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DISSENTIENT OPINIONS IN THE PRIVY COUNCIL.

In discussing, a few weeks ago, the question of suppressing dissentient opinions in the Supreme Court, reference was made to the Judicial Committee of the Privy Council as an appellate tribunal which never revealed the fact of a dissent, or the name of a dissentient member. That is the practice, but it is not invariable. It appears that a dissenting Judge may express his opinion if the majority of the Committee do not refuse him permission to do so. As a matter of fact, in two cases of importance of no very remote date, the dissent of members of the Committee was declared. That of the Bishop of London and of Lord Justice Knight Bruce was stated in the celebrated Gorham case, and in the case of "Essays and Reviews" the dissent of the two Archbishops was declared. In other cases of general interest the names of the dissentient Judges have been well known to the bar.

Not long ago a curious incident arose out of a dissent in the Privy Council. In the famous Ridsdale judgment—one of the cases springing from questions of vestments and postures which have agitated the ecclesiastical atmosphere in England—no dissent was declared from the bench. But it was generally known that two or three members of the Committee did not concur in the judgment, and their opinion, though bottled up at the time, exploded some six months afterwards with intensified vehemence. It happened in this way. A clergyman wrote a letter to a newspaper, in which he alleged that the Lord Chief Baron, who sat in the Ridsdale case, had authorized him to state that the judgment of the Privy Council was "an iniquitous one; that it was not a judgment founded upon law, but upon policy." This severe criticism of his colleagues led to a correspondence between the Lord Chief Baron and the Lord Chancellor, published in the *Times* of the 29th October last, in which Sir Fitzroy Kelly practically admitted that he had spoken in terms of disparagement of his colleagues, though he repudiated the use of the term "iniquitous." It appeared that the Chief Baron desired that his dissent should be made public at the time the judgment was delivered, but his request to be allowed to state his view was refused by the majority of the Committee. The result was that his dissent was made known under circumstances which gave it much greater prominence than it would otherwise have attained.

It may be remarked that the press on that occasion did not seem to regard the system of suppression as one to be commended. The *Times*, referring to the fact that the Lord Chancellor had invoked the rule made in 1627, remarked: "We are quite sure that a defence of it for which the Lord Chancellor has to go back to 1627 is not adequate. We wonder whether there is any other country in the world except England in which, upon a question of procedure in a Court of about a quarter of a century's standing, any one would go back two hundred and fifty years. The Order of 1627, as the Lord Chief Baron says, was made when the Privy Council had very different work to do, when its occupation was very different from that of a Judicial Committee, and when it dealt in a very summary manner with ecclesiastical offences. In point of fact, all the world knew of the dissent of the Lord Chief Baron and of one or two of his colleagues immediately after the decision was delivered. It was commonly discussed in Ritualistic journals, and treated as something very mysterious, instead of being one of the most commonplace of occurrences. The Lord Chancellor must find some better authority than the rule of 1627 if he thinks it worth while to make the Judicial Committee an exception to our other Courts."

The excitement of the Lord Chief Baron was due in part to the fact that as counsel, in consultation with eight others, he had given an opinion in opposition to the judgment of the majority of the tribunal, and yet he was deprived of the opportunity of stating that his views had undergone no change. This bears out the opinion we formerly ventured to express, that the total suppression of dissents is unfair to the Judges themselves as well as objectionable in other respects.