Saturday, March 31, 1866

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

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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 Saturday, the 31st March 1866.

PRESENT:

The Hon'ble H. Sumner Maine, Senior Ordinary Member, *presiding*.
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Mahárájá Vijayaráma Gajapati Ráj Bahádur, of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.
The Hon'ble W. Muir.
The Hon'ble D. Cowie.

REGISTRATION ACT AMENDMENT BILL.

The Hon'ble MR. TAYLOR moved that the Report of the Select Committee on the Bill to amend Act No. XVI of 1864 (to provide for the Registration of Assurances) be taken into consideration. He said that the Council had been made aware by the motion which stood in his name in the list of business for to-day, that he had taken charge of the Bill which was introduced and brought almost to its final stage by their late colleague, Mr. Stewart Gordon, whose premature removal from among them they all so deeply deplored. On the last occasion of his attendance in this Council chamber, Mr. Gordon presented the Report of the Select Committee, which he (MR. TAYLOR) had now the honour to ask the Council to take into consideration. As this Report explained very fully the nature of the amendments and the reasons for the various alterations proposed by the Committee in the Bill as introduced, he should not detain the Council longer than was necessary to enable him to notice very briefly the few prominent points that seemed to call for remark.

Two of the most important Sections of the Bill were Sections 17 and 18, relating to registrable documents—Section 17 to instruments the registration of which was compulsory, and Section 18 to documents of which registration was optional. They had carefully considered the question of enforcing the compulsory registration of all instruments relating to immoveable property. As the law now stood, the registration of such instruments was not compulsory

if the value of the property to which they related was less than 100 rupees, and under the present Bill this exemption was continued. No doubt it was extremely desirable that all such instruments should be registered, however small in value the property might be to which they related; but for the present they thought it better to leave it to the option of the parties whether instruments relating to property of trifling value should be registered or not. It formed indeed no part of the intention with which this revision of the law was undertaken to extend the area of compulsory registration. Notice had not been given to the public of so important a change. It was true that there was a strong and growing feeling in favour of such extension; but they were on the whole of opinion that it would be wiser to invite, through the local administrations, a full expression of public opinion on this important question before legislating further in this direction.

This led him to notice an alteration which they had made in the definition of this word "Lease" which occurred in Section 2. It was now made to exclude the pattás and muchilkás of the Madras Regulations, as defined in the Rent Recovery Act, No. VIII of 1865 (Madras). Under the Registration Act of 1864, all leases between landlord and tenant, relating to land in the Madras Presidency liable to the payment of revenue to Government, were exempted from compulsory registration, and this exemption was continued in the Bill as introduced. It had been ascertained, however, that all that was desired by the Revenue Authorities of that Presidency was that the general requirements of the law should be inapplicable to leases for one year and under; and there was really no reason why leases for longer periods than one year should be treated in Madras differently from similar leases elsewhere. The requirement of compulsory registration, while it gave additional security to both parties, was not likely to check the use of written agreements to any perceptible degree. But, looking to the importance of encouraging registration of leases by every legitimate means, he would commend to the careful attention of the Local Governments the remarks of the Select Committee in favour of charging the lowest possible fee for the registration of this class of documents.

An addition had been made to Section 21 of the Bill, providing that a conveyance containing a plan should, on presentation, be accompanied by a copy or copies of the plan, as the case might be. Such conveyances would generally be unintelligible without the plans, and it was quite out of the question that a staff of draftsmen should be employed in Registration Offices to copy them. He would here correct a misapprehension which seemed to have prevailed in some quarters, as to a provision in a former portion of this Section. After laying down that the property should be clearly and fully described in the instrument presented for registration, the Section went

on to say that the description should contain, whenever it was practicable, a reference to a Government map or survey. By this of course it was not intended, as some had supposed, that every Registering Office in the country should be supplied with standard plans and maps for verifying descriptions of instruments brought for registration. But whenever it was possible to describe a property by reference to any such map or plan—as, for example, in the case of military cantonments—the person presenting the instrument for registration would doubtless produce if required, for the satisfaction of the Registering Officer, the map or plan to which he had referred.

Section 41 provided that all memoranda or orders sent by the Civil Courts should describe the property with as much particularity as possible, that is, in the manner required by Section 21 which he had just noticed. It was clearly important that the description of immoveable property should be as specific as possible, and that there should be no mistake as to the identity of the property to which the decree or order referred.

Section 48 was a new and important provision. It gave all registered documents relating to property effect against all oral agreements and declarations relating to the same property. This priority of registered documents, as against all oral agreements, was an entirely novel feature in the law of this country, and would have, it was hoped, a most beneficial effect in checking perjury and preventing frauds for which the present state of the law provided no remedy.

The Committee had made a very important alteration in the mechanical part of the Bill, by the abolition of abstracts of the contents of documents registered, and the substitution in their stead of copies of entries in the indexes. This improvement had been strongly advocated from many quarters; it would get rid of an immense amount of labour, and attain all the objects which the present system was intended to effect.

There was no other amendment which he need specially notice. He might add, however, that various communications had been received from the Governments of Bombay, Madras and the North-West, forwarding some further remarks and suggestions of the several Registrars General, many of which were of great value and had been adopted by the Committee in the Bill as now amended. Within the last few weeks, a letter had also been received from the British Indian Association, suggesting a few alterations, the most important of which had already engaged the attention of the Committee and were effected. The Association noticed some points of a purely administrative character, which might safely be left to be dealt with according to the discretion,

or indeed the common sense, of the Registrars General. On the whole, the Bill had been favourably received in all quarters, and there was a general concurrence of opinion that this important measure was a great improvement on the old law, and likely to prove in every way extremely beneficial to the country.

He could not conclude without saying one word more. After the well-deserved tribute which, on a recent occasion, His Excellency the Governor-General had paid to the memory of the late Mr. Stewart Gordon, it was perhaps unnecessary that he (MR. TAYLOR) should allude to his merits, or to the high esteem in which his character and talents were held by his colleagues in Council. As one of the Select Committee who had special opportunities of observing and appreciating his useful labours in connection with this Bill, he might, however, be permitted to say this at least, that the Council had sustained a loss that would not be easily supplied. He did not doubt that this opinion was shared by the President as well as by all who had had official relations with the deceased gentleman. The name of Mr. Gordon would always be associated with this revision and amendment of the Registration Act, and when his Bill became law, which he hoped it would to-day, it would stand in the Statute Book as a memorial of the patient industry, care, and ability he devoted to its preparation.

The Motion was put and agreed to.

The Hon'ble the PRESIDENT said that he had an amendment of his own to propose in the Bill. Perhaps the Council would recollect, the subject was last under discussion in public when the late Hon'ble Stewart Gordon introduced the Bill. Since then the Select Committee had held many sittings on the measure, and the patience, sagacity and candour which Mr. Gordon showed, were the admiration of every body who was associated with him. Mr. Gordon, when the Bill was submitted to the Council, mentioned that a memorial had been received from certain Indigo Planters of the North-West Provinces. He read (if MR. MAINE did not mistake) the same sentences which he (MR. MAINE) now proposed to read. The Secretary to the Government of the North-West Provinces said:—

"It is represented by the memorialists that the provisions of this Section [17], which make the registration of a lease for any period exceeding one year compulsory, affect them seriously, inasmuch as the indigo operations of the year necessarily involve possession of the lands for 15 months. The lands are rented under the agreement that the Planters are to have possession of them as soon as the annual rains set in, and keep them until the close of the rains in the following year, that is, until such time as the Khuntí crops are cut.

The Planters also state that, as the lands taken from the zamíndárs are generally small, it is not worth the zamíndár's while to waste time in going to the Registration Office and to incur the expense of having the deed registered. The Planters must therefore either refuse to

make the necessary advances, or they must rent the lands and run the risk of having the agreements found to be invalid, and give the assamees the opportunity, under the clause, of taking possession of the lands at the expiration of a year, and with them of the Khuntí crops."

Mr. Gordon observed, on these sentences, that the proposal of the Planters ran counter to the probable course of legislation on this subject. He anticipated—and no doubt this was true as regarded the greater part of India—that the next change which would probably take place would be to make the registration of all documents relating to immoveable property compulsory. But Mr. Gordon was in all probability not aware of the importance of this question. MR. MAINE had been in communication with a late colleague of theirs, Mr. Hamilton, known to them as Mr. Claude Brown, and Mr. Hamilton had assured him that the Planters would be driven either to neglect the Act, or to give up the cultivation of the plant altogether. But now, on referring to a very famous document in his hand (the Report of the Indigo Commission), he found that, while admitting that planting in Bengal was subject to animadversion, the Commissioners exempted Planters in the North-West and in Behar from the censure which they were compelled to give in other quarters. This was a purely local matter, but he thought that we might fairly give the required relief to the case. He therefore proposed to add to Section 17 this proviso:—

"Provided also that, so far only as regards the Territories respectively under the Governments of the Lieutenant-Governors of Bengal and the North-West Provinces, the Local Government may, by order published in the Official Gazette, exempt from the operation of the former part of this Section any leases of immoveable property, executed in any particular district or part of a district, the terms granted by which shall not exceed two years, and the annual rents reserved by which shall not exceed fifty Rupees."

Mr. Hamilton was of opinion that this would entirely meet the case, and that no greater exemption was required than as to small leases, that is, leases at rents less than Rupees 50 and for terms less than two years.

The Hon'ble MR. TAYLOR said that he entirely concurred.

The Motion was put and agreed to.

The Hon'ble MR. TAYLOR said that he also had a series of amendments to propose, none of which were of very great importance.

The first was that, for Section 36, the following be substituted:—

"Subject to the provisions contained in this Section and in Sections 76, 80, 84 and 89, no document shall be registered under this Act unless the persons executing such document, or their representatives, assigns or agents authorized

as aforesaid, appear before the Registering Officer. He shall thereupon enquire whether or not such document was executed by the persons by whom it purports to have been executed, and, in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

"If all the persons executing the document appear personally before the Registering Officer and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document;

"Or, in the case of any person appearing by a representative, assign or agent, if such representative, assign or agent shall admit the execution;

"*Or, if the person executing the document shall be dead, and his representative, assign or agent shall not appear before the Registering Officer, or shall refuse to admit the fact of execution, but such Officer shall nevertheless be satisfied of the fact of execution;*

"The Registering Officer shall register the document as directed in Section 68.

