COUNCIL OF THE GOVERNOR GENERAL OF INDIA

VOL. 4

JAN. - DEC.

1865

P. L.

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

The Council met at Government House on Friday, the 20th January 1865.

PRESENT:

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

INSURANCE COMPANIES' LIMITED LIABILITY BILL.

The Hon'ble Mr. MAINE in moving for leave to introduce a Bill to enable Insurance Companies to be formed on the principle of Limited Liability said:—

"Sir, the immediate occasion of proposing this measure is a representation received from certain Native Gentlemen to the effect that they are prevented by what appears to be an accidental condition of the law, from forming Life Insurance Companies on the principle of limited liability. They represent that the Life Insurance Companies now established in India are branches of English Companies registered in England, and that they rarely or never accept Native lives, probably from want of sufficient information, in the shape of vital statistics, for the calculation of the premiums. This difficulty the applicants think that they can get over; and no doubt they may be able to command sources of information which are not open to an European. But at the same time they urge that not only the persons assured, but the shareholders in such Companies will always be Natives, and they say that no Native will embark in an undertaking of the kind unless it be formed upon that footing of limited liability on which English Insurance Companies may now be constituted. These gentlemen certainly appear to be in the right when they state that there is a

difference between the English and the Indian law on the subject of liability, which cannot be justified. The course of legislation in the two countries has been as follows:—The earliest Limited Liability Act passed in England was the 18th and 19th Vic., cap. 133. Both Banking and Insurance Companies were exempted from the principle of that Act. The Indian enactment, Act XIX of 1857, was almost literally copied from it, and contained similar exceptions. Two years after the first English Act on the subject became law, a second Act passed—the 21st and 22nd Vic., cap. 91,—which repealed the exception as to Banking Companies. The Indian Legislature followed suit with Act VII of 1860, which also permitted Banks to be founded on the principle of limited liability. Lastly, in 1862, the English Parliament passed the 25th and 26th Vic., cap. 87, which permits all Insurance Companies, whether Life, Fire, or Marine, to have the benefit of limited liability; and while repealing this last exception, it consolidates the whole law respecting the registration, incorporation, and winding up of Joint Stock Companies. Sir, the only reason why I have not earlier asked your Excellency's permission to publish a Bill which shall follow English legislation in repealing the exception as to Insurance Companies is, that I have a great dislike of piecemeal legislation, and I was desirous that the new law, like the last English Statute, should be a consolidating Act, comprehending the whole law on the subject of limited liability. But, Sir, the pressure of legislative business has been so great that I have been prevented carrying out this design. The Council knows what the pressure is on its Committees; that we have before us two Codes—the Civil Procedure Code and the Indian Civil Code—which make the heaviest demands on our powers and our time, and that accordingly a comprehensive Bill such as I have described could not with advantage be submitted at present. Hence, as I do not wish to keep the applicants from what seems to me to be their right, I am driven to a mere amending Bill, like the former Indian Acts, simply extending the provisions of the older law to Insurance Companies constituted under limited liability. At the same time it is my opinion that the preparation of a consolidating law on the subject is one of the earliest tasks to which the Legislative Department should address itself, and I now throw out a suggestion for the consideration of the Council, and in particular, of the mercantile members, and indeed, of the Public generally—a suggestion which I do not think can be too much discussed—whether the opportunity should not be seized of such consolidating law to take that step which the English Parliament appears to be on the point of taking, and to legalize the form of limited liability which is known as Commanditarian Partnership. Sir, all the English law on the subject of limited liability has been taken from the French law, and it has always been matter of surprise to the best authorities on the subject that, while the English Legislature

copied in its integrity the legal constitution of one sort of limited partnership—the *société anonyme* or Joint Stock Company Limited, now so familiar to us—it refrained from trying an experiment which at first sight seems less hazardous, by transferring to English law the commanditarian partnership. This can only be accounted for by the fact that Englishmen were already somewhat familiar with limited liability in joint stock associations through the previous application of the principle to Chartered Companies. Sir, I need not do more than explain very briefly that a commanditarian partnership is a mixture of limited and unlimited liability: the ostensible partner—the acting and managing partner—trades under unlimited liability, but other persons are allowed to share in the profits of the Firm, provided that they register the amount of their advances, and carefully abstain from interfering with the conduct of the business. These two last conditions—registration and abstinence from meddling with the management—are rigorously insisted on in order to close the door against obvious frauds. Sir, the English Parliament in its last session all but passed a Bill legalizing commanditarian partnership. But the reason why I suggest the question for special consideration in India is, that I think this form of limited liability particularly suited to the country. In France, it is considered the form of limited partnership peculiarly adapted to the business of retail tradesmen of the higher class. Such businesses mostly depend in an unusual degree on the skill and knowledge of the person who founded the Firm or conducted it to success; and commanditarian partnership has the advantage of giving the limited partners the utmost possible hold on the continued services of the person who created the fortunes of the Firm. When, then, I see, on this side of India, the businesses of the larger retail tradesmen freely converted into limited liability Companies, and investers freely embarking their money in the shares of such Companies, it does strike me as a little singular that the capitalist on this side of India should be tied down to that form of limited partnership which gives the limited partner the smallest and weakest hold on the continued assistance of that partner whose services, by the assumption, are of the greatest value. Of course, Sir, I only suggest the question now for general consideration. Before any Bill on the subject is published, your Excellency will probably see fit to ask the opinion of the Chamber of Commerce and other mercantile associations, and of any individuals whose views may be of authority on such matters."

