COUNCIL OF THE GOVERNOR GENERAL OF INDIA

VOL. 4

JAN. - DEC.

1865

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 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 6th January 1865.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
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 Sir C. E. Trevelyan, K.C. B.
The Hon'ble W. Grey.
The Hon'ble H. L. Anderson.
The Hon'ble Mahárájá Vijayaráma Gajapati Ráj Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble G. Noble Taylor.
The Hon'ble W. Muir.
The Hon'ble R. N. Cust.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble D. Cowie.

REMARRIAGE OF NATIVE CONVERTS' BILL.

The Hon'ble MR. MAINE introduced the Bill to legalize, under certain circumstances, the remarriage of Native Converts to Christianity, and moved that it be referred to a Select Committee. He said—"In submitting this Bill to the Council, I must repeat the description of its intended character which I gave when I obtained leave to introduce it—that it is intended to be an interposition of the secular power on purely moral grounds, leaving missionaries and clergymen and ministers of religion generally to remarry Native Converts repudiated by their wives or husbands for religious reasons, or not to remarry them, or to remarry them under such circumstances as, in their view, may justify remarriage. I have attempted to mark its secular character, first, by the recital in the preamble that it is expedient to relieve ministers of religion from the penalties to which they are now exposed for celebrating such remarriages, and secondly, by the provision in the Bill that no minister of religion shall be compellable to avail himself of the liberty allowed by it. There are, moreover, many minor points and small peculiarities of expression in the Bill which are to be accounted for by the intention to stamp its secular nature.

Sir, the persons entitled to relief under the measure are Native Husbands and Native Wives—a "Native Husband" being defined to be "a married man domiciled in British India, who shall have completed the age of sixteen years, and shall neither be a Christian nor a Jew," and a Native Wife being correspondingly defined to be "a married woman domiciled in British India, who shall have completed the age of thirteen years, and shall neither be a Christian nor a Jewess." The first point, then, to be noted in regard to the measure is that it applies to Native wives no less than to Native husbands. I freely acknowledge that the same considerations do not apply to females as to males, and that the instances will be few in which a Native Christian woman will apply for permission to rejoin her Native husband. Still such cases may occur; and until it be shown that we are legislating for a contingency which is practically of no moment, I have thought fit to maintain the equality of sexes provisionally in the Bill. Perhaps I shall make my description of the provisions of the Bill clearer if I follow the course adopted in my Statement of Objects and Reasons, and speak as if the Bill referred only to a Native husband repudiated by his wife, it being remembered that the converse proposition will always apply to Native wives deserted or repudiated by their husbands.

Sir, the grounds of relief are the desertion or repudiation of the Native husband by his wife when such desertion or repudiation is solely the result of the Native husband's having changed his religion for Christianity. I have followed Sir Barnes Peacock's draft Bill in providing that the voluntary refusal or neglect of the wife to cohabit with the husband after his change of religion has come to her knowledge, shall be sufficient proof of desertion or repudiation, and also shall be sufficient presumptive proof that such desertion or repudiation was the consequence of his change of religion, unless some other cause be shown. I further hold—and that seems to have been also the opinion of Sir Barnes Peacock—that no greater difficulty will attend the proof of the fact of the change of religion for Christianity than attends the establishment of any other fact before a court of justice. It is true that, in European and Protestant Christian societies, where the shades of belief mix insensibly and by imperceptible gradations with one another, it is sometimes hard to say when a person has passed from one form of belief to another. But English courts of justice, and particularly the Court of Chancery, have often to face a similar difficulty. Here in India the difficulty is greatly diminished. It must be remembered that these matters have to be regarded from a Native, not from an European, point of view: and in India a change of religion is generally accompanied by a violent disturbance of manners, usages, and family relations. On the whole the Indian Courts seem to me to have many

more difficult questions before them to solve every day than the enquiry whether a Native has *bonâ fide* changed his religion for Christianity.

The mode of relief is by suit for conjugal society, commencing, as at home, with a petition followed by a citation. The petitioner will appear personally in Court, and so will the respondent in conformity with the terms of the citation. The petitioner will be bound to prove the identity of the parties, their marriage, the fact that they have attained the age which will satisfy the definitions of 'Native Husband' and 'Native Wife,' the desertion or repudiation, that such desertion or repudiation has taken place solely in consequence of the change of religion, and that it has continued for the six months next before the commencement of the suit. The *media probandi*, in the last instances, will be those provided in Sir Barnes Peacock's Bill. Thereupon the Judge will ask the respondent whether she refuses to cohabit with her husband, and, if so, what is the ground of such refusal. It is to be remarked that the Judge will be a High Court Judge in the Presidency Towns and the Zillah Judge in the Mofussil, and that during the examination he may exclude from the Court such persons as he shall think fit. If the respondent refuses to rejoin her husband, the case will be adjourned for a month, and arrangements made for a private interview between the husband and wife. I call the interview private, but it has been suggested that in some cases it may be cruel or unseemly to provide for an absolutely private interview, and hence the Judge may regulate or modify the degree of privacy; but no condition is to be imposed which may interfere with the ascertainment of the respondent's free volition. At the expiration of the month the parties will re-appear. If the respondent still persist in her refusal, there will be an adjournment for a twelvemonth, at the expiration of which they will again come into Court, and the petitioner will be under the necessity of proving the continued desertion or repudiation during the year that has expired. A fresh interview will then be arranged for, followed by a new interrogation; and if after all these adjournments, interrogations, and interviews, the respondent conclusively declines to rejoin her husband, then, and not till then, the Court may make a decree empowering the petitioner to remarry.

The time occupied by these proceedings will necessarily be twenty months. But I calculate that, taking into account the preliminaries and the hearings, the space of time between the first desertion or repudiation and the decree for remarriage will be at least two years. These periods are, however, only inserted in the Bill *pro formâ*, and if the further information we shall receive shows that they ought to be shortened or lengthened, I personally shall have no objection to change them.

The further points which require notice are mentioned in the Statement of Objects and Reasons. Cruelty or adultery proved against the petitioner will bar the suit. The children of the first marriage retain their personal and proprietary rights, and, if under the age of three years, may remain in their mother's custody until attaining that age. The wife retains the status which she would have had as lawful wife, and forfeits no right to maintenance, dower or inheritance. She is, however, permitted to remarry after the decree allowing the petitioner's remarriage, but if she remarry she forfeits all rights or interests she may have in the petitioner's property. That is substantially the provision of the existing law—the wife after the decree of remarriage has the rights of a Native widow, but if she remarries she forfeits them as under the Hindú Widows' Remarriage Act. It is further to be observed that, if the wife has not sufficient property to maintain herself, the Judge may award alimony, and also sufficient funds to enable her to defend the suit, if she be in need of them. A Convert married to several Native wives will have to make them all respondents.

Sir, when I obtained leave to introduce the Bill, I went so fully into the grounds for considering it both justifiable and expedient, that I do not deem it necessary to trouble the Council by travelling again over the same field. I have, however, to say that it is not my intention to ask the Council to pass the Bill in any haste, and shall probably not ask them to pass it during the present sittings. I am aware that many missionaries consider the matter one of extreme urgency, and are anxious that this measure should become law with the least possible delay. But I think that after waiting so long they may reasonably wait longer until full information and criticism have been received, both from the various sections of the Christian community and from any persons who may speak the opinion of Native and non-Christian society. It is my firm conviction that the preponderant opinion of the missionaries is strongly in favour of the Bill, and I further am under the impression that in proportion to the success in conversion of any body of missionaries is their anxiety for some such measure as this. As for the Native community, I have seen no sign of any dislike or disrelish for the measure, and, indeed, I imagine them to be entirely indifferent to it. Still I am aware how difficult it is to ascertain these things in India, and I am desirous that the Council shall pass no measure of which it may repent hereafter. But to prevent misconstruction, I must add that, so far as I am personally concerned, if no political difficulties should disclose themselves, and if no general dislike on the part of the Christian world should be proved, it is assuredly my intention to persevere with the Bill."

