

Letter in Justice of the Peace Being Fair To Lord Bingham

The following, including FB's reply which follows on from Prof. Spencer's letter) was published in 170 JPN (25 Nov 2006) 916. The first letter from Prof. Spencer was in response to FB's earlier article, '*Jones v Whalley*: Constitutional Errors by the Appellate Committee', 170 JPN (4 Nov 2006) 847 (See Doc. No. 2006.039 for the full article, subsequent correspondence and FB's Introductory Note).

CORRESPONDENCE

The Editor,
Justice of the Peace.

Dear Sir,

Jones v Whalley

In his article about this case in the JP for the 4 November Francis Bennion is as thought-provoking as he always is, but I do not think his strictures are entirely fair.

On page 850 he quotes a passage from Lord Bingham's speech which describes the right of public prosecution as "a somewhat anomalous historical survival" and "of questionable value", and castigates him roundly for having said so.

But in the passage to which Mr Bennion objects Lord Bingham was not expressing his own views. He was merely summarising one of the arguments of counsel. And in the two sentences that follow the passage Mr Bennion quoted, Lord Bingham distanced himself from the argument of counsel thus:

"I would not therefore, reject this argument. But nor do I think the House should in this appeal accept it..."

The argument, Lord Bingham said, had not been properly ventilated in the course of the proceedings, and the House should not take a position on it unless and until those who might think otherwise had had the chance to persuade their Lordships that it was wrong.

Yours truly,
Professor J.R. Spencer, QC

Francis Bennion replies:

Professor Spencer is mistaken. There is not the slightest doubt that I accurately conveyed the views on the right of private prosecution which were expressed by Lord Bingham, as a careful inspection of the law report will confirm. I did it is true cite the words "of questionable value", about which Professor Spencer complains, but they are in a part of Lord Bingham's speech in which he is undoubtedly expressing his own view and not the argument of counsel. He has earlier completed his approving summary of counsel's remarks by saying "I see very considerable force in this argument". Then comes the following, which I quoted in full in my article:

“It is for the state by its appropriate agencies to investigate alleged crimes and decide whether offenders should be prosecuted. In times past, with no public prosecution service and ill-organised means of enforcing the law, the prosecution of offenders necessarily depended on the involvement of private individuals, but that is no longer so. The surviving right of private prosecution is of questionable value, and can be exercised in a way damaging to the public interest.”

This clearly shows that Lord Bingham opposes the right of private prosecution as a feature of current law, and therefore justifies the opposition I expressed. I readily acknowledge that whether my view or that of Lord Bingham is right is a question of opinion.