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[Despatch Abstract.]

SOCIETY OF COMPARATIVE LEGISLATION.

Communicating to the Honourable the Judges of the High Court, the Madras Bar Association, the Madras Attorneys' Association and certain officers despatch from the Right Honourable the Secretary of State regarding the newly constituted -- with the Right Honourable Lord Herschell as President.

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Govt. of {1895} Madras.

LEGISLATIVE.

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Nos. 83, 84.

AUGUST.

Society of Comparative Legislation.

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GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

READ—the following paper :—

Despatch from the Right Honourable the Secretary of State for India, to His Excellency the Right Honourable the Governor in Council, Fort St. George, dated India Office, London, 18th July 1895, No. 3, Judicial.

I forward a copy of a letter, dated 19th June 1895 (with enclosures), from the Right Honourable Lord Herschell with reference to the newly constituted Society of Comparative Legislation of which he is the President.

2. I request that your Excellency in Council will take the matter into your consideration and adopt such means as you may think best fitted to further the objects of the Society.

ENCLOSURES.

HOUSE OF LORDS, S.W.,
19th June 1895.

SIR,

As President of the Society of Comparative Legislation and at the request of the Council of that Association I have the honour to invite your co-operation in furthering the objects of the Society, and your assistance in bringing those objects to the notice of the Indian Governments.

The Society, as you are aware, took its inception from a valuable paper read by Sir Courtenay Ilbert, K.C.S.I., before the Fellows of the Imperial Institute on the ——— 1894, and definitely took shape at a large and important inaugural conference held at the Imperial Institute on the 19th of December 1894 over which I had the honour to preside.

The Society has since obtained more definite organization; the Council and the Executive Committee have been formed and a formal constitution and prospectus, or scheme of the objects of the society, have been drawn up. Of these documents, I have now the honour to enclose copies, in the hope that you will be good enough to have them placed on record in your department, and that you will also forward copies to the Governor-General of India and the Governors of Madras and Bombay for their consideration accompanied with an invitation that they will severally take such action as may appear best calculated to advance the objects which this Society has in view and to promote the study of comparative law.

Those objects are both practical and scientific. The Society is intended to be of service to legislative bodies both here and elsewhere, to practising lawyers and to jurists, and students of Sociology. If the authorities in India will help us, we believe that we shall be able to repay any assistance they may render, by communicating to each the results of the work to which all will have contributed, after that work has been arranged, assimilated and supplemented by ourselves.

I do not enlarge further upon the objects of the Society, for these are fully detailed in the documents which I enclose; but it may be well that I should briefly indicate the nature of the assistance which those who are so disposed can afford us. It is hoped that many persons in India will help in the useful work to be done by the Society so far as to become subscribing Members of it and it would be useful, if, in each province having a Legislature, persons of position would consent to act as Local Agents, for the purposes of procuring subscriptions to the Society and otherwise assisting its objects. I should be glad to think that branch Societies will eventually be formed, from whom the Central Society may receive valuable suggestions and co-operation. But at present I can do no more than ask that suitable persons may be found to accept the position of corresponding Members to whom our communications may be addressed and from whom we may obtain information. I trust that we shall be so fortunate as to secure as our correspondents either the Chief Justices or some other Judges or the Advocate-General or some other Barristers who will carry sufficient weight to enable them to organize branches of the Society.

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Yours, etc.,

(Signed) HERSCHELL.

The Right Honourable H. H. Fowler, M.P.

THE SOCIETY OF COMPARATIVE LEGISLATION.

A Conference, presided over by the Lord Chancellor, was held at the Imperial Institute, on the 19th December 1894, to consider the best means of furthering the study of Comparative Legislation, as suggested in a paper lately read at the Institute by Sir Courtenay Ilbert, K.C.S.I. The following resolutions were passed:—

Moved by the Lord Chancellor, seconded by Sir Robert Herbert, G.C.B.:—

(1) "That it is expedient to establish a Society of Comparative Legislation, with the object of promoting knowledge of the course of legislation in different countries, more particularly in the several parts of Her Majesty's Dominions, and in the United States."

Moved by Lord Hobhouse, K.C.S.I., seconded by Sir Raymond West, K.C.I.E.:—

(2) "That, for this purpose, a Council be formed, with instructions to nominate an Executive Committee, charged with the duty of preparing a Constitution for the Society, and of indicating the best mode of carrying out its objects."

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(3) "That the Lord Chancellor be the first President of the Society."

These resolutions were the origin of the Society. Some further explanation of its objects, however, may be needed.

They are both practical and scientific. The Society is intended to be of service to legislative bodies, practising lawyers, jurists and students of sociology.

To jurisprudence the Society will apply the comparative method of investigation, which has already proved fruitful. It will gather together, epitomise, and arrange materials now scattered through many periodicals, or to be found only in official documents of which few libraries contain copies, and it will otherwise endeavour to promote the study of comparative law. Chief among its aims will be the collecting of information as to the statute law and the forms and methods of legislation in the British Empire and the United States.

In France, Germany and America, similar associations exist; and it has long been matter of surprise that no such society has been formed in the British Empire, with its great variety of legal systems. In India, where English, Hindu and Muhammadan law co-exist, and have affected each other, and where ancient customs of interest to the legal historian are still observed, and in our colonies, dependencies, and possessions, in which French, Roman-Dutch, and Spanish law subsist, will be found a vast field for the work of a Society of Comparative Legislation. In extent and variety, the jurisdiction of the Judicial Committee of the Privy Council, as a Court of Appeal, is unequalled. In a single year, it may be called upon to consider questions of constitutional law of moment to all civilised countries, cases dependent on Hindu or Muhammadan law, on texts of the Digest, on the Ordonnances of Louis XIV., on the Coutume de Paris or other portions of the old customary law of France before the Revolution, or on the ancient customs of Normandy. It is somewhat remarkable that there should not have long ago been founded a society for the scientific study and comparison of the very diverse laws brought before the Appellate Court of the colonies and possessions of the British Empire.

Benefits, direct and indirect, from the labours of the Society may be counted upon.

