ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

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ABSTRACT OF THE PROCEEDINGS

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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 Tuesday, the 5th May 1874.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*
The Hon'ble B. H. Ellis.
Major-General the Hon'ble Sir H. W. Norman, K.C.B.
The Hon'ble A. Hobhouse, Q. C.
The Hon'ble E. C. Bayley, C. S. I.
The Hon'ble J. F. D. Inglis, C. S. I.
His Highness the Mahárájá of Vizianagram, K. C. S. I.
The Hon'ble Rájá Ramánáth Tagore.
The Hon'ble B. D. Colvin.

CRIMINAL PROCEDURE CODE AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE moved that the Report of the Select Committee on the Bill to amend the Code of Criminal Procedure be taken into consideration. He said that he should not have thought it necessary to address the Council any farther in explanation of this Bill, had it not been that the Secretary had placed in his hands a memorial of the British Indian Association desiring that some amendments should be made in the Bill. The greater part of this memorial related to matters which were either in the Bill as introduced, or were in the Code of Criminal Procedure as it now stood, and as to which the Bill made only some very small alterations. As to all such matters, he thought it was incumbent upon those who contended for any material alteration to have addressed themselves to the Select Committee, and not to address the Council at the very latest moment. But, considering the most respectable quarter from which this petition emanated, he thought it proper to acquaint the Council with what it contained; and if, after hearing its contents, any hon'ble member desired to move an amendment to the Bill as it stood, or to postpone the consideration of the Report, he should be prepared to ask His Excellency the President's permission to adjourn the matter. But if there was no such desire on the part of any member of the Council, he would be prepared to proceed with the motion that the Bill be passed.

The Memorial commenced as follows:—

"Your Memorialists have perused the Bill to amend the Code of Criminal Procedure as amended by the Select Committee, and feel grateful for several improvements introduced in it by that Committee.

"Your Memorialists, however, notice certain new provisions in the amended Bill, which, as they humbly conceive, are based on questionable principles, and are calculated to work injuriously in practice. They crave leave to submit the following remarks in respect of some of those provisions for the consideration of your Excellency in Council.

"Firstly, it is provided that 'whenever it appears to the Governor General in Council that it will promote the ends of justice or tend to the general convenience of parties or witnesses, he may, by notification in the *Gazette of India*, direct the transfer of any particular criminal case or appeal from one High Court to another High Court, or from any Criminal Court subordinate to one High Court to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court, and the Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in or presented to such Court.'

"Your Memorialists feel persuaded that this power will be but rarely exercised by His Excellency the Governor General in Council, and that always with great caution. But they take leave to doubt whether the vesting of such power in the Executive Government is consistent with the general principles of administration of justice in this country. It is a recognized principle of English law that the action of courts of justice should be perfectly unfettered, and the British Government in India is justly jealous of the freedom of those Courts. Indeed, of the many excellent features of British rule in India none makes a greater impression upon the people of this country than the fact that the courts of justice enjoy perfect freedom; that not only do they try issues between subject and subject, but between subject and Government, and *vice versa*, and that the Judges are thoroughly independent in deciding upon those issues, though their decisions may be adverse to the Government to which they are indebted for their existence. But this freedom, your Memorialists are constrained to think, will be jeopardized if power be given to the Executive Government to transfer a criminal case from one High Court to another at pleasure. It is impossible to divine the sort of cases in which this power may be exercised; but supposing that the Government gives effect to the provision in cases in which it may be interested one way or another, it will be as an interested party selecting its own Court, and the effect of such a proceeding upon the popular mind cannot but be prejudicial. Should this power be exercised at a time of political excitement, that effect would be still more aggravated; while the slur which would necessarily be cast upon the High Court from which the case is transferred in the estimation of the people would be very grave. Your Memorialists are fully sensible of the exceptional position of the British Government in this country, but they humbly think that the existing law is strong and wide enough to meet exigencies of a political character. It may be urged that the proceeding contemplated may be needed for the furtherance of the 'ends of justice,' but your Memorialists fear that although the Government may be acting from the best of motives, it may however be misunderstood and misinterpreted. It is well known that the several High Courts command the highest confidence of the people, but the very action of Government implied in this course may induce doubt and distrust in their minds where there was none. Your Memorialists venture to remark that they cannot conceive

how the 'ends of justice' can be better promoted by transferring a criminal case from one High Court to another; for if the Court thus superseded is competent to do justice in other cases, it ought to be equally competent to do justice in that particular case. On the other hand, if it be deemed necessary to transfer a case with a view to promote the general convenience of parties or witnesses, that object may be attained by giving the necessary power of transfer to the several High Courts. The High Court will have a better opportunity of judging the matter than the Executive Government, which cannot have the means of examining both parties like a constituted tribunal of justice."

That was a matter which was in the Bill when introduced, and the object was fully explained at the time. He thought the gentlemen who submitted this memorial had totally mistaken the object of the provision. The object was not to take away a case from one Court which was expected to decide it in one way, and to transfer it to another Court which was expected to decide it in another way. The object was to meet cases in which either from local political excitement, or from the abode of the witnesses it was convenient to try a case in one province rather than another. Now it was common enough to transfer cases from one District Judge to another District Judge. But it was not left in the hands of the District Judge to transfer the case from his own Court. The application was made to the common superior of all the District Judges, the High Court; and the High Court decided as to the necessity for the transfer. He never yet heard that it was considered a slur on any District Judge when, for the convenience of witnesses or anything of that kind, a case was transferred from one District Judge to another. But the High Courts had no common superior, and it was impossible to remove a case, or, as lawyers called it, "change the venue," from one High Court to another High Court. For this purpose then the Bill created a common superior where at present no common superior could be found.

