COUNCIL OF THE GOVERNOR GENERAL OF INDIA

VOL. 3

JAN. - DEC.

1864

P. L.

Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., C. 67.

The Council met at Government house on Wednesday, the 6th April 1864.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honour the Leutenant-Governor of Bengal.
Major-General the Hon'ble Sir R. Napier, K.C.B.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble A. A. Roberts, C.B.
The Hon'ble H. L. Anderson.
The Hon'ble C. H. Brown.
The Hon'ble J. N. Bullen.
The Hon'ble Rajah Sahib Dyal Bahadoor.

MARRIAGE BILL.

The Hon'ble MR. ANDERSON, in moving that the Report of the Select Committee on the Bill to provide for the solemnization of marriages in India of persons professing the Christian religion be taken into consideration said, "I consider it due to the Christian community of this country to submit some observations explanatory of the grounds on which this measure is deemed expedient. The doubts and difficulties which have arisen have had their origin in the extraordinary complexity of the question of what by the Common Law of England does or does not constitute a valid marriage, and the fact that the Statute which insisted on a more decent, though not more simple, system has not been extended to India, and if it had been, would only have added to the confusion which surrounds the subject. The Statute to which I allude is the 26th Geo. II, cap. 33. It was passed in 1753, and took its effect from March 1754. It is commonly called Lord Hardwicke's Act. Its direct object was to provide that all marriages not solemnized in a Church after due solemnization of banns in that Church, or under a license from competent authority, should be null and void. Incidentally, but not I think with direct intention, it rendered necessary the presence of a person in Holy Orders at the ceremony. When I say incidentally, I merely mean to suggest that I believe

the framers of the Act commenced their work under the conviction that such presence of a person in Holy Orders was essential to the validity of a marriage, and that they did not believe it necessary to assert the principle in so many words. The measure has never been extended to India and when the question arose of whether the presence of a person in Holy Orders was essential to the validity of a marriage, the course of the inquiry would be to ascertain what was the Common Law of England on the subject. But this question is one which has elicited a more laborious, learned, and subtle discussion than on any other occasion was ever submitted to the highest judicial tribunal in England; it called forth the most complete contrariety of opinion, and it really can hardly be said to have been decided. The celebrated decision of Lord Stowell (then Sir William Scott, in *Dalrymple* v. *Dalrymple*, which was mainly directed to the determination of a question of Scotch Law, laid down, not extrajudicially as has been asserted, but as an argument subsidiary to his immediate conclusion, that by the Common Law of England a contract of marriage "*per verba de præsenti*" constituted a valid marriage. When such a jurist as Lord Stowell had pronounced his opinion, it might have been imagined that the point was ruled for ever. But in 1826, there came forth a challenger who strongly impugned the position assumed in Lord Stowell's great decision. Mr. Jacob in an edition of "*Roper on the Law of Husband and Wife*" argued with great learning and consummate ability, that the presence of a person in Holy Orders was by the Common Law of England necessary to the validity of a marriage. It has generally been allowed that it was this opinion of Mr. Jacob which induced in 1842 the objection that the marriage involved in the great case of the *Queen* v. *Mills* was void. I think that in some of the discussions which that case produced at the time and afterwards, there may be traced something like a feeling of irritation that a young Barrister should have re-open a question which ought to have been regarded as disposed of for ever by the authority of Lord Stowell. But Mr. Jacob was no common man, and had his life been spared, there might very possibly have been few names more illustrious in the annals of the law. Dying comparatively young, he is chiefly known as having twice compelled the omniscient Whewell to take the second place in mathematical contests, and as having carried the whole bench of England with him in assailing a position which the genius of Lord Stowell was thought to have rendered impregnable. His opinion, then, leads us to the case of *The Queen* v. *Millis*. This was a case in which George Millis had in 1829 contracted a marriage in Ireland, with Hester Graham, in a Presbyterian Chapel, before a Presbyterian Minister, and had afterwards in 1836 married another person in England. He was prosecuted for bigamy, and the question was raised whether the first marriage not having been solemnized in the