The Hon'ble Mr. Cust:—"No one can doubt the benevolent motive which has led to the introduction of this Bill, and it must be admitted that it has been introduced in a most fair and liberal manner. I understand that the Bill will be published and circulated for opinion, and no further action before this Council will be taken until replies come, when the principle will be open to discussion. Such being the case, there is no room for opposition at this stage. And I have no amendment to propose, as what I should have proposed is conceded by the Mover of the Bill."

I should be most unwilling to appear as an opponent of any measure in favour of Native Converts, and it would be presumptuous in me to assert, on my own authority, that this measure is opposed to Scripture: but this is the view apparently adopted by the numerous clergy and laymen, who met two years ago at the Punjab Conference, and this is the opinion apparently expressed in a petition signed last week by nearly all the clergy of the Church of England in Calcutta, the clergy of Bishop's College, Native missionaries, and missionaries the husbands of Native wives, who have called upon the Government of India to hold back from legislation in the direction of this measure. I am aware that the Church of Rome and many of the evangelical clergy, men for whom I have the greatest respect and esteem, have adopted a contrary opinion, whether from unbiassed conviction or motives of expediency I cannot say: anyhow it behoves this Council to pause before it proceeds to legislation.

I am myself opposed to this measure on secular as well as religious grounds. To the conciliation clauses, with some amendments, there may be in principle no objection, though it is doubtful how they can be worked in practice, and how Native ladies of respectable family will be induced to appear in Court, and be closeted with Native converts; but the other clauses of the Bill do nothing less than legalize bigamy among Native converts, and inflict penalties on innocent parties. I am assured that, in many cases, if the converts would but have the grace to wait, they might persuade their wives to come round: but when once they have formed new alliances, the door to reconciliation is closed for ever.

I do not wish to say any thing which could possibly appear to be harsh, but it must occur to all that the convictions of a convert from heathenism to Christianity must be slight, if he requires legislation to secure his morality: that is the real object of the Bill. I do not admit that celibacy and asceticism are unknown in India: these practices had their origin in the East, and are adopted by numerous professors of the Hindú and Buddhist religions. It is with the greatest diffidence that I approach in this Council, even from a historical point of view, the very serious subject of the interpretation of passages of Scripture

but it is forced upon me by the argument adopted by Mr. Maine when he asked leave to introduce this Bill. I cannot bring myself to believe that St. Paul, a native of Cilicia, in Asia Minor, in a letter to his flock at Corinth in Greece, used the words "Let her depart," in the technical sense of the Roman forum, as tantamount to a divorce. I lean more to those who maintain that he could not have done so without inculcating a rule contrary to the precepts in the Gospel, which make adultery the sole ground of divorce. These difficult points will no doubt be cleared up by those who are best able to do so, and whose special province it is to do so before the Bill comes up in Council again, and I shall be glad if arguments are adduced sufficient to convince me that the measure is not opposed to the real interests of the convert."

The Hon'ble Mr. Muir :—"Sir, I beg to offer a few remarks in support of this Bill.

I believe that legislation is necessary on the subject, because we have applied the European law of marriage to the Native Christians, absolutely and entirely, without any exception to meet the widely different position in which that community stands.

I am as much opposed to 'class-legislation,' where it can be avoided,' as my Hon'ble friend who has preceded me. But, Sir, I submit that class-legislation then first took place when we made the provisions of the English marriage law applicable to Native Christians without the necessary modifications. And we are now simply retracing our steps in exempting the Native Christians from penalties and restrictions which ought never to have been imposed upon them.

Relief is needed by no other portion of the community. When we look to the Hindoos, we find that, if a person changes his religion, he is held to be civilly dead, and so far as any penalties of the secular law go, he is free to consider his previous marriage dissolved, and to contract a new one.

So also with Mahometans. In countries under Mahometan rule, if an idolater or an infidel becomes a Mahometan, he is thereby released from all the domestic obligations under which he lay to the members of his family who do not join Islam, and is free to contract a new marriage. Take the converse case of a Mahometan falling away from his religion;—he becomes *ipso facto* civilly dead, and his marriage dissolved; or rather, if the strict letter of the law be followed, the marriage is dissolved by a much more summary process, for he becomes liable not merely to civil death, but to a natural, or rather to a violent, end by the sword of the executioner.

Under our own rule, Sir, excepting of course this latter provision for the decapitation of the apostate, the freest liberty is given both to the Hindoo and to the Mahometan in the exercise of their laws and usages. In case of change of religion, they are free to act upon the dogma of consequent civil death, and so far as any interposition or penalty of the secular law is concerned, to remarry at pleasure. Or rather they have perfect liberty both of divorce and remarriage, whether there be change of religion or not.

This, then, Sir, is a sufficient reply to those who say (for this has been said by some) that we are providing an immunity or special license for the Native Christians. This is not the case. Even after the relief sought for by this Bill has been granted, the Native Christians will be bound by restrictions immeasurably severer than those of any other Native community; for they will be expected and required to do all in their power to maintain the previous marriage. Equally unfair is the allegation that the Bill is a measure for enabling the Native Christian to rid himself of his previous obligations. Exactly the reverse of this is the truth. If the Bill, indeed, had been designated one to enable the other party, the one that does not embrace Christianity, to rid itself of its obligations, the assertion might have had some colour of truth. As regards the Native Christian, the measure might more properly be designated one enabling and requring him to *maintain* his previous obligations: for it expects and requires of him that he shall take every step in his power to ratify and confirm his previous marriage; and not until every effort has been used in vain, and the marriage is seen to be hopelessly disowned and repudiated by the opposite party, is it superseded, and permission to remarry conceded.

We have rightly made the Christian law of monogamy, with its inexorable limitations, and its penalties for bigamy, applicable to the Native Christian, because, by his change of religion, he has signified that to be the system under which he wishes to live. But, Sir, in doing this, we are bound to allow the freest scope for all marriages not opposed to morality and the interests of society, or to the recognized principles of the Christian religion. We are bound, by every consideration of fairness and equity, to relax the letter of the law where it imposes penalties contrary to its spirit, and arising out of circumstances never contemplated by the law.

Holding, then, that legislation on the subject is justifiable, I will now state my views as to whether the provisions of the Bill are sufficient and reasonable.

I hold, Sir, that the relief which it grants is not sufficient, because it makes no provision for an inexpensive and easy mode of procuring divorce in case of adultery. Legislation is urgently required for this purpose; and I learn from my Hon'ble friend, the introducer of this Bill, that he intends, at the earliest possible date, to bring forward a measure to secure this object.

As regards repudiation and desertion for change of religion, I believe the provisions of the Bill, with one or two exceptions which I will state hereafter, to be satisfactory and sufficient. If we view marriage as a civil contract, I do not see how we can refuse our assent to these provisions. The laws of various countries hold wilful and persistent desertion, or as it is termed by the Scotch law, *non-adherence*, to be a ground for divorce. And in other countries, a change of religion is taken as a sufficient cause. Burge, one of the first authorities on the subject, thus states the law of divorce in Prussia :—

"In so far as a difference of religious faith is, from the beginning, an obstacle to marriage" (and this is precisely the case we have to deal with under the present Bill) "in like manner will change of religion by one of the spouses during the marriage give legal ground to the other to sue for a divorce."

But here, Sir, we have not simple desertion, nor simple change of religion, but desertion and repudiation, combined with, and aggravated by, the dogma of civil death in consequence of the change of religion. And, so far as we may regard marriage to be a civil contract, I know of nothing in the abstract principles of law or ethics opposed to the provisions of the Bill.