The memorial referred next to section 16 of the amended Bill, and quoted the Explanation which the Bill added to that section. It continued thus:—

"This Explanation, your memorialists fear, will have an injurious tendency. It will encourage laxity of procedure. A complete idea of a charge can be best formed when the evidence of the prosecution is completed. Your memorialists submit that the necessity of giving the Magistrate the latitude which this Explanation covers is not clear, not to say that a charge framed upon incomplete evidence may be found to be defective or insufficient."

It was a small point and a matter solely of general convenience. The amendment was made by the Select Committee. As the Code at present stood, the charge could not be drawn up until after all the witnesses for the prosecution had been heard. Magistrates found that inconvenient; they found themselves obliged to take a quantity of unnecessary evidence. The change would not

prejudice the prisoner, but if occasionally a charge missed its aim from being prematurely framed, it would rather favour the prisoner. But the generally convenient course was to give discretion to Magistrates, and leave them to judge for themselves when it was proper to frame the charge.

Then the memorialists quoted section 20 in the amended Bill, and of it they said:—

"There are, your memorialists submit, serious objections to the course sanctioned by this section. It is well known that a defendant labours under great disadvantage in the preliminary trial before the Magistrate, and that he is generally so much overawed by the Police that he not unfrequently considers it safe to reserve his defence for the Sessions. If he is a poor and friendless man he cannot at once engage Counsel to defend himself, though it has often occurred that he has exhausted his last means to employ professional assistance at the Sessions. The evidence before the Magistrate is not therefore subjected to that sifting examination which his professional adviser applies at the Sessions. On the other hand, it is essential to the ends of justice that the Judge and jury should examine the witnesses personally, and watch their demeanour. It is also observable that the power given by this section will be liable to abuse, if the Judge happens to be fond of case. It needs be furthermore borne in mind that the old method of recording evidence in the form of question and answer has been done away with, and that the notes of the Magistrate are necessarily incomplete, and apt to mislead. All these considerations, your memorialists respectfully submit, suggest that the change proposed in this section is likely to do more harm than good."

The only alteration made by the amended Bill was this. The section was framed to enable the higher Courts to look at the depositions taken by the committing Magistrates. A more reasonable provision could not be conceived. It was already in the Criminal Procedure Code. There was, however, a doubt in respect to the existing section whether it applied to the High Court both in its original and in its appellate jurisdiction. That it applied to one of them was certain: the doubt was as to whether it applied to both. The Bill said it should apply to both. The argument in the memorial went, not against the thing effected by the Bill, but against the section already in the Code. The memorialists were against the Code as it stood quite as strongly as against the amendment made by this Bill. Therefore, he thought, their views ought to have been addressed to the Select Committee. The provision, however, was a most defensible one. Its effect was to check a witness giving evidence before a higher Court by what he had said before the committing Magistrate. There was not the least reason to suppose that it would tell more against a prisoner than for him. It would tell sometimes one way and sometimes another. A witness might be tampered with on the part of the accused or on the part of the prosecution, and either way he would be checked by a comparison of his first story with his second. What the provision really did

tell in favour of was the truth, and to get at that should be the object of all our criminal procedure.

Fourthly the memorial said :—

"Section 22 provides that, in case of an appeal, reference, or revision, where the Judges of the High Court composing the Court of Appeal are equally divided, 'the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such examination and hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.'

"This provision, your memorialists submit with due deference, introduces an anomaly, which becomes apparent when its effect is contemplated in such a case as this. Suppose a Divisional Court is divided in opinion; one Judge convicts the prisoner on three out of five counts, and the other Judge acquits him on all counts, and the matter is referred to a third Judge, who again convicts him on a minor count, which has been rejected by the other Judges. All the three are Judges of the High Court, and presumably equally qualified, but the opinion of the third Judge will prevail out of a mere chronological accident. Your memorialists are humbly of opinion that it would be reasonable if the case were referred to a full bench in the event of such difference of opinion."

The effect of that would be that a number of trumpery points might be referred to a full bench and business would be seriously impeded. The sole object of the provision was that in such cases, the two dissenting Judges should be bound by opinion of a third Judge. That seemed to be a very reasonable and convenient way of disposing of small matters of business. If it was a large matter of business, it was competent to the High Court to decide with an adequate strength of Bench.

The memorialists concluded by saying :—

"The several provisions on which your memorialists have taken the liberty to comment are in their nature material alterations in the Bill, which they submit ought to be published for general information before their enactment into law. Should Your Excellency in Council, however, decide otherwise, your memorialists would then pray that Your Excellency in Council may be pleased to take the above remarks and suggestions into consideration, and to make such modification in the Bill as may to Your Excellency in Council seem fit."

That was the whole of the memorial. MR. HOBHOUSE had made such remarks as occurred to him. It did not seem to him that there ought to be any amendment made in the Bill in consequence of the receipt of this memorial. But if it struck any other hon'ble member differently, he was ready to postpone his notion.

No remark was made, and the motion was put and agreed to.

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

The Motion was put and agreed to.

MAJORITY BILL.

