EAST INDIA (LEGISLATION).

RETURN to an Address of the Honourable The House of Commons, dated 13 March 1876;—*for*,

"COPIES of the following LEGISLATIVE DESPATCHES:—

No. 15, of the 15th day of December 1864, from the Governor General of India to the Secretary of State for India in Council;

No. 12, of the 31st day of March 1865, from the Secretary of State to the Governor General;

No. 8, of the 18th day of March 1869, from the Secretary of State to the Governor General;

No. 1, of the 22nd day of March 1870, from the Governor General to the Secretary of State;

No. 47, of the 24th day of November 1870, from the Secretary of State to the Governor General;

No. 2, of the 1st day of February 1871, from the Governor General to the Secretary of State;

No. 9, of the 31st day of March 1874, from the Secretary of State to the Governor General;

No. 45, of the 28th day of July 1874, from the Governor General to the Secretary of State;

No. 33, of the 15th day of October 1874, from the Secretary of State to the Governor General:"

"And of a MINUTE by Mr. *John Stuart Mill*."

India Office,
13 March 1876.

G. HAMILTON,
Under Secretary of State.

(Legislative, No. 15, of 1864, dated 15 December.)

To the Right Honourable Sir *Charles Wood*, Bart., G.C.B., Secretary of State for India.

Sir,

WE have the honour to acknowledge the receipt of your Despatch, No. 34, dated 31st October last, on the subject of the Bill for consolidating and amending the laws relating to the procedure of the courts of Civil Judicature in British India, which is now pending before this Government in the Legislative Department.

2. In this Despatch you remark that the question of the necessity of enacting a new Code of Civil Procedure, consisting for the most part of the provisions of the code now in operation, does not appear to have been sufficiently considered; you proceed to suggest whether, for the reasons stated, it would not be better to add separately to the code such further provisions as may from time to time be considered necessary, and to postpone the enactment of a new code for the present; and you conclude by requesting that we will obtain and transmit to you, accompanied by an expression of our own views on the subject, the opinion of the Judges of the high court at Calcutta as to the expediency of enacting a new Code of Civil Procedure, and that we will postpone, until the receipt of further instructions, the consideration of the Bill in the Council of the Governor General for making Laws and Regulations.

3. From the reports of the proceedings of the Council of the Governor General assembled for the purpose of making laws and regulations, which are regularly transmitted to you, you will have learned that the Bill alluded to in

your Despatch was introduced into the Council on the 11th of last month, and ordered to be referred for Report to a Select Committee. No time was fixed for the submission by the Select Committee of their Report, but we are informed that the committee have already revised more than two-thirds of the Bill, and that they expect to complete the revision of the entire Bill, and to be in a position to make their Report in about six weeks or two months from this date. We apprehend that, according to the rules which have been laid down for the conduct of business at the meetings of the Council of the Governor General, it could only be by a motion regularly made and carried in the Council that the progress of the Bill before the Select Committee could be suspended, and we think you will agree with us that there are obvious reasons why such a motion should not be made. But, apart from the consideration just mentioned, we are of opinion that, with advertence to the progress already made by the Select Committee in the revision of the Bill, it is on every account very desirable that the Committee should be allowed to proceed with their work and to make their Report, and that it would be highly inexpedient, at the present stage, to check their proceedings. We do not purpose, therefore, communicating your Despatch to the legislative branch, or taking any immediate action upon it; but on the Select Committee making their Report, it is our intention, in pursuance of the instructions contained in your Despatch, to propose that the Bill, as settled by the Select Committee with a copy of the Report of the Committee, shall be published in the Official Gazette, and that copies of the Bill and of the Report of the Select Committee shall be sent to the Judges of the high courts at Calcutta, Madras, and Bombay, and of the Sudder Court for the North Western Provinces, and, through the Local Governments, to the Judicial Commissioners of the Punjab, Oude, the Central Provinces, and British Burmah, for their remarks and for an expression of their opinion as to the expediency of passing the Bill at once into law, or, to quote the words of your Despatch, of enacting at this time a new Code of Civil Procedure. We think that upon this point the opinions of all the principal civil courts in the country should be obtained, and that the requisition for such opinion should not be confined to the High Court at Calcutta. We shall, at the same time, forward a copy of the revised Bill and of the Report of the Select Committee for your information; and, on the receipt of the opinions of the Judges of the several courts and Judicial Commissioners above mentioned, we shall transmit a copy of the same to you accompanied by an expression of our own views, and having done this we shall await a further communication from you.

4. Having thus stated the course which we consider it proper to adopt, consequent on the receipt of your Despatch under acknowledgment, and which we trust will have your concurrence, we must express our regret that it should have appeared to you that the question of the necessity of introducing the present Bill had not been sufficiently considered. On this point we would refer you to the statement of objects and reasons which was published with the draft Bill in the Official Gazette, and the remarks made by our honourable colleague Mr. Harington in introducing the Bill.

5. In the statement to which we have asked your attention it was remarked that if the object of the present Bill were simply to supply omissions or to cure defects brought to light in the working of the code during the period that had intervened since its introduction, or to remove doubts which had arisen as to the intent and meaning of some of the sections, it might be better to allow the code to remain some further time in operation before any general revision were attempted; but (the statement went on to say,) during the last four years, great changes had taken place in the judicial agency of the country, as well as in the substantive criminal law in its relations to the administration of civil justice, and having enumerated some of the most important of these changes, it observed—

"These and other changes have already led to the passing of several Acts to amend the Code of Civil Procedure, and further legislation is called for on many points connected with the procedure of the courts. One of the Acts passed to amend the code (Act XXIII. of 1861) consists of no less than 44 sections. This was, to some extent, a consolidating Act; but still the laws constituting the Code of Civil Procedure are much scattered, and further legislation, as already noticed, being necessary, it seems desirable instead of adding to the number of Acts by which the civil courts are to regulate their proceedings, that the opportunity should be taken to pass a single or consolidating Act which shall be complete in itself,

and

and which shall amend whatever experience may have shown to be defective in the existing code."

6. And here we desire to remark that the decision arrived at to introduce a consolidating Bill for the reasons given in the paragraph of the statement of objects and reason just quoted, in preference to the course suggested in your present Despatch, is strictly in accordance with the instructions communicated for our guidance in a Despatch from the late Court of Directors, No. 4, of 1858, dated the 5th of June of that year. Paragraph 35 of that Despatch says—

"In reviewing from time to time the course of legislation in India, we have been much struck with the inconvenience of legislating, so much as is the case at present, by mere reference to prior and existing laws which are left unrepealed. In cases of extreme pressure and urgency, and when there may not be leisure for a full and more correct framing of the law, a short Act referring to existing Acts or regulations, repealing or adding to, or varying them, may be the only course open to the Legislative Council. But in general, and indeed whenever there is time to do it, the best mode of framing a new Act which is to modify existing Acts or regulations is to repeal all that it modifies, and embrace in the new Act all that the Act of Reference and the Acts or Regulations referred to would, on the other plan of proceeding, include."