The Hon'ble Mr. COWIE said that he did not propose to offer any opposition to the introduction of this Bill. It would stand upon its own merits when really introduced. But he wished to mention that, having held the opinion that the British Legislature exercised a wise discretion in excepting Insurance

Societies from the operation of the Limited Liability Act, he was not at once prepared to admit the wisdom of a reversal of that step. He would not object to see Marine and Fire Insurance Companies brought under that Act, but he thought that Life Insurances stood upon a different footing. Most of these were taken out for the benefit of a family, and he considered there was a quasi sacred responsibility thrown upon an Office which undertook the risk, more than there was upon those who granted policies against loss by sea or by fire. He would be sorry to see the liability limited in those cases short of the whole property of the share-holders. He was quite aware that the large Insurance Companies at home enjoyed limited liability under their Acts of incorporation, and if the Hon'ble Member (Mr. Maine) proposed any safe-guards in his Bill, similar to those under which incorporation was obtained—such as the largeness of the paid-up and invested capital—his (Mr. Cowie's) objection to the measure would be greatly removed.

The Hon'ble Mr. MAINE said that he did not quite understand whether his Hon'ble friend was aware that Insurance Companies, whether Life, Fire, or Marine, could now be freely formed in England on the footing of limited liability under the last Act he (Mr. Maine) had before cited. That being so, Mr. Maine must say that, when any commercial principle was sanctioned among the large, wealthy, and active mercantile community of England, there could not often be much ground for hesitating to adopt it in India. Moreover, there was nothing to prevent Life Insurance Companies formed in England under limited liability from establishing branches or agencies in India. Mr. Maine was under the impression that some of the Life Insurance Companies now trading in India were in fact trading under a limited liability derived from registration in England—at all events, there was nothing to prevent their availing themselves of the English law.

The Hon'ble MR. HARINGTON submitted that the discussion, at the present time, of the provisions of the Bill which his Hon'ble Colleague, Mr. Maine, had asked for leave to introduce, was irregular. Hon'ble Members had not yet received copies of the Bill and of the Statement of Objects and Reasons. They did not know the precise form which the Bill would take, or what would be the exact nature of its provisions, and they had not come prepared to discuss on that day the principle of the Bill. Under the rules of the Council the introduction of a Bill, after a copy had been circulated to all the Members of the Council with the Statement of Objects and Reasons, was the proper time for discussing the principle of the Bill and its details.

The Motion was put and agreed to.

ACT XXXI OF 1860 CONTINUANCE BILL.

The Hon'ble Mr. MAINE, in moving for leave to introduce a Bill to continue Act XXXI of 1860 for one year from the expiration thereof, said that the measure which he proposed to continue for a single year, and which was known as the Arms Act, had excited considerable discussion when it was originally introduced by his Hon'ble friend at his side, Mr. Harington. It would not serve any useful purpose if he (Mr. Maine), who only knew that discussion, so to speak, by tradition, were to enter upon an enquiry whether the apprehensions of certain possible results of the measure felt at the time by a part of the community were justifiable or not. He would only say that the Government of India had required from all the local Governments and administrations a report on the working of the measure, and especially as to its incidence on particular classes. Mr. Maine believed that these reports would show that no European in all India had been disarmed under the Act. The answers to these requisitions could not, however, come in very rapidly since the enquiry had to be conducted over a very wide field, and with particular carefulness in the wilder parts of the country, where the law was sometimes reported to have encouraged the multiplication of wild beasts. It was not probable, or even possible, that there would be a sufficient interval, before the expiration of the Act, to consider whether it should be perpetuated or prolonged. Mr. Maine did not suppose that the Council would refuse to continue for a year a law which, apart from questions of detail, had assuredly contributed largely to the extraordinary peace and security which India had been recently enjoying.

The Motion was put and agreed to.

CIVIL COURTS' (CENTRAL PROVINCES) BILL.

The Hon'ble Mr. HARINGTON introduced the Bill to define the jurisdiction of the Courts of Civil Judicature in the Central Provinces, and moved that it be referred to a Select Committee with instructions to report in four weeks. He said that the Bill would apply only to the Central Provinces. It was desirable that the Bill should, if possible, become law during the present sittings of the Council. The Bill involved no question of principle ; and the local authorities would have ample opportunity of submitting any remarks or suggestions which they might wish to make during the four weeks for which he had proposed that the Bill should be published.

The Motion was put and agreed to.

FINANCIAL COMMISSIONER (OUDH) JURISDICTION BILL.

The Hon'ble Mr. CUST, in moving for leave to introduce a Bill to remove doubts with regard to the jurisdiction of the Financial Commissioner of Oudh,

stated that this Bill was a portion of a Bill with a much wider object introduced into this Council on the 12th March 1862 by His Excellency the Governor General, Lord Canning, who remarked as follows :—

"The Bill went farther and dealt with suits of whatever description relating to the title to lands in Oudh. In regard to these, it restored the state of things subsisting in Oudh prior to the introduction of Act VIII of 1859. Before that time, all such suits were adjudicated by the Revenue Authorities, subject to appeal to the Chief Commissioner as Financial Commissioner. Act VIII had been understood to alter the procedure, and to place such questions under the cognizance of the Civil Courts. There had been, however, doubts as to the operation of that Act in this respect, and it was, therefore, desirable that the law should be clearly defined. He deemed it far preferable that, in a country in the condition of Oudh, where our laws and system of legal procedure were not familiar to the people, where the Settlement was still a summary and temporary one, and where the Government had yet to feel its way to a wise, encouraging, and beneficial Settlement, questions relating to land should, as far as possible, continue to be dealt with as revenue questions, and not be brought within the scope of our Courts and law."