His Highness the MAHÁRÁJÁ OF VIZIANAGRAM introduced the Bill to establish a uniform age of majority for persons domiciled in British India, and moved that it be referred to a Select Committee with instructions to report in six months, and said—"My Lord, the object of this Bill has been shortly set out in the Statement of Objects and Reasons, and at more detail when I had the honour to ask your Lordship's permission to introduce the Bill. I shall accordingly not occupy the time of the Council by again going over that matter. Since the draft Bill was last before the Honourable Members of this Council a section has been added to it, for which I am indebted to my friend the Hon'ble Mr. Hobhouse, who has so kindly rendered me his invaluable assistance, without which I could not hope to carry the Bill though its remaining stages. That section has been inserted to meet the objections which were raised in several quarters against the Bill as it originally stood, and as it was circulated for the opinions of the Local Governments and other authorities throughout the country. By the Muhammadan law, any person who has arrived at the age of puberty can make a binding contract of marriage, make himself responsible for the payment of wife's dower and divorce her at will. It was stated in some of the opinions which have been received by the Government on the original draft Bill, that it might have the effect of depriving a Muhammadan, under the age of majority proposed by the Bill, of the rights and powers in matters of marriage, dower and divorce which by his own law he possesses at puberty. It was never intended by the Bill to interfere with the privileges of Muhammadans in these matters; but in order to avoid any possibility of mistake, it is, in the section now added to the Bill, expressly provided that it shall not affect the capacity of any person to act in matters of marriage, dower and divorce. The same provision has been made with regard to adoption, inasmuch as, by the Hindú law, a minor has power to give authority to another to adopt a son to him, and the power of adoption is so intimately connected, in his creed, with the spiritual welfare of a Hindú, that it is most important to guard against the chance of it being supposed that this Bill will in any way curtail the power of Hindús in this respect. The new section goes on expressly to except from the operation of the Act all religious rites and usages of any class of Her Majesty's subjects in India, and with the view of preventing any possible injustice from retrospective action, a clause has been introduced expressly providing that the proposed Act shall not affect the capacity of any person who, before it comes into force, shall have attained majority under the personal law applicable to him.

"The only other point to which I shall now draw the attention of the Council is that of the age of majority proposed by this Bill. The age now

inserted in the Bill was selected in accordance with that named in a series of legislative measures in this country, such as the Regulations and Acts mentioned in the Statement of Objects and Reasons, and the Succession Act, the Divorce Act, the Limitation Act, and Act III of 1872. But it has been urged in some of the most influential opinions received on this Bill by the Government that the age of majority should be placed at the end the twentieth, or the commencement of the twenty-first, year, instead of at the completion of the eighteenth year. His Honour the late Lieutenant-Governor of Bengal, the Hon'ble Mr. Beaufort, the Commissioners of the Rajsháhai and Patna Divisions, and the Hindú and Muhammadan gentlemen whom they consulted, were all of this opinion. The late Mr. Justice Dwárkanáth Mitra writes on this matter as follows :—

"'I entirely approve of the general policy of the measure referred to therein. That the law of minority, as at present administered in this country, is in a state of great confusion and uncertainty, has, I think, been fully shown in the Statement of Objects and Reasons annexed to the Bill under consideration, and I entirely concur with its hon'ble mover in thinking that legislative interference is absolutely necessary to remedy the evil. The advantages derivable from a uniform law of minority applicable to all classes of Her Majesty's subjects in India, appear to me to be too obvious to require much comment. Such a law, while serving as a short, simple and safe guide to the public, would at the same time save our Courts of Justice from the necessity of trying those complicated and obscure questions, both of fact and law, which they are often called upon to determine in dealing with questions of minority.

* * * * * *

With reference to the detailed provisions of the Bill, however, I beg to state that the limit of minority proposed therein appears to me to be too low. Under the rules now in force in our Universities no student can possibly finish his academical career before the completion of his twentieth year, and it would in my opinion be extremely undesirable to fix the age of majority at an earlier period. I know of several cases in which the education of minors under the Court of Wards has been seriously interfered with, in consequence of the age of majority being fixed at 18, and I beg to add that, notwithstanding all that has been said about the precocity of Indian youths, I am by no means prepared to concede that the majority of them can be safely left to act for themselves at that early age. Then, again, in the case of European British subjects domiciled in India, the age of majority, as at present recognised by our Courts of Justice, is, I apprehend, 21 years, and I do not think it desirable or prudent to reduce that age at once by a period of three years. For the above reasons I would recommend that the limit of minority proposed in the third section of the Bill be raised to the completion of the twentieth year.'

"I am inclined to think that this most able Judge must have overlooked the effect of the definition of 'minor' in the Indian Succession Act; but I feel that this matter, as well as the particular year to be fixed as the date of majority, I ought to leave entirely to the judgment and experience of the Council; and

I now mention the point merely to obtain the views upon it of any of the hon'ble members who may be pleased to express them. I now have the honour, my Lord, to move that this Bill be referred to a Select Committee with instructions to report in six months."