presence of a Clergyman in Holy Orders that is, who had received episcopal ordination, was valid. The case was removed by a writ of *certiorari* to, and was argued before the Court of Queen's Bench in Dublin. The Court was divided. Mr. Justice Perrin and Mr. Justice Crampton thought that as a marriage contracted "*per verba de præsenti*," it was valid. Mr. Justice Burton, and Chief Justice Pennefather, held that as no person in Holy Orders was present, it was not a valid marriage. I should mention that I have not had an opportunity of reading the case before the Irish Court, but that Mr. Justice Crampton appears to have thought that the fact of a regular ceremony having been performed by a Presbyterian Clergyman rendered the marriage valid. His opinion would appear, then, to have been something like that eventually held by Lord Campbell. The junior Judge, Mr. Justice Perrin, "*pro forma*," withdrew his opinion, and the case came before the House of Lords. After an elaborate argument at the Bar, the opinions of the Judges were invited. Lord Chief Justice Tindal then delivered the unanimous opinion of the Bench that the Irish marriage was not valid, not having been solemnized in the presence of a person in Holy Orders. This conclusion, Sir Nicholas Tindal stated, had not been reached without considerable discussion and great fluctuation of opinion; and he particularly impressed upon the Lords that, although the Judges agreed to the conclusion, he was not authorized to bind them down to the arguments and presumption on which that conclusion, as exhibited in his reply, was founded. The Law Lords then delivered their opinions. Lords Brougham, Campbell, and Denman considered the Irish marriage to be valid. Lords Abinger and Cottenham, and Lord Chancellor Lyndhurst, held that it was not valid. In this equality of opinion, the direct question being whether Millis had committed bigamy, the rule *semper presumitur pro negante* was applied, and judgment given for the defendant in error. We thus see that the judgment in *The Queen* v. *Millis* did not conclusively establish the principle that the presence of a person in Holy Orders was necessary to the validity of a marriage. It did not, I should rather say, place the conclusion above legal question; it only disposed of the immediate case before the House by a technical rule. The Court of Exchequer has, however, subsequently considered itself bound by the decision of the Lords, and in *Catherwood* v. *Caslon* pronounced a marriage solemnized by a Presbyterian Minister in the English Consul's House at Beyrout, in Syria, to be void. But on the other hand, a great authority in all questions connected with matrimony, Dr. Lushington, in the case of *Catterall* v. *Catterall*, refused to be bound by the decision in *The Queen* v. *Millis*. That case was an Australian one. The parties had been married under an Act of the Legislature of New South Wales by a Presbyterian Minister. The Act was an exact copy of the Statute 58 Geo. III, cap. 84, under

which marraiges are solemnized in India by Presbyterian Clergymen, and provided that a declaration be made that one of the parties was a member of the Established Church of Scotland. In the particular case, the parties did not sign this declaration, but Dr. Lushington held that the Act did not state that if the prescribed forms were neglected, the marriage should be void. I mention this point particularly as it will be of use with reference to another question to which I shall advert hereafter in connection with this Bill. That Dr. Lushington's view was perfectly correct will be seen by any one who will compare the Statute 7 and 8 Will. III, cap. 25 with Lord Hardwicke's Act. The one punished the priest and the parties, the other went further and provided that the marriage should be null and void. Dr. Lushington then allowed the question to be raised and argued, that the contract was sufficiently a marriage to enable a Court to pronounce sentence of separation by reason of adultery. The Common Law of England had been carried to New South Wales by the Statute 9 Geo. IV, cap. 83. Dr. Lushington refused to be bound by the decision in the *Queen* v. *Millis*, because the Law Lords had been divided in opinion, and it was only in consequence of the form in which the case came before the House that the judgment took the shape in which it appeared. He gave judgment for a separation. The Council will thus see that since the decision in the *Queen* v. *Millis* the Court of Exchequer had in a Syrian case held one view, and that at Doctors' Commons, in an Australian case, a precisely opposite view had been taken by Dr. Lushington. I would next draw the attention of the Council to an Indian case, *Maclean* v. *Cristall*, tried before Chief Justice Sir E. Perry, at Bombay. The parties had been married at Surat by a Missionary named Fyire, a gentleman of very high character, but who had not received episcopal ordination. In this case also the question was raised whether the marriage was valid, and the decision in the *Queen* v. *Millis* was relied on. Sir Erskine Perry in his judgment took, evidently against his own conviction, the view of the Law imposed on him, as he considered, by the decision of the House of Lords; but he held that the whole of the Common Law had not been extended to India, but only so much of it as was suitable to the condition of the country. He thus met the objection *ad absurdum*, suggested by Lord Campbell as to whether the Mutineers of the Bounty living on Pitcairn's island were to be regarded as living in concubinage until visited by a Clergyman who had received episcopal ordination. Sir E. Perry's decision, then, was in favour of the validity of the marriage. It would be presumptuous in me to dilate on the ability displayed in this judgment, especially as I am inclined to take a different view from that, which Sir Erskine Perry evidently held on the Common Law question; but I may as one born and resident in India, be allowed to advert for a moment to the self-reliance and breadth of view with which he enunciated the principle, that the whole