But I prefer, Sir, to discuss this question on the basis of marriage as a union contracted under religious obligations.

It has been held, indeed, by some that "heathen or infidel marriage" is different *in kind* from Christian marriage, and is not fenced about with the same indissolubility. I apprehend that this is the ground on which the Bill has been supported by members of the Romish Church, which holds that Christian marriage is absolutely indissoluble. The position might also be regarded as receiving some countenance from a passage in one of Lord Brougham's judgments, where he says :—

"It is important to observe that we regard it (Christian marriage) as a wholly different thing, a different status from Turkish or other marriages among infidel nations."

But it is clear that, in saying this, he only meant that such marriages could not be dealt with by our Courts upon the same principles as Christian marriages.

He expresses no opinion as to how those marriages would be treated if the parties to them came over to Christianity.

"Because," he proceeds, "we clearly never should recognize the plurality of wives, and consequent validity of second marriages, standing the first, which marriages the laws of those countries authorize and validate. This cannot be put upon any rational ground, excepting our holding the infidel marriage to be something different from the Christian."

But, Sir, I do not think that this argument can be held in support of the Bill; for however much the marriage-bond may be weakened among various nations by the license of poligamy and divorce, it still remains the basis and ground-work of society. It does so in every country; it has done so in every age. Its obligations are anterior to Christianity, and independent of it. And Christianity accordingly maintains the obligations of marriages contracted under the sanction of other systems, equally with those of marriages contracted under its own.

Holding this view, if the present Bill appeared to me in any wise to relax the obligations of the marriage-bond, I should be the last to support it. If to my apprehension it tended in the least degree to break down any of those securities and safeguards for innocence and integrity, for purity, faithfulness and affection, which the religious obligation of marriage, including the Christian doctrine of indissolubility, has so happily reared around it, this Bill should not receive countenance from me.

But, Sir, it is not so. For when we speak of the religious obligations of marriage, we mean of course those obligations defined and limited by the religion itself, that is by the common consent of the Christian community, or by any large section of it. The secular law clearly should not impose any restrictions on marriage not absolutely required either as safeguards to society, or by the recognized principles of the Christian religion.

It is not, Sir, the business of this Council, it would not befit its constitution, to discuss the question upon a theological basis; nor if it were, should I consider myself competent to the task. But it is its duty to enquire what, *as a matter of fact*, is the received opinion on the subject, of the Christian community at large, or of any considerable portion of the community. For I do not concur with my Hon'ble friend who has preceded me (Mr. Cust) that it is necessary to prove unanimous consent. The opinion even of a respectable and weighty minority would justify the exemption of those who follow it from penalties and disabilities for so doing.

I have taken some pains to ascertain the course of the discussion in this country. I find that it arose so far back as thirty years ago. In 1834 a paper

appeared in the *Calcutta Christian Observer* entitled "an Essay on Marriage and Divorce," written, I believe, by the Revd. W. Morton. I beg permission of the Council to read an extract from that paper, and I do so because it formed the basis of the resolutions arrived at by the missionary body in the following year, and to which I will presently refer:—

"The apostle's rule plainly appears to be this—that the Christian party is only absolved from the obligations of the matrimonial contract by the act of the *unbelieving* party; if not so absolved, then, of course, both the Christian and Civil Law hold the marriage good and binding; if otherwise, then 'a brother and sister is not under bondage in such a case'; *i. e.* in case where the other, the *heathen* party resolves upon a separation, and actually does separate from the Christian husband or wife. The apostle's words are—'If the unbelieving depart, let him depart.' The original is 'if he voluntarily or by his own act be separated or put asunder, let him be so separated or put asunder,' and clearly supposes an entire divorce of person, interests, and affection.

"Where the Civil Law does not decide, there the Church should enjoin the necessary caution and delay upon its members, nor permit a second marriage till at least the continued avowal of the absenting person and other circumstances establish the determined intention not to re-unite with the Christian partner. Then, I think the apostle's words go to absolve the latter from all further obligation. In this country especially, where passions are strong, judgment weak, and the party a novice, it is as highly expedient to come to a settled conclusion, as to afford due time for the return of the heathen separatist."

In 1835, the subject was fully and anxiously discussed by a conference of all the protestant missionaries at Calcutta; and they unanimously came to conclusions which they embodied in a series of resolutions, the third of which I beg permission to read to the Council:—

"III—Married persons, both Christians, should not be divorced for any other cause than adultery. But if one of the parties be an unbeliever, and though not an adulterer, wilfully depart from and desert the other, a divorce may properly be sued for.

"We are of opinion, however, that such liberty is allowable only in extreme cases, and when all known means of reconciliation, after a trial of not less than one year, have failed."

The resolutions were widely circulated, and, I think, called forth at the time only one dissentient voice from Madras. The unanimity with which they were received by the clerical body may be gathered from a subsequent paper which I quote from the same periodical.

"These resolutions have since been before *four* general meetings, and with a few alterations, chiefly verbal, have been unanimously adopted by all who were present, embracing missionaries of the Churches of England and Scotland, the Baptist, London, and American Presbyterian Societies. The Serampore missionaries, too, approved generally of the propositions, and had for many years adopted them in their own practice."

In 1860, the parent committee of the Church Missionary Society, who, writing from London, and thus at a distance from local influences, might, perhaps, be supposed likely to form a sounder judgment, thus stated their opinion on Sir Charles Jackson's Bill in a communication which is in the hands of Hon'ble Members :—

"We have submitted this measure to our legal advisers, who concur in the expediency of legislative enactment on the subject, and we beg of you to lay the following suggestions in the proper manner before the Legislative Council."

The suggestions were merely matters of detail; the measure being in substance and general principle very much like the present Bill.

But it may be asked, why lay so much stress on the opinions of the missionary body? I reply because they, from their relation to the Native Christians, have naturally turned their attention more than any other class to the subject, and investigated its bearing, both social and scriptural. And I must add that their statements appear to me an honest expression of the views of the majority of those who are the recognized exponents of the doctrine of the Protestant Churches.

We are not, however, dependent on clerical opinion in respect of the propriety and reasonableness of the measure. In 1853, Sir Barnes Peacock, after quoting the views of the missionaries as above explained, wrote thus :—

"The alteration proposed to be made in the law is to enable the convert, if deserted and repudiated, to summon the unconverted party before a Court to ascertain whether he repudiates the marriage or not; and if he repudiates it, after allowing him or her a sufficient time for reflection, to authorize a Judge to grant a divorce. It appears to me that the proposition is reasonable, and that the convert ought not to be left in a state of suspense for ever, as to the intentions of the other to repudiate the marriage or not."

Sir Charles Jackson, likewise, when introducing his Bill in 1859, spoke as follows :—

"And he (Sir Charles Jackson) thought he might add that the great majority of the clergy deemed this (*viz.*, the passage in 1st Corinthians) a sufficient authority for the present measure."

He also said :—

"Before going farther, he wished to guard himself against any misconstruction. This Bill would not in any way affect either a Muhammadan or Hindoo party to the marriage who remained true to their original faith. According to the principles of the law to which they still adhered, the marriage was dissolved already; and it ought to be, and he believed it was, a

matter of indifference to them whether the convert did, or did not, marry again. The Bill only proposed to do that for the convert which the Muhammadan and Hindoo Law had already done for the other party to the marriage contract."

I may lastly refer to the views of Sir James Colville. When referred to, as Advocate General, by the Right Reverend the present Bishop of Calcutta (who is believed to be himself in favour of the principle of the Bill), as to his power "to license the remarriage of a Christian convert, whose partner had refused all further cohabitation on the ground of difference of religion," Sir James Colville wrote :—

"This one case of hardship seems sufficient ground for passing a law, which, in a few sentences, might provide that a Native convert (male or female) should, on the solemn refusal of his or her wife or husband to cohabit with him or her, be declared competent to contract a second marriage, subject to such provision as may be thought just, and in accordance with Hindoo laws and usages with respect to the maintenance of a former wife."