7. The course here suggested is obviously proper and desirable, and it has been followed on more occasions than one since the receipt of the honourable Court's Despatch. But if of general applicability to legislative measures in this country, it would seem to have a special application to codes, whether of procedure or of substantive law. In support of this view we would quote a remark made in the Report on the first chapter of the Indian Civil Code.

The framers of that code, four of whom* were on the Royal Commission which originally prepared the present Code of Civil Procedure, after referring to the views expressed by the framers of the Indian Penal Code as to the best mode of preventing the code from being overlaid with an accumulating mass of comments and decisions, and of keeping the code complete in itself, go on to say—

*Sir John Romilly.
Sir Edward Ryan.
Mr. Robert Lowe.
Mr. John Macleod.

"We agree with the framers of the penal code in thinking that, for the prevention of this great evil, the enacted law ought at intervals of only a few years to be revised, and so amended as to make it contain, as completely as possible, in the form of definitions, of rules, or of illustrations, everything which may, from time to time, be deemed fit to be made a part of it, leaving nothing to rest as law on the authority of previous judicial decisions. Each successive edition, after such a revision, should be enacted as law, and would contain, sanctioned by the Legislature, all Judge-made law of the preceding interval deemed worthy of being retained. On these occasions, too, the opportunity should be taken to amend the body of law under revision in every practicable way, and especially to provide such new rules of law as might be required by the rise of new interests and new circumstances in the progress of society.

8. We would only further remark, on the part of your Despatch under consideration, that, having regard to the composition of the great majority of the courts in this country, whose proceedings are required to be regulated by the Code of Civil Procedure, and to the character of that section of the community whose transactions take them into those courts, it is in the highest degree desirable that the Code of Procedure to which they have to look for their guidance should be contained in a single enactment, instead of having to be searched for in numerous Acts of different periods. This, to some extent, is already the case with the present Code of Civil Procedure, as will be seen from the schedule of Acts and Regulations at the end of the present Bill which the Bill proposes to repeal, and the evil would be increased if, to the Acts now existing, a further law repealing or modifying the provisions of former Acts, and enacting a number of new provisions were to be added. In such a state of things there must always be great danger of the new provisions of law being overlooked, or of provisions which have been repealed or modified continuing to be acted upon.

9. We cannot conclude this Letter without briefly noticing the request contained in your Despatch, that we will postpone, until the receipt of further instructions, the consideration of the present Bill in the Council of the Governor General for making laws and regulations. We understand the request here made to have been intended as a suggestion only, not as a positive direction; and we desire to say that we are at all times prepared to receive any suggestions which

Her Majesty's Government may deem it proper to make in respect to any project of law proposed for adoption in this country, whether prior to or after its introduction into the Council of the Governor General for making laws and regulations, and to give full consideration to the same. The Indian Councils Act, 1861, though it reserves to Her Majesty the right to disallow any law passed by the Council of the Governor General, and assented to by the Governor General, does not appear to contemplate that the consideration of any Bill regularly introduced into the Council of the Governor General for making laws and regulations, and not falling within the proviso contained in the 22nd section of the Act, should be stayed by orders from home; and a request, such as that under consideration, if taking the form of an order, might prove very embarrassing, and lead to conflict, in the case of a Bill brought in by an additional member of the Council, supposing the Bill to be within the competency of the additional member to introduce without the previous sanction of the Governor General.

Fort William, the 15th December 1864.

We have, &c.
(signed) *John Lawrence.*
R. Napier.
H. B. Harington.
H. S. Maine.
C. E. Trevelyan.
W. Grey.

(Legislative, No. 12.)

To His Excellency the Right Honourable the Governor General of India in Council.

Sir, India Office, London, 31 March 1865.

Para. 1. YOUR Despatch, dated 15th December 1864 (No. 15), on the subject of the Bill for consolidating and amending the laws relating to the procedure of the Courts of Civil Judicature in India, has been received and considered by me in Council.

2. As, however, you have informed me, in para. 9 of this Despatch, that the Bill and Report of the Select Committee will be communicated to the several judicial authorities named by you, in order to elicit an expression of their opinion, I will abstain from any further remarks on the subject until the Report of those opinions shall reach me.

3. It appears to me, however, from some parts of the 3rd and 9th paragraphs of your Despatch, that you have misunderstood the character of my Despatches, and indeed of the relations between the Secretary of State and the Government of India.

4. I allude to your intimation that you did not intend to communicate to the body which you designate "the Legislative branch" my Despatch, suggesting that the proceedings in respect to the new Code of Civil Procedure should be postponed, and to the difficulties which might arise in certain circumstances from such a suggestion, or at any rate if a direction to the same effect should be given by the Secretary of State.

5. I must point out to you that it would have been altogether an erroneous proceeding to have communicated the Despatch in question to your Council when assembled, with its additional members, for the purpose of making laws and regulations. The Despatches of the Secretary of State, to whatsoever subject they may relate, are addressed to the Government of India, that is, to the Governor General and his Executive Council, to be dealt with by them at their discretion, but by no means to be communicated as a matter of ordinary usage to those to whom they are not addressed. Nor does it make any difference in this respect, that they may happen to relate to subjects on which legislation is proposed or is in progress. They are intended to influence the conduct of your Government, as an executive body, in dealing with such subjects, and not to convey the views of the Secretary of State to the legislators themselves.

6. There

6. There may be occasions when, in the exercise of the discretion of your Government (as indeed must be the case with any local Government), when there could be no objection to your laying before your Council assembled for legislative purposes a Despatch from the Secretary of State, as if, for instance, he directed the introduction of some particular measure.

7. It might be desirable to lay such a Despatch, or extracts from it, with any other papers relative to the subject, before your Council with its additional members; but I need not add, that my Despatch of 31st October (No. 34) 1864, which only contained suggestions respecting an important question then in progress, is not of such a character.

8. No Despatch which I have written assumes to prescribe to any member who may be added to the Council of the Governor General, for the purposes of legislation, what his conduct shall be in reference to any Bill before the Council, or for his guidance respecting any measure introduced by him, unless it has been introduced by him on behalf or by directions of the Government.

9. With regard, however, to any directions to your Government, I am not aware that, by any recent legislation, the full and undoubted power formerly possessed by the late Board of Control and Court of Directors, and now possessed by the Secretary of State (in whom all the powers possessed by both those bodies are vested), to control and direct the action of the Government of India, has been taken away or curtailed.

10. The introduction of a Bill by the Government, or the course to be pursued by the Government in respect to a Bill introduced by any additional member, does not appear to me to be less an act of the Government as such than any other act which they may perform.