In the British Empire are some sixty Legislatures; in the United States are nearly fifty. Each of them is occupied with much the same problems. The same questions as to criminal law and the administration of justice, capital and labour, marriage and divorce, patents and literary property, the regulation of the sale of intoxicating liquors, education, railways, companies, bankruptcy, merchant shipping and mercantile law generally, come from time to time before the British and

Colonial Parliaments, and the Legislatures of the States of the American Union. Experiments as to similar subjects are being made by more than a hundred legislatures in English-speaking countries.

It is not uncommon, on the introduction of measures into Parliament, to refer to the laws of other countries. At present the results of foreign experiments are only imperfectly and casually brought to the notice of those who might profit by them; and enactments may be proposed and adopted in one English-speaking community in ignorance of the fact that similar measures have after trial been abandoned or modified in another. Much, it is conceived, might be learned with advantage both as to the substance and as to the form of legislation, and many mistakes might be avoided, if precedents derived from the experience of other countries were collected and studied. In the future changes in criminal law, for example, it would be advantageous to have some acquaintance with the provisions of the Criminal Codes passed after careful discussion in Germany, Holland, Italy and Hungary. Impressed by the advantage of ascertaining systematically the course of foreign legislation, M. Dufaure established, in connection with the French Ministry of Justice, the *Comité de Législation Etrangère*, the duty of which was to collect and arrange information as to foreign laws. M. Dufaure's action has, it is believed, been justified by the results. It is hoped that the Society of Comparative Legislation may render services of a similar kind, and may be the means of enabling Governments and Legislatures to profit by useful precedents.

English-speaking races show a tendency towards unity in law. Our colonies borrow the principle and form of many statutes from England. The United Kingdom also borrows from the colonies. Among the colonies themselves, there is a like movement, and the same interchange goes on between the United Kingdom and her colonies and the United States. No fewer than 36 States of the American Union, it is alleged, have adopted the Australian Ballot system. The Torrens system of land transfer, which had its origin in South Australia, and the provisions of which were to some extent founded on the register of British ships, has been adopted in many of our colonies. One law as to bills of exchange may be said to exist throughout the Colonial Empire. A similar statute is in force in India. Several of our colonies have adopted a bankruptcy law borrowed from the English statutes of 1861, 1869 and 1883.

The open and avowed adoption of statutes gives no complete idea of the extent of assimilation. Underneath differences of phraseology will be found a tendency to approximation even in colonies and possessions where the English common law never prevailed. The Roman-Dutch law, for example, in both South Africa and Ceylon, has been modified by the introduction of elements borrowed from English statute and common law.

Very often the local differences are unimportant and accidental. In the United States are some 47 different systems for conducting civil litigation. But for the most part they are based on the New York Code, the Common English Procedure Acts, and the Judicature Acts. "While nearly every one of these diverse systems is modelled upon one or the other of two models, and conforms to its model in all substantial particulars, probably no two of them are alike in every respect." In some colonial statutes relating to procedure, it is stated that, "unless it is otherwise provided," the procedure shall be regulated by the practice in the Superior Courts in England.

English Mercantile Law is already to a large extent the law of all English-speaking countries. On this subject the same rules are acted upon, the same decisions and text-books are cited with respect, in all courts of the British Empire and in the United States. The statutory modifications of the *Lex mercatoria* here and elsewhere are similar. The Indian Contract Act, embracing sale of goods, indemnity and guarantee, bailment, agency and partnership, is framed upon English decisions and statutes. Our colonies and several States of the American Union have passed similar statutes altering the common law to meet the necessities of modern commerce. The Factors and the Companies Acts are cases in point; they are reproduced, generally with slight modifications, in colonial legislation. In the Cape Colony, where Roman-Dutch law is the basis, the Legislature has, by a single Act, incorporated a large part of the commercial law of England (Act 8, 1879). There is still, however, much diversity in the law relating to bankruptcy. In some parts of the British Empire no bankruptcy law proper exists. In the interest of commerce few legal reforms could be more beneficial than the adjustment and determination of rights in bankruptcy and the administration of bankrupt estates throughout the Empire according to the same principles.

There was a time when it seemed that Roman law might become the law of the world. In the early part of this century, the tendency in countries engaged in codifying their law was to take the Code Civil of France as a model. This is no longer the case. In recent times the tendency, especially as to commercial legislation, is to approximate to English Law. It has spread almost as widely as the English language or literature.

In accordance with a plan which has proved successful in the case of the American Bar Association and the *Institut de Droit International*, standing committees, entrusted with separate parts of the work of the society, will be formed. The number and nature of the committees will depend on the assistance which the society receives. But the intention is to begin with only a few important subjects.

One of the first committees to be formed will be a Statute Law Committee. In furtherance of its work, communications will be addressed to the Governments of British colonies and dependencies, with a view to obtain information as to the existing condition of statute law, and in particular as to the following points—

I. The form of statute and written law.
II. Modes of preparing and passing bills.
III. Revision and amendment of statutes.
IV. Form and manner of publication and numbering of statutes.
V. Measures taken to secure uniformity of language.
VI. Consolidation and Codification.
VII. Indexing of statute law.

One result of the labours of the society may be, it is hoped, to bring about uniformity in regard to the form, numbering and publication of statutes, as to which there is now great diversity. Efforts will be made to procure the preparation, on some uniform plan, of a satisfactory index of the statutes of each legislature; and perhaps it is not too much to hope that we may one day have a general index of the legislation of the British Empire. Mr. Stimson, in his Digest of the Laws of the States of the American Union, and the Uiversity of New York, in his Library "Bulletin," have shown what may be done within a moderate compass. Prepared not solely for the use of the lawyer, such an index as is here suggested might be of use to the statesman and student of sociology.

It may be expedient in the first instance to deal chiefly with statute law. This will not, however, be the sole work of the Society. As the Lord Chief Justice pointed out at the recent conference, the statute law of a country cannot be understood without reference to the common law on which it is based, and which it was intended to correct.

The services of those who are interested in different parts of comparative jurisprudence will be made use of. In India alone, which is at once, to cite Sir Henry Maine's language, "the great repository of verifiable phenomena of ancient usage and ancient juridical thought," and the scene of some of the most interesting modern experiments in legislation, is a limitless field for work such as the Society seeks to promote. There ancient and modern Codes co-exist. In customs and usages, still observed, are legal conceptions of which in the Western world are only obscure traces; and the meeting of several diverse systems of law has given rise to problems akin to those which in the decline of the Roman Empire arose from the contact of its law with the customs and laws of other States.