of the Common Law had not been applied to India. Major Maclean subsequently obtained his divorce in the House of Lords, but the point involved in the *Queen* v. *Millis* was not, I believe, raised, and the question is not regarded as having been finally resolved. I cannot, then, but fear, that, some other Judge in India may take a narrower view of the applicability of the Common Law than that exhibited in Sir Erskine Perry's judgment; and, on the other hand, it is the duty of this Council to take care that, with respect to so important a relation as marriage, no undue laxity be introduced. It is mentioned in the Statement of Objects and Reasons originally prefixed to the Bill, that in 1854 a person who had received no kind of ordination had pretended to join several couples in matrimony, and the late Mr. Ritchie expressed an opinion that the marriages thus performed were legal. If this view of Mr. Ritchie, a name which can never be mentioned without respect, be correct, it is clear that we have to deal with a very serious evil. I do not myself concur in the view; but the mere fact that such a man as Mr. Ritchie entertained it, must be sufficient to induce the Council to adopt due precautions that such irregular marriages be declared by enactment to be void in future.

(The Hon'ble MR. ANDERSON then submitted at length to the Council his opinion as to whether, by the English Common Law, the presence of a person in Holy Orders was necessary to the validity of a marriage. After referring to various authorities, he stated that he considered such presence of a Clergyman to be essential, and that it was principally because he did think so that he urged on the Council the adoption of the measure now proposed. He then proceeded.)

I would now submit, Sir, to Your Excellency and the Council, that we have two difficulties to encounter, *first*, that it may at some time very possibly be held that a marriage "*per verba de præsenti*" is not valid by the English Common Law, and that some Judge, with less breadth of view than Sir E. Perry, may declare that part of the Common Law applicable to India; *secondly*, if the opposite view be correct, then a large portion of the Native Christian community, and perhaps some portion of the European Christian community, may be reduced to a social condition little better than concubinage; no better, with respect to the enforcement of certain civil rights, through the instrumentality of impudent impostors, pretending to have authority to solemnize marriages. The late Mr. Ritchie proposed to deal with these evils by restricting legal marriages in India—*1st*, to those solemnized by persons who had received episcopal ordination; *2nd*, to those solemnized by Clergymen of the Church of Scotland, one of the parties being a member of that Church; *3rd*, to those performed by or in the presence of a Marriage Registrar under the Statute 14 and 15 Vic., cap. 40, and Act V of 1852 of the Gov-

ernor-General of India in Council. All other marriages, he proposed, should be declared to be null and void. The Bill, as prepared by Mr. Ritchie, may be regarded only as a first draft; it had not received the final corrections of his accomplished intellect, and public discussion had in no way been invited upon it. On the Bill coming into the hands of the Hon'ble Mr. Harington, a new Chapter was added providing a simpler and less expensive form of marriage for native converts. This part of the Bill will, I think, be regarded as not the least of the many services rendered by that gentleman to this Council and this country. The rest of the Bill, Mr. Harington wisely left untouched until public opinion had been expressed upon it. That opinion has now been widely expressed with great intelligence and great moderation. The Select Committee, on a full consideration of the whole subject has earnestly endeavoured to adapt this Bill to the wants of the country. It has placed the clergy of the Church of Scotland on an equality with the Church of England, recognizing the argument that India should be regarded as neutral ground between the two Churches. With this view, it proposes that the declaration and certificate that one of the parties is a member of the Scotch Church, required by the Statute 58 Geo. III, cap. 84, shall be no longer required. I am the more induced to recommend this change by the consideration that in Dr. Lushington's opinion, the absence of such declaration and certificate will not nullify the marriage. But the Select Committee has done more than this; it has proposed to enable Ministers of the Free Church of Scotland and of dissenting congregations to solemnize marriages under licenses from the different Governments. It may possibly be said "Let such as object to episcopal or Presbyterian ordination be married by Marriage Registrars." But I fully believe that many Dissenters, good men and good citizens, entertain a fond desire for a purely religious ceremony, a ceremony in which they lay element shall be intruded as little as may be convenient, and in which it certainly shall not constitute the legalizing leaven. But I go further than this, and say that if there were no other alternative, many good members of the Church of England would prefer to be married by some future Alexander Duff in Calcutta, or some future John Wilson in Bombay; by some Philip Doddridge, Robert Hall, or John Foster, of Dissent, than by any Marriage Registrar in the world. This is a sentiment which, taking care that all things be done decently and in order, we should not disregard. It is a tribute of respect which may wisely and gracefully be paid to the blameless lives, the unselfish ambition, and the pure example of the Missionaries in India. With respect to native converts, I would, as briefly as I can, submit two remarks. It is very probable that the various Governments will at first be inclined to issue licenses to persons to grant certificates of mar-