No further action was taken: intermediately the Office of Financial Commissioner had been revived.

Apparently something was contemplated in 1862 beyond the scope of this Bill, which only provided for a change of tribunal, but left unchanged the law and procedure of the Province. The Revenue Courts of all grades would be special Courts of law for the trial of particular cases as long as it appeared to the Governor-General in Council expedient that this deviation from the ordinary system should continue.

Opportunity was taken at the same time to enlarge the period of limitation within which suits before these Courts could be heard, for rights in property as distinguished from rights of cultivation.

The Motion was put and agreed to.

PARSEES' MARRIAGE AND DIVORCE BILL.

The Hon'ble Mr. ANDERSON introduced the Bill to define and amend the law relating to Marriage and Divorce among the Parsees, and moved that it be referred to a Select Committee, with instructions to report in six weeks. He said :—

"I have the honour, Sir, to submit the Bill which I recently received permission to introduce, for defining and amending the Laws relating to Marriage and Divorce among the Parsees. I will first explain as briefly as I can the principal provisions of the measure.

In the first place the Bill prescribes the form in which Parsee marriages shall be celebrated, and provides that the parties shall not stand to each other within the prohibited degrees of consanguinity and affinity. In the first draft of the Parsee Code, those degrees were stated, but as there is no doubt and no dispute regarding them, they have now been omitted, and it will be for the tribunal which will hereafter have cognizance of all cases arising out of Parsee marriages to determine what are, according to Parsee usage, the prohibited degrees. The Bill next provides for the due registration of Parsee marriages, and it will be sufficient for me to state upon this point, that the provisions are taken from the English law upon the subject. It then details the grounds on which the dissolution of marriages may be permitted. These may be resolved into six divisions:—

1 Transportation for life.
2 Lunacy at the time of marriage.
3 Desertion for seven years.
4 Impotency.
5 Change of religious belief after marriage.
6 Adultery.

It also provides that cruelty shall be a ground on which a woman may obtain a judicial separation.

The measure proceeds to enact that in certain cases alimony should be granted to the divorced or judicially separated wife, and it also recognises and provides for suits for restitution of conjugal rights.

For the disposal of all cases arising out of this Act, and for the due enforcement of the obligations and duties connected with the marriage union, a special tribunal is provided. For this purpose the ancient institution of the Parsee Panchâyat is revived, and is invested with full powers for the investigation and decision of matrimonial suits among Parsees. Rules are laid down for the examination of present and absent witnesses, and for the preservation of an adequate record of the investigation. Applications for the interference of the Panchâyat are to be made in writing, and any false statement in such application will render the applicant liable to the penalties prescribed for giving or fabricating false evidence. The due performance of its duty by the Panchâyat, is secured by granting an appeal from its decisions to the High Courts of the respective Presidencies, on the ground of such decisions being contrary to law or to usage having the force of law, or on account of substantial error in the investigation of the case.

It is intended that there shall be a Panchâyat, not only in the Island of Bombay, but in any district in which Parsees in any considerable number reside. The Bill provides that this Panchâyat shall be elected according to rules which shall be sanctioned and approved by the Local Governments. I had at one time contemplated that provision should be made in the Act itself for rules as to the qualifications of electors and other similar questions, but I have thought it better to leave the matter, as one of executive administration, to the Local Governments. But this view is, of course, subject to any modification which may be deemed advisable by the Select Committee.

There is one other point to which I should briefly allude. Provision is made that the Presidency of the Panchâyat for the Town and District of Surat shall be hereditary in the family of Khursidji Dodabhai, Dâvar of the Parsees of Surat. This provision is made because the office of Dâvar, which may be translated spiritual Judge, has been held for centuries under adequate "parwânas" by this family. It is doubtful to what territorial extent the authority of the Dâvar was acknowledged, but there can be no doubt that it has always been respected in Surat, and recognised by the Nawâbs of Surat and by the British Government. The claims of the present Dâvar are commensurate rather with the former than the present relative importance of Surat; but the Government of Bombay has considered that it will be a fair solution of the difficulties which the claim presents, if the Presidency of the Surat Panchâyat be hereditarily vested in this family. In this view I entirely concur, and I should mention that the family has another and somewhat curious claim on the consideration of the British Government. The Council is well aware that Surat was the first place in which a British Factory was established. The new Power encountered during the early part of its existence very powerful opposition from the Portuguese and Muhammadans, and a very doubtful support from the Dutch. The supplies of the English were cut off by the intrigues and hostilities of their rivals, and the Factory would have been reduced to the greatest straits, had not the ancestor of the present Dâvar contrived to supply it secretly with provisions and water. The Dâvar then obtained the name of the Modí, or supplier of provisions, a name retained by the family to the present day. I have seen a minute written at the close of the last century by the Hon'ble Jonathan Duncan, Governor of Bombay, in which he alludes to some dissensions and disturbances which occurred at Surat in 1757 and speaks of "the English Modí's nephews having been mortally wounded by the Sídí's people from the Castle." It will thus be seen how entirely, more than a hundred years ago, this family had thrown in its lot with the British Government. I think, then, that a recognition of the position of the Dâvars of

Surat is not only in itself most just and politic, but it is also a becoming tribute by the great British Government to a family whose ancestor rendered an important service to it, when that Government was struggling into existence.