The Hon'ble RÁJÁ RAMÁNÁTH TAGORE had nothing to say against the principle of the Bill. It had his entire support. The law which regulated majority in this country was in a very confused state, and therefore he thought that some such measure as that which had been introduced by His Highness the Mahárájá of Vizianagram would no doubt produce a salutary effect. As to the details, he observed that in section 3 it was declared that, subject as aforesaid, every person domiciled in British India should be deemed to have attained his age of majority when he had completed the age of eighteen, and not before. To that he objected. Eighteen years in this country was not a sufficient age for a young man to take possession of his estate, and administer it successfully against the machinations and wickedness of the ámla who surrounded him. The age of eighteen was more suited to a schoolboy than to a young man taking possession of his father's estate. Under these circumstances, he would suggest that when the Bill was referred to a Select Committee they should consider whether the age of majority should be declared to be the age which was stated in this Bill. All limitation of age was arbitrary, that ought to be fixed as the age of majority, which would serve the best interests of society. In his opinion 21 years was that age. He had conversed with many educated Natives, and they were all in favour of the age of majority being fixed at twenty-one instead of eighteen. It was true that the Government, in 1793, in order to mitigate the evils of a too early age of majority, had fixed it at eighteen. But his experience of more than fifty years enabled him to say that that attempt had not remedied those evils. He had also conversed with many zamíndárs and men who were connected with the management of landed property, and they all seemed to be in favour of limiting the age to twenty-one. The late Hon'ble Prasanna Kumára Tagore by his will provided that his executors should not pay the legacies left by him to his grandsons until they had attained the age of twenty-one. So did the late Bábu Ramáparsád Rai. He (the speaker) had been told that he had made a provision in his will that his sons should not inherit until the youngest of them attained that age; so that the eldest of them must at that time have been of a greater age. This was the feeling of the educated and thinking portion of the Native community, and as for the Hindú law he did not see, as far as his knowledge went, that there was any thing in the Hindú çástras which would militate against the age of twenty-one, should the Committee

think proper to adopt it. Manu, no doubt, in his fourth chapter, first verse said that, in the first period of his age, a man should read and acquire knowledge; afterwards he should marry and enter into domestic arrangements. That showed that Manu was more in favour of a higher age than what was prescribed by this Bill. Twenty-five years of age was his limit of minority. People then and even now in some cases lived a hundred years. Taking all these circumstances into consideration, he hoped that when this Bill was referred to a Select Committee, they would do ample justice to the Hindús, who were so anxious to have this anomaly removed from the Statute-book.

The Hon'ble MR. HOBHOUSE said—"As this is the proper occasion for discussing the principle of a measure before this Council, I wish to state my reasons for supporting the Maháráját's motion to send his Bill into Committee. Indeed, on a measure of this kind, affecting as it does the social status of the whole youth of India, it would under any circumstances be desirable to have a close examination of the principles on which it rests before going into Committee. It is especially desirable in this instance, because in some very influential quarters objections—I will not say to this measure, but to a measure on this subject—have been expressed. The first proposal of my hon'ble friend the Maháráját was at his desire sent round to Local Governments and authorities for an expression of opinion, and that course has occasioned an unusual amount of discussion before the introduction of the Bill. I must say that since I have been in this country I have not witnessed so general a consent on any topic resembling this—a topic which concerns everybody, with which everybody is familiar, the practical bearings of which are before everybody's eyes, on which everybody has or can easily form an opinion. There is at present expressed a great preponderance of opinion in favour of making the age of majority higher than it now is. There is not however unanimity. And these things are not to be decided by numbering opinions, but by the reasons alleged for or against the measure.

"One very important authority objecting to the proposal sent to them is, or was, the Government of the North-Western Provinces, to whose objection indeed the Maháráját referred in his opening speech on moving for leave to introduce the Bill. Sir William Muir's language is as follows:—

"'The Board have grave doubts of the policy of the measure, because the present age of minority among both Hindús and Muhammadans has a quasi religious sanction. They also fear that a great many rulings relating to marriage, divorce, dower, &c., might be disturbed by the introduction of the proposed period. The Lieutenant-Governor is of opinion that there is much weight in the Board's objections, and would support them the more strongly as His

Honour has never heard of any serious practical inconvenience or difficulty from the existing state of the law.'

"Now, if Sir William Muir had had the advantage which I have had of perusing statemnts sent in from a number of different parts of India, he would, I think, be of opinion that there is overwhelming evidence of inconvenience in the law; not only the inconvenience principally dwelt on in the Statement of Objects and Reasons and stated on the last occasion here, namely, a legal inconvenience owing to doubts and anomalies, but inconvenience of a much more important kind—a social and political inconvenience, because lads are left to take care of themselves at too early an age. The Board of Revenue rested their opinion on the inexpediency of interfering with such matters as marriage, divorce, dower and religious customs. Well, in the present Bill my hon'ble friend has taken care to steer clear of all those objections. The second section proposes to except marriage, divorce, dower, adoption and the religion and religious rites and usages of any class of Her Majesty's subjects in India. Those exceptions did not appear in the draft proposal submitted to the Government of the North-Western Provinces. I therefore conclude—of course I do not know—that the high officers who objected to the first and unmodified proposal would not object to the present modified one.

"There is another body who objected to the first proposal on grounds of which some remain unremoved by the subsequent modifications. And I propose to consider what they say in some detail, because, excepting those I have just dealt with, they are the only objections to be found in these papers which rest on detailed grounds.

"The Muhammadan Literary Society have embodied their opinions in the shape of a letter to the Secretary of the Bengal Government signed by my learned friend the Maulaví Abdul Latíf. In that letter they first state what the Muhammadan Law is, that is to say, that majority is attained at the age of fifteen years, or at the age of puberty if that occurs earlier. Then they observe—

"'It will thus be seen that the enactment of the Bill in its present form would, the Committee respectfully submit, amount to a direct interference with the law of Islam which, as far as Muhammadans are concerned, has always been respected by the British Government.'