riage between native converts, only in the Mofussil. My Hon'ble friend, Mr. Ellis with characteristic acuteness, remarked in the Select Committee that native converts in the Presidency towns would thus be thrown back on Part II of the Bill, which makes the age of twenty-one years the earliest age at which marriage may be solemnized without the consent of parents and guardians, or without extended notice. The Hon'ble Mr. Ellis was inclined to think that at Madras, if not in Calcutta, Bombay, and other large towns, these circumstances would operate as a serious impediment. It was pointed out by my Hon'ble friend, Mr. Maine, that the Governments were not debarred from granting licenses under Part V to persons in Presidency towns, and that if, on experience, such a measure seemed necessary, the Local Governments should be moved on the subject. My hon'ble friend, Mr. Ellis, expressed himself satisfied with this explanation, but he particularly begged me at the time and afterwards, as he should be absent from this debate, to mention his doubt to the Council, which I have accordingly done. The other point to which I would allude is one which has been pressed upon the attention of the Select Committee from all sides. It relates to the condition that neither of the native converts intending to be married shall have a wife or husband still living. The communications placed before the Select Committee point urgently to a Native Christian Divorce Act—that is, that a native convert shall be competent to obtain a divorce, when his unconverted wife, after interrogation before civil authority, obstinately refuses to live with him. On this it should be remarked, that Europeans in this country have not as yet obtained a proper Divorce Act, and secondly and principally, that in a matter into which so many various and important considerations enter, regarding which there is so much contrariety of opinion, and in which native feeling may be deeply involved, the Government on which the great responsibility rests should in no way be compromised, and that no invidious duty of opposition should be precipitately imposed upon it. The question of divorce is allied to the one under discussion; but it is still perfectly distinct from it, and it is one which every consideration of prudence and policy would leave to the unbiased deliberation of the Government. With respect to Roman Catholics it may be objected, that Priests are debarred by this Bill from marrying persons "*in articulo mortis*," and that in some instances the last sacraments of religion cannot be administered unless such marriage be first solemnized. To this I would reply, earnestly trusting I shall give no offence to the feelings of any fellow Christian, that if a Priest solemnizes in good faith a marriage between parties, one of whom is on his death-bed, for the sole purpose of administering the sacraments, he will run little or no risk from the provisions of this Bill. His conduct will probably never come beneath the cognizance of the Magistrate, and if it does, the

punishment will probably be merely nominal. But one of the objects of this Bill is to prevent such marriages from carrying any civil rights with them. A wise Legislature should oppose itself to all such marriages, whether Protestant or Roman Catholic, so far as the rights of others are concerned. They may be performed for the good of a man's soul, but must not be allowed to affect the transmission of his estate. I do not know that I have any further remarks to submit, but I must not omit the public expression of my great obligation to the Lord Bishop of Calcutta for some excellent suggestions with which he has favoured me, and which have been adopted by the Select Committee. The Bill is, I honestly believe a liberal Bill and a safe Bill; it is therefore, I trust, a wise Bill. It will inspire security where doubt before existed; while introducing freedom, it will secure decency. It will, I hope, be acceptable to the entire Christian community, and I now respectfully commend it to the consideration of Your Excellency and of the Council.

The Hon'ble MR. MAINE said, that his hon'ble friend had given the history of this difficult question with much learning, clearness, and ability, and, so far as his (Mr. Maine's) recollection served him, with much accuracy. On the whole, he agreed in the opinion of his hon'ble friend that, under the English Common Law, the presence of a person in Holy Orders was essential to the validity of a marriage. Mr. Anderson had fully analyzed the course of decision on the point, and he (Mr. Maine) would only added one *á priori* consideration. Among the influences which had the greatest effect on the Common Law, but which the course of English history had tended most to keep out of sight, had been the influence of the Canon Law, and it would always require strong evidence to convince him that any doctrine of the Canon Law on any fundamental point had not been transferred to the Common Law. The case of the *Queen* v. *Millis* had, no doubt, never been considered altogether satisfactory; but that was chiefly owing to the peculiar position of the defendant and the special circumstances of the decision. Had the case, however, been decided the other way, it must have immediately been followed by legislation very much like that embodied in the present Bill; in other words, the laxer doctrine must have been negatived and a liberal system of solemnizing marriage established. The state of the Scottish law was only possible where population was comparatively thin and where a strict ecclesiastical discipline existed; and, much as ecclesiastical discipline had been broken into of late years in Scotland, it was still in practice about the strictest in the world. In England, a similar condition of the law would have been intolerable. He approved of the shape in which his hon'ble friend had presented the Bill.