11. The action of the Government in this country, in respect to what is called a Government Bill, is perfectly well known and recognised. It is introduced with the authority of the Government, is carried on, or postponed, or withdrawn, on the responsibility of the Government, and the action of the Government in this country, in respect to a Bill introduced by any Member of Parliament, is guided by the same rule.

12. I apprehend that the action of the Government of India must be considered in precisely the same light, and that the control of the Secretary of State extends to this, as to every other action of that Government.

13. I have always abstained, however, from giving any direction upon such subjects. I have confined myself to suggesting the course which I thought desirable, and it seems to me that this is a course altogether unobjectionable.

14. Your Despatch refers to the power of the Secretary of State to disallow any Act passed by the Governor General's Council when assembled for purposes of legislation; but surely it is more courteous, and more calculated to maintain the character and dignity of the Council, that the Secretary of State should suggest to the Executive Government to suspend, and even to withdraw, a Bill, than leaving them to proceed without any intimation of his opinion that he should ultimately disallow it.

15. In the course which I have taken on this and on former occasions, I have always been anxious that the communications between the Home Government and the Government of India should be so conducted as to ensure the most harmonious action between them.

16. It is obviously most conducive to a good understanding that extreme claims should not be put forward on one side, or extreme rights enforced on the other; and I cannot entertain a doubt but that with an earnest desire on the part of the various bodies amongst whom the different parts of the Government of India are distributed to maintain harmonious action, the well-being of that vast and important Empire may best be promoted.

I have, &c.
(signed) *C. Wood.*

(Legislative, No. 8.)

To His Excellency the Right Honourable the Governor General of India in Council.

My Lord, India Office, London, 18 March 1869.

Para. 1. In my Despatch of 18th March (No. 7) 1869, I instructed you as to the course which I wished to be pursued respecting the 75th section of the proposed Contract Law, framed by Her Majesty's Indian Law Commissioners and proposed by them for enactment. I wish to take this occasion of indicating to you my views as to the manner in which chapters of substantive law proposed in like manner by the Commissioners should in future be dealt with. I am anxious to reconcile, as far as possible, the respect which is due to the recommendations of a body at once so personally distinguished and so high in authority as the Commissioners, with the exercise, on the part of those engaged in legislation in India, of the necessary freedom of discussion.

2. On receiving any such proposed measure from this Department, if your Excellency should wish to have the advice of any of the judicial authorities, or of your officers whose local knowledge and experience may be serviceable, with respect to any part of its contents, let them be consulted confidentially. If, after such consultation, where deemed necessary, and after consideration in Council, you should entertain doubts as to the expediency or applicability of any of the provisions, let those doubts be communicated to me. I shall then consider these doubts, and I shall confer with Her Majesty's Law Commission respecting them. You will then receive back the chapter from me in the shape in which I think it desirable that it should be finally passed into law, and (unless in case of strong unforeseen objection arising in your mind, which I will not anticipate, but which must then be dealt with according to your discretion as circumstances may require) I shall expect that the measure will be introduced by you into the Council when assembled for making laws and regulations, and discussed there in the stages and according to the forms usual in like cases. And while under consideration by the Council, I shall further expect that you will employ all the usual and legitimate means to secure its passing as a Government measure.

3. The course of proceeding thus indicated will, in my opinion, be the most conducive to the ultimate interests of the community, through the speedier adoption of a corpus of law which must confer the most important benefits on all classes of Her Majesty's Indian subjects.

I have, &c.
(signed) *Argyll.*

(Legislative Department, No. 1 of 1870.)

To His Grace the Duke of *Argyll*, K.T., Her Majesty's Secretary of State for India.

My Lord Duke, Fort William, 22 March 1870.

We have the honour to transmit herewith a copy of the Report of the Select Committee on the Indian Contract Law. It will be seen, on perusal of the Report, that the Committee propose numerous alterations of great importance in the draft prepared by Her Majesty's Indian Law Commissioners, the most important of which is the omission of Section 75, which your Grace has recommended us to adopt. That section provides, in substance, that any person in possession of goods may make a good title to them, if the purchaser acts in good faith. The Committee, after a very careful consideration of this section, are unable to agree with the Indian Law Commissioners as to its expediency. The reasons which have led them to this conclusion are fully explained in their Report, in which we concur, and which, indeed, most of us have already signed in our legislative capacity.

2. Until we receive your Grace's instructions upon the question whether the Bill, as amended, is to be proceeded with or not, we have thought it best to suspend the presentation of the Report and its publication in the "Gazette"; but

but in the meantime we think it necessary to refer to your Grace's Despatches, Nos. 7 and 8, dated the 18th of March 1869, inasmuch as they appear to us to raise an important question as to the character of our legislative powers.

3. The line of conduct which is pointed out to us by your Grace, in reference to draft of Acts sent out by the Indian Law Commissioners is, if we apprehend it rightly, as follows:—If we feel doubts as to any part of the Commissioners' drafts we are to report them to your Grace. You will then discuss the matter with the Commissioners, and inform us of the course which you desire us to take. We are to accept the measure as settled by you, and it is to be introduced into the Council when assembled for making laws and regulations, and discussed there in the stages and according to the forms usual in like cases.

4. The course which matters have taken with reference to the draft of the Contract Law obliges us to point out to your Grace the difficulties by which this mode of proceeding would be attended. It would, in the first place, impose upon the Executive Council the obligation of doing the work which is now done by Select Committees of the Legislative Council; that is to say, we should have to discuss, clause by clause, every draft forwarded to us by the Indian Law Commissioners, to report our opinion to your Grace, and to discuss with you each topic separately. A reference to the Report of the Select Committee upon the Contract Law will show, at a glance, what would be involved in such a proceeding. The Report is the result of discussions ranging over many months. If such discussions had to be undertaken by the Executive Council in the first instance, and if all the important points had afterwards to be separately discussed with your Grace, and indirectly with the Indian Law Commissioners, the discussion would be interminable, and the additional demand on our time, which is already fully occupied, could not, we believe, be met without serious injury to other branches of the public service.

The Committee has proposed to modify the Commissioners' draft in many other sections besides the one to which we have specially referred. It seems to us practically impossible that all the suggestions which they make, and in which we agree, should be referred to you Grace as doubts, and discussed by us with you in the first instance.

5. In the next place, upon receiving your Grace's final instructions, we are to employ all usual and legitimate means, while the measure is under consideration, to secure its passing as a Government measure.

6. It appears to us that the adoption of this suggestion would deprive the Legislative Council of all real power in the discussion of the Bills in question, and would deprive their debates, and in particular the debates of the Select Committees, of all real significance. This we should regard as a great misfortune, as the Council is constituted with the view of giving the Government the advantage of the experience of gentlemen who, whether they hold office or not, do not form part of the Government, and who are practically acquainted with every part of the country. We attach the highest importance to their opinions upon the questions which come before them, and we have frequently had occasion, in consequence of their suggestions, to modify views which we had previously entertained; but we are convinced that we should lose this benefit if the independence of the Council were to any extent diminished.