"The Registering Officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one, whether summoned or not under Section 37, present in his Office."

MR. TAYLOR said that the real alteration in the Section was the addition of the words in italics. The object of the addition was to meet the case of the representative or agent wishing to conceal, or dishonestly denying, the execution of the document. It gave power to the Registering Officer to satisfy himself that the document had been really executed.

The Hon'ble the PRESIDENT said that he fully agreed to the proposed amendment, and observed that it also met the case, which might well occur, of a representative or general agent being really unable to give any information respecting the execution.

The Motion was put and agreed to.

The Hon'ble MR. TAYLOR then moved that the following Sections be substituted for Sections 37 and 38:—

"If any person presenting any document for registration shall desire the attendance of any person whose presence or testimony is necessary for the registration of such document, the Registering Officer may, in his discretion,

call upon the Revenue Officer in whose jurisdiction the person whose attendance is so desired may be, to issue and serve a summons requiring him to attend at the Registration Office, either in person or by duly authorized agent, as in the summons may be mentioned and at a time named in such summons."

"The Revenue Officer, upon receipt of the peon's fee payable in such cases, shall issue the summons accordingly, and cause the same to be served upon the person whose attendance is so required."

He said that the only Sections in the Bill which provided for the issue of summons by the Registering Officer, gave no power to enforce the service of that summons. Practically, MR. TAYLOR understood from the Registrar General of Bengal, there would be no difficulty in Bengal, because the Registering Officer was the Revenue Officer, and would serve his summonses through the Revenue peons. But as this might not always be possible, it was necessary to introduce a provision to enable the Registering Officer to call upon the Revenue Officer to enforce service of summons.

The Motion was put and agreed to.

The Hon'ble MR. TAYLOR said that the next amendment proposed an addition to the penal clauses of the Bill. It provided a penalty for false personation in any proceeding before a Registering Officer. He moved that the following new Section be introduced after Section 92 of the Bill:—

"Whoever falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding under this Act, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both."

His Honour the LIEUTENANT-GOVERNOR asked whether the case had not been provided for already by the Indian Penal Code.

The Hon'ble MR. TAYLOR supposed that His Honour referred to Section 205; but that only provided for false personation in a Civil suit or Criminal prosecution.

The Motion was put and agreed to.

The Hon'ble MR. TAYLOR said that, in consequence of the foregoing amendment, he would move that the numbers of the subsequent Sections be altered.

The Motion was put and agreed to.

The Hon'ble MR. TAYLOR then moved that the following words be added to Section 95 of the Bill:—"and in Section 228 of the Indian Penal Code the words 'judicial proceeding' shall be taken to include any proceeding under this Act." The addition was necessary because the proceedings of a Registering Officer were not strictly judicial proceedings.

The Motion was put and agreed to.

The Hon'ble MR. TAYLOR lastly moved that the Bill as amended in Committee, with the amendments now approved, be passed.

The Motion was put and agreed to.

RE-MARRIAGE OF NATIVE CONVERTS BILL.

The Hon'ble the PRESIDENT moved that the Report of the Select Committee on the Bill to legalize, under certain circumstances, the Re-marriage of Native Converts to Christianity be taken into consideration. He said:—

"In submitting this important Bill to the Council, I shall perhaps do well to depart a little from the course usually pursued when the motion is that the Report of the Select Committee be taken into consideration. That course I understand to be, to assume that the principle of the Bill was affirmed when it was referred to the Committee, and to confine oneself to explaining and justifying the Committee's recommendations. But I can add nothing to the reasons assigned by the Select Committee for its amendments, and indeed I do not suppose that anybody would object to amendments who does not object also to the principle of the Bill. In truth I cannot conceal from myself that it is the principle and policy of the measure which have been in question throughout, and that nobody quarrels with the details who does not question the lawfulness or the expediency, or both the lawfulness and the expediency, of any legislation on this subject.

"I do not now propose to justify directly the principle of this measure. I have said enough about that already in former stages of the discussion, and indeed I have little more to say. But I propose to lay before the Council the history of the measure; to show what were the evils of which the measure is remedial; to point out what was the political and legal situation resulting from those evils, and to demonstrate that out of that situation there was but one way of escape. I hope to prove that it was simply impossible not to legislate on the re-marriage of Native converts repudiated by their heathen wives, and that, the necessity having arisen, only one mode of legislation was practicable and permissible. Of course I do not mean to say that I am not warmly and heartily in favour

of this Bill. But it is due to myself and, what is much more important, his Excellency the Viceroy—I say it all the more heartily in his absence—to establish that, whoever was at the head of the Government of India, and whoever was in charge of its legislative business, some measure of this kind must have been submitted to the Council, and that this measure could not widely have differed from the Bill now under consideration, or at least (and this I am entitled to say) could not have differed from it by any difference which has been pointed out to us by the numerous persons who have engaged in the discussion upon it

"It is first of all necessary for me to explain—so far as explanation is possible—what was the state of the law among Christians,—the law governing the celebration and formalities of marriage—before the legislation of 1864; before the two Marriage Acts of 1864 and 1865, one repealing and re-enacting the other, which I may call for convenience Mr. Anderson's Acts.

"If there are any Members of Council present who recollect the discussions on Mr. Anderson's first Bill, they will agree with me that the uncertainty and confusion which the matrimonial law exhibited can only be described by one epithet; it was chaotic. The doubts affecting it covered the whole ground between a doubt whether the marriage law in India was not stricter than that of England, and a doubt whether it was not laxer than that of Scotland. This condition of things had long existed, and having it in view, Parliament had provided a partial remedy by passing in 1851, the Statute 14 & 15 Vic., cap. 40, which was carried into full effect by the Indian Act, No. V of 1852. The Statute provided a mode in which marriages might be celebrated, and all marriages solemnized under its provisions were to be absolutely valid. It contained, however, a proviso to this effect: 'nothing herein contained shall invalidate or affect any marriages which, under the law for the time being in force in India, might have been there solemnized in case this Act had not passed.' So that the Statute did nothing to resolve the question,—which affected many Europeans and nearly all Native Christians,—what was the proper legal view of marriages which were celebrated independently of its provisions? A course of legal decisions had rendered this question one of extreme gravity. In a celebrated case, well known to lawyers, which was thoroughly analysed by Mr. Anderson in the exhaustive speech which he delivered at the final reading of his Bill—The Queen v. Millis—the majority of the English Judges advised the House of Lords that under the English Common law, *i.e.*, the law as unaffected by Statutes, the presence of a person in Holy Orders was essential to the valid solemnization of a marriage. There was, however, a dissenting minority of Judges, and it included name

of such eminence and authority that the question was regarded by lawyers as far from finally settled. And shortly afterwards the Supreme Court of Bombay, and Dr. Lushington in the English Ecclesiastical Court, decided that whatever were the state of the Common law in England, it could not be held to extend to colonies and dependencies like Australia and India, not even to the Presidency Towns which are subject to so much of English law. Of course the reasoning of these Courts applied with tenfold force to the marriages of Native Christians in the Mofussil, who owe no inherited or local allegiance to the English Common law. On the whole, the better opinion seemed to be—although the whole subject was beset by doubt—that Native Christians might lawfully marry by a contract, to use the technical expression, *per verba de præsenti tempore, i.e.*, by any words or forms showing a present intention to marry, and whether the marriage was legal or not, the majority of them did, I believe, so marry.

"Up to this point I have been speaking of the marriages of Native Christians under ordinary circumstances—not of Native Converts wishing to marry under the circumstances contemplated by the Bill. What, then, was the position previous to the Indian legislation of 1864 in regard to marriage, of a convert deserted or repudiated by his unconverted wife? Sir B. Peacock held that he could not be married in the presence of a Marriage Registrar under the Act of Parliament, and considering the purely English point of view from which the Act is conceived and drawn, I think he was right—at all events I bow to his opinion. But the doctrine is of no importance, because there was no necessity for marrying under the Act, and in fact the great majority of converts were simply married by Missionaries according to the simple forms which they considered suitable to the solemnization.

"It is right I should add that, till five or six years since, it is possible that a Native Christian who had re-married during the life of the heathen wife might have been punished for bigamy in the English sense, if he ventured within the jurisdiction of one of the Supreme Courts. This is a consequence of the wide language of a Statute of George IV, which, however, was never intended to apply to such a case, but was meant to put down the scandalous practices of a very different class of people. The Act indeed is a good illustration of a peculiar grievance of the Native Christians. The draftsmen of the English Parliament, in order to escape the long circumlocutory phraseology necessary for the description of all classes of Europeans in India—East Indians, Colonists and so forth—fell into the habit of using the erm 'Christian subjects of Her Majesty,' and thus laws have more than nce been made applicable to Native Christians quite foreign to their circum-

stances and position. There is an instance in an Act of Parliament passed this very last Session. But, however that may be, the statement I have made about the Act is of no practical importance, because an enormous majority of Native Christians never came near Presidency Towns, and because the Statute has been repealed by the Penal Code.

"Here is Section 494 of the Penal Code—'Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.'