Such, then, is a specimen of the (to my mind) preponderating opinion in favour of the principle upon which this Bill proceeds.

I admit, Sir, that there is high authority on the opposite side: and strong opinions have been expressed, by those who are every way qualified and entitled to express them, that the passage relied on by the other party warrants separation only, and not remarriage. This is the opinion of one, the Venerable Archdeacon Pratt, whose learning and judgment are admitted upon every side.

But it does not concern the Council to judge between these two parties. It is enough for the purposes of the Bill to know that a large section, if not the majority, of the Christian community admit the liberty of remarriage as in accordance with the Divine law,—enough to justify the Council in exempting from the penalties of the Criminal law those who avail themselves, by remarrying, of that admission.

It appears to me that the case of remarriage after divorce for adultery is in every way analogous to the present. It is well known that a considerable party in the Protestant Church, and the whole Romish persuasion, hold that remarriage, either of one of the parties or of both, even after such divorce, is contrary to the injunction of Scripture. Yet that has not weighed with the Legislature to make it declare such remarriages illegal. The scruples of one party are not to be imposed, by the penalties of the secular law, upon others. It is a case for the conscience of each person. Thus in Prussia, where the persuasions are mixed, Burge thus states the law :—

"It is left entirely to the conscience and religious principles of a divorced spouse to make use of the dissolution of the former marriage to contract a new one."

And therefore, even if I myself had held the argument of those who admit the liberty of re-marriage in the cases under consideration to be weak and insufficient, I should still have supported the Bill, or at least not have objected to its becoming law, on the ground that those who act upon a principle widely recognized as conformable to Christianity, ought not to be subject to disabilities and penalties for so doing.

The provisions of the Bill are simply permissive. They grant relief where it is sought, but impose themselves upon no man's conscience. There is no interference with the liberty either of individuals, or of any body or any section of the Church. No minister of religion is obliged to perform the ceremony of marriage under this Bill; and I would extend the same relief to all Marriage-Registrars, for I would force the conscience of none into acting a part which he does not approve. Similarly, any Church or any school of theology which adopts stricter views on the subject and holds itself bound by what it deems a higher and severer standard of morality, is at perfect liberty to impose that standard as a test of its communion, and to enforce its views by any spiritual sanctions at command, upon its own adherents. But those views should not be imposed by the secular arm upon the whole Christian community.

It is not doubted, indeed, that cases may arise, of the nature adverted to by my Hon'ble friend Mr. Cust, where a person, even holding to the scriptural liberty of re-marriage, might yet find himself (especially where there are children by the first marriage) met by arguments of the strongest expediency, amounting even to a moral obligation, not to avail himself of that liberty. But I submit that this is a case for the conscience of the individual. It is not an obligation to be enforced, as at present, by the pains and penalties of the criminal law for bigamy.

Such, then, are the reasons which induce me to vote for this Bill. Its earlier provisions must, I am sure, be hailed by all as affording, under the procedure fully detailed by the Hon'ble Mr. Maine, the best opportunities and facilities for reconciliation and reunion;—means which, I doubt not, will oftentimes prove successful. But where every endeavour has been resorted to fruitlessly; when the opposite party persists, after ample warning and delay, in repudiating the Christian partner, and the union is thus at an end in fact as well as in theory, the law should, without doubt, grant the liberty of re-marriage.

I will now specify one or two points in which the Bill appears to me defective.

The first refers to the case in which the Hindoo or Mahometan partner of a Christian convert, acting on the dogma of the civil death of the latter, may

have contracted a fresh marriage. From the Christian point of view, this might be held to be bigamy or adultery, warranting the Christian to sue for divorce on that ground. But it would not be bigamy or adultery from the Native point of view; and, as the case arises out of a change of religion, it might consistently be provided for in the present Bill. The Christian convert would not of course, under these circumstances, be expected to sue for conjugal society; but upon proof of the re-marriage of the former husband or wife, should, without farther proceedings, obtain a decree with liberty to enter into a fresh marriage. The point can be taken up in Committee, should the suggestion be deemed ground sufficient for the alteration.

The next point is of more serious importance and involves a principle of great moment: I mean that of infant marriage. On this subject, I think the Bill has gone too far, and yet not far enough.

As my Hon'ble friend, the introducer of the Bill, has explained its provisions to me, it would act in this way. Suppose a boy and girl to have had the marriage ceremonial performed for them in infancy, and the boy to become a Christian: he must wait till his infant bride reaches a marriageable age. He must then claim her as his wife: on her continuing to reject his advances for six months, he must sue under this Bill. The girl will be forced into Court, and subjected to all the interrogatories and private interviews already described by Mr. Maine; and at the conclusion of the period and proceedings provided by the law, on her still declining to fulfil the marriage, a decree of separation will be pronounced. Should the convert re-marry without having adopted this course, he may be indicted for bigamy under the existing law, and sentenced to seven years' imprisonment with hard labour, and any person performing the ceremony of re-marriage will be liable to four years' imprisonment with hard labour and fine in addition.

Sir, I wholly object to any contract or engagement to marry being enforced by the penalties of the criminal law. It may be replied that this is not a mere betrothal or engagement to marry, but an actual marriage. This may be the doctrine of the Hindoos: it can hardly be that of the Mahometans, with whom marriage is a free contract: I admit, however, that it is the doctrine of the Hindoos. But surely, Sir, it is a doctrine which cannot be sustained according to the principles of any enlightened nation, with whom it is held to be of the essence of marriage that it is a contract freely entered into by the parties themselves after reaching years of discretion. The Christian convert is surely entitled thus to regard the engagement made for him in his infancy. And from this point of view the marriage can be accounted nothing more than a formal betrothal.

It is agreed upon all hands that engagement or betrothal of marriage is not a class of contract, the specific performance of which ought to be enforced by the criminal law. But here, Sir, is something incomparably worse. For the contract was not made by the parties themselves, but made for them at an age when they were wholly unconscious of the obligation, unconscious of the very nature of the alliance contracted for them.

I do not say that cases may not arise in which (especially among the Hindoos, where the unfortunate girl would be held a widow) the betrothed husband should not use all means in his power to carry out the betrothal; but the obligation, whatever it may be, is of a nature to be judged of by the individual himself,—it is not of a character to be enforced by indictment at criminal law; otherwise we shall have cases such as the following, described by Sir Herbert Edwardes:—

"Would it not be monstrous," he says, "that a Native Christian, who, at eighteen, married a Christian girl of his choice, should be indicted for bigamy, because, when he was two years old and two feet high, his parents betrothed him to another baby of the same age and height? Yet this might happen tomorrow."

I object also, in the interest of the girl, to this Bill being applied to such cases. A maiden who had never left the female apartments, might, as above shown, be summoned into Court, and forced to hold private interviews with a man she may never have seen, and for whom, in consequence of his change of religion, she may have an insuperable aversion,—an indignity alike to her own modesty and to the honour of her whole family.

Thus, forcing her to appear in Court, the Bill goes too far; while, making the release of the other party dependent on her refusal, it does not go far enough.

For these reasons, if the Bill be referred to a Select Committee, I will urge the adoption of a provision, to the effect that, if the marriage ceremonial shall have been performed between parties when under (say) twelve years of age, but shall not have been followed by cohabitation,—and if one of the parties becomes a Christian, such person shall not be required to sue under this Act, but shall be free to marry without reference to the infant marriage.