Here it may pointed out that in no modern book is there an adequate treatment of the systems of law in force in the British Empire. The first and only edition of Burge's "Commentaries on Colonial and Foreign Laws" is dated 1838.

Little can be done without co-operation in all parts of the Empire. It is intended to establish branches in the different colonies and possessions. From these branches valuable suggestions may be expected. With them, in great measure, must rest the success of the undertaking. It is desired to enlist the aid in particular of the Governors, Chief Justices and Judges of our colonies, of Chambers of Commerce throughout the Empire, of the Inns of Court and Incorporated Law Societies, of the Universities, of the Diplomatic and Consular Services, and of the Bar Associations and Statute Revision Commissions in the United States.

Probably the work of the Society would be advanced by holding from time to time conferences. In Germany, Italy, Austria and Switzerland, representative meetings of lawyers and jurists annually take place. At these meetings are discussed questions of interest to the legal profession and the public. It is no disrespect to existing associations to say that hitherto no meetings, with the objects here indicated, have taken place in England, or in any part of the British Empire; and it is believed that the utility of the new Society would be recognized, its objects would be shown to be not merely academic but practical, if conferences were periodically held for discussion of legal matters affecting the whole Empire.

The information collected by the Society will be edited, and published in a concise and intelligible form, for the use of members.

The annual subscription will be £ 1 1s., payable to the Society's Bankers, Messrs. Child and Co., 1, Fleet Street, E.C., or to either of the Honorary Secretaries, to whom also any communications as to the Society should be addressed. A donation of £ 10 10s. will entitle to the privileges of life membership.

So soon as the Society has received sufficient support, it is proposed to apply to the Board of Trade for a license to incorporate it under section 23 of the Companies Act, 1867.

The following is a list of the Officers, Council, and Executive Committee :—

PRESIDENT.

The Right Hon. Lord Herschell, G.C.B., Lord Chancellor of Great Britain.

COUNCIL.

Sir W. R. Anson, Bart., Warden of All Souls College, Oxford.
Lord Ashbourne, late Lord Chancellor of Ireland.
H. E. The Baron de Courcel, Ambassador of France.
H. E. The Hon. T. F. Bayard, Ambassador of the United States.
Thomas Barclay, Esq.
H. C. Beeton, Esq., Agent-General for British Colombia.
The Hon. E. Blake Q. C., M.P.
J. Bramston, Esq., C.B., Assistant Under Secretary of State, Colonial Office.
The Right Hon. James Bryce, M.P., President of the Board of Trade.
Lord Carrington, G C.M.G., formerly Governor of New South Wales.
The Hon. J. W. Carrington, Attorney-General for British Guiana.
His Honour Judge Chalmers.
Arthur Cohen, Esq., Q.C.
Viscount Cross, G.C.B.
Lord Davey, Lord of Appeal.
The Earl of Derby, G.C.B., late Governor-General of Canada.
Professor Dicey Q.C., Vinerian Professor of English Law, Oxford.
The Marquis of Dufferin and Ava, British Ambassador, Paris.
Lord Farrer.
Sir Edward Fry, formerly Lord Justice of Appeal.
Sir James Garrick, K.C.M.G., Agent-General for Queensland.
The Hon. Duncan Gillies, Agent-General for Victoria.
C. J. Follett, Esq., C.B , Solicitor to the Commissioners of Customs.
Sir George Grey, K.C.B., formerly Governor of New Zealand.
Lord Halsbury, late Lord Chancellor of Great Britain.
Sir Robert Herbert, G.C.B., Agent-General for Tasmania.
Lord Hobhouse, K.C.S.I.
Professor T. E. Holland, Professor of International Law, Oxford.
Sir Courtenay Ilbert, K C.S.I., Assistant Parliamentary Counsel to the Treasury.
The Right Hon. Sir Henry James, Q.C., M.P.
Professor Jenks, Professor of Law, University College, Liverpool.
Sir Henry Jenkyns, K.C.B., Parliamentary Counsel to the Treasury.
Dr. Courtney Kenny.
Lord Knutsford, G.C.M.G.
The Hon. Chandos Leigh, Counsel to the Speaker of the House of Commons.
Lord Justice Lindley.
Lord Lingen, K.C.B.
The Marquis of Lorne, G.C.M.G., late Governor-General of Canada.
John Macdonell, [illegible] Master of the Supreme Court.
K. Muir Mackenzie, Esq., Q.C., C.B , Permanent Secretary to the Lord Chancellor.
Professor Maitland, Downing Professor of Law, Cambridge.
The Earl of Morley, Chairman of Committees, House of Lords.
Sir Francis Mowatt, K.C.B., Permanent Secretary to the Treasury.
Viscount Peel, late Speaker of the House of Commons.
Sir Westby Perceval, K.C.M.G., Agent-General for New Zealand.
T. D. Pigott, Esq., C.B., Controller of the Stationery Office.
Sir Frederick Pollock, Bart., Professor of Jurisprudence, Oxford.
T. Raleigh, Esq., R,eader in English Law, Oxford.
Lord Reay, G.C.S.I. Under Secretary of State for India.
The Right Hon . Cecil Rhodes, Prime Minister of Cape Colony.
The Lord Chief Justice of England (Lord Russell of Killowen).
Professor Henry Sidgwick, Professor of Moral Philosophy, Cambridge.
Whitley Stokes, Esq., C.S.I., late Legal Member of Council, India.
Lord Thring, K.C.B., late Parliamentary Counsel to the Treasury.
Sir Charles Tupper, Bart., G.C.M G., High Commissioner for Canada.
Sir Joseph Warner, Counsel to the Chairman of Committees, House of Lords.
Lord Watson, Lord of Appeal.
Lord Welby, G.C.B.
Sir Raymond West, K.C I.E.

Professor J. Westlake, Q.C., Professor of International Law, Cambridge.
E. H. Whittuck, Esq.
Arthur Wilson, Esq., Legal Adviser to the India Office.
Mr. Justice Wright.
Sir Henry Wrixon, K.C.M.G.

EXECUTIVE COMMITTEE.