I have now briefly stated the provisions of the Bill which I have the honour to submit, and would now wish to offer a few explanatory remarks upon some of those provisions. I have stated that desertion for seven years constitutes a ground for divorce. This provision I regard as justified by a reference to the English and Scotch law. By the Statute of 1857, desertion for two years is regarded as a ground for judicial separation. By the Scotch law desertion for four years is regarded as a ground for divorce. Bearing these systems in view, the proposed Law may be said to carry out the English law if not to a logical, at least to a legal conclusion, while at the same time it is not so severely stringent as the Scotch law.

Next, as to change of religion after marriage being constituted a ground of divorce. I think this provision, which embodies the view of the Government of Bombay, is a happy compromise between the extreme demand of the Parsees on the one hand, that any marriage contracted by one of their community with one professing another creed shall be *ipso facto* null and void, and the scruples of those on the other hand who regard marriage as a contract which can only be dissolved by death or by the commission of adultery by the woman. The Parsees urge, on behalf of their extreme view, that marriage is not regarded by Zoroastrians as a civil contract simply, but as being of the nature of a religious rite, and that a marriage of a Parsee with one of another faith cannot be celebrated. If a Parsee Priest were to solemnize such a marriage, his act would be irregular and invalid. But the answer to this is obvious. No one would wish to compel a Parsee Priest to solemnize such a marriage. No one would insist that a Parsee who had contracted such a marriage should still be regarded by his countrymen as a Zoroastrian. But the Legislature can only see in the union a civil contract, and it cannot consent to bastardize and to deprive of their legal rights the issue of such a marriage, entered into with full knowledge by both parties, according to the forms prescribed by the religion of the man or of the woman. On the other hand, with respect to a change of religious faith after marriage, there is, I think, great weight in the argument of the Parsees that marriages are only solemnized amongst members of their community, on the full understanding that both the parties profess, and always will profess, the religion of Zoroaster. A violation of this condition should, they urge, render the marriage voidable at the instance of either party. They state that, in any case of a change of religion, the parties would immediately separate, and they consider that if such separation occurs, it is better

that there should be a dissolution of the union, rather than that the parties should be tempted to immorality by the enforcement of a practical widowhood or widowerhood.

Next, as to adultery. The proposed law goes a step further than the English law on this point. The Council is aware that it is one of the points of difference between the Jewish and the Muhammadan law, that by the former divorce was never granted at the instance of the woman. The Muhammadan law, on the other hand, grants divorce to the woman on the ground of cruelty, and for other causes. The law of England, in its most recent enactment on the subject, following the Mosaic precedent, only gives a divorce for adultery under certain aggravating circumstances. The usage of the Parsees assimilates rather with the Muhammadan practices, and it is accordingly provided that a divorce shall be granted to the woman on the ground of adultery by her husband. But there are two provisions to which allusion should here for a moment be made. First, that the adultery which gives the wife a right to a divorce is not adultery with a courtezan; second, the rule just stated is qualified by the provision that, if the courtezan be openly brought to reside in the husband's house, the right of judicial separation accrues to the wife. If these provisions be carefully considered, it will be found that they bring the spirit of the proposed law very nearly into unison with the spirit of the English law.

Proceeding from the examination of details to the consideration of the general Bill, I would take this opportunity of alluding to a difficulty which has occurred to the disciplined mind of my Hon'ble friend Mr. Muir, and which he has had the kindness to communicate, to me. He is reluctant as an English Legislator to be responsible in any degree for, or to extend his sanction in any manner to, usages which are inconsistent with his own ideas of right and wrong This is not a difficulty which presents itself to my mind; but I can very easily understand that it may weigh heavily on the feelings of others. I shall propose, therefore, in Committee, to declare in the preamble, as I have already done in the Statement of Objects and Reasons, that the Bill is prepared entirely at the instance of the Parsees, and in consonance with Parsee feelings and usages, thus carefully providing that no sanction is intended to the character of such usages by a British Legislature. At the same time, I feel bound to declare that, if for the words "such marriages shall be solemnized according to the Parsee form commonly called "Ásírvád" were substituted the words, shall be solemnized according to the form prescribed in the Book of Common Prayer; and if for Panchâyats were substituted the words "Spiritual Courts," I do not think there is a provision in the Bill which has not in substance, at some time or other, been enacted by Christian Legislatures for the Government of Christian subjects.

I stated on a former occasion that the necessity for this measure had been demonstrated by a decision of Her Majesty's Privy Council in 1856, which left the Parsees without any tribunal for the vindication of obligations arising out of the marriage union. But the necessity for legislation had long been foreseen. In 1837 Sir John Awdry, who was not only a consummate Judge, but a scholar of large and liberal views, a member of that distinguished society, the fellows of Oriel, who during the present century have exercised so remarkable an influence on English thought, expressed himself as follows in a letter addressed to a leading Parsee gentleman:—"I quite concur in your wish that the Panchàyat may be placed on a footing which will enable that body still to command the respect of your nation; that it should be invested with some definite authority in Ecclesiastical and Matrimonial questions. As the subject is a very delicate one, I will only advert to one point which is connected with the subject of inheritance. I hope that it will be empowered to decide in such mode as the Civil Courts can recognise on the validity of all marriages between Parsees. An enactment that on these points embraced the usages of Parsees, should have the force of law, would, I think, be desirable." Similar views to these were expressed in 1813 by Sir E. Perry, another distinguished Judge. And in the present day, the claims of the Parsees have found their ablest advocate in a third Judge, Sir Joseph Arnould.