7. Your Grace, however, refers to the case of "strong unforeseen objections" arising in our minds. If we are to interpret this exception as authorising us to act as, upon the whole, seems best after full discussion, we ask for nothing more. We shall always, of course, receive with the deepest respect any intimation of your opinions and wishes, or any statement of the result of your Grace's conferences with the Indian Law Commissioners; but if, upon the whole, we remain unconvinced (as in the present instance), we cannot suppose that your Grace expects us to receive the expression of your opinion as a command to introduce into the Legislative Council a measure of which we disapprove.

It is enough to say, as to such a course, that it would reduce us to the alternative of either publicly stating that the Bill was introduced, not on our responsibility, but in obedience to your positive orders, or else of defending it by arguments which we did not believe to be sound. Either course would be totally inconsistent with our position as a Government.

8. We believe, moreover, that if we were to take such a course, we should be acting in opposition to the spirit of the law.

9. The Indian Councils' Act (s. 22) empowers us "to make laws and re-

gulations" for all purposes, with certain exceptions, throughout British India, and empowers your Grace (s. 21) to disallow such laws. It appears to us that it is the effect of this enactment to invest us with a legislative discretion, and to impose upon us the duty of using it to the best of our judgment. Any other view would invest the Secretary of State with the character of the legislator for British India, and would convert the Legislative Council into a mere instrument to be used by him for that purpose.

10. Your Grace observes that you are "anxious to reconcile, as far as possible, "the respect which is due to the recommendations of a body at once so per- "sonally distinguished and so high in authority as the Commissioners, with the "exercise, on the part of those engaged in legislation in India, of the necessary "freedom of discussion." We are fully sensible of the claims of Her Majesty's Commissioners to respect upon every ground, but we cannot admit that we show any want of respect by modifying their drafts. We are responsible for the enactment of those drafts into laws, and that responsibility appears to us to carry with it the right of deciding upon the form in which Acts are to come before your Grace for final approval or rejection.

We have, &c.

(signed) *Mayo.*
W. R. Mansfield.
H. M. Durand.
John Strachey.
R. Temple.
J. F. Stephen.

(Legislative, No. 47.)

To His Excellency the Right Honourable the Governor General of India in Council.

My Lord, India Office, London, 24 November 1870.

Para. 1. I HAVE to acknowledge your Despatch, No. 1, of the 22nd March 1870, transmitting copy of the Report of the Select Committee on the Indian Contract Law.

2. You will have been informed by mine of the 30th of September, No. 40, of the resignation by the majority of the Indian Law Commission of their offices. This circumstance has of course deprived the questions, to which your Despatch and report relate, of much of their immediate urgency. There is, however, one question of constitutional principle raised in this correspondence of so much importance, and so distinct in its nature, that I feel it to be indispensable to convey to you without loss of time the views which I entertain respecting it.

3. I instructed you by my Despatch of 18th March 1869, after you had fully considered any drafts of laws prepared by the Commissioners which I might in future transmit to you, and after you had communicated to me any doubts you might entertain respecting them, that, upon receiving them again from home in the shape in which the Secretary of State in Council considered it advisable that they should be passed into law, you should introduce them into the Council when assembled for making laws and regulations, and that you should then employ "all usual and legitimate means, while the measure is under discussion, "to secure its passing as a Government measure."

4. To this instruction you state various objections, which resolve themselves into two, one an objection of detail, pointing to certain inconveniences in the working of the plan which you think would arise out of the usual organisation of the Council; the other an objection of principle, to the effect that the course I have indicated is in derogation of the legislative independence which belongs in your opinion to the Council.

5. As regards the first of these objections, I need not reply to it at any length, because it is founded on some misapprehension of the intention of my Despatch. It was not my intention to prescribe, or to exclude, any particular mode of "considering in Council" the drafts sent out from home. How that consideration may best be given is a matter which must remain with you to determine.

6. I pass,

6. I pass, therefore, to the second objection which you make to my instruction on this subject, an objection which does involve questions of the highest importance.

7. You object that the course I have pointed out "would deprive the Legis- "lative Council of all real power in the discussion of the Bills in question, and "would deprive their debates, and in particular the debates of the Select Com- "mittees, of all real importance."

8 "The course prescribed," you add, "would reduce us to the alternative of "either publicly stating that the Bill was introduced, not on our own responsi- "bility, but in obedience to your positive orders, or else of defending it by "arguments which we do not believe to be sound."

9. It cannot be denied that some theoretical inconveniences are inseparably connected with the working of such a machinery of government as that through which the Empire of India is ruled from home. In practice these inconveniences may be, and have actually been, reduced to a minimum by mutual respect on the part of those who discharge various functions and exercise different powers in a divided and complex system of administration. But the risk of serious embarrassment would become much greater than hitherto it has been found to be, if a clear understanding were not maintained as to one great principle which from the beginning has underlaid the whole system. That principle is, that the final control and direction of the affairs of India rest with the Home Government, and not with the authorities appointed and established by the Crown, under Parliamentary enactment, in India itself.

10. The Government established in India is (from the nature of the case) subordinate to the Imperial Government at home. And no Government can be subordinate unless it is within the power of the Superior Government to order what is to be done or left undone, and to enforce on its officers, through the ordinary and constitutional means, obedience to its directions as to the use which they are to make of official position and power in furtherance of the policy which has been finally decided upon by the advisers of the Crown.

11. Neither can I admit that it makes any real difference in the case, if the directions issued by the Imperial Government relate to what may be termed legislative as distinguished from executive affairs. It may be quite as essential, in order to carry into effect the views of the Imperial Government as to the well-being of Her Majesty's Indian dominions, that a certain measure should be passed into a law, as that a certain act described in common language as executive should be performed. But if it were indeed the case, as your argument would represent it to be, that the power of the Imperial Government were limited to the mere interposition of a veto on Acts passed in India, then the Government of the Queen, although it could resist the passing of an injurious law, would be helpless to secure legislative sanction for any measures, however essential it might deem them to be for the welfare or safety of Her Indian Empire. I think that on reconsideration you will see how inadequate such a power would be to regulate and control the affairs of that Empire, and how small a part it would represent of that supreme and final authority which has always been held and exercised by the Government of the Crown.

12. The Imperial Government cannot indeed insist on all the members of the Governor General's Council, when assembled for legislative purposes, voting for any measure which may be proposed, because on such occasions some members are present who are not members of the Government, and are not official servants of the Crown. But the Act which added these members to the Council for a particular purpose made no change in the relations which subsist between the Imperial Government and its own executive officers. That Government must hold in its hands the ultimate power of requiring the Governor General to introduce a measure, and of requiring also all the members of his Government to vote for it.