"Now, that the law of Islam has always been respected by the British Government is true, and true in the highest and broadest sense. If, however, it is meant to infer that the British Government did not think themselves at liberty to pass laws affecting the Muhammadan community, that is not true. It

is not true in regard to this very subject-matter. To show how untrue it is, I will take the liberty of referring at length to a Regulation passed in the year 1793. The preamble of the twenty-sixth Regulation of that year runs as follows:—

"'By the original rules for the decennial settlement of the three provinces, minors were declared disqualified for the management of their estates, and according to the rules for the establishment and guidance of the Court of Wards, passed on the 15th July 1791, and re-enacted with modifications by Regulation X. 1793, the minority of proprietors of land is limited to the expiration of the fifteenth year. In fixing this period, Government were guided solely by legal considerations, the Muhammadan and Hindú laws, although they prescribe no specific age for the termination of minority, indirectly pointing out the fifteenth year as the time when persons are to be considered competent to the management of their affairs. Instances, however, have recently occurred, that evince the inexpediency of vesting proprietors with the charge of their lands at this early period; and general principles, which have their foundation in human nature, justify the conclusion that the same effects would result in similar cases that might hereafter occur, were the cause allowed to exist. At this early age, the proprietors must necessarily be unacquainted with the laws and regulations which they are bound to observe in the management of their estates, and their understanding cannot be sufficiently matured to render them sensible that their welfare depends upon their making the acquirement of this knowledge the chief object of their pursuit. Emancipated from the control of their guardians, and with their property at their disposal, they abandon themselves to those pleasures to which their youth naturally inclines them; the management of their estates consequently devolves to favourites or dependants, who are interested in confirming them in habits of dissipation, until they have lost both the capacity and inclination to assume the direction of their own affairs. But the pernicious consequences resulting from the incapacity of the proprietors are not confined to themselves. The cultivators of the soil, and the various orders of people residing upon their lands, suffer equally by the rapacity and mismanagement of their agents, the payment of the public revenue is withheld, and the improvement of the country retarded. It is therefore incumbent on Government, as well with a view to the future welfare of the proprietors of land in general, as to protect the country from the frequent shocks to which it would necessarily be liable from their want of education and early corruption of morals, to extend the term of their minority to an age by which, with due attention on the part of their guardians, they may be rendered qualified for the management of their estates'

"Then the Regulation rescinds the rule which limited the minority of Hindú and Muhammadan proprietors of estates paying revenue to Government, and declares that the minority of such proprietors shall extend to the end of the eighteenth year.

"Now, I will ask whether there is any trace in that Regulation of the idea that the law of Islam is, in such a matter as this, a sacred thing which the Government is bound to keep its hands off. The law-giver, having deter-

mined that the existing practice is not expedient, proceeds to alter it as he would alter any other practice. He shows that it is not consistent with the public welfare, or with the welfare of the individual owners of property. And he obviously does not feel himself bound to enter upon any other consideration. No doubt the Regulation applies only to those persons who happen to have estates paying revenue to Government. But so far as regards the law of Islam, the principle is precisely the same, whether the Regulation applies to many or to few. It is in principle just as much an encroachment on the Muhammadan law as the encroachment contemplated by this Bill; and each must be defended and may well be defended by the plea that it is for the universal good.

"Well, that law of 1793 was extended to Madras in the year 1804, and such was the law in those two Presidencies down to the present day.

"In the year 1858 the legislature went a great deal farther. They then passed Act XL of 1858 for the Presidency of Bengal. That Act is not prefaced by an account of the motives which actuated the Government, because it was not the fashion of the day; but we may fairly assume that the motives of 1858 were the same as the motives of 1793. The Act applies to everybody who is not either under the Court of Wards or an European British subject. It provides that the care of the persons and property of all minors shall be subject to the jurisdiction of the Civil Courts. It provides a machinery by which that jurisdiction may be put in motion and brought to bear on the person and property of minors. And it declares that, for the purposes of the Act, every person shall be held to be a minor who has not attained the age of eighteen years. Now it is true that, practicably speaking, such enactments as these operate only on those who have some property which may set the machinery in motion. But, legally speaking, and in point of principle, that Act affected every Hindú and Muhammadan in Bengal, except those who are already brought under a similar law by the Regulation of 1793. There is not one who is not either already by law, or who may not become by a simple proceeding in Court, subject to tutelage up to the age of eighteen. And that law of 1858 was extended to Bombay in the year 1864.

"When, therefore, we come to examine the statement of the Literary Society about the law of Islam, we find that though it is quite true in terms, it is either irrelevant or not true when applied to the subject-matter before us.

"The Society proceed thus—

"'In a secular point of view, if the proposed law were made applicable to Muhammadans, then it would happen that an individual of either sect who, by either of the conditions specified

in paragraph 3 of this letter, has reached majority, would be incompetent to exercise the legal functions of proprietorship with respect to his property. He would be precluded from discharging any of those acts of a free agent in which the qualification necessary was that of having attained the age of majority—such as effecting sales, entering into co-partnership and carrying on various sorts of trade—although, according to his own law, he would be of age and fully competent in these matters.'