"The Code, therefore, it will be seen, makes every thing turn on the civil invalidity of the second marriage, on its being civilly void because of the first. At the present moment, the Acts of 1864 and 1865 do make the second marriage civilly void, but how did the law stand before 1864? On what ground could it be contended that the marriage of the convert, leaving his heathen wife, was void? Putting aside for a moment those difficult questions turning on the effect of Native matrimonial law in operating a divorce through conversion, it could only be on one ground, that there was something in Christianity which forbade a Christian to have two wives at once. Now I know there are many here who will only consent to derive their law of Christian life direct from the Bible, but, so far as law is concerned—though I may surprise some by the statement—there is no Codex, no body of express rules setting forth discipline, except the Canon law, which is accepted by the Courts of even Protestant countries as authoritative on the point where it has not been expressly dissented from. Now, the Canon law, while laying down the general rule, does permit a convert to re-marry during his first wife's life where she deserts him on religious grounds. In fact, the definition of the Penal Code before cited let in the delicate theological point to which I will advert presently. Indeed I must go further. I feel the scandalousness of the position—but I am not sure that a Native convert might not lawfully have practised polygamy. It may plausibly be contended that a Native of India, converted to Christianity from a religion which permitted polygamy, did not by the fact of conversion so change his legal status as to render invalid, after it, any marriage he might have contracted before. To apply the rule of monogamy to him is obviously impossible, for he might have had five or six wives before conversion, who would not have been less his wives after conversion.

"Of course, I know that some of these propositions are disputable—indeed it is part of my case that the whole subject was immersed in doubt—but I

have stated my opinion, which I believe to be the better opinion, and it is some presumption in its favour that it corresponds with actual practice. For it is certain that these marriages were entered into freely by Native Christians, and nobody ever heard that a Native Christian was ever punished for marrying during the life-time of the unconverted wife, or that any Missionary was punished for abetting an illegality through marrying him.

"This then was the state of the law. Every part of it was enveloped in doubt; doubt which affected all Christians, but Native Christians more than all. It was doubtful whether they were not bound to marry in the presence of a Marriage Registrar, which, considering their situation and circumstances, amounted to a prohibition of marriage; but again it was doubtful whether they could not marry with just as much or as little ceremony as was necessary to supply proof of intention. It was doubtful whether a Native Christian might not be punished for bigamy in the Presidency Towns for marrying when his spiritual guide told him such marriage was lawful; but again it was doubtful whether he might not with impunity continue to practise polygamy.

"I hold myself dispensed from showing cause why the Legislature should have interfered in such a state of things. What worse could its bitterest critics say of it, than that it declined to remedy evils so intolerable? Doubts concerning the validity of marriage are not simply serious on grounds of feeling, though every body who has observed how much the moral and religious views on this subject are affected by the legal view, will consider them serious even on that ground. But they are formidable for the most solid reasons. Such doubts are doubts concerning the legitimacy of children; they are doubts concerning the guardianship of children; they are doubts concerning the descent and inheritance of property. And they are especially painful because, if the questions involved in them are wrongly solved, the error or negligence of the parents is visited on unborn generations. The danger meanwhile was greater in regard to the Native Christians than any other class, because they were practically debarred from the only complete security against mistake, marriage under the Marriage Act then in force.

"I cannot see what the Indian Legislature was good for, if it felt itself unequal to placing the law of Christian marriage on a satisfactory footing. However that may be, nobody now a Member of the Government or of this Council is responsible for the beginnings of the undertaking. As soon as the three great Codes—the Penal Code, Civil Procedure Code, and Criminal Procedure Code—were completed, it was felt that the law of marriage was the next great body of rules which it was urgently necessary to consolidate and put in order, and Mr.

Ritchie, my predecessor in office, was for months before his death engaged in drawing a Marriage Bill, much of which is now embodied in the Acts of 1864 and 1865. Mr Ritchie's papers were left imperfect at his death, and hence I cannot be sure that I have gathered his intention from the indications they furnish, but I am under the impression that he intended to bring all Native Christians under the same law as Europeans, in respect of the formalities of marriage. But when he died, and the papers were transferred to Mr. Harington, he saw the practical impossibility of suiting to the circumstances of Natives any system, however liberal and elastic, which fitted Europeans, and Mr. Harington accordingly added the provisions which now appear as Part IV of the Act in force, under which licenses to solemnize marriages are to be freely issued to respectable persons, whether laymen or clergymen, by the Local Government. The celebrant is to report the marriages he has solemnized, but is not bound to use any special form. He is, however, obliged to see that certain conditions are satisfied by the persons he marries, and here occurs the provision which has rendered this Bill necessary. The person wishing to marry is not to have a wife or husband already alive. Now, as Mr. Harington's opinions are known, I presume he intended a very simple settlement of the question, and meant to prohibit converts from re-marrying pending the life-time of the unconverted wife. But when the measure passed into Mr. Anderson's hands and went to Committee, I need not say that the wisdom and justice of this prohibition were sharply denied; probably the majority of the Committee were adverse to the prohibition. But it was seen that to settle the question at once would be to delay indefinitely an urgent reform. The situation of the Native converts was unsatisfactory, but the general state of the law of marriage was still more unsatisfactory. Accordingly the course followed—not only justifiable, but in my opinion the only one which could have been taken—was to declare in the Bill the general rule, that a Christian should have but one wife; but to leave the special case of a convert repudiated to be dealt with separately. When the Bill came into Council, the Lieutenant-Governor of Bengal was not satisfied with a mere understanding, but tried to introduce words into the Bill intending to pledge the Government to take up the question. I opposed, on the technical ground that it was not constitutional for the Council to force the Executive Government to any particular course, and the Lieutenant-Governor withdrew his motion. But it appeared to me, and I state it now, that every Member of the Government and of the Council engaged by implication that this exceptional case should be fully gone into, though of course no pledge could be given as to the special mode of settlement. No sooner did we get to Simla than the Lieutenant-Governor pressed for the fulfilment of the engagement. An answer

conveying a pledge to legislate was given on August 27th, 1864, and on the very first day of the sittings of 1864-65 I redeemed the pledge by moving for leave to introduce this Bill.

"If I have had the good fortune to make myself intelligible to the Council, it will result from my statement that the discussion on which we are engaged to-day is not merely the supplement to, but actually part of, the discussion which took place when the Marriage Act was under debate. No objector to the Bill is entitled to take advantage of the fact that the re-marriage of converts repudiated by heathen wives has for two years been illegal in India. That is a mere accident arising from the impossibility in India of holding continuous sittings of the Legislature. We must recur to the situation in which we found ourselves in the spring of 1864. We must consider ourselves as having laid down the general rule (to which who will object?) that a Christian can have but one wife, and we must regard ourselves as proceeding to consider the special case of the repudiated convert. This is the true position of the question to-day, and it is important to bear it clearly in mind, for the following reasons. It alters the burden of proof. Many of the excellent persons who have addressed us in petitions are under the impression (perhaps not an unnatural one) that it is for the Government, or for me, to justify the principle of the Bill. But strictly speaking this is an incorrect view. The liberty of re-marriage must be considered as enjoyed by the Native Christians, certainly in practice, and probably under sanction of law, and it is for those who would sweep it away to prove their case, and it is for those who would abridge it to justify by argument the limitations which they would place upon it.

"If I had any reason to think that this measure would be opposed, I might stop there, and leave to opponents what I am sure would be the extraordinarily difficult task of establishing a case against the Bill. But as I do not anticipate any opposition, I will as briefly as I can—and, so to speak, under protest—advert to the objections which might be urged against me, as I collect them from the papers which have been circulated through the Council. The first of these objections, and the most difficult to deal with, is the objection that the divorce and re-marriage of the convert are not permissible under the laws of Christianity. I call it the most difficult to deal with of all, not because it is unanswerable, but because—even if I were competent to answer it—I could not make out a case conclusive to the minds of those who use it, unless I travelled into topics which cannot be handled in a Council composed as this is. Although, however, I cannot hope to convince those who doubt the lawfulness of the measure, I venture to think I can point to

a weight of authority in favour of its principle, which must at all events show them that the question must be considered as settled, so far as any secular Legislature is concerned. The exact point I hope to prove is that, as a matter of fact, and as a matter of history, no Church or religious community in all Christendom has ever given a decision or an opinion on the question involved, which decision or opinion has not been in harmony with the Bill.

"The first religious community which I shall mention as having ruled the point in favour of the view taken by the Bill is the Roman Catholic Church, and I mention it first because its doctrine is based on the Canon Law,—which is all-important in this discussion—and which declares divorce lawful under the circumstances, and even settles a procedure to be followed. And here I must express my surprise at the language held by some of the critics of the Bill about the Canon Law. They seem almost to suppose that its authority being in favour of the Bill ought to militate against it, rather than otherwise, in the eyes of Protestants. Now I always thought it almost a commonplace in ecclesiastical law that, where the Canon Law has not been expressly dissented from by the Protestant Churches, its authority on points of discipline like this is held by them to be not only great, but paramount. At present, however, I will merely cite it as proving that the Roman Catholic Church considers the divorce of a convert repudiated by his heathen wife to be lawful."

Mr Maine then proceeded to quote authorities showing the concurrence of other religious bodies in this view. He said that, although the information which had reached him was imperfect, he had no doubt that the Greek Church held the same doctrine on the point. After observing that the dogmatic statements of Luther and Calvin on points like this were held binding by the Continental Lutheran and Calvinistic Churches, Mr. Maine quoted opinions to the same effect from Luther and Calvin. He also cited Melancthon, as being the draftsman of the Confession of Augsburg. For the opinions of the Scottish Presbyterian Church, the English Presbyterians, and the various dissenting religious bodies descended from them, he appealed to the Westminster Confession, observing that the text on which the controversy turned was quoted in the margin at the passage which bore on the point in the earliest editions. The only religious community which had not pronounced dogmatically on the point was the Anglican Church, but it was one of the characteristics of the Anglican Church only to pronounce on emergent questions. Its doctrine on other points was to be collected from its learned authorities, and which way the weight of learned authority inclined might be seen by the opinions of English divines quoted in the Pastoral of the Bishop of Calcutta, whose own adoption of the view taken by the Bill

might indeed be regarded as establishing what was the voice of learning. The simple fact was, there was no authority whatever the other way, good, bad or indifferent. Mr. Maine did not complain of the opposition to the Bill offered by a few Missionaries and a considerable number of Bengal Chaplains, but it was quite idle to suppose that every man could form a satisfactory opinion of himself and for himself on a point of discipline which for century after century had been of interest to all Christian Churches alike, and upon which it had never occurred to them to differ. At all events, all Christendom being on one side, and these gentlemen on the other, a mere legislator must be guided by the voice of Christendom.