13. I need hardly say that I am speaking on a question of abstract right, not on a question of ordinary procedure. But it is the question of abstract right which I understand to be raised in your reply to my Despatch of 18th March 1869. As regards ordinary procedure, it is only needful to bear in mind where the seat of ultimate authority is placed, in order to secure on both sides that forbearance and moderation without which no political constitution can be worked with smoothness and success.

14. I must add that the principle I have now asserted is the recognised principle of British government in relation to other parts of the Queen's dominions where the authority of the legislating body is derived from the

Crown, and is not founded on the principle of popular representation. The vastness and importance of Her Majesty's Indian dominion, however they may add to the dignity of those who are called on to administer its affairs on the spot, in no degree exempt them from the necessary tie of subjection, but rather render it more incumbent on Her Majesty's advisers and councillors at home to maintain the more carefully the existing order of things as defined by constitutional usage, and by what I may term the fundamental axioms of the connexion between this country and India.

15. I do not wish to argue this question more in detail. The reasonable application of the principle here asserted to the particular work of the Law Commission is obvious enough. That Commission was appointed because it was assumed that for the highly scientific work of drawing up codes of substantive law and of procedure, there were men and facilities at home such as could not be found in India. In works of this nature, whether undertaken for England or for India, it is wise and almost necessary to take a good deal upon trust from an authority which has been well and wisely chosen. But, on the other hand, it is very possible that local circumstances, the habits or the prejudices of the people may render it unwise to apply to them, without modification, even the soundest abstract principles of jurisprudence. It is to provide for such cases that the drafts of the Commissioners have been submitted to your consideration, and you may depend upon my receiving, with the most careful and respectful attention, any suggestions you may make on such omissions or modifications as you may think required by the special circumstances of Indian society. But on the general question of authority raised in your reply of the 22nd March 1870, it is sufficient for my present purpose to express, as distinctly as possible, the adherence of myself and my Council to the view taken in my above-mentioned Despatch of 18th March 1869, respecting the duties of Governors and official Members of Council in the case supposed. Such powers of control as are there claimed for the Secretary of State must indeed be used with great deliberation, and on the rarest occasions. But the Imperial Government, as it alone is responsible for the use of them, would incur, on the other hand, a heavy responsibility if it allowed their substantial existence to be controverted without reply.

I have, &c.
(signed) *Argyll.*

(Legislative Department, No. 2 of 1871.)

To His Grace the Right Honourable the Duke of *Argyll*, K.T., Her Majesty's Secretary of State for India.

My Lord Duke, Fort William, 1 February 1871.

WE have the honour to acknowledge your Grace's Legislative Despatch, No. 47, dated 24th November 1870, referring to the resignation of the majority of the Indian Law Commissioners, and conveying to us the views which your Grace entertains respecting the question of constitutional principle raised in the correspondence ending with the Despatch under notice.

2. We fully accept, and indeed we never intended to dispute, the principle that the "final control and direction of the affairs of India rest with the "Home Government, and not with the authorities appointed and established "by the Crown under Parliamentary enactment in India itself," and we are glad to find, from paragraphs 5, 13, and 15 of the Despatch, that your Grace does not intend to apply that principle to matters of ordinary procedure, and that you consider it should "be used with great deliberation and on the rarest occasions."

3. The resignation of the majority of the Indian Law Commissioners renders it unnecessary to refer further to the special question which was the occasion of our first Despatch.

We have, &c.
(signed) *Mayo.*
John Strachey.
J. F. Stephen.
B. H. Ellis.
H. W. Norman.

(Legislative, No. 9.)

To His Excellency the Right Honourable the Governor General of India in Council.

My Lord, India Office, London, 31 March 1874.

Para. 1. My attention has been drawn to the great number and importance of the measures recently passed by the Council of the Governor General for making Laws and Regulations, which have been brought, for the first time, to the official knowledge of the Secretary of State for India, through enactments sent hither for Her Majesty's approval or disallowance, under Section 21 of the Indian Councils Act. The Government of India appears to have taken upon itself the entire responsibility for nearly the whole of these measures throughout their course. The policy embodied in them was, no doubt, maturely considered, in the first instance, by the Governor General in his executive capacity, and in Executive Council. When this policy was determined upon, Bills to give effect to it were drafted in your Legislative Department, and were subsequently introduced into the Legislative Council by the law member, or by some other member of Council, or by some gentleman who acted as the organ of the Government. In their passage through the Legislature they appear to have remained in charge of some representative of the Governor General in Council up to the time of their final enactment. There is no question that, if measures of equally great moment to the fortunes and interests of the Indian Empire had been adopted by the Governor General, not in the Council for making Laws and Regulations, but in Executive Council, they would have been reported to me in full detail at a much earlier stage, and I see no sufficient reason why the circumstance, often quite accidental, that your Excellency's orders take a legislative form, should deprive me of all official information concerning them until a period at which it becomes peculiarly difficult to deal with them. Among many inconveniences which attend the present course of proceeding, it may be pointed out that if the Secretary of State advises Her Majesty to disallow an enactment, under Section 21 of the Indian Councils Act, he may be annulling, on the score of a single objectionable provision, the results of much conscientious labour on the part of the Legislature, and of much technical skill bestowed by the Legislative Department; and, further, that unless a measure is reserved, under Section 20 of the above Act, for Her Majesty's pleasure (a course which appears to be very rarely followed), its disallowance may cause great difficulty and confusion, by rendering useless courses of administrative action which have been entered upon on the footing of the law. It adds to the force of these observations that of late there has been a considerable increase in the number of petitions and representations addressed to the Secretary of State by natives of India and others, on the subject of intended legislative measures, concerning which his information is at best imperfect.

2. The present practice appears to be a departure from older precedents. I observe that, as recently as 1868, Despatches were addressed by the then Government of India to Sir Stafford Northcote (Home Department, Legislative, 30th June 1868; Home Department, Public, 6th November 1868), in which full information was given to him respecting important legislation which was at that time contemplated, and in which his opinion on its policy was invited. I consider that a return to this method of proceeding would be attended with advantage, and I request, therefore, that your Excellency in Council will observe in future the following rules with reference to all intended legislative measures which are at the same time of importance and are not urgent.

3. Whenever the Governor General in (Executive) Council has affirmed the policy and expediency of a particular measure, and has decided on submitting it to the Council for making Laws and Regulations, I desire that a Despatch may be addressed to me stating, at length, the reasons which are thought to justify the step intended to be taken, and the mode in which the intention is to be carried out. This Despatch should be accompanied by a copy of the Bill drafted in your Legislative Department, or should be followed by such copy with as brief delay as possible. I do not propose to reply at once in all cases to this communication, but I request that your Excellency will mention in it the date at which it is intended that the Bill referred to shall be submitted to

the Legislative Council, and that this date may be so fixed as to afford me sufficient time to address to you on the contemplated measure such observations as I may deem proper, if I should desire to observe upon it.