Supported then by the high reputations of these eminent Jurists, Sir John Awdry, Sir E. Perry, and Sir J. Arnould, I think I may appeal with confidence to the justice of the assembly which I have now the honour to address. The Parsees will day by day prove themselves more efficient as an agency by which the civilization of the West will be able to influence the destiny of this magnificent country. I would recall to the Council the fact that, above a thousand years ago, when the Fire-worshippers, driven from their native country, sought a refuge in India, they received from one whom we might term a Barbarian Prince not only the bread and salt of Oriental hospitality, but the liberty of independent occupation and permission for the free exercise of the observances of their ancient faith. We have before us a class of our fellow subjects who ask this Council to save them from moral degradation. The remnant of a great historic race have, by the operation of our legal tribunals, been left, in respect to a most important relation of life, without law. They have not revelled in the base license thus afforded; they cleave to the purer instincts of man's nobler nature. Much as all who know the Parsees must applaud their lofty public spirit, this demand so long, so patiently, so consistently urged, for the sanction of a moral law, has the greatest claim to our admiration. From the time when the Dávar of Surat afforded aid to our first

Factory, to the time when Sir Jamsetjee Jeejeebhoy called on his countrymen to stand by the British Government with their fortunes as they would, if need were, with their lives, the Parsees have ever been faithful and loyal to our rule. They asked in the eighth century, a poor Ráná of Sanjem for the boon of religious liberty, and he granted it to them. They ask in the nineteenth century from the great British Government the vindication by enactment of their moral law. I trust it is not possible that they can ask in vain.

I have the honour to introduce the Bill, and to move that it be referred to a Select Committee with instructions to report in six weeks."

The Hon'ble Mr. COWIE said that he acknowledged himself no friend to exceptional legislation for the creeds and classes of India, but he considered that the unvarying loyalty, integrity, and public spirit of the Parsee community had richly earned a title to such exception, and he therefore had pleasure in voting for this Bill.

The Hon'ble RÁJÁ SÁHIB DYÁL BAHÁDUR said that, although the Bill provided simply for the use of a Panchâyat, still, before making it over to the Committee, it should be submitted for the inspection of a member of the Parsee community that he might have an opportunity to note his objections.

The Hon'ble MR. MUIR said that, as his Hon'ble friend the mover of the Bill had alluded to him, he would offer a few remarks upon the Bill. He confessed that he was at first in doubt as to the attitude which this Council should assume toward a measure which professed to lay down the law in respect of the social usages of a class of the community. But upon consideration he believed that a broad distinction might be drawn between the framing and enacting provisions of a social character for a particular class, and the recognizing of existing laws and usages, so as those laws and usages were not injurious to society or opposed to the grand principles of morality.

He thought that the Parsee laws and usages embodied in the Bill might rightly be decided to fall within this latter category. They were certainly greatly in advance of the laws and usages on the same subject, of any other portion of the Native community. This was evident from the fact that no other class of Native society would venture to propose that the penalties of the Criminal Code for bigamy should be made applicable to them. But if this Council made the penalties of that Code applicable to the Parsees, it appeared to him absolutly necessary that an efficient provision be made for the registration of Parsee marriages, and for declaring under what circumstances divorce and remarriage were legal; otherwise either bigamy might be practised with

impunity, or individuals might be exposed to punishment for bigamy, where bigamy by the laws and usages of the community had not really been committed. He believed that a Panchâyat, appointed by the people themselves, was the best possible tribunal for adjudicating such cases.

But it might be asked, why not allow the Panchâyat to be themselves the judge of what the local usages were; to determine the law as well as administer it. This seemed to be the purport of the remarks quoted by his Hon'ble friend from Sir John Awdry, and other judicial authorities. The Parsees were, however, scattered throughout the country, and there would be this objection to leaving the usages as to marriage and divorce undetermined, that difference of practice might arise in different quarters, and the decisions of one Panchâyat might clash with those of another.

He thought, then, that it was right to lay down what the social Code of the Parsees on the subject was, and then to leave the Panchâyats to administer it. The onus of deciding such cases at least in the first instance, would thus be taken from our own Courts. He believed that the measures proposed in the Bill would tend materially towards the purity and welfare of the Parsee society. But in saying this, it seemed to him that it should be made to appear in the drawing of the Bill that this Council was not prescribing social laws for the Parsees, but was only recognizing and declaring the ancient and well-known usages of that community. This might be secured, not only by the Preamble, but throughout the Bill, by reciting the rules for marriage and divorce, wherever they were embodied in the Act, as the ancient usages of the Zoroastrian faith, and the existing practice of the community, or if not of the whole community, at all events of the great majority. If this were done, he did not see that any objection on principle could be taken to Mr. Anderson's Bill.

There was but one other observation he had to make, and that was in the same line as the remark which had fallen from his Hon'ble friend Rájá Sáhib Dyál, who had preceded him; namely, that ample opportunity should be given to the Parsee community for stating, in reference to the provisions of the Bill, whether they were really so completely in conformity with the ancient law and existing usages of the Zoroastrians as to justify the Council in their adoption. He thought, therefore, that six weeks (as proposed by Mr. Anderson) was too short a time for the Committee to furnish their report; and that a considerably longer period ought to be allowed in order that the Council might be placed in possession of the views of the Parsee community in respect of their usages. Subject to these remarks he should not object to give his vote in favour of the motion.