The Motion was put and agreed to.

The Hon'ble MR. GREY moved that in Section VII, instead of the words "provided also that no Clergyman of the Church of England shall solemnize a marriage in a private dwelling or in any place except a Church, Chapel, or other building generally used for public worship," the following words be substituted :—

"Provided also that at any place or Station where there is a Church, or Chapel or other building usually set apart for public worship on Sundays, no Clergyman of the Church of England shall solemnize a marriage in a private dwelling or in any place except in such Church or Chapel or other building usually set apart for public worship."

He (Mr. Grey) said that he entirely sympathised in the feeling which he supposed to have led to this provision of the Bill, in reference to the permission to solemnize marriages in private dwellings ; but in this opinion the Clause as it stood was not well adapted to the state of things in many parts of the country. Europeans living 20 or 30 miles, or further, from a Station which contained the nearest place of worship, would be unable to secure the presence of a Clergyman to solemnize their marriage, unless they obtained a special license on payment of such fee as the Bishop of the Diocese might fix. If his amendment were not accepted, he should move that an additional proviso be added to the Section, to the effect that the fee should not exceed the sum of fifty rupees.

The Hon'ble MR. HARINGTON said he thought the words "or other building generally used for public worship" would meet the case of parts of the country, such as had been referred to by Mr. Grey, better than the words proposed to be substituted for them, and he would suggest that the words which he had quoted be retained. There were still many places in which, owing to there being no Church or Chapel, public worship was held in a private dwelling, or in a public Office, either the Court House or the Magistrate's Cutcherry ; but these buildings, though they might be held to fall within the meaning of the Section as now worded, could not be said to be set apart for public worship.

The Hon'ble the Lieutenant-Governor expressed a strong objection to the Clause as it stood, on the ground that it might reduce persons to the alternative of undertaking a long journey, or paying an indefinite amount by way of a fee. This would operate with special harshness upon persons in indifferent circumstances.

The Hon'ble MR. ANDERSON said that the amendment proposed by the Hon'ble Mr. Grey had regard to the convenience of only a small class of persons. The general principle was a very important one, and in his opinion the

amendment proposed was calculated unduly to relax a rule which it was desirable to maintain as strictly as possible.

The Hon'ble Mr. Grey said that there was very little that had been said by the hon'ble mover of the Bill in which he did not agree, but upon this point he felt that his amendment would not materially affect the principle for which the Hon'ble Member contended, while it would tend to prevent inconvenience and hardship. It had been said by the Hon'ble Mr. Anderson that this Section had been introduced at the wish of the Bishop of the Diocese, who entertained a very well grounded opinion as to the expediency of discouraging the celebration of marriages in private dwellings. But in his (Mr. Grey's) opinion the prohibition in the Section as it now stood was too general. He had no objection to adopt the suggestion of the Hon'ble Mr. Harington as to the substitution of the words "generally used" for "usually set apart."

The motion to insert the words of the amendment proposed by the Hon'ble Mr. Grey, altered as suggested by the Hon'ble Mr. Harington, was put and agreed to.

The Hon'ble the Lieutenant-Governor moved that the words "or affinity" be omitted in Clause 2 of Section XLII. He said that he was unaware to what extent the question might have received the consideration of the Select Committee, but in his opinion there was no reason why the disability involved in the retention of these words should be imposed upon Native Converts. The prohibited degrees of affinity were, he supposed, those which were found in the Prayer Book. These were adopted at the time of the Reformation by Archbishop Parker and were afterwards made part of the Ecclesiastical Law. Under that law marriages within the prohibited degrees of affinity were not in themselves invalid, but were voidable only upon proceedings in the Ecclesiastical Court. It was not until 1835 that Parliament, after enacting that all such marriages previously contracted were valid, and taking away from the Ecclesiastical Courts the power of dissolving them declared that all future marriages of the kind were illegal and absolutely void. It was questionable whether the Legislature should recognize the application of these rules to native converts, especially the prohibition of marriage with the sister of a deceased wife, which had recently been the subject of much discussion, and to abolish which, a Bill had twice, if not oftener, passed the House of Commons. Whether rightly or wrongly, the feeling of the natives was, he believed, not opposed to such marriages. There was nothing in nature or religion against them, but they were objected to in England on social grounds which did not apply here. In many States of Europe and of North America, such marriages were legal. In