4. I have excepted from the above directions measures of slight importance (of which I am aware that a considerable number pass the Legislative Council annually), and measures urgently requiring speedy enactment. I leave your Excellency to judge of the degree of importance which will bring a given case within the rule I have laid down, and of the degree of urgency which will withdraw another case from it. In the event, however, of your omitting to give me previous information of an intended enactment on the ground that it is urgently required, I request you to communicate to me subsequently the grounds of the opinion on which you have acted.

5. It is, of course, conceivable that a Bill of which I have approved, or which has been modified in conformity with my desire, may be materially changed during its passage through the Legislative Council. It appears to me that, as a fact, that body rarely alters Government measures on points of principle; but if the case to which I am referring should happen, I do not apprehend that your Excellency would have any practical difficulty in delaying the progress of the Bill until I have a fresh opportunity of expressing my opinion.

6. In making these observations I have not failed to bear in mind the correspondence which took place in 1870 between my predecessor and the Government of Lord Mayo, respecting the powers of the Council for making Laws and Regulations, but it does not appear to me that the questions discussed in that correspondence are raised by the rule which I have requested your Excellency to observe.

7. It is my intention to send a copy of this Despatch (omitting the last two paragraphs) to the Governors in Council of Madras and Bombay for their guidance in matters of legislation, and I request you to transmit a copy (with the like omission) to the Lieutenant Governor of Bengal, to whose legislative measures I wish my directions, *mutatis mutandis*, to apply.

I have, &c.
(signed) *Salisbury.*

— No. 45 of 1874. —

Government of India, Home Department, Public.

To the Most Honourable the Marquis of Salisbury, Her Majesty's Secretary of State for India.

My Lord Marquis, Fort William, 28 July 1874.

We have the honour to acknowledge the receipt of Your Lordship's Despatch (Legislative) No. 9, of the 31st March 1874.

2. In that Despatch the following rules are prescribed for the guidance of the Government of India, the Governments of Madras and Bombay, and the Lieutenant Governor of Bengal, in matters of legislation:—

(1.) Whenever the Government, in its executive capacity, has decided to submit a measure of importance, which is not urgent, to the Council for making Laws and Regulations, a Despatch is to be addressed to the Secretary of State stating at length the reasons for the measure, and the manner in which its objects are to be carried out. The Despatch is to be accompanied, or followed soon after, by a draft of the Bill proposed to be introduced.

(2.) When this course is not followed, because a measure of importance is urgently required, the grounds of the opinion on which the Government has acted are to be subsequently communicated.

3. In

3. In communicating the motive for these rules and instructions, the Despatch alludes to the great number and importance of the measures recently passed by the Council of the Governor General for making laws and regulations, which have been brought for the first time to the official knowledge of the Secretary of State through enactments sent home under Section 21 of the Indian Councils Act. And your Lordship observes that our present practice in regard to communications with the Secretary of State upon important legislative measures, appears to have departed from older precedents. It is added that there has been a considerable increase in the number of petitions and representations addressed to the Secretary of State by natives of India and others on the subject of intended legislative measures, concerning which his information was at best imperfect.

4. We have no record of the petitions and representations on the subject of intended legislative measures to which your Lordship refers, and we know only one instance of a representation recently made to your Lordship regarding measures under our consideration. In fact, during the last two years few measures of importance have been introduced into the Legislative Council of the Governor General; and official consultations have passed between the Secretary of State and the Government of India in respect to several measures, either introduced or under consideration during that period. We are not aware that there has been any deviation from former practice in this respect; and we can certainly affirm that none has been intended.

5. Your Lordship's Despatch explains that the degree of importance which will necessitate reference of a measure to the Secretary of State before its introduction to our Legislative Council, is left to be determined by our judgment. We see no difficulty in giving effect to your Lordship's wishes as thus understood. We assume that they do not contemplate the examination and criticism of the drafts of Bills on points of form or detail, and that only their general object and scope would form the subject of correspondence. We believe that we could place before your Lordship sufficient reasons to show that any further discussion of Bills, previous to their introduction, would be likely to cause serious inconvenience. But from the tenor of your Lordship's Despatch we do not infer that any argument upon this point is required from us.

6. We observe, however, that your Lordship sees no sufficient reason why the circumstance, that our Orders take a legislative form, should deprive the Secretary of State of all official information concerning them, until a period at which it becomes peculiarly difficult to deal with them. There is of course a distinction, which has been observed from the earliest constitution of our Indian Governments, between measures that are put in force by the Executive and those that are committed to legislation. It may be true that this distinction makes no difference in the expediency of taking the opinion of the Secretary of State in Council upon any important legislative measure before its policy has been affirmed by the Executive Government. On the other hand, when that policy has been settled and announced, and when the measure founded upon it is under consideration by the Council of the Governor General, which, when assembled for the purpose of making laws, includes additional members, and deliberates in public, we apprehend that the question of subsequent reference to the Secretary of State then takes a different aspect.

7. If an important alteration on a point of principle in a Bill of which the Secretary of State has approved, or which has been modified in conformity with his desire, should be made during its passage through the Legislative Council, your Lordship apprehends that there will no practical difficulty in delaying the progress of the Bill until the Secretary of State has had a sufficient opportunity of expressing a further opinion.

8. Alterations of great importance proposed or made during the passage of a Bill through the Legislative Council would be considered by the Government in its executive capacity. Such alterations may be equivalent to measures which, if they had been affirmed before the introduction of a Bill, it would have been proper, in our judgment, to communicate to the Secretary of State. In that case, and in the absence of any practical difficulty as to delaying the progress of the Bill, we should refer these alterations to the Secretary of State. We do not gather that your Lordship requests us to frame any rule for the purpose of

regulating the manner in which rare cases of this kind should be dealt with in the Legislative Council. In order, however, to guard against risk of misapprehension upon a matter which might materially affect the position of the Legislative Council, we desire to add the expression of our opinion that such a rule would be open to objections which we have not considered necessary on the present occasion to discuss, while the application of your Lordship's directions to any wider class of cases than that to which we have alluded would be likely to give rise to difficulties. We shall be prepared to state our reasons at length if your Lordship should entertain any doubt upon this part of the subject.

9. We foresee considerable impediments to the application of the rules prescribed by your Lordship's Despatch to the legislative business of the Presidencies of Madras and Bombay, and of the Lieutenant Governorship of Bengal.