Mr. Maine proceeded—"It is objected to the Bill—and this is the second objection which I will notice—that it is only required by a small number of converts. Here I will say that, if I made any concession to the opponents of the measure, it would be that the general language of some of its friends as to the number of cases in which divorce is actually required has been somewhat too strong. But then the number, though not extraordinarily great, is still very considerable, and it is sure to increase, for both the causes which bring the husband over to Christianity, and the influences which keep back the wife, are steadily growing in strength. And indeed, even were the area of the grievance smaller than it is, it is always most difficult to apply statistics to a grievance which, though felt by a few, is probably felt by those few as quite intolerable. But the truth is, I claim, as cases making in favour of the Bill, all the instances in which, under the present system, the wife comes over of herself—voluntarily, as it is called. It is a very inadequate view of this Bill if it be only regarded as a Bill for dissolving the marriages of Native Christians. It is in its main features a Bill for the restitution of conjugal society, and the great merit I claim for it is, that it substitutes a merciful and regular, for a cruel and irregular, procedure. The argument of the few Missionaries who are opposed to it is that, in the majority of cases, the wife joins her husband voluntarily. The fact appears to be so at present, though singularly enough it appears to be unknown to the Native petitioners against the Bill, who evidently assume that the new law will for the first time give his wife to the Christian husband. But though she comes over, in what sense can she be said to come over voluntarily? The truth is, there is a procedure by which she is brought over, but it is a procedure involving the slight defect of moral torture or worse. It would be moral torture if it were only a conflict between affection for her husband and deference to the persuasions and misrepresentations of her kindred. But it is too often torture in another sense. What brings her over, is the intolerable life of the Hindú widow; what brings her over, is too often a course of life which has unfitted her for the society of her husband, as much

as it has done for the society of her relatives who have at last driven her out. And if the procedure employed is sometimes aided by the expedients resorted to by her husband to communicate with her, I can only say that these expedients, as described to me, seem to me open to to the gravest misconstruction. But for this procedure, cruel, capricious, and even scandalous as it is, the Bill will substitute a procedure, simple, regular and effectual. Twice within two years from the desertion, the wife will be judicially asked whether she will join her husband; twice she will be solicited by her husband to come over, but never *sola cum solo*; that was never intended, and those who have a contrary impression cannot have read the Bill. That is all it comes to; and yet so convinced am I that the cause which keeps back the wife in the majority of cases is, not horror of the husband's person, but misrepresentation by others of his new mode of life, that I am sure this simple procedure, these few opportunities of explanation, will be enough to overcome her reluctance. No doubt there will be a small residuum of cases in which the husband will not succeed, but in these cases the absolute impossibility of restoring conjugal society may be taken for granted, and to these, and to these only, the provisions for divorce will apply.

"I now come to what in the language of this country is called the political objection. Agreeing that it is just and right to give redress, does the situation of the English, of the British Government in India, admit of its being given? Now, there are several gentlemen at this table whose experience of the country enables them to answer that question with far more authority than I can, but there are many things which lead me to think it would be very surprising if the question had to be answered in the negative. In the first place, the Bill has been framed upon, and moulded to, the opinions and suggestions of the Mahárájás of Vizianagram and Burdwan, and it would be strange if the British Government were compelled to greater tenderness for the obligations of rank and caste than our Hon'ble Colleagues. In the next place—and the Council will see that this consideration is likely to have some weight with me—a Native lady exposed to the full brunt of this procedure will undergo no sort of indignity which, if indignity it be, she would not have to suffer ten times over, if she were plaintiff or defendant in a suit for half a bígha of land, or indeed if she happened to know anything about it, and her testimony were required. I hear it said on good authority that the agitation against this Bill—not very fervent or formidable—was commenced by some Native gentlemen attached to the Bar of the Agra Sudder Court. Is it possible they can be unaware that commissions for the private examination of ladies of the highest rank issue every day in Bengal and the North-West, and that the Commissioner is often—is always, if it can be managed—an English

gentleman of my own profession, who is quite as much an outcast as the unfortunate husband. All the epithets which the tolerant habits of this Government permit our petitioners to repeat of the Christians with such complacency, that they are outcast, degraded, and utterly unclean, apply in all their force to the Barrister-Commissioner, and the native lady—though the form of a curtain may be between them—is exposed to the calamity, so much dwelt upon in the petitions, of breathing the same air with him ; indeed, she is exposed to a process much more unpleasant than the solicitations of the unfortunate husband, a severe cross-examination. The Council must really not confound objections to the procedure of the Bill, with objections of another kind—objections to a man's becoming a Christian. One of our petitioners (I do not agree with his opinions, but I will do him the justice of saying that he is a very honest man) has proposed that the offence of conversion to Christianity should be punished by seven years' rigorous imprisonment. I am afraid that this opinion pervades several papers which the Council has before it, and in which it is not avowed.

" But whatever be the weight to be attached to the Native objections to the measure, I must make one observation on them—I entirely deny the right of the same person to make the Christian and the non-Christian objection at the same time. It is not permitted to argue that the Bill is not required because the majority of wives come over, and to argue in the same breath that their coming over is a grievous wrong to the Hindús. And it illustrates the levity with which some of the arguments against the Bill have been taken up, that it has been described as tending to make the heathen suppose that Christians think lightly of the marriage bond. Why, the very objection of the heathen is, that the measure does not treat the marriage bond lightly enough. They have not the smallest reluctance to let the convert marry a new wife, or twenty new wives. What they quarrel with is the careful consideration shown to the first marriage and the first wife. It would be easy to silence, if not to satisfy, all the Native petitioners against the Bill,—those excepted who simply object to Christianity—by a simple excision of the Sections which provide a procedure to be followed before divorce. But I cannot give up that procedure. I cannot give it up, in the first place, in justice to the wife. I do not think the situation of a Hindu widow so happy, or that of a Christian wife so unhappy, that I can consent to leave her to her family unless in deference to her fully ascertained free-will. The Missionaries and the converts are well informed as to the causes which generally keep the wife apart from her husband. It is no fanciful opinion about his outcast condition ; it is misapprehension about his new mode of life—some miserable fable about meat, drink or raiment, by which she has been deluded—which deters her. I cannot agree to leave her to her widowhood until at least an opportunity has been given of explain-

ing these delusions away. Again, I cannot abandon the procedure in justice to the husband, for, if in law she is still his wife (which is the case supposed), I do not choose to assume that his sole object in suing her is to obtain facilities for marrying somebody else. Lastly, I am not ashamed to say that I will not surrender the procedure, because, while it is equitable in itself, it is in harmony with the theory of divorce in which so many Christian Churches have concurred, and by which the Native converts and their advisers are presumably guided. That theory I understand to be, that while divorce on the ground of persistent heathenism is lawful, it is not lawful in cases where the civil law maintains the validity of the marriage, unless some serious attempt is made to recover the wife's society. It is the more reasonable to make some concessions to the doctrines held by the converts, because I am convinced that, in regard to this particular matter, they obtain less than fair treatment simply because they are Christians. It is not only that we forget that they are a Native race, with many of the characteristics of all Native races, but we actually show them less consideration than other Native races. I am completely convinced that if conversions had been going on in some parts of India from Hinduism to Mahomedanism, and if the convert to Mahomedanism had entertained the same feeling as the Christian convert about his first wife (which one knows he would not), and if the disturbances which would be the probable consequence had compelled us to legislate—I feel sure that a Bill applying this carefully guarded procedure would have been praised by all as eminently prudent, moderate and equitable. But because the converts are Christians, every point is taken against them. For this reason I have been compelled to prove, I fear at tedious length, that they are entitled by their own religious laws to demand relief. Contingencies on which not a thought would have been bestowed if another Native race had been in question have to be carefully weighed and taken into account; the very molehills of Hindú prejudice are exaggerated into mountains, and difficulties which in every-day Indian life crumble away at a touch are assumed to be of stupendous importance. I know, of course, that we do this because the converts are of our own faith, and because we are tender of our character for impartiality. But I do not know that we are entitled to be unjust even for the sake of seeming to be impartial. Surely the duty of the British Government to the Christian converts is too plain for mistake. We will not force any man to be a Christian; we will not even tempt any man to be a Christian; but, if he chooses to become a Christian, it would be shameful if we did not protect him and his in those rights of conscience which we have been the first to introduce into the country, and, if we did not apply to him and his those principles of equal dealing between man and man, of which we are in India the sole depositories."

The Hon'ble MR. MUIR said that the luminous and exhaustive, and (he trusted he might be permitted to say) admirable, defence of the Bill, which the Hon'ble the President had just delivered, rendered it superfluous for him to speak at any length in its favour. This was also the less necessary, as on a former occasion he had entered at some length into a statement of his views on the question, especially from the Christian side of the argument. He would therefore make his observations as brief as possible.

He considered the Bill to be necessary because we had made that penal which ought never to have been made penal. We must now retrace our steps and remove the penalty.

At the time Mr. Anderson's Marriage Bill was circulated for suggestions, it was generally held by those who supported the Bill, that a supplementary measure of this kind would be absolutely necessary in justice to the Native converts. He held in his hand the replies on the subject, submitted from all quarters to the Government of the North-Western Provinces, ni the beginning of 1863. It was remarkable with what unanimity this view had been spontaneously expressed by the great majority of persons from every class, official and clerical, that if the Bill became law, a measure of the nature now before the Council would be needed for the relief of converts. Among these he found his own opinion which had been referred to by the President, and from which he would quote one or two sentences as shewing that he had been consistently in favour of the measure before he had the honour of a seat in this Council. He had written thus:—

"We must not admit that the adoption of the Christian religion sweeps away existing obligations, but when these obligations are repudiated by the other party, a limit should be put to the wrong inflicted upon the husband or wife, who would otherwise be deprived of all prospect of matrimony, if held bound, till death, by the previous marriage. Liberty of re-marriage should be given after notice served on the opposite party, and after the convert had endeavoured in vain for a considerable period to abate the desertion and restore the state of cohabitation. If we impose the Christian rule of marriage, its inexorable law of monogamy and penal infliction for bigamy, we ought to see that all reasonable scope is given for marriages in accordance with reason and morality, and not against the law. There is no ground in the existing law for holding a Hindú or Mahomedan convert bound under all possible circumstances except adultery by a non-Christian marriage; and if he can show that for years he has endeavoured without success to get his wife to follow him, there is nothing in the principles of abstract law or ethics to prevent the marriage being pronounced invalid,—much to be said in favour of such a course..... If peculiar opinions, or a higher morality, should lead any school of theologians to inculcate a different course, or impose a different rule, on their communities, they can do so, but this should not avail to involve the great mass, who do not hold themselves so bound, in certain unnecessary social disabilities."