Such a provision, I admit, has not hitherto been urged. But, Sir, I am persuaded that no enlightened ruler can consistently enforce by penal provisions infant marriages not followed by cohabitation. The tendency of enlightened legislation must be to regard any such ceremonial as on an entirely different footing from marriage contracted by the free assent of persons who have

reached years of discretion;—to regard it as a simple betrothal or engagement to marry, and as such, the ground not of criminal indictment, but only of civil action against the parties who object to fulfil the contract, or against the persons who made the contract for them.

Before concluding, I beg permission of the Council to quote the opinion of one whose words will be listened to with attention and respect equally within these walls and beyond them, one who will not be accused either of narrow bigotry or sectarian bias, and whose labours for the welfare of India are matter of history. Dr. Duff, in an article which appeared in the *Calcutta Review*, wrote as follows:—

"We have no hesitation in saying that an order or enactment of the nature suggested" (alluding to the Resolutions of the Missionary Conference already explained) "if once formally promulgated, would go far to secure the great practical object, the realization of which the interests alike of justice and humanity unite in demanding. Sooner or later, the day must come when our Legislators can no longer evade or postpone the determination of the present and other similar questions,—the equitable determination of which, on the great broad principles of Catholic jurisprudence, ought to constitute one of the prime vocations of a Civil Government, and one of the chief ends of its very being. To shrink from 'timeously grappling' with such subjects is not weakness merely; it is a wrong;—a wrong against those classes of the community whose natural rights and privileges demand the protection of Government, as much as their peaceful demeanour and principles of unshaken loyalty merit a return of gratitude and esteem. For they whose grand maxims of religious and civil polity are, 'Fear God, honour the King,' will ever be found not good Christians merely, but the best of citizens."

These words were written in 1845; and subsequent events have well sustained the eulogium which Dr. Duff then passed on the peaceful demeanour and unswerving loyalty of the community for whom it is proposed to legislate. But, Sir, this is a subject on which I need not enlarge. It is not a *favour* which the Bill provides for; it is a simple act of justice. The aim of this Bill is to exempt those who adopt the religion of the country which Providence has called to rule over India, from special penalties and disabilities for so doing; to exempt them from the penalty of bigamy, where bigamy was never contemplated by the law, and is proved neither by Reason nor Revelation. And as such I do not see how the Council can refuse to entertain it. At any rate it shall have my warm and hearty support.

Sir, I shall not object to the Bill being postponed for a short time beyond the usual period in Committee, in order that its principles and details may have the fullest discussion—care being taken that it is not indefinitely postponed."

The Hon'ble MR. TAYLOR said that but for the observations which had fallen from Mr. Cust, he, MR. TAYLOR, would have been content to have given a silent vote in favour of the motion. He did not intend to trouble the Council with any lengthened remarks on the subject. He understood that the question would not be pressed to a division on the present occasion, and that ample time would be given for the most careful enquiry as to what was the general sense of the Christian world in the matter. He would therefore merely take the opportunity of stating that the principle of the Bill had his entire and cordial approval, and that he would reserve to a future meeting any observations he might have to make on the various details and provisions of the important measure before them.

The Hon'ble MR. HARINGTON said he wished the few remarks which he proposed to make to-day on the subject of the Bill before the Council to be regarded, not in the way of answer or otherwise to the arguments which had been advanced in favour of or against the Bill, but, whatever they might be considered worth, as chiefly suggestive. He frankly confessed that the Bill did not approve itself to his judgment. Having said thus much, he felt it to be due to his Hon'ble colleague, who had charge of the Bill, that he should state at once that the Bill bore evident marks of the very great care with which it had been prepared, and displayed the anxiety felt by his Hon'ble colleague to meet the exigencies of the case in the least objectionable manner. Furthermore, assuming the necessity of some measure of relief for the class of persons in whose interests the Bill was introduced, on which point probably little, if any, difference of opinion existed, and assuming also that what the Bill proposed was the form in which the desired relief could be most conveniently or suitably granted, he thought it must be admitted that the Bill contained every, or nearly every, proper safeguard or security that could be introduced into it. In this respect, indeed, it appeared to him, on his second hypothesis, that those at whose instance the Bill had been introduced would have more cause to complain than the opponents of the Bill. His Hon'ble colleague, speaking with his wonted ability, when he asked for leave to introduce the Bill, had referred to the great length of time that the question of affording relief of some kind to Native converts to Christianity, whose wives or husbands persistently refused to live with them by reason of their conversion, had been under the consideration of the Government of India. He believed it might be said with truth that the delay that had taken place in the settlement of this important question was owing, not to any want of sympathy with the classes interested, or to any disinclination on the part of the Government of India to afford them reasonable relief, but solely to the diffi-

culty of determining what form the relief should take, or how it could be most unobjectionably granted. As they had already been told, various remedies had been proposed at different times, but they were regarded either as open to grave objections, or as not likely to lead to any satisfactory results. There had also been former attempts at legislation, but they too had come to nothing. All this served to show the difficulty of the problem which they were required to solve; and he could not help thinking that those who regarded its solution as beyond the province, or at least beyond the reach, of legislation, and who were disposed in consequence to leave matters very much as they were, were not altogether wrong. It seemed to him impossible for any one who had made law a study, or who possessed any familiarity with the administration of laws, to read the present Bill without perceiving the great difficulties which surrounded the proposed legislation, and without feeling that in practice the Bill would give rise to numerous and most serious complications which might prove injurious to the cause of Christianity in India and check its advance. He had heard it remarked that the Bill would probably prove nearly, if not entirely, inoperative, and his Hon'ble colleague, who was in charge of the Bill, must excuse him for saying that this was perhaps the best thing that could happen. Opposition to the Bill was deprecated on the ground that if it would do no good, it would do no harm. The answer which he would make to such observations was, that he always had objected and always should object to placing laws on the Statute Book which were not likely to accomplish the object of their enactment. He had a great horror of what was called harmless legislation, that was, laws which if they did no good would do no harm. He was indeed somewhat sceptical on the subject of harmless laws, and he was disposed to think that laws which did not fulfil the purpose for which they were passed, were very likely to be perverted to other and to evil purposes. This was frequently the case in this country. Caste feeling, which was so strong and general in India, enabled unscrupulous persons of low caste to play off laws of the nature of the Bill under consideration upon Natives of rank and respectability, and to make them the instruments of annoyance and extortion.

But notwithstanding what he had said, he did not think that it would be expedient or right to stop the Bill at its present stage. The Government of India had pledged itself to action of some kind in the direction of the Bill. That pledge the Government was bound to do its utmost to fulfil, and it could only escape from it, or be relieved from the responsibility which it had incurred in making the pledge, on proof that its proper fulfilment was impossible. He did not think that they were now in a position

to say that such was the case, and as a step towards fulfilling the promise which had been given, he should vote for the motion that the Bill be referred to a Select Committee. The reference would be followed by the publication of the Bill in the several Official Gazettes, and, as the result, they might fairly expect to receive many valuable opinions and practical suggestions, with the aid of which they would be able, in due time, to reconsider the Bill with advantage, and probably so to mould its provisions, that the law, as passed, if it did not come up to the expectations of the promoters of the present Bill, and accomplish all that they desired, would still be the means of affording a large measure of substantial relief to a most deserving class of persons in a comparatively unobjectionable form. He had no doubt that the Bill, when published in the manner which he had mentioned, would be immediately and most carefully considered by the whole body of Christian ministers of all persuasions and denominations throughout the country, including the Right Reverend the Lord Bishops and the Venerable the Archdeacons of the three Presidencies. He was willing to leave the matter in a great measure in their hands, feeling assured that they would come to a right decision. At the same time, he would venture to suggest some points which appeared to him to be specially deserving of consideration.