Lord Herschell, G.C.B., (Chairman).
The Hon. E Blake, Q.C., M.P.
Thomas Barclay, Esq
J. Bramston, Esq., C.B.
The Right Hon. James Bryce, M.P.
His Honour Judge Chalmers.
Arthur Cohen, Esq., Q.C.
Newton Crane, Esq.
Lord Davey.
Sir James Garrick, K.C.M.G.
John Hunter, Esq. (President of the Incorporated Law Society).
Sir Courtenay Ilbert, K.C.S.I.
Sir Henry James, Q.C., M.P.
Master Macdonell.
K. Muir Mackenzie, Esq., Q.C., C.B.
Professor F. W. Maitland.
Whitley Stokes, Esq., C.S.I.
Sir Charles Tupper, Bart., G.C.M.G.
Lord Welby, G.C.B.
Sir Raymond West, K.C.I.E.
Professor Westlake, Q.C.

Honorary Secretaries. { Thomas Raleigh, Esq., All Souls College, Oxford.
Albert Gray, Esq., 2, Paper Buildings, Temple, E.C.

APPLICATION FOR LIFE MEMBERSHIP.

To the Honorary Secretaries of the
Society of Comparative Legislation.

Date _____

Gentlemen,

I desire to become a Life Member of the Society of Comparative Legislation, and herewith enclose a donation of Ten Guineas to the Society.

Yours truly,

Ordinary Signature _____

Full Name _____

Address _____

_____

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I desire to become a Member of the Society of Comparative Legislation, and herewith enclose my subscription (£1 1s.) for the current year.

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[Order to Bankers].

To Messrs. _____

Please pay to Messrs. Child and Co., 1, Fleet Street, E.C., for the credit of the Society of Comparative Legislation the sum of one pound one shilling annually on the 1st January, and debit same to my account.

Signature _____

Date _____

£1 : 1 : 0.

ORDER—dated 29th August 1895, No. 83, Legislative.

Communicated to the Honourable the Judges of the High Court, the Honourable the Advocate-General, the Government Pleader, the Government Solicitor, the Crown Prosecutor, all District Judges, all District Magistrates, the Madras Bar Association, the Madras High Court Vakils' Association and the Madras Attorneys' Association. The Government will be prepared to assist in furthering the objects of the Society of Comparative Legislation by furnishing any local branch which may be started with copies of the Madras Regulations and Acts and in any other practicable method.

(True Extract.)

J. F. PRICE,
Chief Secy. to Govt.

To the Honourable the Chief Justice of the High Court, with C.L.
„ the Honourable the Advocate-General.
„ the Government Pleader.
„ the „ Solicitor.
„ the Crown Prosecutor.
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„ the Secretary, Madras Bar Association.
„ the „ „ Attorneys' Association.
„ the „ „ High Court Vakils' Association.

LETTER—to the Right Hon'ble Lord HERSCHELL, G.C.B., President of the Society of Comparative Legislation, dated Ootacamund, 29th August 1895, No. 84, Legislative.

I am directed to forward, for your Lordship's information, a copy of the Proceedings of the Madras Government of this date expressing its readiness to assist in furthering the objects of the Society of Comparative Legislation. The papers relating to the establishment of the Society have been communicated to such individuals and bodies in the Madras Presidency as are likely to take an interest in the promotion of knowledge of the course of legislation in different countries. No more active steps have been taken in view of the Society's belief that it will be more successful if dependent upon individual effort rather than upon directions emanating from Government.

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Chief Secretary.

Ead. S. J. Pereira.

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In France, Germany and America, similar associations exist; and it has long been matter of surprise that no such society has been formed in the British Empire, with its great variety of legal systems. In India, where English, Hindu and Muhammadan law co-exist, and have affected each other, and where ancient customs of interest to the legal historian are still observed, and in our colonies, dependencies, and possessions, in which French, Roman-Dutch, and Spanish law subsist, will be found a vast field for the work of a Society of Comparative Legislation. In extent and variety, the jurisdiction of the Judicial Committee of the Privy Council, as a Court of Appeal, is unequalled. In a single year, it may be called upon to consider questions of constitutional law of moment to all civilised countries, cases dependent on Hindu or Muhammadan law, on texts of the Digest, on the Ordonnances of Louis XIV., on the Coutume de Paris or other portions of the old customary law of France before the Revolution, or on the ancient customs of Normandy. It is somewhat remarkable that there should not have long ago been founded a society for the scientific study and comparison of the very diverse laws brought before the Appellate Court of the colonies and possessions of the British Empire.

Benefits, direct and indirect, from the labours of the Society may be counted upon.

In the British Empire are some sixty Legislatures; in the United States are nearly fifty. Each of them is occupied with much the same problems. The same questions as to criminal law and the administration of justice, capital and labour, marriage and divorce, patents and literary property, the regulation of the sale of intoxicating liquors, education, railways, companies, bankruptcy, merchant shipping and mercantile law generally, come from time to time before the British and Colonial Parliaments, and the Legislatures of the States of the American Union. Experiments as to similar subjects are being made by more than a hundred legislatures in English-speaking countries.

It is not uncommon, on the introduction of measures into Parliament, to refer to the laws of other countries. At present the results of foreign experiments are only imperfectly and casually brought to the notice of those who might profit by them; and enactments may be proposed and adopted in one English-speaking community in ignorance of the fact that similar measures have after trial been abandoned or modified in another. Much, it is conceived, might be learned with advantage both as to the substance and as to the form of legislation, and many mistakes might be avoided, if precedents derived from the experience of other countries were collected and studied. In the future changes in criminal law, for example, it would be advantageous to have some acquaintance with the provisions of the Criminal Codes passed after careful discussion in Germany, Holland, Italy and Hungary. Impressed by the advantage of ascertaining systematically the course of foreign legislation, M. Dufaure established, in connection with the French Ministry of Justice, the *Comité de Législation Etrangère*, the duty of which was to collect and arrange information as to foreign laws. M. Dufaure's action has, it is believed, been justified by the results. It is hoped that the Society of Comparative Legislation may render services of a similar kind, and may be the means of enabling Governments and Legislatures to profit by useful precedents.