The matter seemed to him (Mr. Muir) to lie in a nutshell. The argument for the Bill, from the Christian point of view, might be comprised in a dozen words;—Spiritual offences are not to be visited by secular pains and disabilities. This was taking the lowest ground, and arguing on the premises of the opponents themselves. For the offence, if one at all, was evidently a spiritual and ecclesiastical offence, and not a secular offence. It could not be called an offence against the civil or municipal law of England, for the case was never contemplated by that law. It could not be held an offence against society, calling for the enactment of new and special sanctions as a safeguard and security to the interests of the social system; else why should we find so large a majority of the community itself, both lay and clerical, in favour of the measure? There was no principle in ethics, in our abstract ideas of right and wrong, opposed to the re-marriage of a convert under the circumstances supposed. He (Mr. Muir) was then entitled to say that the offence was not a secular offence, punishable as such by the pains and disabilities of the secular law.

If it were an offence, it must be a strictly spiritual or ecclesiastical offence. It could be an offence only because supposed to be a transgression of a doctrine,—or rather of an ecclesiastical dogma, held by a section of the Christian Church,—that under whatever dispensation or religion the parties might live, the first contract of marriage could be the only true one; that it was absolutely indissoluble (excepting perhaps for adultery), and that it excluded and nullified every other; so that, during life, under no possible circumstances could another than the first contract of marriage be valid, or another than the first husband and wife be recognized as such; any other husband or wife, under whatever circumstances espoused, would not be a true husband or wife, but something else, it did not clearly appear what.

On these grounds, he (Mr. Muir) could understand a clerical opponent of the Bill, who held such views, visiting an offender with ecclesiastical penalties. He might refuse to celebrate the marriage; he might place the offender on the stool of repentance; he might proceed to excommunication, and debar him from the society of a body whose dogma he had contravened: in short he might inflict any ecclesiastical penalty which the law and the opinions of the day would admit. This he (Mr. Muir) could understand; but he confessed he could not understand the opponents of the Bill when they insisted on their dogma being enforced, as it would be if the present law were maintained, by criminal penalties and secular disabilities. Much less could he understand their refusal to relax its penalties in reference to whole bodies of Christians, who not only reject the dogma, but held that re-marriage was under

the circumstances expressly permitted by the Divine law. It seemed to him incredible that, in the 19th century, persons could be found calling in the criminal law to maintain and enforce a purely religious doctrine, and one held by but a minority in the Church.

If, then, the penalties on re-marriage were to be removed, as he (MR. MUIR) held they must, it followed that the re-marriage of deserted and repudiated converts must be legalized and validated, and the disabilities at present attending it removed: and that was the simple object of the present Bill.

So much for the Christian argument against the Bill, if it was worthy of that name. He now proceeded to consider the arguments against it from the Hindu and Mahomedan point of view. Here the objections were of an entirely opposite character. We Christians attached, they said, too great weight to the previous marriage which had been disannulled by the conversion to Christianity of one of the parties: and we recognized rights in the convert, in respect of the former husband or wife, which no longer existed.

And here, in passing, he would notice that this was a sufficient answer to those who, as the Hon'ble the President had observed, alleged that by this Bill the impression would be created that we held the marriage-bond lightly. He (MR. MUIR) had met good men who stumbled at that idea, and were against the Bill on this ground alone. Why, the truth was that, on the contrary, as he had stated last year, the Bill might be regarded, not so much as a law of divorce, as one enabling and requiring the convert to maintain the previous marriage: it was not until he had taken every means in his power to this end, and had failed, that liberty to remarry was given. And if the Bill had any defect in the eyes of the Native community, it was just this.

The fact was, that each of the parties to the previous marriage must be judged and treated according to their respective laws and religious systems. On the side of the Christian convert, an obligation undoubtedly lay upon him to maintain the existing marriage, if the other party were content. There was the apostolical injunction to the husband, that if his wife be pleased to dwell with him, let him not put her away; and to the wife, that if her husband be pleased to dwell with her, let her not depart from him. It was right and proper therefore to require the convert to do what in him lay to maintain the marriage. In short, the Christian system taught that there was a continuity of the marriage after conversion, that it remained intact,—unless broken and annulled by the repudiation and desertion of the non-Christian party. And on this ground he did not doubt that where (as in the case of Mahomedans) the law might not lay down a course of procedure to

establish the repudiation, even there the ministers of religion would call upon the convert to shew that no means had been left by him unattempted for the maintenance of the previous marriage, and only then, and after the lapse of a sufficient interval, would they proceed to sanction re-marriage.

But the case was entirely different with the non-Christian and dissenting parties. We must look to their rights and legal position under their own system, and we must be careful not to demand or enforce anything inconsistent with those rights. If, according to their law and creed, the marriage had become void by the conversion of one of the parties to it, we must not by any Act of the Legislature interfere with their liberty of action: we must not, because of the different light in which Christianity views the marriage-bond, enforce any procedure justifiable only on the supposition that the bond was still unbroken. And it was on this ground that the Mahomedans had been exempted from the operation of the Bill. The Mahomedan law distinctly and expressly provided for the case, and declared that the marriage was dissolved by the falling away of one of the parties from Islám. As the law now stood, it had been shown that the convert from that religion could re-marry without incurring any penalty or disability, and no farther provision was necessary for his relief.

But it was not so clear that the Hindú law provided for the case. It was not certain that the law pronounced an immediate, complete and irrevocable separation between man and wife if one of them joined another faith. Some vestige of right might therefore still remain in the husband over the wife; and on the side of the wife towards her husband, in respect of property, maintenance, the guardianship of children, etc. It was the jealous care of the Legislature not to imperil any such rights by a hasty and precipitate declaration of annulment. And on this ground it was justified in interposing a sufficient interval of time, and providing for certain appearances and interviews by which the voluntary and deliberate renunciation of the marriage might be clearly evidenced. Here, then, the requirements of both systems met; the procedure fulfilled the Christian requirements of the case, by attesting that the convert did all in his power to maintain the marriage; and the Hindú requirements, by proving that no rights were sacrificed through precipitate dissolution, and that the repudiation was deliberate and voluntary. By the amendments to be moved by the Hon'ble the President, it was provided that any respondent who held that by Hindú law the contract was *ipso facto* cancelled by conversion would be able to plead that defence; and if it were proved, the party pleading it would be at once relieved from all farther proceedings. A body of precedents might be expected on this point; and if the Hindú law were really as had been repre-

sented by some of the objectors to the Bill, the simple presentation of that plea would ever after bar farther proceedings, and suffice for the decree of dissolution.

Thus the measures provided by the Bill were just and equitable, and they met the requirements of the case with every consideration and respect for the position and rights of the parties concerned. If the farther amendments which he (MR. MUIR) would have the honour to submit were carried, the procedure would be still farther ameliorated, and the objects of justice secured with as much tenderness and as little inconvenience and annoyance as were compatible with the ends in view.

On one point he (MR. MUIR) felt it his duty to state that he still differed from the Bill, and that was on the subject of infant marriages or betrothals. He still held the opinion which he advanced last year, that such marriages, unless followed by cohabitation, ought not to be enforced at law by any penal provisions. They should be treated as ordinary contracts, the breach of which might form the ground of civil action, but not of criminal prosecution. He admitted, however, that the procedure in this class of cases had been greatly improved in Committee, since the refusal of the non-Christian party on the first interrogation would form the ground of immediate decree. If the betrothal was to be held binding, the procedure could not be made less objectionable. And as he (MR. MUIR) found that the opinion of the Council was against him on the principle involved, he would not press his opinion farther.

He also wished to repeat what he had said on a former occasion, that there was urgent necessity for a law of divorce on account of adultery. Such a law was indispensable for maintaining the purity of domestic relations among the Native Christians, for at present they had practically no means of redress. He trusted that his Hon'ble friend, the President, would take the earliest possible opportunity for introducing such a law.

He trusted that the Hon'ble the President would permit him, before concluding, to say that he (Mr. Maine) had imposed upon the Native Christian community a debt of gratitude by bringing successfully to its present stage this Bill, which he hoped would in a few minutes become the law of the land. When he (Mr. Maine) retired from this country, and looked back upon the measures of eminent benefit which he had carried through the Council, he would no doubt find many that affected wider interests, and classes more numerous and influential; but he would find none based upon sounder principles of equity and justice than the present, none affecting a class of the community which by their worth and their loyalty had stronger claims upon the Legislature.

The Hon'ble the MAHÁRÁJÁ OF VIZIANAGRAM said that, after giving his attention to the subject of this proposed law, and after going through all that had been said both in favour of and against it, he was still of his original opinion that there was no doubt whatever of the necessity of such a law.

The Bill seemed to have caused much needless apprehension. Taking the common run of the Hindús, they all knew that their marriages were celebrated when the parties were *impuberes;* and in all such cases Section 21 of the Bill determined the question as soon as that simple fact had been proved. It was then to cases in which marriages took place after the parties had attained puberty that the proposed law applied. Even in regard to these, the amendments which the Hon'ble the President intended to introduce into the Bill provided that, if it could be proved that according to Hindú law the first marriage was dissolved on either party having become a convert to Christianity, the question would at once determine. Apart from these considerations, which showed that the proposed law would be unobjectionable in principle and harmless in working, it might be observed that no contract could be dissolved unless all the parties to it did consent to such dissolution, or it was infringed on either side. Marriage was a grave and solemn contract entered into by man and woman in the presence of their Creator. If the rule held good in common contracts, could there be any doubt of its being more binding in such grave and solemn contracts?