He would ask that it should be considered whether all that was really necessary, or could properly be allowed, might not be accomplished, first, by permitting the Civil Courts to grant divorces between Native Christian husbands and their wives on the ground of adultery by the latter: secondly, when betrothment in infancy had not been followed by what completed the connubial relation, and the woman having attained an age at which, according to Native custom, she should leave her family and go and reside with her husband, refused to do so on the ground of his conversion to Christianity, by permitting the Civil Courts to annul the betrothment, and to set the parties free; and thirdly, by permitting the Civil Courts, on the joint application of the husband and wife for a dissolution of their marriage on the ground that the conversion of the husband to Christianity prevented the wife, according to the rules of her religion, from any longer cohabiting with him, then and there, or after allowing a reasonable period for reflection, to grant the application. He thought that the mutuality of this last provision, or the consent of both husband and wife to its enforcement, would relieve it from the charge which it appeared to him might not unjustly be brought against the present Bill, that it was the unoffending party whom it proposed, under certain circumstances, to visit with what might be a severe punishment, or, at least, social degradation. It had been remarked by Mr. Muir that the Bill would force the conscience of no man. This might be quite true, but let them look at the alternative to which it exposed the unoffending wife. He used the term "unoffending" in reference to the wife because it

was in reality the act of the husband, and not the act of the wife, which prevented her from continuing to cohabit with him, and caused the separation between them. The Native husband knew full well when he married his wife, or took her home, that, if at any time he became a Christian, and she retained her religious faith, a serious obstacle would be created by his conversion in the way of her continuing to live with him as his wife. With a full knowledge of the consequences he changed his religion, and he must abide the consequences. This was what Christianity expected of its followers. As regarded betrothment, he fully admitted that, amongst Hindoos, it was as binding as absolute marriage amongst other sects; but he contended that there was a very wide difference between the case of a woman who had never lived with the man to whom she was betrothed in infancy, and who had no knowledge of what the Bill, with a proper regard to decency, called conjugal society, and the case of a woman who had lived with her husband for many years, and had perhaps borne him children. There was no law, at present, which allowed the Civil Courts to decree divorce on the ground of adultery, but a Dispatch had lately been received from the Secretary of State for India, in which he recommended the passing of such a law with respect to Native Christians, and he (MR. HARINGTON) hoped that no time would be lost in carrying out this recommendation. He did not think that, when a Native wife not only refused to cohabit with her husband by reason of his conversion to Christianity, but allowed the rights of a husband to another man, any principle of justice would be violated by her divorce under a law such as he had mentioned, though it might be true that the husband, by changing his religion, had himself raised up the obstacle which had prevented the wife from continuing to reside with him, and had thus, by his own act, been in some degree the cause of her yielding to a temptation to which, had the husband and wife continued to live together, she might not have been exposed.

The next point which appeared to him to call specially for consideration had already been noticed by his Hon'ble colleague Mr. Maine. It was whether this Bill should be made applicable alike to Native husbands and Native wives, or whether its application should not be confined to Native husbands. He held a very decided opinion in favour of the latter course, and he was glad to find that his views were supported by so high an authority as their late lamented colleague Mr. Ritchie, who justly remarked that very different considerations prevailed in the case of wives. He had never heard of a Native husband refusing to cohabit with his wife, or to allow her to live with him solely on the ground that she had become a convert to Christianity. He believed that he was right in saying that the religion of the Native husband did not require him to separate from his Native wife under such circumstances; and instances of Native

husbands having so acted, if they had ever occurred, which he doubted, were probably very rare. According, therefore, to his view, the present Bill, in so far at least as it would apply to Native wives as well as to Native husbands, went beyond the necessity of the case. He must be allowed to add that there was something very repugnant to the prevailing ideas of what was right and becoming in women, to require or allow a young Native Christian girl, say of the age of thirteen years, who had been betrothed in her infancy, and had perhaps never seen her betrothed husband afterwards, to cite him before a court of justice for the purpose of being asked certain questions, and, having been closeted with him, to address him in language such as was used by a royal female of old to one whose chaste conduct on the occasion had passed into a proverb. This was what the Bill provided. He might be told that such a case would never happen. He sincerely hoped it never would, but, if not likely to occur, why, he would ask, should they legislate as if it might happen, or why should they make provision for it? The case of a high-born Native girl cited before a court of justice at the instance of a man to whom she, in like manner, had been betrothed when a mere child, but whom she might never have seen since, and subjected to the like interrogatories, or to having a similar request made to her either in public or in private, which the Bill also allowed, naturally suggested a doubt whether such a proceeding would tend to promote the cause of Christianity in India, and whether it was not open to the objection already noticed when the Native female might herself appear in the character of a suitor for conjugal society.

In addition to the points which he had mentioned, he would ask the Select Committee, to which the Bill would be referred, to consider whether the age at which a Native Christian husband, whose wife refused to live with him by reason of his conversion, might, under the Bill, claim possession of the persons of his children, was not much too young. He was disposed to doubt whether they should legislate at all in this Bill in respect to the custody of the children of Native converts to Christianity born previously to their conversion. The circumstances of Native families were so peculiar and so different from the circumstances of English families, that he did not think that in dealing with the question of the custody of children they could act upon English analogies or enforce rules which, however right and proper in England, might be totally unsuited to Native customs and Native ideas. He would take the case of a respectable undivided Hindoo family, all the members of which, male and female, lived together as one household. A male member of the family was converted to Christianity and became in consequence an out-cast: he had a son and a daughter, say of the ages of thirteen and fourteen, both of whom had been betrothed in their infancy with their father's consent, or by him acting in their behalf, to persons of the same sphere

of life and of the same religious persuasion as themselves. Should the father, after his conversion, be allowed to claim the custody of these young people and to compel them to live with him as a Christian, whereby they also might lose caste, he, MR. HARINGTON, would ask the Council to consider the complications to which this might give rise, and the consequences which might ensue. The Bill provided that if a Native husband who should have remarried returned during the time of such remarriage to his first love, as men were wont to do, the intercourse would be adulterous; but supposing the Native wife whose husband had remarried, instead of availing herself of the option given to her of remarrying also (an option which he believed he might safely say would rarely if ever be taken advantage of), should yield to some man other than her husband the rights of a husband, would this other man be guilty of adultery and be liable to the penalties prescribed by the Indian Penal Code for that offence? According to the Code of Criminal Procedure, a charge of adultery must be preferred by the husband of the woman against the man who committed the offence with her. The husband, who might, under the Bill, commit adultery with his own wife, was not likely to prosecute himself for the offence, but would he be at liberty to prosecute any other man, which it was not improbable he might do? He did not think that this should be permitted; but as the Bill stood, it appeared to him that it would be allowable.

There were other points of detail in the Bill calling for notice, but these might be left for consideration by the Select Committee. Before concluding his remarks he wished to observe with reference to the opinion of Sir Barnes Peacock, cited by Mr. Muir, that, if he, MR. HARINGTON, recollected rightly, Sir Barnes Peacock had in the papers from which Mr. Muir had quoted, given it as his opinion that the laws of God which were applicable to European Christians were equally applicable to Native Christians.

Having now noticed the various points connected with the Bill which appeared to him to be specially deserving of consideration, he would only further say that should the result of the publication of the Bill show that it was viewed favourably by a very large majority of the Indian clergy, including under that head Christian ministers of all denominations, and that in the opinion of such a majority the Bill should become law, he should not consider it consistent with his duty, should he have the honour of a seat in that Council when the Bill again came on for discussion, to offer any opposition to the passing of the Bill. On the other hand, if, in the words of his Hon'ble colleague, Mr. Maine, the preponderant feeling should be shown by the result of the publication of the Bill to be against the Bill, and its enactment should be regarded as objectionable, either on religious or on political grounds, he felt sure that the Council would not consider it right or expedient to proceed further with the Bill.

