is defrauded. A really careful report ought to mention no one fact that is not essential to the full understanding of the judgment, and to omit no one fact that is essential to it.

"'If this rule were carefully observed, I believe that all reports might be reduced to a small fraction of their present bulk.

"'There are numerous cases, too, which, however important and however well-decided they may be, ought not to form precedents. Cases on the construction of written documents should never be reported unless they decide some broad principle. Can there be a less satisfactory argument than this? A and B must be held to have meant so and so by such an agreement, because C and D were held to have meant something like it by a somewhat similar agreement. In nearly every instance such cases should be decided on their individual merits.'

"Now that is a forcible picture of the state of things which results from holding at the same time that Law Reports are fit subjects for commercial speculation and are also to be treated as binding authorities. Nor is it easy by any private efforts to get out of the false system thus established. If a publication is started on the principle of careful selection and skilful exhibition of decisions, it is easily undersold by another which gives a greater quantity of unselected and undigested matter; for it is all equally law. If buyers could choose, they would choose only that which was really instructive; but under the supposed system of free-trade, they have no choice. The result is that the bad Reports drag good ones down to their own level; those who would gladly supply good and useful Reports are forced to follow the bad example set them, and to insert a quantity of useless matter, merely because others do the same.

"That such is actually the case here and now, I will show by the evidence of Mr. Pitt Kennedy. I quote from a letter written by him on behalf of the Council of Law Reporting to the Government of Bengal in the year 1872.

"'The practical effects of the system are in evidence before the Government of India. In the first place as to mere pecuniary cost, the Advocate General of Madras, in his recent

pamphlet on Law Reporting, says 'that the cost of obtaining a single set of the ordinary current Reports is at least Rs. 300 per annum.' As regards the far more important effect on the quality of the Reports, and on the practice of those who use them, Mr. Pitt Kennedy, in 1872, wrote thus:—He is speaking of the publication called *The Weekly Reporter*:—

"'Mr. Sutherland's publication is a mere reprint of judgments, never containing any statement of the facts of the cases, or any summary of the arguments of Counsel, and including many cases, illustrative of no principle and wholly unfit to be reported. Unfortunately few of the legal practitioners, in this country, save the Advocates in the Presidency High Courts, appreciate these defects, and an indiscriminate insertion of cases is to too many of these practitioners rather an attraction than a fault. In consequence of this, and in order to obtain subscribers amongst the mofussil practitioners, the Bengal Law Reports were obliged to publish many cases, which on strict principles of selection ought to have been excluded.

"'This, of course, has considerably increased the expense of publication of the Bengal Law Reports, which, in the competition with Mr. Sutherland's series, is placed at great disadvantage; the latter, as before observed, consists merely of reprints of judgments with placita prefixed, thus avoiding all labour, save that of copying, and saving the space required for a statement of the case and of the arguments of Counsel.'

"And again he says—

"'The average number of subscribers to the Bengal Law Reports is 310, and the large number of these (exclusive of those in Calcutta itself) are in places outside Bengal, for these reasons, that the officials in Bengal who might otherwise be subscribers are already supplied by the Bengal Government, and that the mofussil practitioners usually prefer Sutherland's Weekly Reporter *as containing more cases at a lower price.*'

"We have also the evidence of a firm of Law Booksellers who are eminently qualified to speak on the commercial aspect of this question. I quote from another letter written by Mr. Pitt Kennedy:

"'But Messrs. Thacker Spink and Co. state that *if the number of cases reported be considerably reduced, there will be a great falling off in the number of subscribers;* and we are bound to admit that we have frequently heard complaints on account of their having omitted to report many cases which had been decided. These complaints, it is true, prove rather the incapacity of the persons making them to form a judgment, but many of the subscribers hold that opinion. Messrs. Thacker, Spink and Co. think that the reduction in the cost of printing would be trifling in comparison with the amount likely to be lost by the discontinuance of subscriptions.'

"I will only add that precisely the same thing has happened in England, and, indeed, it seems to me the inevitable result of the combined principles I have referred to.

