COUNCIL OF THE GOVERNOR GENERAL OF INDIA

VOL 11

Book No. 2

9 April - 31 Dec.

1872

ABSTRACT OF PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

VOL 11

1872

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 Simla on Thursday, the 4th July 1872.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*
His Honour the Lieutenant-Governor of the Panjáb.
His Excellency the Commander-in-Chief, G. C. B., G. C. S. I.
The Hon'ble Sir John Strachey, K. C. S. I.
The Hon'ble Sir Richard Temple, K. C. S. I.
Major-General the Hon'ble H. W. Norman, C. B.
The Hon'ble Arthur Hobhouse, Q. C.
The Hon'ble E. C. Bayley, C. S. I.
The Hon'ble R. E. Egerton.

INDIAN PENAL CODE AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE moved for leave to introduce a Bill to amend the definition of 'Coin' contained in the Indian Penal Code. He said that this Bill, like that which he had first introduced, was necessitated by the use of unnatural and arbitrary definitions. Its object was to check the practice of counterfeiting the copper coin of Native States.

These counterfeits were freely circulated in parts of British India, and the Financial Department stated that the result was injurious to our currency. The Penal Code (section 230) prohibited the counterfeiting of coin. But "coin" was defined as metal stamped and issued by the authority of some *Government*, and 'Government,' by section 17, denoted the person or persons authorized by law to administer executive government in any part of *British India*. It had thus happened that the coin of Native States was not coin within the meaning of the Code. It was doubtless an oversight, and due to the draftsman forgetting that the word "Government," which in section two hundred and thirty he used in its true meaning, had by section seventeen something different from its true meaning affixed to it. This defect the proposed Bill would amend.

The Motion was put and agreed to.

HIGH COURT JURISDICTION (SINDH) AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE also moved for leave to introduce a Bill to amend Act No. V of 1872 (to remove doubts as to the jurisdiction of the High Court of Bombay over the Province of Sindh). He said that Act No. V of 1872 consisted of a single section declaring that the "High Court of Bombay has not, and shall be deemed never to have had, jurisdiction over the Province of Sindh." One effect of this was to repeal the provisions of the Administrator General's Act (XXV of 1867), which enabled the Administrator General of Bombay to obtain from the Local High Court letters of administration to assets situate in Sindh. Another effect was to invalidate all probates and letters of administration heretofore granted by that Court in respect of such assets, whether to the Administrator General or to a private person. These results were of course not intended. The Bill would remedy the defects which he had indicated.

The Motion was put and agreed to.

CHRISTIAN MARRIAGE BILL.

The Hon'ble MR. HOBHOUSE also moved that the final Report of the Select Committee on the Bill to consolidate and amend the Law relating to the solemnization in India of marriages of persons professing the Christian Religion be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE then moved that in section eight, line four, after the word "Christian," the following be inserted:—"either by name or as holding any office for the time being."

This amendment was due to Mr. Aitchison, who had suggested that it would save a great deal of trouble if, instead of naming the individual holding the office, they should describe the officer. It was obvious that the officer would be selected not for his own merits but for his position.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE then moved that in section fifty-six, for the words "the Secretary in the Foreign Department of the Government of India," the following be substituted:—"Such officers as the Governor General in Council from time to time, by notification in the *Gazette of India*, appoints in this behalf."

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE then moved that in section eighty-one, line one, after the words "Local Government," the following words be inserted :— "and the officers appointed under section fifty-six ; and that in lines five and ten for "him" the words "them respectively" be substituted ; and that in line ten, after the word "to," the words "the Secretary to the Government of India in the Home Department to be by him forwarded to" be inserted. And that the following proviso be added to the section :—

"Provided that in the case of the Governments of Madras and Bombay, the Chief Secretary shall forward the said certificates directly to the Secretary of State for India."

His Excellency THE PRESIDENT suggested that for the words "to be by him forwarded" should be substituted the words "for the purpose of being forwarded" and that the proviso should run thus :—

"Provided that in the case of the Governments of Madras and Bombay, the said certificates shall be forwarded by such Governments, respectively, directly to the Secretary of State for India."