The Hon'ble MR. ANDERSON.—"I am unwilling to avoid, Sir, the responsibility of taking a part in this debate, though I feel I can contribute nothing to the discussion, in addition to what has been stated by the Hon'ble mover and the gentlemen who have preceded me. I confess that I have always dreaded the necessity for the introduction of a Bill similar to that now before us. I have always been accustomed, as a servant of Government, to advocate a stringent adherence to the policy of a complete abstinence by Government from all interference with the religious prejudices of the Natives of this country. I have invariably ranged myself with those who consider that Government education in India should be strictly secular education, and the more I have seen of the operation of the Educational Department in the part of India in which I have served, the more convinced I am, that such instruction can be imparted to the incalculable benefit of the governed, without any prejudice to their religious feelings and without any prudish reserve as to simple historical facts. I hold these views not merely from a fear of what may be the results of an opposite policy—results which I shrink from contemplating—but from a higher feeling, that non-interference with the religion of the governed is the great Charter of the subjects of our Indian Empire, that it is the peculiar glory of our rule, that we have never sought to propagate our faith by any exhibition of force or by any offer of sordid inducements. Holding, then, as I do most strictly, that the maintenance of this policy should be absolute, consistent, and veracious, the subject of this Bill is one which I should have been glad to see the Legislature avoid, if it honestly could; and I must even now say that, if I thought the proposed measure was in any remote degree a part of an organization to induce the Natives of this country to change their religion, it should have no support from me. But the appeal which is made to us is not to our Christianity, but to our sense of justice; and I am compelled to say that, in my opinion, it is an appeal which can rightly receive but one answer. A subject says to us: "On account of my religious opinions, my wife refuses to dwell with me: either compel her to do so, or let me go free." I hold this to be a just demand, but I regret to find that such is not the view of the clergy of the established Church of England resident in Calcutta. I do not propose to dwell at any length on their petition, for it is one of the many difficulties which surround this subject that, without the exercise of great caution, it may involve us in discussions which are not suitable to the deliberations of this Council. I will make therefore but one general remark. The clergy of the Church of England have many claims on our respect as a body: they have exhibited great piety, learning, purity of life, and sympathy with suffering; but I cannot say that it has come within my experience, that I have ever heard, that it has ever been

presented to me as a fact in the course of my reading, that the clergy of the Church of England have, in any conspicuous degree, or indeed in any degree at all, displayed any vocation towards celibacy. I do not impute this to them as a reproach. The celibacy of the clergy as an institution has had its uses: it probably, during the dark ages, saved us from the curse of an hereditary priesthood; but in the nineteenth century I should as soon suggest to a dignitary of the Church to assume the part of Simeon Stylites, and to be the incumbent of a pillar on Salisbury Plain, as I would urge on him the virtue of celibacy. But have we not a right to say to these Reverend gentlemen—if you, with your intelligence and high aspirations, with all the resources of science and learning at your command, still find it not expedient to be as St. Paul was, are you justified in withholding relief from the poor Hindú, whose religious convictions, it may be, have succumbed to your dialectic powers? Does not such a course savour of the practice of that straitest sect of which St. Paul was a member before he received his commission to Damascus? Are you not imposing a burthen grievous to be borne, which you will not touch yourselves with one of your fingers? But I am not inclined to dilate upon this petition, especially as the propositions put forth in it are not supported by any reasons. I can only at present say that these propositions do not command my concurrence. But I would remark that it will be largely subservient to the ends of good government, if the gentlemen who have signed the petition will state their views freely and at length, during the considerable time which must elapse before this Bill comes on again for discussion. For I am very glad that my Hon'ble friend, the mover, has determined to give every opportunity to the Public, and especially to the Native Public, to express a deliberate opinion upon this measure. It is a very difficult duty for Europeans to legislate on such a subject, and I know of no question which so imperatively demands a careful expression of Native opinion as the one now before us. If the intelligent portion of the Native community will give this Bill a candid and careful consideration, they will very possibly be able to submit objections which are not likely to occur to our minds; but I do not think they will be able to say that this Bill has been devised with a view to induce Hindús and Muhammadans to embrace Christianity, or that through this Bill a man will be likely to become a Christian in order to obtain another wife. On the contrary, I think they will see that he will far more easily obtain another wife by adhering to his original religion. If we are to deal with this question at all—and I confess I think we are as much bound to afford to this class of our fellow-subjects the relief they seek, as we are bound to protect their persons from ill usage and their property from destruction—if we are to deal with this question at all, I do not think it possible that a measure more moderate, more cautious, one

exhibiting more earnest anxiety to do justice, and only justice, could have been submitted, than the one which has now been introduced. I trust that, if no solid objections are hereafter advanced it may eventually become law."

His Excellency the PRESIDENT said that whatever might be the fate of the Bill, he thought that those who were opposed to it exercised a wise discretion in agreeing to allow it to go before a Select Committee. Only in that way, His Excellency thought, could the pros and cons be fairly deliberated upon and fully considered. Judging by the light of his own experience, His Excellency thought that the hardships imposed on a Native Christian of this country were very great, and that we were bound in duty as Statesmen and Legislators to give them relief, as far as we could do so fairly and honestly, with reference to others who were interested in the measure. When we considered that the Native Christian convert had been bred up under peculiar laws, under peculiar customs, under a peculiar system, which allowed and encouraged poligamy, it became a peculiar hardship to that convert, when deliberately repudiated by his own wife or her own husband on account of the change of religion, that Christianity should enforce celibacy, and that no relief should be granted by the Legislature. It seemed to His Excellency only reasonable, fair and just that relief should be granted, and that such relief could be no just cause of aggravation or irritation to any of the persons concerned.

The Hon'ble MR. MAINE in reply said:—"Sir, the wide difference of opinion as to principle which has shown itself between your Excellency and my Hon'ble friend Mr. Muir on the one hand, and my Hon'ble friends Mr. Harington and Mr. Cust on the other, goes, I think, some way to justify my view that the only mode of solving this difficult question is by requiring those who, by their active exertions, have added to Indian society this class with whose interests we have such difficulty in dealing, to take upon themselves, and to relieve the State from, the responsibility of saying when their converts ought or ought not to be remarried. Deeply, however, as Mr. Harington and Mr. Muir differ, they seem to agree in considering that unconsummated marriages between children may legitimately be neglected, and that after a mere betrothal, a Christian convert may be allowed, without more, to remarry. Of course, Sir, from the point of view which I feel myself compelled to occupy for the purposes of this discussion, the point of view of secular morality, there is much to be said against infant marriages. I have never conversed with an educated Native gentleman who did not allow that these marriages are deeply injurious to the morals of Native society. I fear, however, that if we allowed a young man to acquit himself of the obligations which Hindú law and his family have imposed upon him by the mere fact of having changed his religion, we might expose this measure

to imputations which cannot, I think, be justly brought against it as it stands: we might open the door to grave abuses, and certainly should give room for great scandal. On the whole, I think that the safer course is that the convert should allow his wife an opportunity of joining him when the period of infancy has gone by. But it is a point for consideration in Committee whether, in the case of a marriage not followed by cohabitation, some of the interviews and interrogations provided by the Bill might not be dispensed with. My Hon'ble friend Mr. Harington enquires whether the missionaries will not be satisfied if, in addition to a measure permitting their converts to neglect mere betrothals, a law allowing divorce on the ground of adultery be enacted. There is reason to believe that Her Majesty's Government is likely to introduce into the British Parliament a measure giving Indian divorces between Christians the same effect as if they had been decreed in the English Divorce Court. And if such a measure be passed, it will certainly be the duty of your Excellency's Government to introduce into this Council a Bill providing for the dissolution of marriage on the ground of adultery, and applying to all Christians in India, Native as well as European. But, Sir, when it is contended (I do not know whether my Hon'ble friend so contends, but it is sometimes contended) that such a law can be regarded as a substitute for this measure, the argument is one which I regard with the extremest repugnance and dislike. For, stript of all disguise, it seems to me to come simply to saying this: 'If you will only hold your hand, if you will only do nothing, the heathen wife is sure to be guilty of adultery, and then you may divorce her without shock or injury to the conscience of the Christian world.' Now, Sir, it is one of the recommendations of this Bill in my eyes, that it protects the morality of the heathen wife no less than the morality of the Christian husband, and by permitting her to remarry, displaces, so far as legislation can displace, that ground of divorce which some persons seem to think more satisfactory than the practical defeat of the objects of marriage."