"Now, I don't wish to say an unnecessary word against the Weekly Reporter. It is a very respectable publication, and I believe has been and is very useful in its proper place. Taken on its own merits, it will probably find many

purchasers, and I wish it, as I wish all deserving publications, a fair measure of success. My only object is to show that it ought not to possess that factitious quality of binding authority, which, as we are destitute of authorized reports, we have attributed to all reports. A little while ago the Government, who spend money on the Bengal Reports, forbad the expenditure of public money on the Weekly Reporter, which Mr. Sutherland its proprietor thought very hard upon him. And he now considers that we shall do him a further injustice if we succeed in attaching the quality of authority to those Reports which alone ought to have it. Mr. Sutherland piques himself, I believe quite justly, on giving correct transcripts of the judgments of the High Court, and he contends that whatever the High Court have thought fit to utter is fit to be embodied in reports that are to govern the law of the country. He forgets, I think, that a Judge's primary duty is to decide the dispute between the parties, and that a judgment may be an excellent settlement of a dispute, and yet throw no light on the law. I will, however, give a few instances of the sort of case which this gentleman finds it useful to insert in his Reports, and the Council will judge for themselves whether they are useful additions to the law or not.

"Here is a case. A Principal Sadr Amín decided for the plaintiff. The District Judge reversed him, and assigned as the only reason that the plaintiff ought to have produced a specified document. On special appeal by the plaintiff, the High Court found that the reason was absurd, for no such document existed; still they said, there might be reasons for the reversal, and they remitted the case in order that the District Judge might state what his reasons were. When the case got back to the District Judge, he conceived that the High Court intended him to alter his judgment: and so he confirmed that of the Principal Sadr Amín, assigning no reason at all. Of course there was another appeal, this time by the defendant, and of course the High Court again remitted the case to the District Judge for a statement of his reasons.

"The whole history of this struggle of the High Court to make a stupid or perverse man do his duty is given in the Weekly Reporter. It is a most proper subject for publication, and may well find a place in a newspaper, or in any other vehicle for the information of the day. But I need hardly insist on its utter uselessness in a work intended to form part of the general body of law.

"Take another case. A decree awards to the plaintiff, in satisfaction of a money claim, a portion of the defendant's land called Plot 2, and goes on to say that if the claim is not satisfied by Plot 2, the plaintiff may enforce the remainder against Plot 1. The plaintiff took a portion only of Plot 2, and then

tried to get possession of Plot 1. On application to the High Court, it was declared that he could not do so. But why should we have among our laws a declaration of the meaning of a very special decree, of no sort of interest to any body but the parties, and on a point so plain that nothing but the bias of self-interest could have caused a dispute about it? A great number of cases come before the Courts, not because there is any difficulty in them, but because one side or the other is bent upon doing wrong. The authority of the Court is wanted to get justice. But we do not want the history of such cases in our permanent Reports.

"In a third case, Mr. Justice Phear opens his judgment thus:—'The question in this case is a very simple alternative question of fact, namely, whether certain land belongs' to one person or to another person. He then reviews the evidence in detail and decides the case in favour of one or the other. Now what possible light can it throw on the law, to know how a very simple alternative question of fact was decided on a particular occasion? The opening sentence of the judgment is enough to show that, however useful it may be to publish it, it should find no place in a work of authority.

"I will give the Council one more specimen. This is a headnote of a case. 'An indivisible tenure cannot be split up into parts with a view to the institution of different suits against the tenants for arrears of rent.' The proposition is intelligible, and commands assent, but one looks with some curiosity to see on what grounds it was disputed. Well, on looking into the report, I find that it never was disputed at all. The sole dispute was one of fact, whether the particular tenure was or was not indivisible. Having found that it was indivisible, the Court experienced no further difficulty in applying the law to the facts.

"There are a great many cases of the same kind, but I should only weary the Council by giving further specimens. Probably, more than half the reported cases might be omitted on the ground that, considered as moulding the law, they are unimportant or wholly inoperative. It may be useful to the parties or agreeable to some sections of the public that they should be published. Ephemeral publications for this temporary purpose may, if they do their work well, be worthy of praise and encouragement. But to let them take their place among the laws of the land can only be embarrassing. To treat them in such a manner as practically to compel a whole profession to buy them is oppressive. And it is from such an embarrassment and such an oppression that we wish to give relief.

"There is also another great fallacy about reports of this kind; the supposition namely that if only you have a true account of what the Judges said, you have a true account of the decision. Now, there are very few occasions on

which a Judge thinks it necessary to make such a statement of the facts and the arguments as to make his judgment a full exposition of the case. He would usually waste much time if he did so. But a judgment without the facts, like a Counsel's opinion without the case laid before him, is apt to be very misleading. If I were asked what is the most essential part of a good report of any decision, I should say without hesitation a full and accurate statement of the facts. Next to that generally comes the reasoning of the Judge, but that depends upon circumstances; the arguments of Counsel are often of great importance for a due understanding of the case.