He had lately been turning over all the available authorities on the subject of divorce. Every European Jurist that had written upon it without reference to any particular religion, had declared himself in favour of this contract being indissoluble during the life-time of either party. Nor was it otherwise with the Hindús. Then how was a contract of this nature to be dissolved? The ancient Hindú Jurists had no idea of the Christian religion; and it was therefore impossible to suppose that the word *patita*, which occurred in their writings, meant a convert to that religion. Paráçara was the great authority for the present age, and those who were opposed to the Bill seemed to base their arguments chiefly on the *Paráçara Smriti*, in which occurred a couplet—

Nashte mrite pravrajite klîbecha patite patau

Panchasva patsu nârinâm patir anyo vidhiyate;

which translated ran thus:—

A second husband is enjoined to women in any of the five cases of hardship; namely, when the (first) husband is lost, dead, has become a religious mendicant, or impotent, or fallen (from religion and virtue).

The word *patita* here did not seem to mean a convert to a different religion, but merely one who had abandoned the paths of religion and virtue. Every Hindú Jurist seemed to have employed this word or some of its equivalents in a similar sense. What they meant by the word *patita* was entirely in relation to the Hindú religion. *Patita*, then, was not a Hindú who renounced Hindúism, but was one who, being still a Hindú *in name*, did not observe the ordinances of the Hindú religion. Could such a word be applied with any propriety to a Christian convert who believed that he had embraced a better religion and whose conduct was generally virtuous? As the first marriage of a Hindú convert to Christianity was not satisfactorily dissolved, and as neither party could marry a second time before the first marriage had been dissolved, the proposed law was justly a desideratum. Even supposing that *patita* meant a convert to Christianity, and that therefore the first marriage was thereby dissolved, it was still dissolved on the Hindú side only; for the Hindú law did not govern the Christian, and as Christian law did not sanction bigamy, and as bigamy was a crime under the Indian Penal Code, a law was required to absolve the Christian convert from these religious and legal responsibilities.

Then again it would be said, why not simply say that a Native convert's previous marriage was null and void through the fact of conversion. As he had already observed, marriage was the gravest and most solemn contract; and before pronouncing it to be dissolved, it was but right and just that all possible means should be adopted for ascertaining whether it could be really dissolved; for if there were a Hindú husband or a Hindú wife wishing to join the convert, how was this fact to be known? Again, how were we to ascertain whether the Hindú's objections to join the convert consort were spontaneous, or proceeded merely from outside pressure of near relations and others? Such considerations as these strongly induced him to support the amended Bill, and move that it be passed.

His Honour the LIEUTENANT-GOVERNOR said that, after what had fallen from the President and Mr. Muir, he need not take up the time of the Council with any lengthened statement of the grounds on which he supported the Bill. He did support it cordially, and regarded it as in a great measure the fulfilment of the objects proposed in the communication from the Missionary Conference, which he had the honour of submitting to the Government of India the year before last. So far as the theological argument in favour of the Bill was concerned, he was quite content to accept the views of the Lord Bishop as expressed in His Lordship's Pastoral, supported as they were by a weight of authority which, as the President had observed, amply justified a secular Legislature in acting upon them. He did not think that those among

the Clergy who held a different opinion had any reasonable ground for objecting to the Bill, since it was purely permissive in its character, and contained a clause exempting ministers of religion from the obligation of marrying persons whose previous marriage had been dissolved by the operation of the Bill.

No doubt the defect of the Bill, if defect it could be called, consisted in the tenderness it showed towards Hindú marriages, and, considering the circumstances of those who would chiefly be affected by the Bill, he would himself have preferred a simpler course of procedure. He was disposed, therefore, to support the amendments of which Mr. Muir had given notice, for, though he did not concur in the objections urged in the various communications which had been made to the Council,—objections which had been happily refuted by the President—he thought the procedure as contained in the Bill more intricate and cumbersome than was necessary, and hardly applicable to the poorest classes, the classes to which the great majority of converts did and must always belong.

He must express his regret that Mahomedans were excluded from the operation of the Bill. He would not question the correctness of the construction of Mahomedan law by which Mahomedan marriages were declared to be void *ipso facto* on conversion of either party; but this construction left the convert at liberty to contract a fresh marriage immediately after conversion, and though this might be unobjectionable in the case of a convert repudiated by his wife, or by his wives if he had more than one, yet there was another case which had perhaps not been fully considered. A Mahomedan might become a convert with a view to contract a fresh marriage, and might repudiate his former wife or wives though they desired to live with him. He would have nothing to do but to declare himself a convert to Christianity: all his previous marriages would at once be void: he would have no wife living: and no Marriage Registrar could refuse to marry him to another woman. This was a monstrous evil, and one he feared not unlikely to arise. So again, in regard to the Roman Catholics, it might be wise to defer to the wishes of the priesthood, but he could not help thinking that the interests of the converts had been overlooked. It was true that the re-marriage of the convert would be a valid marriage in the eye of the Church, and His Honour was not disposed to think that there would be any want of precaution in ascertaining that the repudiation of the convert by a former husband or wife was sincere. Still it was not clear that the re-marriage was a legal contract, and the status of the convert, of his former wife, of his new wife, and of the issue of the re-marriage would be doubtful and uncertain. He mentioned these circumstances, not with a view of finding fault with the Bill, of which he heartily approved, but

to indicate them as points which must soon demand the attention of the Government and of the Legislature.

There were one or two amendments of no great importance which, with the permission of the Council, he would move at the proper time, though he had omitted to give notice of them: but he regarded the Bill as a most valuable measure, and a just relief both to the converts themselves and to their unconverted partners, as well as to ministers of religion, who would now be at liberty to solemnize the marriage of converts, legally separated from unconverted husbands and wives, without the fear of penal consequences.

The Hon'ble MR. TAYLOR said that there was still less reason than any which could apply to His Honour the Lieutenant-Governor why he (MR. TAYLOR) should occupy the time of the Council by any observations on the subject now under discussion. Lest, however, it should be supposed that there were any differences of opinion on the really important provisions of the Bill, which were not reconciled in Committee, he thought it right to say that he concurred entirely in the sentiments so well expressed by the President on this interesting and important question, and that he also agreed in most that had fallen from his Hon'ble friend, Mr. Muir. He thought his Hon'ble friend had exercised a wise discretion in refraining from pressing his views with respect to infant marriages, but this was a subject which would scarcely bear discussion in this Council, and he had no wish to pursue it.

As regarded Hindú public opinion in respect of the soundness or otherwise of the Bill, though we had received petitions against it from the Hindú inhabitants of a few of the large towns in the North-West Provinces, none had reached us from other parts of India, either from the Presidencies of Madras or Bombay. He had been at some pains to ascertain the real feelings in this matter of the more enlightened Hindús of the Madras Presidency, in some parts of which there existed to this day as bigoted an adherence to the rites and tenets of Hindúism as prevailed anywhere; and he gathered from all the communications he had received, that the general feeling was one of utter indifference as to whether or not the Bill became law. One of these papers he now held in his hand—it was from a Bráhman of high caste, who obtained a thoroughly good English education in a Missionary school. He styled himself an unconverted Native, but he was well known as an able, intelligent and upright public servant of long standing. One passage in his letter, which was too long to quote entire, appeared to him to be so striking a commentary upon the known theological view of this question which had been entertained

and expressed by a section of the Calcutta clergy, that he hoped the Council would pardon him for quoting it. He said—

"It is contrary to the first elements of logic and reason to suppose that because a man chooses to embrace a religion which he finds best adapted for his future salvation, he should also give up, whether he wishes or not, that conjugal engagement ordained and sanctioned by every religion on the surface of the earth. There is no doubt that all obstacles thrown in the way of re-marriage will prove to be so many valuable tests of sincerity and safeguards against false and hypocritical conversions; but the end cannot justify the means. In the early stage of Christianity, persecutions were the causes which contributed to its progress, but persecutions were not, therefore, in themselves justifiable. There can hardly be two opinions on the justice and duty of Government to legalize the re-marriage of Native converts when repudiated by their wives on the ground of the change of religion."

There could scarcely, he thought, be stronger testimony in favour of the soundness of the principle of the Bill. The only really distasteful portion of the Bill was the procedure provided for the institution of the suit for conjugal society, and for bringing the Native wife before the Judge in a Court of law. This was described as being generally repulsive to the feelings of Hindús; but the procedure would be so simplified and so improved by the amendments about to be introduced by the President and by Mr. Muir, that he (MR. TAYLOR) thought every reasonable objection would be removed. The procedure which was now proposed, while in his opinion it would suffice to ascertain the real mind and wishes of the Native wife, was as tender and considerate as it well could be in reference to the social prejudices of Hindú society. He believed, as had been well expressed by Dr. Duff in a printed paper attached to the annexure to the Report, that "all thoughtful, intelligent and liberal minded Hindús" would on reflection "acknowledge the rectitude of a measure which, while relieving by doing justice to one party, does no injustice to the other, whose own law is thereby not only respected, but is really upheld as inviolate."

The Hon'ble RÁJÁ SÁHIB DYÁL said that he could not support this Bill, as its provisions were opposed to the religious belief of the Hindús and would be very distasteful to the people.

The Motion was put and agreed to.

The Hon'ble the LIEUTENANT-GOVERNOR begged to propose an amendment in the first Section. Instead of the Short Title "The Native Converts' Divorce Act, 1866," he would propose, "The Native Converts' Marriage Dissolution Act, 1866." Divorce was a large word which included a great deal which this Bill did not provide for, and it was probable that before very long, some further

measure would have to be introduced in this Council which might more properly be called a Divorce Act. He thought that the word "Divorce" conveyed to all English ears a proceeding caused in consequence of adultery or some moral delinquency on the part of the respondent. It did not appear that there would be any proceedings under this Act, in which the respondent might not be actuated, at all events, by respectable motives. Therefore, perhaps the words "Marriage Dissolution" might be inserted in the Short Title of this Act, more fitly than the word "Divorce."