These amendments with the alterations suggested by the PRESIDENT were put and carried.

The Hon'ble MR. HOBHOUSE then moved that to section eighty-six the following clause be added :—

"And all such powers and functions may be exercised, as regards Native States situate within the local limits of the Presidencies of Fort St. George and Bombay, by the Governors in Council of those Presidencies respectively."

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE then moved that the Bill as amended be passed. He now took the opportunity of explaining what had been done in respect to the Bill. It was introduced into the Council in the month of October 1871 by Mr. Cockerell, who assigned two reasons for its introduction. One was, that it would be convenient to consolidate the law relating to the solemnization in India of the marriage of persons professing the Christian Religion, and the other reason was that there was a substantial grievance felt by a class of Native Christians owing to recent legislation on this subject, which took place in 1865. It was thereby provided that marriages might be contracted by persons whom we should consider mere boys and girls ; that the husband might be only 16 years old and the wife only 13 ; and no provision was made for reserving to the parents the right of objecting to the marriages of these young persons. Accordingly, representations were made by the Bengal Christian Association that there was a substantial grievance created by this law, and it was thought that the grievance ought to be remedied. This was done by the Bill, and at the same time opportunity was taken for giving

greater facilities for marriages in Native States. The Bill was referred to the Select Committee, who reported upon it. But it was found on examination to be not wholly in a satisfactory state. There were a good many little flaws in it, so it was found desirable to re-cast it, and thereupon it was referred to the Select Committee again, and they had again reported. He would not occupy the time of the Council with the details of that report, but it was desirable to notice some of them before the Bill was passed. What the Committee had done required mention in two respects. In the first place, section sixty of the Bill which the Committee had to consider, contained a condition of marriage which had disappeared from section sixty of the Bill now before the Council. The condition was this,—"the man and the woman shall not stand to each other within the prohibited degrees of consanguinity or affinity."

What was the legal meaning of "the prohibited degrees," it was difficult to say, and of course if the Council retained the clause in the old shape, it would be necessary to examine it much more carefully than they had done. There was, however, little doubt that the intention of the Bill, as introduced, was simply to deal with the forms and ceremonial of marriage; it was to be what it called itself—A Bill to regulate the law for the *solemnization* of marriage, not a Bill to regulate the Marriage Law. This had nothing to do with the essence of the contract, and the Committee thought it desirable to confine it to the purpose specified. MR. HOBHOUSE begged the Council to bear these observations in mind, because they had a still more stringent application to the remarks he was about to make on another clause. The omission of such a clause as that under consideration would be remarked, but they had done all the framer of the Bill intended by putting the clause in a negative form, namely, that nothing in this Act should be deemed to validate any marriage contracted under a law forbidding the parties to contract that particular marriage. That was the whole intention of the original section sixty, and it was accomplished by the present section eighty-eight.

MR. HOBHOUSE would next proceed to consider the more important point which related to sections seventy-six and seventy-seven of the draft Bill as approved by the first Select Committee:—

"76. No European British subject, and no person domiciled in any country by the law of which polygamy is prohibited, shall acquire a right to practise polygamy by any change in his religious belief.

Bar of right, by change of religion, to practise polygamy.

"77. If any person who has contracted any such marriage as is provided for by this Act, or any other marriage which by the law to which he is subject would render any subsequent marriage during its continuance illegal, marries any other person during the continuance of such marriage, he shall, whatever religion he may profess at the time of such subsequent marriage, be deemed guilty of the offence described in section four hundred and ninety-four of the Indian Penal Code, and every such subsequent marriage shall be void."

Punishment for marrying again during continuance of marriage under law forbidding polygamy.