English-speaking races show a tendency towards unity in law. Our colonies borrow the principle and form of many statutes from England. The United Kingdom also borrows from the colonies. Among the colonies themselves, there is a like movement, and the same interchange goes on between the United Kingdom and her colonies and the United States. No fewer than 36 States of the American Union, it is alleged, have adopted the Australian Ballot system. The Torrens system of land transfer, which had its origin in South Australia, and the provisions of which were to some extent founded on the register of British ships, has been adopted in many of our colonies. One law as to bills of exchange may be said to exist throughout the Colonial Empire. A similar statute is in force in India. Several of our colonies have adopted a bankruptcy law borrowed from the English statutes of 1861, 1869 and 1883.

The open and avowed adoption of statutes gives no complete idea of the extent of assimilation. Underneath differences of phraseology will be found a tendency to approximation even in colonies and possessions where the English common law never prevailed. The Roman-Dutch law, for example, in both South Africa and Ceylon, has been modified by the introduction of elements borrowed from English statute and common law.

Very often the local differences are unimportant and accidental. In the United States are some 47 different systems for conducting civil litigation. But for the most part they are based on the New York Code, the Common English Law Procedure Acts, and the Judicature Acts. "While nearly every one of these diverse systems is founded upon one or the other of two models, and conforms to its model in all substantial particulars, probably no two of them are alike in every respect." In some colonial statutes relating to procedure, it is stated that, "unless it is otherwise provided," the procedure shall be regulated by the practice in the Superior Courts in England.

English Mercantile Law is already to a large extent the law of all English-speaking countries. On this subject the same rules are acted upon, the same decisions and text-books are cited with respect, in all courts of the British Empire and in the United States. The statutory modifications of the *Lex mercatoria* here and elsewhere are similar. The Indian Contract Act, embracing sale of goods, indemnity and guarantee, bailment, agency and partnership, is framed upon English decisions and statutes. Our colonies and several States of the American Union have passed similar statutes altering the common law to meet the necessities of modern commerce. The Factors and the Companies Acts are cases in point; they are reproduced, generally with slight modifications, in colonial legislation. In the Cape Colony, where Roman-Dutch law is the basis, the Legislature has, by a single Act, incorporated a large part of the commercial law of England (Act 8, 1879). There is still, however, much diversity in the law relating to bankruptcy. In some parts of the British Empire no bankruptcy law proper exists. In the interest of commerce few legal reforms could be more beneficial than the adjustment and determination of rights in bankruptcy and the administration of bankrupt estates throughout the Empire according to the same principles.

There was a time when it seemed that Roman law might become the law of the world. In the early part of this century, the tendency in countries engaged in codifying their law was to take the Code Civil of France as a model. This is no longer the case. In recent times the tendency, especially as to commercial legislation, is to approximate to English Law. It has spread almost as widely as the English language or literature.

In accordance with a plan which has proved successful in the case of the American Bar Association and the *Institut de Droit International*, standing committees, entrusted with separate parts of the work of the society, will be formed. The number and nature of the committees will depend on the assistance which the society receives. But the intention is to begin with only a few important subjects.

One of the first committees to be formed will be a Statute Law Committee In furtherance of its work, communications will be addressed to the Governments of British colonies and dependencies, with a view to obtain information as to the existing condition of statute law, and in particular as to the following points:—

I. The form of statute and written law.
II. Modes of preparing and passing bills.
III. Revision and amendment of statutes.
IV. Form and manner of publication and numbering of statutes.
V. Measures taken to secure uniformity of language.
VI. Consolidation and Codification.
VII. Indexing of statute law.

One result of the labours of the society may be, it is hoped, to bring about uniformity in regard to the form, numbering and publication of statutes, as to which there is now great diversity. Efforts will be made to procure the preparation, on some uniform plan, of a satisfactory index of the statutes of each legislature; and perhaps it is not too much to hope that we may one day have a general index of the legislation of the British Empire. Mr. Stimson, in his Digest of the Laws of the States of the American Union, and the Uiversity of New York, in his Library "Bulletin," have shown what may be done within a moderate compass. Prepared not solely for the use of the lawyer, such an index as is here suggested might be of use to the statesman and student of sociology.

It may be expedient in the first instance to deal chiefly with statute law. This will not, however, be the sole work of the Society. As the Lord Chief Justice pointed out at the recent conference, the statute law of a country cannot be understood without reference to the common law on which it is based, and which it was intended to correct.

The services of those who are interested in different parts of comparative jurisprudence will be made use of. In India alone, which is at once, to cite Sir Henry Maine's language, "the great repository of verifiable phenomena of ancient usage and ancient juridical thought," and the scene of some of the most interesting modern experiments in legislation, is a limitless field for work such as the Society seeks to promote. There ancient and modern Codes co-exist. In customs and usages, still observed, are legal conceptions of which in the Western world are only obscure traces; and the meeting of several diverse systems of law has given rise to problems akin to those which in the decline of the Roman Empire arose from the contact of its law with the customs and laws of other States.

Here it may pointed out that in no modern book is there an adequate treatment of the systems of law in force in the British Empire. The first and only edition of Burge's "Commentaries on Colonial and Foreign Laws" is dated 1838.

Little can be done without co-operation in all parts of the Empire. It is intended to establish branches in the different colonies and possessions. From these branches valuable suggestions may be expected. With them, in great measure, must rest the success of the undertaking. It is desired to enlist the aid in particular of the Governors, Chief Justices and Judges of our colonies, of Chambers of Commerce throughout the Empire, of the Inns of Court and Incorporated Law Societies, of the Universities, of the Diplomatic and Consular Services, and of the Bar Associations and Statute Revision Commissions in the United States.

Probably the work of the Society would be advanced by holding from time to time conferences. In Germany, Italy, Austria and Switzerland, representative meetings of lawyers and jurists annually take place. At these meetings are discussed questions of interest to the legal profession and the public. It is no disrespect to existing associations to say that hitherto no meetings, with the objects here indicated, have taken place in England, or in any part of the British Empire; and it is believed that the utility of the new Society would be recognized, its objects would be shown to be not merely academic but practical, if conferences were periodically held for discussion of legal matters affecting the whole Empire.

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The following is a list of the Officers, Council, and Executive Committee:—

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The Right Hon. Cecil Rhodes, Prime Minister of Cape Colony.
The Lord Chief Justice of England (Lord Russell of Killowen).
Professor Henry Sidgwick, Professor of Moral Philosophy, Cambridge.
Whitley Stokes, Esq., C.S.I., late Legal Member of Council, India.
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Lord Watson, Lord of Appeal.
Lord Welby, G.C.B.
Sir Raymond West, K.C.I.E.