"The Council will remember a recent discussion at this table as to the meaning of a passage in a judgment, which was only to be explained by reference to the frame of the suit. On turning to the report, we found nothing said about the frame of the suit, or indeed about any other fact; so that the badness of the report made the judgment worse than useless, actually misleading on that point.

"But I can show you by illustration from the columns of the Weekly Reporter what mere heaps of rubbish are reports of judgments without the facts.

"In an early volume is the report of a case (we may call it case A) in which Counsel cited another case (case B) from another publication framed on the same principle of giving copies of judgments without the facts. Upon this the Court says, 'The facts of the case are not given: and we are by no means sure that the marginal note correctly represents the ruling of the Judges.' And so they pay no attention to case B. Well, time runs on, and in its turn case A comes to be cited to the High Court. The only observation they make is 'We do not know the facts of the case,' and again they pay no attention to case A.

"I ask then why such reports, only cited to be treated as useless, should enter into our system of law making, and whether it is wise or fair to anybody to let them swell the mass of our law, if we can prevent it.

"Of course the cases that I have cited are mere illustrations; their number, as I am informed by gentlemen who have the best means of judging, can be multiplied indefinitely. I hope the Council will be of opinion that I have said enough to show that it is worth our while to make an effort to prevent publications such as these, useful as they may be in their own way, from becoming part and parcel of the law of the land.

"I ought not, however, to quit this part of the subject without reading to the Council a passage from a letter with which Mr. Sutherland has favoured me, and which gives his own view of the status of the Weekly Reporter:—

"'The fundamental principle on which the Weekly Reporter has been conducted ever since it was commenced in 1864, is to publish no case in which there was no principle of law. No

one has ever contended on behalf of the Weekly Reporter that all the cases therein published were meant to serve as precedents. The great merit of the Weekly Reporter, and the reason why it has met with so much favour in the Mofussil, not from the practitioners there merely, but from the Government officials who have subscribed to it privately when they have been prevented from subscribing to it publicly, is that it contains cases which, though they may not answer as precedents to be judicially cited, supply the want, so greatly felt by inexperienced administrators of the law of Guides or Text-books available to English lawyers.'

"Well, but if it be the case that this publication is taken not for the sake of quoting precedents out of it, but for the sake of instruction, in the first place I am glad it should be so; and, in the second place, nothing that I shall ask the Council to do will in the slightest degree interfere with its sale as a work of instruction.

"Such then being the state of affairs, what is the remedy? I dare say that Hon'ble Members have seen a pamphlet, I need hardly say an ably written one, lately published on this subject by the Advocate General of Madras. After stating his view of the condition of things he says—

"'The remedy which I venture to suggest for this state of things is three-fold—(1), a single set of reports for the whole country, edited by a Central authority; (2), increased participation by the Judges in the work of legislation; (3), the substitution of legislative enactment for reports in all cases in which the decision turns on the interpretation of the written law.'

"Now, as regards the second of these proposals, I do not think that either the Government or the Judges see their way to accomplish it. As regards the third, it is in some degree put in action, as, for instance, by the Act for the amendment of the Criminal Procedure Code, which is now pending before this Council. There we propose to take a few judicial decisions and embody them in the Code. But this remedy can only be partially applied. In the first place, you will observe that Mr. Cunningham only proposes it for the written, that is the statute, law. And even as regards this branch of law, there are considerations which would prevent any but a limited reliance on it. There are many cases very useful in Reports, where all their proper qualifications and shades of meaning can be developed, yet which hardly admit of condensation into propositions of law. It would be difficult to keep so well abreast of judicial decision as to dispense with reports, unless it were by such speed as would carry with it great risk of error, and by such incessant fidgetting and patching as would lead other people to vote us, if indeed we did not vote ourselves, a public nuisance. Moreover, we cannot overlook the ingrained tendencies of English lawyers, and I may add of English Statesmen and Englishmen generally. We are always anxious to make every step onward square with the past, and to decide everything by authority and example rather than by pure reasoning. Accordingly, in all departments of life our tendency is to hunt for precedents.

I do not discuss here whether this habit is bad or good, but, having English lawyers at the head of our legal system, we must take its existence into account. As for supplying the innumerable applications of rules to ever varying facts by short propositions or even by illustrations, the task would, I think, be impracticable. And if we attempt to cut off our lawyers from the comfort of precedents to be found in reported cases, I believe we shall fail, and that the law will more than ever fall under the dominion of irresponsible Reporters and bad Reports.