"As regards the observation of my Hon'ble friend that the Bill inflicts a punishment on the wife, who, according to her own views, has been guilty of no wrong, the answer is that, in all civilised societies under express law, and in all uncivilised societies under law expressed or unexpressed, there exists a proceeding analogous to the suit for restitution of conjugal society. It is true that the refinement of sentiment and manners in Europe rarely allows this proceeding to be resorted to; but legislators have not thought fit to expunge it from European Codes, and, indeed, in more than one European Code it has latterly been made more stringent. It will generally, indeed, be found, that in proportion to the repugnance of the framers of a body of law to divorce is the stress they lay on the rule that the wife must always be with her husband—a rule which they

occasionally enforce by criminal penalties. Nor is any loathing, however deep, a reason for not executing the obligation. Now, will you compel the heathen wife to rejoin her Christian husband against her will? You cannot, and I may almost say, you dare not. But if this be so, the word punishment is entirely inapplicable to a measure like this, for whatever be the penalty you inflict on the wife, it is a penalty which, according to her views, is infinitely slighter than that which, according to the principles both of civilised and barbarous law, she might be compelled to submit to. Strictly speaking, she should join the husband whom she loathes with a loathing unknown in Europe. But instead of forcing her to do so, you permit her to remarry and protect her in her personal and proprietary rights."

"Of course in my Hon'ble friend's appeal to the Bishops, the clergy and the missionaries carefully to consider this measure, I most heartily concur; and I deliberately abstain from replying to much that has been said by Mr. Cust and Mr. Harington, because I think that the answer will come with much more grace and with much more effect from those to whom this appeal is addressed. But, Sir, I have read so much of the sort of communications which may be expected to be elicited by this appeal, that I may be pardoned for offering, with the greatest respect, a few cautions. Sir, if the missionaries or the clergy can establish that the morality of their converts will be injured by the Bill, that will be a fact of the highest importance. If, again, they can show that the conscience of the Christian world will be shocked by this measure (and of course we can only know the feeling of the Christian world by ascertaining the feeling of its various sections), that, too, will be a fact of which this Council will be bound to take notice. But if they are tempted to enter into purely theological arguments as to how and when and why these marriages are lawful or unlawful, I would ask them merely to read the list of the members of this Council, and to say with what decency it can be required to decide whether such considerations are right or wrong, sound or unsound. A second caution I have to give is this: the gentlemen who have signed the single petition against the Bill which is in the hands of members, affirm, with some boldness, that the Native wife comes over to her husband in the great majority of cases. My own information contradicts this; and I have generally found that those missionaries who have doubts as to the Bill confine themselves to alleging that, if some long period of time be taken, such as eight, or ten, or twelve years, the probability is that the wife will come over. Indeed, as it is only recently that great success has been obtained by the missionaries, there has not been time for the attainment of more than a probability. But, Sir, the assignment of these long periods of time constitutes no answer, I must say, to my

argument, that is, to the secular and moral argument. For the obvious rejoinder is, what sort of life has the convert been living in the interval?"

"I will venture yet another remark for the consideration of gentlemen who may respond to my Hon'ble friend's appeal. It has often struck me that, in abstract or moral questions which appear hopelessly insoluble, a great part of the difficulty usually arises from persons confidently employing words without having quite ascertained their meaning and their true relation and correspondence with things. I would ask the opponents of this Bill whether they are quite sure of the sense in which, for the purposes of this controversy, they use the terms 'marriage,' 'divorce,' and the like. The theory which they hold, I believe, is that marriage is a civil institution, consecrated by Christianity: consequently, they take the definition of what constitutes marriage from the civil and secular law, and, in this country, from the heathen law; but the incidents and consequences of marriage they interpret by Christian law. It is obvious, however, that the theory breaks down in its application to polygamous societies, for each one of many wives is as much a wife as the others, so that those who hold this view are compelled to take a mere fragment of the secular definition and prop up the theory with it. And it illustrates the difficulty of the question that, as I can assure the Council, we shall probably, in Committee, have to take account, not only of polygamy in the ordinary sense, but of polyandry; to provide for the case not only of a man having several wives, but of a wife having several husbands. It is only because I await fuller information as to the degree in which the Civil Courts in the South of India recognise this practice that I have omitted all reference to it in the Bill. In short, Sir, if we take India as a whole, I believe it will be found that the forms of marriage are so monstrous that it is impossible to make them fit in with civilised, and still less with Christian, theory. It would seem, therefore, that we are thrown back on the very foundations of the institution of marriage. Accordingly, I would submit to those who doubt the principle of this measure whether a reasonable theory (I will not say *the* reasonable theory, but *a* reasonable theory) be not that of the Roman Catholic Church, which, as I understand it, is that, while the most serious efforts should be made to bring over the heathen wife to her husband, the heathen marriage, nevertheless, has in itself no such sanctity as will compel the missionaries, out of respect to it, to acquiesce in the defeat of the practical objects of marriage. However that may be, as to what should be the secular view I have no manner of doubt. I consider the creation of a celibate class fatal to morality in India; and when the gentlemen who have signed this petition express a fear that the measure may lead the heathen to believe that Christians think lightly of the institution of marriage, I would beg them to

ask any Native gentleman whom they can depend upon to give a frank opinion, what he thinks of a proposal that celibacy be practised for a series of years by a Native Christian, or any other Native? I must repeat what I said in the first debate on the subject, that if no such measure as this be passed, there is too much reason to fear that the missionaries, with the very best intentions, at the cost of enormous self-sacrifice and immense self-denial, will, nevertheless, in effect be propagating immorality in the name of Christianity."

The Hon'ble RA'JA' SA'HIB DYA'L BAHA'DUR said that, in his opinion, the passing of this Bill would be contemplated with grief by the people.

The Motion was put and agreed to.

ACTS AND REGULATIONS' EXTENSION BILL.

The Hon'ble MR. HARINGTON moved that the Report of the Select Committee on the Bill to authorize the Governor-General of India in Council to extend to the Non-Regulation Provinces under the immediate administration of the Government of India certain Acts and Regulations not in force in those Provinces, be taken into consideration. He said the only alteration of any consequence which the Select Committee had made in the Bill was the introduction of a Section giving the Governments of the North-Western Provinces and the Punjab power to extend to the Non-Regulation territories under their respective Governments any Act or Regulation of the Government of India, passed previously to the date upon which the Bill would come into operation, not in force in these Provinces—thus carrying out the suggestion to which he had referred when he introduced the Bill.

The Motion was put and agreed to.

The Hon'ble MR. HARINGTON also moved that the Bill as amended be passed.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to legalize, under certain circumstances, the remarriage of Native Converts to Christianity:—The Hon'ble Messrs. Harington, Maine and Anderson, the Hon'ble the Mahárájá of Vizianagram and the Hon'ble Messrs. Taylor, Muir and Cust.

The Council then adjourned.

WHITLEY STOKES,
Offg. Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA,
The 6th January 1865.

E. Dean, Calcutta Central Press Company, Limited.