"Those are exactly the matters with which it is proposed to interfere; they are interfered with by the enactments I have quoted; it is with regard to them that the question arises whether a lad is competent at the very early age at which the Muhummadan law makes him competent. A written law may be contrary to the law of nature; and when that is the question, as it is here, it is no answer to say that the law is as it is. Surely nobody can contend that it is not the function of the legislature to determine what shall be the age of majority for purposes which those gentlemen themselves describe as secular purposes. If it is found that for these purposes the present age is too tender an age, then surely it is both the function and the duty of the legislature to attempt to remedy that state of things.

"The rest of the letter, for the greater part, relates to such matters as Marriage, Divorce, and so forth; and I do not go into that, because, in the main, I agree with the Society on these points, and the Bill as now framed avoids them.

"But there is one passage which strikes at the Bill in its present shape, and indeed at any other conceivable Bill or enactment. The Society say—

"'In a religious aspect, the encroachments of the enactment now before the supreme legislature, upon the established ordinances of Muhammadanism, would be just as radical. A Muhammadan who, by his or her own law, has reached majority, is bound to fulfil certain religious functions, too numerous to detail, all of which require for their fulfilment the payment of money. But the payment of money inplies the possession of property, which is not entrusted to him, and is not controllable by him, so long as he remains a minor under the proposed law.'

"That, indeed, strikes at the root of all minority, and I think my learned friend, the Maulaví, did not do justice to his own good understanding when he put his name to such an argument as that. Must not a minor eat and drink? Must he not have raiment and where to lay his head? Ought he not to be educuted? And how are these things paid for? We all know that, supposing the minor possesses the means, there is not the slightest difficulty in making them available. Well, then, the same machinery which provides other things which are necessary and proper, will also provide for such religious functions

as it is proper for a minor to perform. Now, having, as I conceive, answered the arguments contained in this letter, I proceed to consider how far, as a matter of sentiment and opinion, its writers, represent what their fellow-countrymen are thinking. And judging by the papers sent in to the Government, my opinion is that they do not represent their fellow-countrymen at all closely.

"First I turn to what the British Indian Association have said. They contend for an extension of minority to the age, not of eighteen but of twenty-one years, as my hon'ble friend, the Rájá Ramánáth Tagore, has contended to-day. They place the duties of the legislature in a perfectly correct light. They say,—

"'The limitation of minority is a civil function exercised by the legislature, and the paramount consideration in discharging that function ought to be to see that the person who is declared by law, on the attainment of a certain age, competent to exercise rights of property, acquires at that age sufficient discretion, judgment and self-reliance, in all human probability, to take care of his own interests, and to perform his part as a citizen.'

"Then, after some argument in favour of the Mahárájá's proposal, they make the following important remark:—

"'In not a few instances, the Committee may remark, have the public anticipated the action of the legislature. In Calcutta, where the minority of Hindús is held to terminate with the fifteenth year, Hindú gentlemen of property now-a-days evince a disinclination to leave their heirs absolute masters of it at such an early age, and there are instances of their making wills by which they extend the age to the end of the eighteenth and twenty-first year.'

"That is a practice of which my hon'ble friend Rájá Ramánáth Tagore has given us an instance to-day, and very important it is. I feel strongly that, on a subject of this kind, a law is not likely to be successful unless it accords with public sentiment which it should try rather to follow than to lead. But this practice of the Hindú community—and I shall show presently that it extends to Muhammadans also—proves that the present proposal is not a crotchet born in the brain of the Mahárájá, but is a true expression of the wishes entertained by the most educated and intelligent men; wishes which they are now driven to gratify by using the imperfect machinery afforded by the law, so as to create an artificial minority beyond the legal limit, under the provisions of wills or trust-deeds. Those wishes are legitimate and wise ones, and it will in my judgment be proper to meet them by prolonging minority to a reasonable extent. Again, I find that Mr. Molony, Commissioner of Rájshahái, says that a meeting of Muhammadan gentlemen was held on this

matter at Rangpur, and that the only objection put forward was with regard to marriage. They said it would be very inconvenient if marriage-contracts, dower, divorce, &c., should be invalid when made by parties under the proposed age of eighteen years. That objection has now been done away with, and I presume that these gentlemen of Rangpur will be in favour of the Bill.

"Mr. Bayley, Commissioner of Patna, says that all the European and Native gentlemen whom he consulted thought the age of majority should be twenty-one. One of them, a Muhammadan gentleman, the Maulaví Dalíl ul-dín wrote thus:—

"'In the case of Muhammadans, the proposed limit will not interfere with any religious custom except marriage. A Muhammadan under sixteen years of age can marry only through his lawful (according to the Muhammadan law and not one appointed by the Court) guardian, but above that age he must himself be the contracting party even if he has a guardian. But according to the proposed Bill a marriage contracted by a Muhammadan of sixteen years of age—and such marriages are very frequent—will be illegal. I would therefore propose an exception in the case of Muhammadan marriages, which should be left to be governed by the Muhammadan law.'

"The wished for exception has now been made.

"From Madras we have had more evidence, and I will first read some important statements made by the Hon'ble V. Rámayyangár a member of the Madras Legislative Council. Confining his remarks to Hindús, he said—

"'In my remarks I shall confine myself to the measure as it affects Hindús. The Bill, then, does not, in my opinion, go far enough. We have long outgrown the state of society to which the Hindú law of majority may have been applicable. The framers of the Regulation constituting the Court of Wards evidently felt this, and properly went a step further than the Hindú law and raised the limit of minority, though only for the purposes of that Regulation, from 16 to 18. I think this limit is still low. Admitting all that is said regarding the precociousness of the Hindú, I am convinced from daily observation and experience that a vast injury is inflicted on individual families and on society at large by the present state of the law on the subject of majority. Eighteen, *a fortiori* 16, is not an age at which the character of a young man, however precocious, may be said to be formed; on the contrary, it is the period of life at which it begins to form, when the faculties are hardly matured, and when his education (that is, where he is subjected to the influence of a proper education) is far from complete.