legislating specially for native converts, it was in his opinion unjust to prohibit marriages of this description as by far the greater number of such persons—whatever might be the custom of particular castes—would before their conversion have been liable to no such restriction. The effect of this Bill would not, he admitted be to change the substantive law. Whatever might be the present law of marriage applicable to native converts, it would not be affected by the Bill; but when the Legislature declared that marriages performed according to certain conditions should be vaild, and prescribed as one of those conditions that the parties should not be related to each other within the prohibited degrees of affinity, it was difficult to avoid the inference that marriages otherwise performed, if not illegal, were, at any rate, discouraged by the Legislature, and of less certain validity; and this he thought unjust to the particular class of Christians to which he had referred.

The Hon'ble MR. HARINGTON said the objection taken by the Lieutenant-Governor to the Clause of the Bill to which His Honour's remarks applied, appeared to be based upon an erroneous assumption. The Lieutenant-Governor said, he saw no reason why the disability involved in the words which he had moved should be omitted from the Clause, should be imposed upon native converts. But the Clause made no new law. The concluding part of the Statement of Objects and Reasons, which was published with the Bill, in calling attention to the Clause said—

> One of the conditions contained in Section XLII of Part IV of the Bill as essential to the granting of a certificate of marriage under that part is that the parties shall not stand to each other within the prohibited degrees of affinity or consanguinity.
>
> It is to be observed that this is no new provision as respects Native Christians, though probably it is not always attended to. There seems to be no doubt that the legal impediments of kindred or affinity in respect of marriage, which apply to European Christians, apply equally to Native Christians, and so long as such impediments apply to European Christians, it is considered to be impossible, with any degree of propriety, to exempt Native Christians from them or to make any distinction in this respect between the two classes.

He had made this statement not upon his own authority, but upon the authority of the present Hon'ble and learned Chief Justice of the High Court of Judicature at Calcutta. Sir Barnes Peacock had expressed himself very decidedly upon the point. He declared that the law made no distinction between Native and European Christians. They could not have higher authority. The view taken by Sir Barnes Peacock accorded, he believed, with the opinions of other high legal authorities both in this country and at home. The Marriage Register Act contained the same condition as the Clause objected to by the Lieutenant-Governor. This Act applied alike to Native and to European Christians. The Clause formed part of the Bill as published upwards of a year ago, and though it had been objected to in some quarters, he believed the opinion was very generally

entertained that so long as the legal prohibition against marriage with a deceased wife's sister (for that was the only point at issue) continued in force in the case of European Christians, it would not be right to change the law as respected Native Christians. When the Bill was before the Select Committee, it was considered whether the Clause should stand as part of the Bill and the conclusion arrived at by the Committee was that it certainly ought to do so. The Committee looking at the object of the Bill, which was simply to facilitate the solemnization of marriages in India of persons professing the Christian religion, whether Europeans or others, were of opinion that the Bill ought not to alter the existing law on any important point of principle. He entirely agreed in this view. Whatever opinions Hon'ble Members might entertain upon the question as to whether marriage with a deceased wife's sister should or should not be allowed, he (Mr. Harington) submitted that they could not alter the Clause, and declare that the impediment which existed in the case of European Christians should no longer apply to Native Christians without previous notice, but if notice of such amendment were given, they would not be able to pass the Bill to-day. It would be necessary to defer the passing of the Bill to allow time for considering the amendment, and this he thought would be a very great misfortune. If, after the passing of the Bill, any Hon'ble Member should consider that the existing law should be altered in so far as it affected Native Christians, it would be open to him to introduce a Bill to make such change in the law, but he contended that they would not be justified in altering the law without previous notice as was now proposed to be done. He might add that he had been told by persons well informed on the subject that amongst large portions of the Hindu community, marriage with a deceased wife's sister was regarded as very objectionable, and that they were as strongly opposed to the connection as any European Christians could be. From a conversation which he had lately had with the Lord Bishop of Calcutta, he had been led to understand that this was the feeling entertained by many of the Native Converts on the Western Coast, which his Lordship had visited in his recent tour, and he gathered that the Missionaries in that part of the country were quite willing that the Bill should pass with the Clause as it now stood.

His Excellency the President said that the customs of the natives of India as to marriage were various. Among the Jats it was an injunction that when a man died, his brother if a brother survived him, should marry his widow.

The Hon'ble the Lieutenant-Governor said that it was dangerous to rely on what might be alleged to be the feeling of the natives of India on such a point. His own enquiries had led him to a precisely opposite conclusion. In fact it was impossible, without a formal investigation, to arrive at a satisfactory result.