The Hon'ble Mr. HARINGTON said he regretted that the pressure of other duties had prevented him from giving to this Bill the careful consideration to which its importance entitled it, or rather from reading through the whole of the voluminous correspondence which had at different times been printed on the subject of the Bill, and a careful study of which might have had the effect of removing some of the objections which he entertained to the Bill in its present form. These objections related chiefly, indeed he might say entirely, to the details of the Bill. He had no wish to oppose the introduction of the Bill or the motion for the reference of the Bill to a Select Committee, but as regarded the proposed instruction to the Select Committee, he agreed with Mr. Muir that it was not desirable that they should reduce by one-half the period for which, under the standing Rules of the Council, Bills were required to be published before the Select Committees to which they were referred could make their report, or before the Bills could be passed into law. The Rules of the Council had been framed after very full and careful consideration. None of the Rules was more important than the one to which he was now referring. The Select Committee which prepared the Rules, considered that it would not be right to fix a shorter period for the publication of Bills intended to apply to all parts of India, which was the case with the present Bill, than twelve weeks. If the Committee committed any error in the framing of this Rule, he thought it could not be said that it was on the side of prescribing too long a period for the publication of Bills. He had always been of opinion that no suspension of this particular Rule should be allowed unless upon the strongest grounds, or to meet a great emergency. When a Bill involved no question of principle, and related only to a small tract of country, its publication for six weeks or even a shorter period might be sufficient. This was the character of the Bill which he had just introduced regarding the Civil Courts of the Central Provinces. But the Bill which they were now considering was very different, and he thought that it ought to be published for the full period required by the standing Rules of the Council. Naturally the Parsee community were very anxious that the Bill should pass in either its present or some modified form on an early date, and he was sure that every Hon'ble Member was desirous of meeting their wishes so far as this could be done with propriety; but having waited so long, he did not think that they would be imposing any great hardship upon the members of this community if they asked that the present Bill should be published for the usual period, although, as a consequence, the Bill might not pass into law during the present sitting of the Council, or until the Council again met for legislative purposes. As regarded divorce, the Parsee community was not in a worse position than the whole of the Christian community in India. At present there was no law under which a divorce could be ob-

tained by a Native Christian, and European Christians were obliged to resort to the Courts in Europe in order to obtain a divorce. It was scarcely necessary for him to say that, in the great majority of cases, this was tantamount to a denial of the right, the expense being more than most persons could bear.

He had no remarks to make at present on the part of the Bill which related to the marriage of Parsees. But he was bound to say that he had looked in vain in the remarks with which his Hon'ble colleague had prefaced his motion for leave to introduce the Bill, in what had fallen from his Hon'ble colleague today, and in the Statement of Objects and Reasons, which, he might mention, had reached him only yesterday, for anything which would justify their setting aside altogether the local Civil Courts, or the constituted tribunals of the country for the trial and decision of the important and delicate questions which would arise under the Bill, as was proposed, and devolving the trial and decision of those questions upon an irresponsible tribunal, which possessed no particular aptitude for the duty to be entrusted to it, on which public opinion would not be brought to bear, and which, as a body, would not be answerable to the Government for the way in which it discharged its functions. Indeed, as the Bill now stood, he had great doubts whether a member of a Panchâyat, constituted under the Bill, would be a public servant within the definition of the Indian Penal Code, and if he was not a public servant, as so defined, he would not be liable to the penalties prescribed by the Code for public servants guilty of any misfeasance. If the questions which would have to be determined under the Bill were questions of religion or caste or usage, or if they were questions peculiar to the Parsee community, there might be some reason for what was now proposed; but such was not the case. The questions were for the most part questions of fact common to all classes, and to be determined by evidence. He believed that he was right in saying that the grounds upon which a divorce might be obtained under the Bill had been imported into the Bill with one or two exceptions from the law of England, but having been so imported, the Bill, instead of making the questions which might arise on those grounds triable by the constituted Courts of the country—that was, by Courts presided over by Judges or qualified Officers who were in the habit of enquiring into, and deciding disputed questions of law and fact, and who alone were competent properly and satisfactorily to deal with such questions—proposed to leave their decision to what he must again call irresponsible tribunals possessing no special qualifications for the duty. Whatever might be the case in the Presidency Towns, it seemed to him very doubtful whether in the Mofussil the Panchâyats to be constituted under the Bill would possess the necessary machinery for carrying out the provisions

of the Bill, or for enforcing their orders. He would refer particularly to two of the grounds mentioned in Section 13 of the Bill on which a divorce might be obtained. The right determination of cases instituted upon those grounds would often depend altogether upon skilled testimony or medical evidence of a high order, and, in almost every instance, would involve very delicate enquiries; but how would Panchâyats in remote Mofussil places be able to obtain such testimony on which any reliance could be placed, or to make such enquiries? Furthermore, if he rightly understood the Bill as intending entirely to oust the jurisdiction of the local Civil Courts or to deprive those Courts of all jurisdiction in cases arising under the Bill, it seemed to him that it would often happen that there would be no tribunals to which persons wishing to avail themselves of the provisions of the Bill, and to obtain a divorce on any of the grounds mentioned, would be able to resort. He believed there were very many places where Parsees were now or would hereafter be found residing, in which it would be impossible to convene a Panchâyat in the manner provided by the Bill. These persons would be excluded from the local Courts, and no provision was made for their going elsewhere. Indeed, as the Bill was worded, Panchâyats could not be convened under its provisions on this side of India or out of the Presidencies of Madras and Bombay. That this arose from inadvertence and was not intentional was clear from what his Hon'ble colleague had said on the subject of the local Governments and the powers to be exercised by them under the Bill; but he had thought it right to notice the circumstance.