10. By the Indian Councils Act, 1861, the Governor General has certain defined powers with regard to the legislation of the two Presidencies and the Lieutenant Governorship. Under the 43rd section no Bill which affects certain subjects specified in the section (in fact, no Bill of real importance) can be taken into consideration except with the Governor General's previous sanction; and, under the 40th Section, Acts when passed are to be transmitted to him, and upon his assent they become valid, subject to subsequent disallowance by the Crown.

11. While the law remains as it is, we cannot avoid the conclusion that these rules will invest the Home Government and the Government of India with a concurrent authority, that might be exercised simultaneously in different directions, upon these matters. The Governor General will not be relieved from the responsibility which devolves upon him by law of giving or withholding his sanction to the introduction of certain classes of Bills, or from giving or withholding his assent to all Acts. On the other hand, the rules now under discussion have been framed with the object of enabling the Secretary of State to express an opinion upon the propriety of introducing certain Bills into the local councils, and upon imortant alterations made during their progress. It is obvious that if the opinion expressed by the Secretary of State to the local Government should in any case differ from that of the Governor General, the position of the Governor General would be embarrassing. We consider that such concurrent, and possibly conflicting, action might complicate proceedings; and that the application of the rules to the business of the local councils would eventually be found to require an alteration to be made in the law.

12. We have also to observe that, by the Legislative Despatch No. 35 of 1st December 1862, all Bills which contain penal clauses are ordered to be submitted for the previous sanction of the Government of India to those clauses, before being introduced into the local legislatures. For reasons similar to those which have been given above in respect to the Governor General's previous sanction required by Statute, we should exercise this executive power henceforward with much hesitation, if the local Governments were simultaneously consulting the Secretary of State upon the Bill containing the penal clauses. But we think that the free exercise of this power is very useful in controlling the unnecessary multiplication of petty penal enactments, and in preserving a general equality of punishments prescribed in different provinces for similar classes of offences. It has been often used with advantage, and we recommend that it be continued in our hands.

13. Moreover, it is, in our judgment, inexpedient, upon general grounds, to place restrictions upon the direct power to control and guide the proceedings of the local legislatures, which the present law and practice entrust to the Governor General, or to the Government of India. We are opposed for many reasons to anything which would bring about such a change. Bills introduced into and Acts passed by the local legislatures require careful consideration as to their bearing towards the laws that have been passed by the Legislative Council of India; they often impose local and municipal taxes, which are intimately connected with Imperial taxation and Imperial finance, for which we are primarily responsible; and they frequently deal with matters of considerable importance to the supreme Executive Government. For these considerations it appears to us that the Governor General and the Government of India should be left to

discharge

discharge the duties which have been imposed upon them by the Indian Councils Act and by existing administrative regulations; and we therefore trust that your Lordship will agree with us that the rules respecting the communication of Bills to the Secretary of State cannot be applied, without embarrassment, to the legislative measures of the local Governments.

14. In conclusion, we enclose a list of the business now before the Council of the Governor General for the purpose of making Laws and Regulations, together with a Minute written by the Honourable Mr. Hobhouse, which will afford a full explanation of the several measures included in the list.

We have, &c.
(signed) *Northbrook.*
Napier of Magdala.
B. H. Ellis.
H. W. Norman.
A. Hobhouse.
E. C. Bayley.
J. F. D. Inglis.

(Legislative, No. 33.)

To His Excellency the Right Honourable the Governor General of India in Council.

My Lord, India Office, London, 15 October 1874.

Para. 1. I HAVE received and considered in Council your Excellency's Despatch (Home Department, Public) of 28th July, No. 45, 1874.

2. In my Despatch of 31st March 1874, to which you reply, I requested your Excellency to furnish me (save in cases of urgency) with full and timely information concerning the policy of all important measures which it was your intention to submit to your Council for making Laws and Regulations. Your Excellency now intimates that you see no difficulty in complying with this request, and you further state that, where alterations of great importance have been made in a Bill during its passage through the Legislative Council, you will, in the absence of any practical difficulty as to delaying the progress of the measure, communicate such alterations to the Secretary of State; but, in regard to this last point, you do not think it expedient that there should be any fixed rule for the purpose of regulating the manner in which cases of the kind should be dealt with in the Legislative Council. You have rightly gathered from my language that I do not consider such a rule necessary or desirable.

3. Your Excellency, however, foresees considerable impediments to the application of the rules prescribed in my Despatch to the legislative business of the Presidencies of Madras and Bombay, and of the Lieutenant Governorship of Bengal. You observe that by the 43rd section of the India Councils Act of 1861, no Bill which affects certain subjects specified in the section can be taken into consideration without the previous sanction of the Governor General, whose assent to an enactment of a local legislature is also rendered necessary by the 40th section of the same Statute. You apprehend that the control over local legislation thus reserved by law to the Governor General may be interfered with or weakened, if the local Governments are instructed to supply the Secretary of State with the same information respecting their Bills, which I have requested you to furnish concerning legislative measures which your Excellency's Government may have in contemplation. I am unable to perceive that any evil can arise from my being kept informed respecting all intended Indian legislation. My possession of that information will not diminish the power now vested in your Excellency by law, of rejecting, either before or after its enactment, any legislative proposal of the subordinate Governments. The circumstance that in any given case a discretion has been given to the Governor General by Statute will at all times have due weight attached to it by the Secretary of State when the question of commenting on a particular measure is under consideration.

At the same time, to obviate all chance of concurrent or conflicting action, I will always state to your Excellency's Government, and not to that of Madras or Bombay, any objections I may think it right to make to their legislative proposals.

4. The object of the instructions which I have given to your Excellency on this subject is not to fetter the discretion which the law has vested in the various legislative authorities of India; nor in any case to renounce on behalf of the Crown the power of disallowance which belongs to it. I therefore think it desirable to add, that the mere fact of my not having replied to a Despatch explaining to me the policy of any intended legislation, is not to be regarded as necessarily implying on the part of Her Majesty a final approval of such legislation. Considerations may arise in particular cases which may make it expedient to defer the expression of my opinion until the period at which the measure is sent to England for the assent or disallowance of the Crown.

I have, &c.
(signed) *Salisbury.*

MINUTE by Mr. *John Stuart Mill.*

IT is of great importance that the character and consequence of the assertion of independent authority by the Legislative Council of India should be seen in their true light.

There are several modes of governing a dependency. The governing country, by its constituted authorities, may itself govern the dependency through agents responsible to it, and bound to obey its instructions. Or, it may allow the dependency to govern itself, under such conditions and with such reservations as may seem to be required either by the circumstances of the dependency, or by the policy of the Empire. In some cases the former of these systems of government is necessary or desirable, in others the latter, in others some combination between the two; the government being shared in various proportions between the representatives of the governing country and the representatives of the governed.