"'I was at one time officially connected with the management of several valuable landed estates in Tanjore which were under the Court of Wards. The young wards used to be sent to the Government school at Combaconum, though much against their own will and that of their guardians and relatives. As is generally the case with this class of people, their education commenced late; they had to unlearn at school much of what they had been taught at

home, and they had to be weaned from evil influences to which they had been subjected from their infancy. At 18, by dint of pushing and hammering, they had commenced to learn something useful; but at the end of that year they had reached their legal majority, and received charge of their estates in the best possible condition, with large accumulated funds invested in Government securities. But they soon went through the latter. Such of them as are now alive are not worth an anna in ready cash, but, on the contrary, are involved in debt, and their estates are neglected and perhaps encumbered. These are only samples of what are daily occuring in every other district of the Presidency.

"'But in the Presidency town, within the High Court limits, the case is much worse. Here, the Court of Wards' Regulation has, of course, no operation, and the Hindú law, under which majority is reached at 16, applies in all cases. Were it necessary, I could mention scores of cases of young lads coming into the possession of property and entering on the responsibilities of life at this extremely early age of 16, dissipating and ruining that property and utterly ignoring those responsibilities, playing into the hands of designing men, leading a life of voluptuousness and vice, and sinking into a premature grave. But it will suffice to refer to one case which at this moment is regarded as a grievance throughout the more intelligent portion of Hindú society in Madras. The property of one of our oldest and wealthiest families is now in the hands of a Receiver appointed by the High Court. The young heir is a boy of, I believe, 15. He is a spoilt child in every way. His education has been, and is being, neglected. His guardian has been good enough to see him married already, and provided with everything except books and a teacher. The boy and his companions are most anxiously looking forward to the completion of his sixteenth year, and next year or so he must, as matters now stand, receive charge of his property, which is worth many lakhs of rupees. The result of this it is not difficult to foresee. It will be what it has been in scores of other cases. I cannot imagine that it can be for the interest of a boy of 16, or his companions, his family or of society at large, that at 16 years of age he should be placed in possession of extensive landed and personal property, of the duties and obligations attaching to which he cannot have the least conception, which he cannot possibly know how to manage, but which he is sure to abuse and dissipate.'

"Next I come to the evidence of a Muhammadan gentleman, the Hon'ble Mír Humáyun Jah Bahádur, who makes an important statement as to the practice of Muhammadans of property. He says—

"'As Muhammadans, with others, have been subjected to the provisions of the Regulations and Acts named in the second paragraph of this memorandum without any inconvenience, hardship, or dissatisfaction, there cannot now be any objection to the proposed measure on their part, more especially when it is calculated to promote the happiness of people in their life by endeavouring to keep them away from all the risks of too early a start in life; in fact, the Muhammadans of Asia, when leaving a minor behind them, have very often exceeded the terms of their own law by declaring in their will that their successor should not take charge of the property left by them from the hands of guardians or protectors until after attaining the age of 18 years, and these testators have not been blamed by any one, neither has any law ever interfered with their arrangements for making such stipulations in their testaments. Such

privileges are maintained in practice, not being prohibited by any especial or general terms of the Muhammadan law. The extent of minority limited to the end of the sixteenth year is held for religious obligations and observance of its rites.'

"I pause a moment for the purpose of calling the attention of the Council again to the evidence here supplied that the Bill is not outrunning but following the sentiments of intelligent Muhammadans, and also that, notwithstanding the fears of the Literary Association, there is no difficulty found in extending the term of minority beyond the age at which it is proper to perform religious duties and rites. The same gentleman continues—

"'The introduction of such a legislative measure as the one I am now called upon to give my opinion upon has become an actual necessity, and in arriving at this conclusion I am strengthened by the reports of several minor cases decided from time to time in our superior Courts, and the remarks expressed by the learned Judges as to the incompetency of the young men taking charge of their estates at an age when they scarcely can exercise their judgment as to the preservation and better management of their estates, and the inevitable consequence of this has been, except in few cases, very disastrous.'

"One of the Madras Police Magistrates, Mr. P. Srínivása Rau, who thinks that the age of majority should be the completion of the eighteenth year, has taken the pains to enquire the age at which candidates come up for the matriculation examination in the Madras Presidency. His account of the years 1871 and 1872 may be roughly epitomized as follows: The number of candidates under fifteen years of age is five per cent. of the whole; between fifteen and sixteen, nine per cent.; between sixteen and eighteen, thirty per cent., and above eighteen, fifty-five per cent. We thus have light thrown upon the question from another side of Native practices. In the important matter of education, those who are in a position to send their sons up for matriculation keep the majority of them in schools, or *in statu pupillari*, till beyond the age of eighteen, and only a small fraction are sent up so early as the age of sixteen.