He observed that the Bill made a change of religion a ground for a divorce. Their Hon'ble colleague told them that it was an understood thing amongst Parsees, that if either party changed the religion which was common to them both at the time of their marriage, the change would be a ground for the dissolution of the marriage. If this was the understanding, or if such was Parsee usage, neither party could complain of its being acted upon, and in this respect the present Bill was not open to the same objection which appeared to him to exist to the Bill of his Hon'ble colleague, Mr. Maine, relating to the remarriage of Native Converts to Christianity. As that Bill applied also to Parsees, he did not feel certain that the two Bills might not conflict, or that they could properly coexist in respect of the provision to which he had just referred.

As regarded the Town and District of Surat, it might be quite proper that the Office of President of Panchâyats convened there under the Bill should be held in the manner provided in the 28th Section, supposing the senior representative of the family named was of age and otherwise competent; but if he was a child or of weak intellect or otherwise unfitted to be President, he ought not to hold the office, and some other person should be appointed in his

room. The Bill should provide for such a contingency. Stress had been laid upon the provision made in the Bill for an appeal to the High Court; but the appeal was to be allowed only on very special grounds, and he did not see how the High Court could properly deal with the misconduct of a Panchâyat or any of its members, committed, it might be, at the other end of the Presidency to which the jurisdiction of the Court extended. He would not notice further the details of the Bill at this time, though he might mention that he understood that differences of opinion existed amongst the Parsees themselves as to some of the provisions of the Bill. He could not conclude his remarks without expressing an earnest hope that the Select Committee, to which the Bill might be referred, would restore the jurisdiction of the Civil Courts, or devolve upon them the duty of administering the law, whatever form it might take. The Civil Courts might be allowed to call in Panchâyats, constituted as proposed, as jurors or assessors, and to avail themselves of their services in either of those capacities. In this way they could be legitimately employed and might be most useful. He most entirely concurred with his Hon'ble colleague in all that he had said to-day and on former occasions of the intelligence, advanced civilization, loyalty, and general good conduct of the Parsee community, as well as of their munificent donations to charities and other benevolent or public objects. These had been more than Royal. He readily admitted that the Parsee Community was entitled to the fullest consideration from this Council, but he thought that the Council should show its consideration for that community by giving it, not bad, but good laws. He could not bring himself to believe that the part of the Bill relating to divorce, to which his remarks were intended to apply, would, as the Bill was now framed fall within the latter category.

The Hon'ble Mr. MAINE suggested that his Hon'ble friend should omit any mention of the period within which the report was to be made: the result would be that the Committee would report whenever it felt itself in a position to do so.

The Hon'ble Mr. ANDERSON:—"I willingly adopt the suggestion of my Hon'ble friend Mr. Maine. With respect to what has been urged by the Hon'ble Rájá Sáhib Dyál, the Hon'ble Mr. Muir and the Hon'ble Mr. Harington, I trust the Council will bear with me if I offer a few words in reply. I would explain that this Bill is the Bill of the Parsees themselves, that they have pressed it upon the attention of the Legislature directly for five years, and indirectly for a much longer period. Its substance as a part of the Parsee Code, was brought before the former Legislative Council and referred to a Select Committee. That Committee considered that sufficient information was not before it, and suggested that further investigation should be held. The Government of India recommended to

the Government of Bombay that a Commission should be appointed thoroughly to examine and report on the whole subject. The Government of Bombay appointed a Commission of which two Parsee gentlemen of very high character, and the Hon'ble Mr. Newton, a Judge of the High Court, who has been upwards of twenty years in India, who knows the Parsees as intimately as the Hon'ble Mr. Harington knows the Bengális—I beg pardon, the inhabitants of the North-West Provinces—were Members, and Sir Joseph Arnould was President. This Commission examined many witnesses and considered many documents: they referred some doubtful questions to Professor Haug, perhaps the most profound scholar in Zend literature in the world: they had repeated discussions, and at length submitted, what the Government of Bombay termed, a lucid and exhaustive report, for which they received the cordial thanks of Her Majesty's Secretary of State. The subject again came before the Government of India, again before the Secretary of State; no opposition has ever been expressed by these high authorities to the grant of the prayer of the Parsees relative to marriage and divorce, and the present Bill has now been introduced in accordance with the opinion of the Secretary of State. To ask the Parsees if they have any objection to the Bill, is to convert them into a *ludibrium*. You might as well ask the opinion of the Judges at Westminster as to the propriety of Magna Charta. I would state for the information of my Hon'ble friends that the Parsees in Bombay have constituted a Law Association which has prepared this Bill, which has gone over all its provisions again and again, and which has weighed each detail with painful scrupulosity. They have asked for more than this Bill, for instance, that the obligations of betrothals should be vindicated, but they certainly will not be willing to take less. I trust, therefore, that the Council will not perpetrate the cruel mockery of postponing the final consideration of this measure in order that the Parsees may have longer time to consider its provisions.

My Hon'ble friend Mr. Harington has stated that there is a difference of opinion among the Parsees themselves as to this measure. I must assure the Council that the Hon'ble gentleman is under a misapprehension. There is some difference of opinion among them as to the part of their Draft Code relative to inheritance, but none as to the part relative to Marriage and Divorce, which is alone included in the present measure.

He has also urged that this measure does not consist with my Hon'ble friend Mr. Maine's Bill for the remarriage of Native Converts; that they cannot both be enacted. I submit that they can; they are perfectly distinct. Under Mr. Maine's Bill, permission to remarry is granted at the instance of the Convert: under the present Bill, at the instance of the Unconverted.