The Hon'ble the PRESIDENT said that the matter was not of much importance, as the Short Title was merely inserted to facilitate reference in Acts and legal proceedings, and did, he thought, in the present case, describe the Bill with sufficient accuracy. He had, however, no objection to the amendment.

The Motion was put and agreed to.

The Hon'ble the PRESIDENT moved that the words "High Court" shall mean the highest Civil Court of Appeal in any place to which this Act extends," be inserted in Section 2, after the definitions of "month" and "year."

The Motion was put and agreed to.

The Hon'ble the PRESIDENT also moved that the word "shall" be substituted for the word "may" after the word "Judge" in line 2 of Section 23.

The Motion was put and agreed to.

The Hon'ble the PRESIDENT also moved that, in lieu of Section 33 of the Bill as amended by the Select Committee, the following new Sections be substituted :—

"33. No appeal shall lie against any order or decree made or passed by any Court in any suit instituted under this Act; but if at any stage of the suit, the respondent shall allege by way of defence that the marriage between the parties has been dissolved by the conversion of the petitioner, and that consequently the petitioner is not a Native husband or a Native wife (as the case may be) within the meaning of this Act, the Judge, if he shall entertain any doubt as to the validity of such defence, shall, either of his own motion or on the application of the respondent, state the case and submit it with his own opinion thereon for the decision of the High Court.

"33*a*. Every such case shall concisely set forth such facts and documents as may be necessary to enable the High Court to decide the questions raised thereby, and the suit shall be stayed until the judgment of such Court shall have been received as hereinafter provided.

"33*b*. Every such case shall be decided by at least three Judges of the High Court, if such Court be the High Court at any of the Presidency Towns; and the petitioner and respondent may appear and be heard in the High Court in person or by Advocate or Vakeel.

"33*c*. If the High Court shall not be satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the High Court may refer the case back to the Judge by whom it was stated, to make such additions thereto or alterations therein as the High Court may direct in that behalf.

"33*d*. It shall be lawful for the High Court upon the hearing of any such case to decide the questions raised thereby, and to deliver its judgment thereon containing the grounds on which such decision is founded; and it shall send to the Judge by whom the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Judge shall, on receiving the same, dispose of the case conformably to such judgment."

He said that he would state shortly, that these Sections were intended to give a respondent denying the jurisdiction of the Court, on the ground that the petitioner was not a Native husband or a Native wife, some sort of appeal. He could not ask the Council to give an appeal in ordinary form for two reasons. In the first place, the appeal would be certain to be abused, and in the next place, the relation of the parties was not that relation of opposition which admitted of an appeal being granted. A husband and wife, under the procedure contemplated by the Bill, could hardly be said to be opposed as plaintiff and defendant. He thought that the exigencies of the case would be met by the machinery set forth in the amendment, a procedure which he should be glad to see more often resorted to in India. The Judge, if he entertained any doubt as to the validity of the defence, would state the case, and submit it, with his own opinion, to the High Court, and the suit would be stayed, and the judgment passed conformably to the opinion of that Court. At any rate some one Judge of some District in India would state a case, and that would enable the High Court to decide the point once for all. In these days of High Courts, uniformity of decisions would soon be attained, and one case would govern the decisions throughout a whole Presidency.

He would proceed to explain how it was that the Bill hinged on the power of the petitioner to satisfy the definition of "Native Husband," and in giving that explanation, he should probably answer the remarks which had been made by His Honour the Lieutenant-Governor of Bengal on the subject of the

exemption of Mahomedans. The Council would recollect that the whole difficulty was created by the condition which was to be fulfilled by the Native converts before marrying under the Marriage Act, XXV of 1864, or V of 1865. That condition was that neither of the parties intending to be married should have a wife or husband alive. If, then, under the Native law, if under the matrimonial law applicable to the case, it was quite clear the first marriage had been dissolved, that condition was satisfied, and the present Bill was not wanted. Relief was only required when the first marriage still subsisted by the civil law, and then and there only the provisions of the Bill would come into play.

It was intended exactly to meet the difficulty, and not to go beyond it. In carrying out this view of the Bill, the Select Committee, when it was considering the position of the Mahomedans, came to the conclusion that, under the Mahomedan law, the marriage was dissolved by conversion. It did not express any approval of the principle, and he would remind His Honour the Lieutenant-Governor, that the Bill did not enact that in the case of a Mahomedan convert the marriage was dissolved; it only recognized the fact of the dissolution under the Mahomedan law. It was so clear that, under Mahomedan law, marriage was dissolved on conversion, that the Committee did not think it worth while to bring Mahomedans under the procedure. This exemption had, however, entailed some consequences which were not expected. It certainly had the effect of causing a certain number of Hindús to petition against the Bill. The signatures were not very numerous, considering that they were the result of a rather active agitation: there appeared to be certainly less than 2,000 of them. They came from places in the North-West, where Hindús were much mixed up with Mahomedans; and the petitioners seemed to be under the impression that some preference or precedence was given to Mahomedans. Nothing was farther from the mind of the Committee, or his own mind. He quite agreed with the Lieutenant-Governor in disapproving the Mahomedan view, and in believing that abuses might arise from it which might render legislation necessary hereafter. So far indeed from intending any slur on the Hindús, he would say that, from his own point of view, he rather thought that their non-exclusion was a compliment to them, for it showed that the Committee were of opinion that the Hindú conception of marriage resembled that of the Western nations, who held that marriage ought to be a *consortium totius vitæ*, much more than did the Mahomedan theory.

It had been alleged by some of the petitioners that under their law also a marriage was dissolved by the conversion of either partner. That there was much difference of opinion on the subject might be inferred at once from the contradictory observations of Rájá Sáhib Dyál and the Mahárájá of

Vizianagram. He might remind the Council that there was some antecedent presumption that, under Mahomedan law, dissolution of marriage followed conversion; for Mahomedanism was a system founded on conversion. It was therefore perfectly possible that the contingency of a re-conversion had been provided for from the first. But Hindúism was nothing of the kind. Hindúism was a social system sanctioned by supposed Divine ordinances; and the inference was that membership in it was regarded as such a privilege that no one would willingly forego it. Hence all antecedent probabilities were in favour of the conclusion, that under Hindú law conversion would not operate as a dissolution of marriage.

He had gone through the opinions of the Pundits appended to the various petitions that had been received, and had done his best to draw a proper conclusion from them. To an English lawyer, all Hindú law appeared like law in the gaseous, or at most fluid, condition. But he had had the most learned assistance in India in interpreting the citations annexed to these opinions, and the conclusion he had come to was, that in the earliest authorities, there was no reference to conversion at all. They considered that a man might sometimes forego his birthright by stress of passion or necessity. But they did not seem to have contemplated that which we now call conversion, that is, the substitution of one set of alleged spiritual truths for another. It did not appear to have occurred to them that, by mere disbelief, a Hindú could give up the privileges to which he had been born. When you came a little lower, there were no doubt found certain vague references to contemners of the Vedas: these passages were said to be pointed at the Buddhists or the materialistic sects; and certainly there were some of them in which the person guilty of the offence described was said, in a vague sort of way, to become an outcast. It was now alleged that this language applied to the Christians, and in fact every thing depended upon the correctness of this application. But even then the desired end was not reached, and it was only by a very long artificial chain of reasoning that we could arrive at the conclusion that a convert's marriage was dissolved. Dr. Duff, in a paper recently printed, had stated that "the result of our inquiries led us to conclude that, while a change of religion did not absolve any convert, male or female, from a previous lawfully contracted marriage alliance, such change, in the case more especially of conversion from Hindúism, entitled the unconverted party to treat the other (by Hindú law) as *civilly dead*, and consequently, as *ipso facto* repudiated." That might be so. But you could not put civil death above natural death; and yet it was quite notorious that before the Widow Marriage Act, in the opinion of the so-called orthodox Hindús, not even natural death dissolved a marriage. They admitted that there were authorities

in their works which seemed to show that a widow might re-marry when her husband became an outcast, or was dead; they argued that those passages which had once been binding had ceased to confer liberty or create obligation. This was the *Kali yuga*, the Fourth Age, and there were many liberties once enjoyed which had been abrogated. It did seem to him, so long as this theory of a *Kali yuga* was maintained, it was quite impossible to come to a positive conclusion on any point of Hindú law that had not been sanctioned by constant usage or decided expressly by judicial authority. However, he did not put himself forward as an authority on Hindú law, and the practical conclusion he came to was that the decision of the question, whether or not, in the case of a Hindú, conversion operated as a dissolution of marriage, was one which must be left to the Courts, and the Section which he proposed to move would facilitate the attainment of the requisite decisions.

There was another course of reasoning which he had to meet. "You admit," it was said, "that by Hindú law a convert to Christianity becomes an outcast." Now, in fact, this was a proposition which MR. MAINE neither affirmed nor denied; but assuming it to be sound, it was said you ought to carry the doctrine farther, and grant a divorce as a logical consequence of the husband's outcast condition. That brought us to the important question which met us constantly in legislation—the question, what were we to do when we came upon a rule of Native law to which we objected on strong moral grounds? MR. MAINE confessed that on moral grounds he objected to the Mahomedan rule of divorce by conversion, and as regarded persons becoming outcast by conversion from Hindúism to Christianity, many of the Native gentlemen who signed the petitions were sensible men, and must understand that it was absurd to expect the Members of the British Government quite to hug this theory to their hearts. Perhaps ours was the first Government that had ever allowed its subjects such ample freedom of expressing their opinions as to its religious position. What then was to be done? MR. MAINE said that the clear rule was to accept these objectionable positions as we found them, and if they were clearly established, we did not make them, and were not responsible for them. But we should not go a step further. We should not turn the objectionable rule into a basis for further legislation. We should not put a legislative superstructure upon that which we considered morally unsound. If we once began legislating, we could not, he repeated, avoid the necessity of declaring what *ought* to be. The practical result of the amendments which he proposed was to enable a Court of law to declare, with regard to Hindúism as a whole, or any particular Hindú sect, or any of the non-Hindú religions of India, whether a convert's marriage was dissolved by the fact of conversion.