Professor J. Westlake, Q.C., Professor of International Law, Cambridge.
E. H. Whittuck, Esq.
Arthur Wilson, Esq., Legal Adviser to the India Office.
Mr. Justice Wright.
Sir Henry Wrixon, K.C.M.G.

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Lord Herschell, G.C.B., (Chairman).
The Hon. E Blake, Q.C., M.P.
Thomas Barclay, Esq
J. Bramston, Esq., C.B.
The Right Hon. James Bryce, M.P.
His Honour Judge Chalmers.
Arthur Cohen, Esq., Q.C.
Newton Crane, Esq.
Lord Davey.
Sir James Garrick, K C.M.G.
John Hunter, Esq. (President of the Incorporated Law Society).
Sir Courtenay Ilbert, K.C.S.I.
Sir Henry James, Q.C., M.P.
Master Macdonell.
K. Muir Mackenzie, Esq , Q.C., C.B.
Professor F. W. Maitland.
Whitley Stokes, Esq , C.S.I.
Sir Charles Tupper, Bart., G.C.M.G.
Lord Welby, G C B.
Sir Raymond West, K.C I.E.
Professor Westlake, Q.C.

Honorary Secretaries. { Thomas Raleigh, Esq., All Souls College, Oxford.
Albert Gray, Esq., 2, Paper Buildings, Temple, E.C.

APPLICATION FOR LIFE MEMBERSHIP.

TO THE HONORARY SECRETARIES OF THE SOCIETY OF COMPARATIVE LEGISLATION.

Date _____

GENTLEMEN,

I desire to become a Life Member of the Society of Comparative Legislation, and herewith enclose a donation of Ten Guineas to the Society.

Yours truly,

Ordinary Signature _____

Full Name _____

Address _____

APPLICATION FOR MEMBERSHIP.

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Date _____

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[Order to Bankers].

To Messrs. _____

Please pay to Messrs. Child and Co., 1, Fleet Street, E.C., for the credit of the Society of Comparative Legislation the sum of one pound one shilling annually on the 1st January, and debit same to my account.

Signature _____

Date _____

£1 : 1 : 0.

ORDER—dated 29th August 1895, No. 83, Legislative.

Communicated to the Honourable the Judges of the High Court, the Honourable the Advocate-General, the Government Pleader, the Government Solicitor, the Crown Prosecutor, all District Judges, all District Magistrates, the Madras Bar Association and the Madras Attorneys' Association. The Government will be prepared to assist in furthering the objects of the Society of Comparative Legislation by furnishing any local branch which may be started with copies of the Madras Regulations and Acts and in any other practicable method.

(True Extract.)

Chief
~~Ag. Under~~ Secy. to Govt.

To the Honourable the Chief Justice of the High Court, with C.L.
" the Honourable the Advocate-General.
" the Government Pleader.
" the " Solicitor.
" the Crown Prosecutor.
" all District Judges.
" all District Magistrates.
" the Secretary, Madras Bar Association.
" the " " Attorneys' Association.
Exd. S. J. Peraira.

Govt. of {1895} Madras.

LEGISLATIVE.

Issued

Read. *Encl.*

G.O., 29th August 1895, No. 83.

AUGUST.

Society of Comparative Legislation.

Communicating to the Hon'ble the Judges of the High Court, the Madras Bar Association, the Madras Attorneys' Association and certain officers despatch from the Right Hon'ble the Secretary of State regarding the newly-constituted — withthe Right Hon'ble Lord Herschell as President.

THE SOCIETY OF COMPARATIVE LEGISLATION.

A Conference, presided over by the LORD CHANCELLOR, was held at the Imperial Institute, on the 19th December, 1894, to consider the best means of furthering the study of Comparative Legislation, as suggested in a paper lately read at the Institute by Sir Courtenay Ilbert, K.C.S.I. The following Resolutions were passed :—

Moved by the LORD CHANCELLOR, seconded by SIR ROBERT HERBERT, G.C.B.:—

(1) "That it is expedient to establish a Society of Comparative Legislation, with the object of promoting knowledge of the course of legislation in different countries, more particularly in the several parts of Her Majesty's Dominions, and in the United States."

Moved by LORD HOBHOUSE, K.C.S.I., seconded by SIR RAYMOND WEST, K.C.I.E.:—

(2) "That, for this purpose, a Council be formed, with instructions to nominate an Executive Committee, charged with the duty of preparing a Constitution for the Society, and of indicating the best mode of carrying out its objects."

Moved by the LORD CHIEF JUSTICE OF ENGLAND, seconded by MR. THOMAS RALEIGH :—

(3) "That the Lord Chancellor be the first President of the Society."

These resolutions were the origin of the Society. Some further explanation of its objects, however, may be needed.

They are both practical and scientific. The Society is intended to be of service to legislative bodies, practising lawyers, jurists and students of sociology.

To jurisprudence the Society will apply the comparative method of investigation, which has already proved fruitful. It will gather together, epitomise, and arrange materials now scattered through many periodicals, or to be found only in official documents of which few libraries contain copies, and it will otherwise endeavour to promote the study of comparative law. Chief among its aims will be the collecting of information as to the statute law and the forms and methods of legislation in the British Empire and the United States.

In France, Germany, and America, similar associations exist; and it has long been matter of surprise that no such society has been formed in the British Empire, with its great variety of legal systems. In India, where English, Hindoo, and Mahomedan law coexist, and have affected each other, and where ancient customs of interest to the legal historian are still observed, and in our colonies, dependencies, and possessions, in which French, Roman-Dutch, and Spanish law subsist, will be found a vast field for the work of a Society of Comparative Legislation. In extent and variety, the jurisdiction of the Judicial Committee of the Privy Council, as a Court of Appeal, is unequalled. In a single year, it may be called upon to consider questions of constitutional law of moment to all civilised countries, cases dependent on Hindoo or Mahomedan law, on texts of the Digest, on the Ordonnances of Louis XIV., on the Coutume de Paris or other portions of the old customary law of France before the Revolution, or on the ancient customs of Normandy. It is somewhat remarkable that there should not have long ago been founded a society for the scientific study and comparison of the very diverse laws brought before the Appellate Court of the colonies and possessions of the British Empire.