Then my Hon'ble friend urges that the Civil Courts should have jurisdiction in suits under this Bill. To this I would answer, first, that appeal is granted from the decisions of Panchâyats to the High Courts, not only on legal and technical grounds, but on the ground of substantial error in the investigation. But beyond this, I must submit that the Panchâyat is a far more appropriate tribunal for the trial of these domestic and delicate suits, than Law Courts presided over by strangers. Our Civil Courts have quite enough on their hands, without bringing suits of this kind on their files. What is to be gained by compelling Parsees to bring their suits into our Courts, by obliging them to unveil the secrets of domestic life? I have always regarded the Divorce Act of 1857 as a most beneficial measure; but I think any man of right feeling would prefer that if possible the proceedings of the Court should not be subject to their present revolting publicity. Is it just or politic to subject men and women of another creed and race to such a system if it can reasonably and justly be avoided? It cannot be supposed that the Parsees, after a residence in India of a thousand years, have not imbibed from the races around them some of the peculiar jealousy of Hindûs and Muhammadans as to interference with domestic life.

My Hon'ble friend has made some objections to certain points of detail in the Bill, which can be better considered in Committee, and which, therefore, I will not notice now. But as to his wish to postpone this Bill, under the delusion of further inquiry being necessary, I must state that such a course is equally unjust and impolitic, and can only be regarded by the Parsees with mingled scorn and indignation, and bring nothing but discredit on this Council. I am always bound to speak with respect of my Hon'ble friend Mr. Harington: I have had many opportunities of admiring in this Council, and especially in the Committees of this Council, his great ability and many accomplishments, but remarkable as his ability is, I fervently trust it will not prevail on the present occasion."

The Hon'ble Mr. HARINGTON said he would ask the permission of His Excellency the President to say a few words in reference to the remarks which had fallen from their Hon'ble colleague, in replying to the objections which had been taken by himself and other Hon'ble Members to the suspension of the Rule which required the publication of Bills for a period of twelve weeks. He did not wish to impute blame to his Hon'ble colleague, but he must be allowed to say that, for any delay that might occur in the passing of the Bill, his Hon'ble colleague and not he (Mr. Harington) was responsible. The Bill having been prepared for so long a time as they were told was the case, why, he would ask, was it not published during the recess under the rule which admitted of such publication, or why was the Bill not introduced immediately after the Council met, now some

weeks ago, or why had the introduction of the Bill been deferred until this late period, when, in order to its being passed during the present meeting of the Council, it had been thought necessary to ask that recourse should be had to the exceptional measure of suspending the rule which fixed the time for the publication of Bills. He must repeat that if, owing to the observance of the standing Rules of the Council, the Bill should not pass during the present meeting of the Council, the responsibility of the delay would rest rather with his Hon'ble colleague than himself, by reason of the late period at which the Bill had been introduced.

The Hon'ble Mr. ANDERSON :—"I cannot for one moment admit the justice of the Hon'ble Member's remark. He seems to forget that the class of our fellow subjects, which is interested in this discussion, dwells at a very great distance from Calcutta. I could do nothing in relation to this measure until my Hon'ble friend Mr. Maine had introduced the Indian Civil Code. I then stated that I proposed to separate the part of the Parsee Draft Code which related to marriage and divorce from the part connected with inheritance and succession, and to bring on the former as a distinct measure on an early occasion. My hands were, however, still bound until I could ascertain whether the Parsees approved of this course. On receiving from the President of the Parsee Law Association an expression of his approval, I lost no time in preparing and introducing the measure. I did not express any surprise that my Hon'ble friend Mr. Muir should consider six weeks too short a time for the consideration of the Bill by a Select Committee, but I did express, and do express, the greatest surprise that suggestion for further delay should come from the Hon'ble Mr. Harington, who knew well how long the Parsees have urged their claims to relief on the attention of the Government of India. The Hon'ble Member also knows how fully and entirely the attention of the Committees of the Council has been occupied with the Code of Civil Procedure, with the Indian Civil Code, with the Grand Jury Bill, and other measures, and how impossible it would have been for a Committee to enter on the consideration of this Bill before the present time, had it been possible, which it was not, for me to have brought forward the measure at an earlier period. I cannot, therefore, in the slightest degree, admit the justice of my Hon'ble friend's strictures."

The Hon'ble Mr. MUIR said, he begged to make but one remark in explanation of what had fallen from his Hon'ble friend (Mr. Anderson) to the effect that a lengthened correspondence had taken place on the subject of this Bill. The correspondence had not been circulated with the Bill, nor noticed in the Statement of Objects and Reasons, and he certainly had no cognizance of it.

The Motion was put and agreed to.

RURAL POLICE (N. W. PROVINCES) BILL.

The Hon'ble Mr. MUIR postponed the presentation of the report of the Select Committee on the Bill to provide for the maintenance of the Rural Police in the Territories under the Government of the Lieutenant-Governor of the North-Western Provinces.

The following Select Committees were named.—

On the Bill to define the jurisdiction of the Courts of Civil Judicature in the Central Provinces—The Hon'ble Messrs. Harington, Maine, and Cust.

On the Bill to define and amend the law relating to Marriage and Divorce among the Parsees—The Hon'ble Messrs. Harington, Maine, and Anderson, the Hon'ble the Mahárájá of Vizianagram, and the Hon'ble Messrs. Muir, and Cust.

The Council then adjourned.

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

CALCUTTA,
The 20th January 1865.