"I will quote yet one more bit of evidence, because it shows again another practice by which Native, at all events Hindú, families evince themselves that the legal age of majority is too low. Mr. T. Mutusvámi Ayyar, Judge of the Madras Court of Small Causes, says:—

"'In the case of Hindús and Muhammadans the present limit of minority in Southern India, which is the end of the sixteen year, is certainly too low. At this period of life young men are not quite equal to the responsibilities which the management of property entails on them, or to protecting their interests in the contracts they enter into with third parties. Practically, they are under the control of elderly relations in respectable Hindú families, and,

where such is not the case, the property entrusted to them is found more to suffer than to improve by their management during the first few years.'

"The result of my examination of these papers is to convince me that the objections of the Literary Society, so far as they apply to the present measure, are not only weak in argument, but are at variance with the sentiments of Native communities. We are not left only to the opinions and arguments of those who desire a change of the law, though those alone are calculated to carry conviction with them. We have that evidence which in such matters is the most satisfactory of all; evidence that in the conduct of their private and family affairs, a number of persons are already doing their best to make a law for themselves which they deem more beneficial than the law at present laid down for them.

"Now Hon'ble Members will no doubt have observed that most of the gentlemen I have quoted desire to make the age of twenty-one the age of majority, and they may ask me why I support a Bill which fixes it at the age of eighteen. It is true that the point may be called one of detail, as my Hon'ble friend Rájá Ramánáth Tagore has treated it, but it is a detail of such extreme importance as hardly to be separable from the principle of the Bill. The Select Committee may on sufficient evidence alter the Bill on this point. But though the Bill is not my Bill and is not a Government Bill, and I am not responsible for its contents at this stage, I am supporting it, and will therefore assign my reasons for thinking that the age of eighteen is the better one to adopt.

"First, we must remember that the present age is, apart from the operation of statutes, a great deal below eighteen: among one large class it is sixteen; among another large class it is fifteen; among a third large class it is either fifteen, or some earlier age at which puberty may be attained. From any of those ages to eighteen is a considerable jump; and if we jump at once to twenty-one, the reform would assume the character of a violent change. The change seems to me more likely to work well if of a more prudent and gradual character.

"Again, of those who have furnished us with opinions and arguments, no one wishes to put the age below eighteen, but many would not put it so high as twenty-one.

"Moreover, by adhering to the age of eighteen we are proceeding on the lines laid down by our predecessors. In the legislation of 1793, in that of 1804, in that of 1858, and in that of 1864, the age of eighteen was selected as the

best age of majority. We must suppose that the selection was made on the best evidence procurable, and that it represents the deliberate judgment of four different Governments as applied to the circumstances of their time. The same thing was done in the year 1865 for a different class of our fellow-subjects. In that year the Succession Act was passed, and the principal class affected by it is the class of European British subjects. In their case, for all purposes of succession, for all dealings with property taken by way of succession, the age of majority has been fixed at the completion of the eighteenth year.

"On these grounds, therefore; that it is more prudent and less abrupt; that it is supported by the opinions of all those who desire reform at all; that it is in accord with the views of former Governments on the same point; and that it starts from and fits into a large basis of existing facts, I think, as at present advised, that it is wiser to adhere to the age of eighteen instead of taking a new starting point.

"The point on which I do feel doubt is the treatment of European British subjects, whether it is advisable to bring down to eighteen their present age of majority, which, except in matters of succession, now stands at twenty-one.

"There are, however, strong reasons for doing so. The topic of uniformity is one which I by no means wish to ride to death. There are other things better than uniformity. But here there is a very strong case for an uniform law. In the first place there is the law of 1865. As regards a large and important part of their affairs. European British subjects are already *sui juris* at eighteen. Again, the physical line dividing a large number of European British subjects from Native Indians is a very narrow one. The distinction must often be imperceptible till enquiry is made and evidence taken. Many contracts may be made with a young man in the belief that he is a Native Indian subject and of age, and may be invalidated by proof that he is an European British subject and a minor. That must lead to much confusion and disputing. As the law now stands, we cannot possibly assimilate European British Subjects to their neighbours who fall under so many different laws. But if we set up a uniform law for their neighbours, it becomes practicable to do it for European British subjects also. And as we have already, without mischief so far as I know, fixed the age of eighteen for them in one department of their lives, I think we are justified in fixing the same in other departments also.

"I have now assigned my reasons for approving the principle of this Bill. I have hardly touched, except in my observations on the last point, on the purely legal reasons for it. Those have been fully set forth in the Statement of

Objects and Reasons and in my Hon'ble friend the Maháráját's speech on the last occasion, in which I intimated a general concurrence from my professional point of view. Today I have dwelt on the far more important class of considerations which relate to the essence of the question—what on social and political grounds is the better law. I think the Bill may be improved. I think we may improve the preamble by resting the change of law, not only on our desire to attain uniformity, but on our faith that we are substituting a better law for a worse one. I do not see why we should be less bold in this respect than our ancestors were. Perhaps we may improve it with respect to contracts made and to be performed in India. Such matters are not beyond the competence of a Select Committee, and I beg to support the motion of my Hon'ble friend that the Bill be referred to such a Committee."

The Motion was put and agreed to.

His Highness THE MAHÁRÁJÁ OF VIZIANAGRAM moved that the Bill be published in the local Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to establish a uniform age of majority for persons domiciled in British India. The Hon'ble Messrs. Ellis, Hobhouse and Bayley and the Hon'ble Rájá Ramánáth Tagore and the Mover.

The Council then adjourned *sine die*.

CALCUTTA,
The 5th May 1874.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Dept.

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