Benefits, direct and indirect, from the labours of the Society may be counted upon.

In the British Empire are some 60 Legislatures; in the United States are nearly 50. Each of them is occupied with much the same problems. The same questions as to criminal law and the administration of justice, capital and labour, marriage and divorce, patents and literary property, the regulation of the sale of intoxicating liquors, education, railways, companies, bankruptcy, merchant shipping and mercantile law generally, come from time to time before the British and Colonial Parliaments, and the Legislatures of the States of the American Union. Experiments as to similar subjects are being made by more than a hundred legislatures in English speaking countries.

It is not uncommon, on the introduction of measures into Parliament, to refer to the laws of other countries. At present the results of foreign experiments are only imperfectly and casually brought to the notice of those who might profit by them; and enactments may be proposed and adopted in one English speaking community in ignorance of the fact that similar measures have after trial been abandoned or modified in another. Much, it is conceived, might be learned with advantage both as to the substance and as to the form of legislation, and many mistakes might be avoided, if precedents derived from the experience of other countries were collected and studied. In the future changes in criminal law, for

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London, May, 1895.

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DR. COURTNEY KENNY.
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THE HON. CHANDOS LEIGH, Counsel to the Speaker of the House of Commons.
LORD JUSTICE LINDLEY.
LORD LINGEN, K.C.B.
THE MARQUIS OF LORNE, G.C.M.G., late Governor General of Canada.
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VISCOUNT PEEL, late Speaker of the House of Commons.
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T. RALEIGH, ESQ., Reader in English Law, Oxford.
LORD REAY, G.C.S.I., Under Secretary of State for India.
THE RIGHT HON. CECIL RHODES, Prime Minister.
Statute law.

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LORD THRING, K.C.B., late Parliamentary Counsel to the Treasury.
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SIR JOSEPH WARNER, Counsel to the Chairman of Committees, House of Lords.
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E. H. WHITTUCK, ESQ.
ARTHUR WILSON, ESQ., Legal Adviser to the India Office.
MR. JUSTICE WRIGHT.
SIR HENRY WRIXON, K.C.M.G.

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SIR JAMES GARRICK, K.C.M.G.
JOHN HUNTER, ESQ. (President of the Incorporated Law Society).
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PROFESSOR WESTLAKE, Q.C.

Honorary Secretaries { THOMAS RALEIGH, ESQ., All Souls College, Oxford.
ALBERT GRAY, ESQ., 2, Paper Buildings, Temple, E.C.

APPLICATION FOR

To the Honorary Secretaries of the
Society of Comparative Legislation.

Date .....

Gentlemen,

I desire to become a Life Member of the Society of Comparative Legislation, and herewith enclose a donation of Ten Guineas to the Society.

Yours truly,

Ordinary Signature .....

Full Name .....

Address .....

.....

.....

APPLICATION FOR MEMBERSHIP.

To the Honorary Secretaries of the
Society of Comparative Legislation.

Date .....

Gentlemen,

I desire to become a Member of the Society of Comparative Legislation, and herewith enclose my subscription (£1 1*s.*) for the current year.

Yours truly,

Ordinary Signature .....

Full Name .....

Address .....

.....

.....

[Order to Bankers.]

To Messrs. .....

Please pay to Messrs. Child & Co., 1, Fleet Street, E.C., for the credit of the Society of Comparative Legislation the sum of one pound one shilling, annually on the 1st January, and debit same to my account.

Signature .....

£1 : 1 : 0

Date .....

House of Lords, S.W.

the 19th of June 1895.

Sir,

As President of the Society of Comparative Legislation and at the request of the Council of that Association I have the honour to invite your cooperation in furthering the objects of the Society, and your assistance in bringing those objects to the notice of the Indian Governments.

The Society as you are aware took its inception from a valuable paper read by Sir Courtenay Ilbert K.C.S.I., before the Fellows of the Imperial Institute on the

1894, and definitely took shape at a large and important inaugural conference held at the Imperial Institute on the 19th of December 1894 over which I had the honour to preside.

The Society has since obtained more definite organization; the Council and the Executive Committee have been formed, and a formal constitution and prospectus, or scheme of the objects of the Society have been drawn up. Of these documents, I have now the honour to enclose copies, in the hope that you will be good enough to have them placed on record in your Department, and that you will also forward copies to the Governor General of India and the Governors of Madras and Bombay for their consideration accompanied with an invitation that they will severally take such action as may appear best calculated to advance the objects which this Society has in view and to promote the study of comparative law.

Those

all over
" " Magistrates

3019.

Letter

Those objects are both practical and scientific. The Society is intended to be of service to legislative bodies both here and elsewhere, to practising lawyers and to jurists, and students of Sociology. If the authorities in India will help us, we believe that we shall be able to repay any assistance they may render, by communicating to each the results of the work to which all will have contributed, after that work has been arranged, assimilated and supplemented by ourselves.

I do not enlarge further upon the objects of the Society for these are fully detailed in the documents which I enclose, but it may be well that I should briefly indicate the nature of the assistance which those who are so disposed can afford us. It is hoped that many persons in India will help in the useful work to be done by the Society so far as to become subscribing Members of it and it would be useful, if, in each province having a Legislature persons of position would consent to act as Local Agents, for the purposes of procuring subscriptions to the Society and otherwise assisting its objects. I should be glad to think that branch Societies will eventually be formed, from whom the Central Society may receive valuable suggestions and co-operation. But at present I can do no more than ask that suitable persons may be found to accept the position of corresponding Members to whom our communications may be addressed and from whom we may obtain information. I trust that we shall be so fortunate as to secure as our correspondents either the Chief Justices or some other Judges or the Advocate-General or some other barristers who will carry sufficient weight to enable them to organise branches of the Society.

I have ventured to ask you to become on this occasion the medium of communication with the Indian Governments as it has appeared desirable that the first communication from the Society should reach India in the most influential manner; but I have no wish to trespass further upon your kindness, and any replies that this letter may produce will I trust be sent direct to me at the Imperial Institute and the Secretaries will then know to whom future letters from the Society should be addressed.