These, however, are not the only modes in which a dependency may be governed; there is a third mode: but this third seems to be the very ideal of badness, the one among all imaginable arrangements of the matter in question which no circumstances could justify, or could render otherwise than preposterous, viz., that the governing country should neither retain the government in its own hands, nor resign it, or any part of it, to the people of the dependency, but should make it over to a small number of individuals sent out from the governing country, to be exercised at their discretion, under no control or responsibility except the power of recall.

If the monstrosity of such a plan of government is not evident of itself, it is almost vain to expect that any words or arguments can make it more so. It might be supposed to be an intentional contrivance for securing that the dependent country should neither have the advantage of governing itself, nor that of being governed by a country more civilised and enlightened than itself. When a country is not fit for the best form of government, that is no reason for inflicting on it one which is fit for no country whatever.

It is presumed that no one considers the people of India to be at present ripe for taking any constitutional share in their own government. Under these circumstances the dominant country is charged with the whole responsibility of governing them well; and it violates the obligations of its position if it does not assert power correlative with this responsibility. From the necessity of the case its power must be exercised by delegation, but the governing country has not the moral right to delegate its power without reserving its control. It cannot discharge its conscience of the responsibility for the good government of India, and charge that responsibility on the consciences of its delegates. It cannot hand over its sacred trust to a few despots, armed with the whole power of the stronger country, but carrying with them no more than they themselves choose of its wisdom or its good purposes. Being unable consistently with the good

good of the people of India to allow them any control over their rulers, it is under the most binding obligation to exercise such control for them. This does not imply that the Home authorities are to interfere minutely or vexatiously with the acts of their delegates. They should give those delegates a liberal confidence when worthy of it. They should recognise that on many subjects those delegates, being on the spot, are better judges of what is fit to be done than themselves. But they are not morally at liberty to allow them either to do what the Home authorities see clearly to be wrong, or to leave undone what those authorities see clearly to be right.

Nevertheless a pretension to this last privilege, in no less important a matter than legislation for 100 millions of people, is made by the members of the Legislative Council of India. It is true they do not, because they cannot consistently with Act of Parliament, assert the right to legislate as they please without the veto of the Home authorities. But they assert the right of refusing to legislate, notwithstanding the commands of the Home authorities. In thus claiming to their own uncontrolled despotism one-half of the legislative power, they in reality lay claim to the other half along with it. For if the body which has the veto has no more—has no authority to substitute anything else for what it disallows, nor has any, even co-ordinate power of legislation, the veto is practically null whenever there is a disposition in the initiating body not to submit to it. In almost every case which is likely to arise, important public interests require that *some* law should be passed. The Council have only to refuse to pass any law on the subject, not containing the provisions objected to by the Home authorities, and they may always compel their nominal superiors to give way. And the spirit which the present Council have manifested shows that they are capable of doing this at the very first opportunity.

As for the plea that it is *only* in their *legislative* functions that the Council claim independence, this is very like saying that it is *only* in the whole business of government. The legislative power is as much more important than the administrative, as the whole exceeds in importance a part of itself. If you have not the control of the legislation of India, you have not that of its administration. The Legislature which is independent of you can make laws which will bind the Executive Government, and which it will be obliged to obey, even in opposition to your orders.

If the pretensions of the Council are admitted, there will be no real controlling authority over the Government of India except Parliament; and what capacity Parliament has for exercising such a control, efficiently and usefully, it is quite superfluous to discuss.

If it were necessary to choose between two hurtful absurdities, more might be said for releasing the control of the Home Government over the Executive of India, than over the Legislature. For the administration must necessarily be in all its essentials carried on in India; and the bulk of it consists of details on which, though the Home authorities may make suggestions, the high functionaries on the spot are in general much better qualified to decide on their value. But legislation, in many of its parts, is to a great degree an affair of general principles; and the local knowledge which it requires is such as can be obtained from books and records, or from a past residence in the country: it is not necessary that the legislators should reside there at the present time; and from the variety of personal endowments, it will occasionally happen that the persons, or some of the persons, best qualified to legislate for India, will be resident in England That this is the opinion of the authors of the Act of 1853 is evident from their having confided the task of reforming the Judicial Establishments and Judicial Procedure of India to a commission in England, some of whom had never set foot in India.

This same case affords an apt example of the obstacle which, if the pretensions of the Council are not repressed, will be opposed to all great measures for the improvement of the laws of India. No competent person will deny the high qualifications of the Indian Law Commissioners, or the eminent merit of their work. With the exception of a great political question, which it was not properly within their Commission to decide, and which they did decide only by a bare majority; with this single exception, the judicial organisation, and the Code of Procedure which they have drawn up, are, it may be said without hesitation, equal to any which would be likely to emanate from any body of select lawgivers, however composed. It will not be pretended that any of the know-

ledge local or general, required for the purpose was not possessed by the Commissioners, nor will anyone doubt their great superiority, in the qualifications of legislators to the present or any average Council of India. Now, when a great legislative work, whether it be a single complicated enactment or a code, has passed such an ordeal; when it has been deliberately prepared, and discussed article by article, by a body of men as competent as any to be procured; the presumption is that the piece of work is as good as there is any reasonable likelihood of making it without trial. The fittest course therefore would be, instead of wasting time by inviting premature criticisms, to pass the code exactly as it is, and correct any defects in it hereafter, as they disclose themselves in its practical working. This accordingly might be done if the Legislative Council could be ordered to do it. But if their assertion of independent authority is submitted to, the well considered work of men selected for the purpose as the best who could be found, men versed in the great principles of legislation and jurisprudence, will be used as mere materials by men in every respect their inferiors, only one of whom was appointed with any particular reference to legislation, and none of them with any expectation that they would have to legislate otherwise than for the mere exigencies of the day, men of whom the lawyers are not as good lawyers, nor the thinkers as eminent thinkers, as those whose best labours are only to be offered as suggestions for their consideration. What will be enacted will not be the Code of Procedure, but that code botched by Mr. * * * and Mr. * * * .

Will anyone pretend for a moment that Parliament, when it passed either the Act of 1833 or that of 1853, had any idea that it was taking away the control of the legislation of India from the Home Government? That a Government which was subject to orders from home when it made "regulations" with the force of law, would be able to set the Home Authorities at defiance as soon as it was empowered by Parliament to make "laws and regulations"? Unquestionably Parliament never dreamt that it was making any such fundamental change in the constitution of the Indian Government; and if the word "legislation" confers *ex vi termini* any such independent power, it is the most noxious word in the language, and should be erased from the official dictionary.

It is submitted that the only remedy for the mischievous state of things which has arisen, is an Act of Parliament declaring that the Home Government of India has legislative power; and either that the Council of India is bound to pass such laws as it shall be directed to pass by the Home Authorities, or else that any enactments sent out by those authorities in their legislative capacity shall be law without being passed by the Legislative Council; such enactments, like those passed in India, being immediately, or at the earliest possible time, laid before Parliament.