"The first of the three remedies is what we are proposing to try. The Government purposes to establish a system of reporting on such principle as may give both to it and to the Judges their due share of responsibility and of control. We hope thereby to increase the usefulness of Reports by bringing a greater amount of skill and care to bear upon their construction, and to diminish their number by rejecting unimportant cases. If so, we shall also decrease expense to their buyers, which I see that the Advocate General of Madras states to be at least rupees 300 per annum.

"I have seen objections made to a Central Editor on the ground that many cases have a local character. Indeed, a friend of mine, an able and eminent Judge on the Bombay side of India, has written to me on this subject, and in this sense. He says there is probably not a subordinate Judge in all his Presidency who takes the Bengal Law Reports, and perhaps but two who takes the Calcutta Weekly Reporter. And he fears that, with a Central Editor, Bombay lawyers will be saddled with the expense and bother of decisions on the Bengal Rent Law, or something equally useless. Now, all these considerations seem to me to supply arguments, not against, but in favour of a central authority. Under the present system, a Bombay lawyer must either forego what is useful to him (as it seems they do), or take what is useless. It cannot be expected that a Bengal Law Reporter shall publish one volume for general use, and another for provincial use. But if you have an authority acting for all India, he will of course carefully distinguish between cases which have a general bearing, and those which have only a local bearing, and he will publish them in separate volumes; so that the Bombay lawyer will have an advantage which he has not now; for he will be able to get the Bengal decisions which have a general application, and be freed from those which do not apply to Bombay.

"It is not for the purpose of establishing this system, but to aid the system, that the action of the legislature is asked for. We can aid it in two ways.

"First, with respect to the binding authority of Reports. When we get a set of Reports under authorized and responsible management, it will be fair to say that no others shall be of such authority that the Courts shall be bound to hear them cited or treat them as binding. And the practice of so treating

all Reports is so inveterate, that though perhaps a declaration of the legislature is not absolutely necessary for its abandonment, it is very unlikely to be abandoned without such a declaration.

"The other point is one on which practical inconvenience is now felt. From historical causes a decision of a High Court in one Presidency is not obligatory on subordinate Courts in another. The result is that you may have an important gloss upon the law in Madras, such an one as would be inexpedient to attempt to embody in a Statute, and yet be left quite uncertain how the same point would be treated by a District Judge in Bengal. We propose as a portion of the more general and national system of reporting, to say that the reported decisions shall carry the same authority in British India as they now do in their own Presidency.

"For these two purposes I ask leave to introduce a Bill. The exact mode by which they shall be effected will be subject for comment when the Bill is introduced."

The Motion was put and agreed to.

## PORT-DUES ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE also moved for leave to introduce a Bill to amend Act No. XXII of 1855 (for the regulation of Ports and Port-dues). He said that the occasion for amending that Act was this. Act XXII of 1855 drew a distinction between the port itself and the navigable channels which led up to the port; and some of the provisions applied to the port itself, and others to these navigable channels; while some applied to both. Under section twelve of the Act, there were provisions which forbade vessels above a certain burden from moving, excepting they had a pilot on board, or they were authorized by some authority mentioned in the section. But that applied to the port, and not to the navigable channels leading to the port. It was found desirable to have the same provision with regard to the navigable channels. He was not in a position to say why those provisions had not been made to apply to these channels; but he thought it was more likely to have been by accident than by design. At all events, it was now found convenient to extend the power of the Port authorities in that respect.

Another matter in which the Act would require amendment was mentioned by him when he was calling attention to the report of the Select Committee on the Burma Municipalities Bill. The authorities in a Port town were in the habit of giving assistance to sick sailors on board ships, and they generally made a collection by way of contribution from the owners of ships. Some difficulty had been found in enforcing that arrangement; and it was

proposed that these charges should, like other charges, be recovered before the ship got its port-clearance. A similar difficulty was found in Calcutta a few years ago and had been amended by Act III of 1869 of the Bengal Council which we were told had worked very well. The same difficulty had now arisen in Burma, and the Local Government of British Burma asked for a law equivalent to the law passed in Bengal. It was found that the matter was clearly of more general concern, and did not only regard the ports in Burma or the port of Calcutta. There must be the same difficulty arising in other ports, and it was desirable to amend the general law in that respect. At the same time as the matter of ports was the subject of a good many scattered Acts, the opportunity would be taken to see if we could not usefully consolidate the law on the subject.

The Motion was put and agreed to.

The Council then adjourned to Tuesday, the 24th March 1874.

CALCUTTA;
*The 10th March* 1874.

WHITLEY STOKES,
*Secretary to the Government of India,*
*Legislative Dept.*

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