It would not be becoming in me to make suggestions to the Authorities in India as to the mode in which the subject dealt with in this letter should be treated, but I venture to think that the Society will be more successful if it is remembered that work of the character required comes better as the fruit of individual effort, than as the result of directions emanating from a Government Institution.

Yours, etc.,

(Sd) Herschell.

The Right Honourable
H.H. Fowler, M.P.

14

№ 7

Copy letter from
Lord Herschell
dated 19th June 1895

1895
Legn Dept
Bundle No 2
To
C. No 220

Referred to in Madras
Judicial Despatch
№ 3 dy. 18th July 1895
— para 1

15

CURRENT NO. 220

INDIA OFFICE,

LONDON, 18th JULY 1895.

18

JUDICIAL,
No. 3.

Leg 83-84 24/8

TO HIS EXCELLENCY THE RIGHT HONOURABLE THE GOVERNOR IN COUNCIL, FORT St. GEORGE.

My Lord,

I forward a copy of a letter (with enclosures) from the Right Honourable Lord Herschell with reference to the newly constituted Society of Comparative Legislation of which he is the President.

2. I request that your Excellency in Council will take the matter into your consideration and adopt such means as you may think best fitted to further the objects of the Society.

I have the honour to be,

My Lord,

Your Lordship's most obedient humble Servant,

George Hamilton

19th June 1895
25 copies of enclosures by
Book Post.

No 6

CURRENT NO. 220
Legislative Dept
Judicial
18th July 1895

The
Letter to Fort St. George
No 3

CHIEF SECRETARY'S
20 AUG 1895
GOVERNMENT OF MADRAS

Read 7/8/95

Regd for reg.d & Rpd 12.8.95
Encs: 2 to 24 &c. of Enc: 1.

Subject

Re the newly constituted Society of Comparative Legislation of which the Right Honorable Lord Herschell is the President.

MO
11
12/8

[G. 25.] 500—21-5-95.

Legislative Department.

[17]

C. No. 220

From the Right Honorable the Secretary of State, forwarding copy of a Letter from the Right Honorable Lord Herschell with reference to the newly constituted Society of Comparative Legislation, with a request that such means as may be thought best fitted to promote the Objects of the Society may be adopted

FOR ORDERS.

The suggestions in the Note seem suitable - but it does not appear to me that it would be necessary to undertake to furnish copies of the Proceedings of the Legislative Councils - unless they were asked for. What any Society who may be formed would most likely wish to have would be the results of the Leg. Council's proceedings: viz: the matured Acts, & not the opinions of individuals - & if we sent them copies of the Acts as they were turned out of the mould, I shd think that would be enough.

W
20 Aug

28/8/95

JG
24/8

From the concluding para. of Lord Herschell's letter it appears that the Society desires assistance emanating from individual effort rather than direct Govt aid. - Perhaps it will suffice to communicate these papers in a printed G.O. to the Hon. the Judges of the High Court, the Govt Law Officers, the Attorneys' & Bar Associations; a sufficient number of spare copies being sent for distribution to District Judges Dist. Magrs &c.

By way of direct aid Govt might undertake to furnish to Society any local branch started in Mad with a complete set of Madras Regulns & Acts, & further communicate to it printed Legve orders of importance & copies of proceedings in the Legve

CRW
16/8

" Crown Prosecutor
" District Judges
" Magistrates

Revised
30/8.

Letter

2 The Society of Comparative Legislation.

[18]

Council.

This together with a general expression of willingness to and the Society, wherever possible might perhaps suffice.

a copy of the proceedings which may be passed will presumably be sent direct to Lord Reay with a covering letter

D
17-8-95

~~To be replied with~~

RP 19/8/95

FOR ORDERS.

H.E the Governor + Circ

~~HON'BLE MEMBER.~~

[G. 24.] 500—23-7-95.

19 Legislative DEPARTMENT.

Papers to be read in proceedings:—

Again G.O., dated	189 , No.	
Again G.O., dated	189 , No.	
A Current No. 220	of 1895, dated 18.7.95,	from the Secretary of State for India
" "	" 189 , " ,	"
" "	" 189 , " ,	"

ORDER. D 29. August 1895, No. 83.

P.S.

Communicated to the Hon: the Judges of the High Court, the Hon: the Advocate-General, the Govt. Pleader, the Govt. Solicitor, the Crown Prosecutor, all District Judges, all District Magistrates, the Madras Bar Association, the Madras High Court Vakils' Association and the Madras Attorneys' Association. The Govt. will be ~~ready~~ thereby to assist in furthering the objects of the Society of Comparative Legislation by furnishing any local branch which may be started with copies of the Madras Regulations and Acts and in any other practicable method.

(From orders)

D
27-8-95

RP
29/8/95

Sent Direct

The Hon: the Chief Justice of the High Court with C.L.

" Hon: the Advocate-General

" Govt. Pleader

" " Solicitor

" Crown Prosecutor

All District Judges

" " Magistrates

C 1918. 1918. 2674

30/9.

Letter

20

Letter No 84.

To

The Rt. Hon: Lord Herschell, G.C.B
Presd^t of the Society of Comparative Legn.

The Society of Comparative Legislation.

(From Orders)

My Lord,

I am directed to forward for your Lordship's information a copy of the Proceedings of the Madras Govt. of this date expressing its readiness to assist in furthering the objects of the Society of Comparative Legislation. The papers relating to the establishment of the Society have been communicated to such individuals and bodies in the Madras Presidency as are likely to take an interest in the promotion of knowledge of the course of legislation in different countries. No more active steps have been taken in view of the Society's belief that it will be more successful if dependent upon individual effort rather than upon directions emanating from Govt.

I have &c

(From orders)

29/8/95

27 8.5.

irst copy sent to Press.

eturned for signature.

espatched in print.

NUMBER OF COPIES REQUIRED. Order complete. 250 Letter only. 40 Order complete with Letter. 20

EAD, JOHN G.O., No. 139 DATED

URRENT No.

NCLOSURES TO C. No.

RDER OF GOVERNMENT

ETTER OF GOVERNMENT.

ATEMENT WITH DITTO.

ES NOT FILED UP, BEING MEANT FOR DESPATCH IN ORIGINAL.

N.B.—
A = Print in full.
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