The Motion was put and agreed to.

The Hon'ble the PRESIDENT also moved that the necessary alteration of the numbers of the Sections might be made.

Also that the words "and that there are now living children, and no more, of such marriage, aged respectively and years" be omitted in paragraph 4 of the first Schedule.

The Motions were put and agreed to.

The Hon'ble MR. MUIR moved that the following Sections be substituted for Sections 15, 16, 17, 18 and 19 :—

"15. If the respondent be a female, and in answer to the interrogatories of the Judge or Commissioners, as the case may be, shall refuse to cohabit with the petitioner, the Judge, if upon consideration of the respondent's answers and of the facts which may have been proved by the petitioner he shall be of opinion that the ground for such refusal is the petitioner's change of religion, shall make an order adjourning the case for a year, and directing that in the interim, the parties shall, at such place and time as he shall deem convenient, have an interview of such length as the Judge shall direct, and in the presence of such person or persons (who may be a female or females) as the Judge shall select, with the view of ascertaining whether or not the respondent freely and voluntarily persists in such refusal.

"16. At the expiration of such adjournment the petitioner shall again appear in Court and shall prove that the said desertion or repudiation had continued up to the time last hereinbefore referred to; and if the points mentioned in the twelfth and this Section of this Act shall be proved to the satisfaction of the Judge, and if the respondent on being interrogated by the Judge or Commissioners, as the case may be, again refuse to cohabit with the petitioner, the respondent shall be taken to have finally deserted or repudiated the petitioner, and the Judge shall, by a decree under his hand and sealed with the seal of his Court, declare that the marriage between the parties is dissolved."

He said it had been incidentally noticed in the remarks which fell from the Lieutenant-Governor and Mr. Taylor, that they were in favour of the amendment which he now proposed as an amelioration and simplification of the procedure; and he gathered from what Mr. Maine had said, that the Hon'ble the President himself would not oppose the amendment, however much he might prefer the Bill in its present shape. Under these circumstances, it would not be necessary for him to say much in recommending his present motion to the favour of the Council.

The amendment related to the number of times the female respondent was required to appear in Court, the number of interviews, and the nature of the interview. MR. MUIR assumed that the procedure had the following objects in view; *first*, to interpose a sufficient interval for thought and deliberation on the part of the respondent, so that the decree should not issue precipitately on the first refusal; *second*, to ascertain that the repudiation was voluntary and decided; *third*, to furnish to the husband an opportunity of personal explanation out of Court, and with a certain degree of privacy. Now he (MR. MUIR) held that, if these objects could be sufficiently attained by a smaller number of appearances, then it was right and proper to modify the Bill in that direction. For it must not be forgotten that these might be most harassing; and that, according to the feelings and customs of the country, the obligation of females to appear in Court would be often painful and humiliating, even in those ranks of society which were not by law exempted from personal appearance in our Courts. This was one of the chief grievances alleged by the Native community against the Bill, and he (MR. MUIR) thought it might be materially lessened.

As the Bill now stood, if the respondent were a female, there was a first appearance in Court by the petitioner, and an interrogation of the respondent by the Judge or by a Commission, then an order adjourning the case for a month, during which there was to be a private interview between the parties; then a second appearance in Court; then an adjournment for one year; then a farther adjournment and a second interview; and after that a third appearance in Court, before the decree of dissolution could be passed. Thus there must be three appearances in Court, and two interviews. Under the amendment, there would be a first appearance in Court, and an interrogation of the respondent by the Judge or by a Commission; then an adjournment for a year, during which an interview would be arranged; then a final appearance in Court, and another interrogation by the Judge or by a Commission, when, if the respondent persisted in the repudiation, the decree would issue. This seemed to him to provide a quite sufficient test of deliberate and voluntary desertion, and it effected also an important diminution in the number of appearances.

Then as to the nature of the interview, the present Section 15 enacted that it was to be private, but subject to any conditions as to privacy which the Judge should see fit. No doubt the Judge under this discretion would ordinarily provide for some third party being present at the interview, but the terms of the law did not require it; the interview might be wholly private; there was nothing in the law to prevent the respondent being left entirely alone with the petitioner; and objection had been naturally taken to the leaving of discretion on such a point to the Judge. The amendment required that the interview should be in presence of such person or persons, who might be a female or females, as the Judge might select for the purpose of ascertaining the free and voluntary

persistence of the respondent in her refusal. Any possibility of impropriety was thus removed from the provision.

If these amendments were carried, he (MR. MUIR) believed that it would be felt as a sensible concession on the part of the Legislature to the Hindú objections, while the procedure continued to be as efficient in all essential points as before. He believed that the law thus modified would deal as tenderly and gently with the female respondent as consisted with the effective attainment of the object which it had in view.

The Hon'ble the PRESIDENT said that it was not without great doubt and misgiving he had decided not to oppose Mr. Muir's amendment. He did not think his own procedure too stringent; and indeed, if the papers were consulted, the weight of opinion would be found in favour of a still more searching procedure. But MR. MAINE had admitted, in beginning the debate, that there were several gentlemen at the table who knew the people and the country far better than he did, and he was bound to bow to the opinion of the Lieutenant-Governor and Mr. Muir, who thought the procedure, unless reduced to the lowest point in accordance with Mr. Muir's amendments, was not to be reconciled with Native usage and sentiment. MR. MAINE gave way with the more satisfaction to himself, because his Hon'ble friends were not of that class who exaggerated the difficulties from the Native side, on account of theological objections to the rare divorces which the Bill would permit. Both had been warm supporters of the measure from the first. Had Mr. Muir proposed and persuaded the Council altogether to suppress the interviews, nothing should have induced him (MR. MAINE) to go further with the measure, and he must have left to others the thankless task of endeavouring to settle this perplexing difficulty. The value of the interviews, he repeated, consisted in the opportunities they gave, not so much for solicitation as for explanation, and judicial interrogatories were no substitute for them. As Mr. Muir's amendment still left some procedure, and provided some security for the ascertainment of intention, MR. MAINE would give way; but he wished it to be understood that he did so, not in conformity with his own ideas of right, but in deference to the representations of others, and in deference to Native usage and Native feeling.

The Motion was put and agreed to.

The Hon'ble the PRESIDENT then said that the adoption of Mr. Muir's amendment necessitated some alteration in the wording of Section 20. He accordingly moved that, instead of the words "and allege as the ground for such refusal that the petitioner has changed her religion, the Judge," in lines 6, 7 and 8, the words "the Judge, if upon consideration of the respondent's answers and of the facts which may have been proved by the petitioner he shall

be of opinion that the ground for such refusal is the petitioner's change of religion," be substituted.

The Motion was put and agreed to.

The Hon'ble MR. MUIR also moved that, in Section 28, lines 14 and 15, for the words "interviews and adjournments," the words "interview and adjournment" be substituted.

Also that Section 26 be omitted, and the necessary alteration of the Section numbers be made.

The Motions were put and agreed to.

His Honour the LIEUTENANT-GOVERNOR said that, with the President's permission, he would move an amendment in Section 28. That Section provided for revival of a suit dismissed on certain grounds. The three grounds on which a suit might be dismissed, as mentioned in Section 27, were, (1) "that the male party to the suit is or was at the institution thereof under the age of 16 years," or, (2) "that the female party to the suit is or was at the same time under the age of 13 years," or (3) "that the petitioner and the respondent are cohabiting as man and wife, or if the Court is satisfied by the evidence adduced that the respondent is ready and willing so to cohabit with the petitioner."

It appeared to him that, although the suit might be revived in the first two cases, it was extremely doubtful whether the suit should be revived when the petitioner and respondent were cohabiting as man and wife. It seemed to him that, when this Act had once served its purpose of bringing the parties together, it should not revive the machinery for bringing the parties together all their life-time, for as long as it might suit their purpose. He would therefore suggest that the decree should be revived only in the case of the first two grounds mentioned in Section 27, but that, as to the third, the time be limited to one year. It was extremely unlikely, after a suit was brought and dismissed on the ground that either of the parties to the suit was under age, that either of the parties should be under age within one year after the suit was brought. He would therefore move the insertion of the words "within twelve months" after the word "time" in line 1 of Section 28.

The Hon'ble the PRESIDENT said he had no objection to the limitation proposed by His Honour the Lieutenant-Governor.

The Motion was put and agreed to.

The Hon'ble the PRESIDENT then moved that the Bill as amended be passed.

The Motion was put and agreed to.

INDIAN MARRIAGE ACT EXTENSION (HYDERABAD) BILL.

The Hon'ble the PRESIDENT presented the Report of the Select Committee on the Bill to extend the Indian Marriage Act, 1865, to the Hyderabad Assigned Districts.

The Hon'ble the PRESIDENT having suspended the Rules for the Conduct of Business, moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble the PRESIDENT said that the Council would no doubt remember that this was merely a Bill to extend, under the powers conferred on this Council by the Statute 28 Vic., cap. 17, the Indian Marriage Act of 1865 to the Hyderabad Assigned Districts. He had now an amendment to propose in the Bill, which had been suggested by Mr. Yule, who was now the Resident at Hyderabad. Mr. Yule proposed that the Bill should not only apply to the Hyderabad Districts, but also to the Cantonment of Secunderabad. It was thought desirable to add the Cantonments of Trimungerry, and Aurungabad. The amendment was accordingly that the words "and the Cantonments of Secunderabad, Trimungerry, and Aurungabad" be added at the end of the Title, Preamble, and first Section of the Bill.

The Motion was put and agreed to.

The Hon'ble the PRESIDENT then moved that the Bill be passed.

The Motion was put and agreed to.

The Council adjourned *sine die*.

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

CALCUTTA,
The 31*st March* 1866.

G. I. C. P. O.—No. 31 L. D.—13-8-96.—100.—W. B. C.