There were, however, two passages in the papers circulated amongst the Members of the Council to which he would refer them. One was in a petition presented by the Protestant Ministers and Missionaries of Calcutta, and the other in a communication from a Missionary employed by the Propagation Society.

Your Petitioners would point out the important consequences involved in running counter to the universal practice of native society in India, in summarily introducing into Indian legislation without further definition, "the prohibited degrees of affinity;" and express their strong objection to the proposed clause in its present form.

On the other hand, marriage with a deceased wife's sister whi h the Law of England does not recognize, is very common among the Hindoos.

As to the argument that the Bill did not alter the substantive law, he had carefully limited his statements to this, that the Bill only virtually imposed a disability on native converts. It might be true that native converts were legally subject to this disability at present under the indiscriminate operation of a general law; but, practically, the prohibition was disregarded as being contrary to feeling and custom, and now that we proposed to legislate specially for native converts it was not fair expressly to impose it.

The Hon'ble MR. MAINE said that, if he could give effect to his own opinion, he would legalize, generally, marriage with a deceased wife's sister; but he thought there were strong objections to legalizing it between Native Christians before it had been legalized among Englishmen. Native Christians had discouragements enough to contend against already, and their principal advantage consisted in their being placed on a footing of aboslute equality with the dominant race in everything relating to religion. To place them under a different law of marriage was to destroy that equality and to mark them with what would practically amount to a badge of inferiority. Moreover, he (Mr. Maine) was disinclined to having so large a question opened on such short notice. The Licutenant-Governor and many other presons argued as if nothing was involved in these prohibitions except the question of marriage with a deceased wife's sister. But there might be some who, while they considered the prohibitions on the score of affinity too stringent, considered the prohibitions on the ground of consanguinity too lax. If the whole subject were to become *res integra*, and they were to revert to natural laws, was it quite certain that marriages between first cousins ought to be permitted? He was unwilling to open such perplexing question on a Bill like this, and would rather have the law of marriage the same as applied to all Christians in India.

The Hon'ble MR. ANDERSON was of opinion that the words should be retained. They in no way extended the law at present in force. As to the principle, before effecting any changes in this country, it would perhaps be better for the Council to wait till they saw the course of the Legislature in England.

The Hon'ble MR. ROBERTS said that he was authorized by the Rájáh Sáhib Dyál Bahádur to state that as regarded Hindus, Mahomedans, and Párais, there was no custom to prohibit marriages with the sister of a deceased wife.

The Hon'ble SIR R. NAPIER said that the restriction referred to in the Bill was not necessarily connected with the profession of the Christian religion, and he could not see that to omit the words would place Native Christians on a lower or different scale than others.

The Hon'ble the Lieutenant-Governor said there was a clear distinction of principle between the prohibitory rules founded upon the consanguinity of the parties and those relating to affinity. Marriages within certain degrees of consanguinity involved a violation of the law of nature; marriages within any degree of affinity were opposed only to feeling and custom. So far from his experience having led him to the same conclusion as his hon'ble friend Mr. Harington, he believed that amongst the Natives of Bengal there was nothing to prevent a person marrying any of his wife's relations.

The Hon'ble MR. ANDERSON said that this Bill had been before the Council for more than two years. This important question had been strongly urged upon the notice of the Select Committee, and at this late stage of the Bill it appeared to him that this amendment ought not to be made.

The Hon'ble MR. CLAUD BROWN said that the omission of the words of the Section which the Hon'ble the Lieutenant-Governor had proposed to strike out would, as it had been stated on the highest legal authority, have no effect to alter the existing law. He would therefore support the amendment.

The Hon'ble the Lieutenant-Governor said that rather than that the Bill should pass with the words he proposed to leave out, he would move to strike out Part V of the Bill, though on the whole he highly approved of it. He wished to press the amendment.

The Hon'ble RAJAH SAHIB DYAL said that, although there was not, to his knowledge, any custom among the natives of India to prohibit the contracting of the marriages in question, yet in his opinion, converts to Christianity ought to follow the rules prescribed for persons of that religion. He should oppose the amendment.

The Motion having been put, the Council divided—

AYES.	NOES.
His Excellency the President.	The Hon'ble H. B. Harington.
The Hon'ble the Lieutenant-Governor of Bengal.	„ „ H. S. Maine.
	„ „ A. A. Roberts.
The Hon'ble Sir R. Napier.	„ „ H. L. Anderson.
„ „ W. Grey.	„ „ J. N. Bullen.
„ „ Claud Brown.	„ „ Rajah Sahib Dyal.

So the Motion was negatived.

The Hon'ble MR. ANDERSON then moved the following amendments, of which notice had been given.

That Section XXI be omitted, and the following words be substituted to stand as Section XXIV :—

" Every marriage solemnized in India, from and after the 1st day of July 1864, by any person who has received episcopal ordination or by any Clergyman of the Church of Scotland or by any Minister licensed under this Act to solemnize marriages shall be solemnized between the hours of six in the morning and seven in the evening. But the provisions of this Section shall not apply to a Clergyman solemnizing a marriage under a special license permitting him to do so at any hour other than between six in the morning and seven in the evening from and under the hand and seal of the Bishop of the Diocese, or from his Commissary. For such special license the Registrar of the Diocese shall be entitled to charge such additional fee as the Bishop of the Diocese may sanction."

Section XXVIII.—That the first nine lines and the first word of line 10 be omitted, and that the following words be substituted :—

" Every marriage solemnized by a Clergyman of the Church of Scotland shall be registered by the Clergyman solemnizing the same in a register of marriages to be kept by him for the Station or District in which the marriage shall be solemnized in the form prescribed in Section XXVI for marriages solemnized by Clergymen of the Church of England, and such Clergyman shall forward quarterly to the

Secretary to Government, through the Senior Chaplain of such Church, returns similar to those prescribed in the preceding Section for Clergymen of the Church of England, of all marriages solemnized by him."

The Motions were severally put and agreed to.

The Hon'ble the Lieutenant-Governor of Bengal moved that the words "and from whom he or she has not been divorced" be added at the end of Clause 3 of Section XLII.

The Hon'ble MR. ANDERSON said that he felt the strongest objection to the introduction of these words. No law of divorce existing, the words would have no meaning, except so far as they might be construed to commit the Government or the Council to an opinion that there would be a law of divorce at some future time.

The Hon'ble Mr. MAINE opposed the amendment.

The Lieutenant-Governor of Bengal said that if the amendment proposed was considered open to the construction that it tended to commit the Supreme Government to a future course of action in this manner, he would withdraw it. It was sufficient for him to have drawn the attention of the Council to the pressing necessity for a law of divorce, especially one applicable to Native Converts.

The Motion was accordingly withdrawn.

The Hon'ble MR. ANDERSON moved that the words "in the presence of Almighty God" be inserted in line 31 of Section XLII.

The Motion was put and agreed to.

The Hon'ble MR. ANDERSON having applied to His Excellency the President to suspend the Rules for the conduct of business.

The President declared the Rules suspended.

The Hon'ble MR. ANDERSON then moved that the Bill be passed with the amendments recommended by the Select Committee and those now adopted.

The Motion was put and agreed to.

ADMINISTRATION OF JHANSIE AND OTHER DISTRICTS (N. W. P.) BILL.

The Hon'ble MR. HARINGTON presented the Report of the Select Committee on the Bill relating to the administration of certain Districts under the Government of the Lieutenant-Governor of the North-Western Provinces, and having applied to His Excellency the President to suspend the Rules for the conduct of business, to admit of the Bill being at once passed through its remaining stages.

The President declared the Rules suspended.

The Hon'ble MR. HARINGTON then moved that the Report be taken into consideration. He said the only change of any importance which the Select Committee had made in the Bill was the addition of a Section by which the Lieutenant-Governor of the North-Western Provinces was empowered to extend the Code of Civil Procedure to the tract of country known as Jounsar Bawur, as well as to the tracts of country described in Act XIV of 1861. The Code of Civil Procedure contained a Section authorizing the Local Governments to extend the Code to Non-Regulation Districts, which was the character of the tracts of country referred to, but as, since the passing of the Code, Rules relating to the administration of Civil Justice had been authoritatively laid down by the Lieutenant-Governor as regarded the tracts of country described in Act XIV of 1861, it was doubtful whether, with reference to an opinion given by the Advocate General the power of the Lieutenant-Governor to extend the Code to these tracts had not ceased. All doubt on the point would be removed by the Section which the Select Committee had added to the Bill.

The Motion was put and agreed to.

The Hon'ble MR. HARINGTON moved that the Bill as amended by the Select Committee be passed.

The Motion was put and agreed to.

The Council adjourned.

C. BOULNOIS,
Offg. Depy. Secy. to Govt. of India,
Home Dept.

CALCUTTA,
The 6th April 1864.

S. C. P. I.—77 L. D.—1-8-11-