These clauses were intended to prevent the practice of polygamy under certain circumstances, and he believed the occasion of them was a scandalous case which had occurred in the Presidency of Madras. Some gentleman, who was married to an English wife, thought proper to declare himself a Muhammadan, upon which he contracted another marriage with a woman who also declared herself a Muhammadan for the same purpose. Every one must feel that this was a very wicked act; it was a gross breach of the contract between man and wife. But whether the Council should remedy it by these clauses was another question. In the first place, the clauses under consideration ought not to be in the present Act. If it were proper to enact them, they ought to be separately enacted, for the present measure was merely one to regulate the form and solemnization of the marriage ceremony. This view was suggested by the Bishop of Madras, who had sent in some very useful and carefully-considered remarks upon the Bill. Approving of the spirit of the clauses, that prelate doubted whether they ought not rather to be included in an Act dealing with the law of Marriage or of Divorce.

There was another reason why these clauses should not be included in this Bill. The principal of them applied to all persons contracting marriage under the law of monogamy, Jews for instance, and not to Christians alone. But the Bill only professed to deal with Christian marriages. As such, it had been published and criticized, and it would be hazardous to insert clauses affecting other communities whose attention had not been called to them.

Another consideration that had occurred to the Committee was this, that there was considerable danger in defining the law and attempting to express it by their own words, when they were not quite certain whether the law as it existed would not do all that was required. Mr. Stephen, who advocated the clauses, expressed himself as perfectly clear that the Madras marriage was illegal. In fact he proposed only to declare the existing law. Mr. Mayne, then Acting Advocate General of Madras, made some remarks upon the Bill, and, while approving of a declaration of the law, he expressed his opinion that the law was perfectly competent to deal with the case in question. Mr. Hobhouse himself thought that there was not a civilized country in the world by whose law such an act would not be treated as a gross fraud, and the doer of it held to the consequences of his fraud. At all events there was no great hurry in legislating for such a question. For these reasons the Committee thought that the subject-matter of these two clauses should not be dealt with in this place or at this time.

Oddly enough, since they had come to that conclusion, a letter had come from Burma, in which the Recorder of Rangoon made some remarks which Mr. Hobhouse took the liberty of reading to the Council:—

"As regards the proposal to insert in the Bill a provision dealing with the case of Europeans who adopt Muhammadanism, or, more generally, a declaration that no person who, by his law

of domicile is a monogamist, should be permitted to acquire the right to commit polygamy, by any change of his religious tenets, I am most decidedly against any such provision or declaration being inserted in the Act, until, at least, it has been decided that the law is, at present, otherwise. There cannot, I imagine, be any doubt in the minds of professional lawyers on the subject, and, if that be so, it is better, both as regards the particular instance and as regards the general principle, that the question should be brought before a competent tribunal and decided. If the law is now to be declared by the Act, that will raise an implication in the minds of many that it was otherwise previously, and, as it is almost impossible to meet the mischief in every possible phase, by a declaration, the same question is sure to arise in some other form, and then the declaration is worse than none at all."

In these remarks, MR. HOBHOUSE expressed his entire concurrence. He thought he would be wrong if he did not add on his own part, though he was not now speaking on behalf of the Select Committee, that the nature of these clauses was such that they ought not to pass. It seemed to him that if they were to amend the essence of the law of Marriage on this subject, it would be necessary to consider it more carefully than had been done. These clauses certainly went far beyond the principle laid down by Mr. Stephen when he originally advocated them. He laid down the sound principle that a person who had contracted marriage under the law of monogamy should not be allowed to contract a second marriage during the continuance of the first marriage by reason of any change of his religion. But these clauses certainly went a great deal farther. They did not rest on the violation of the monogamous contract: they said nothing about the character of the first marriage: they provided generally that no European, who was a British subject, could acquire the right to practise polygamy by any change of his religious belief. Now there were European British subjects in India who had been brought up in Indian society and in some form of Indian religion, and a total change of circumstances of this kind, of which a change of religion might be the principal or the only tangible one, would make a person blameless in practising polygamy. In regard to this matter, he would quote the remarks of a gentleman who had seen the scope of these clauses:

"I hope Mr. Stephen, in framing the declaration in question, will adhere to the wider expressions used in the remarks made by him when announcing his intention to the Council, namely, that no persons who by his law of domicile was a monogamist, should be permitted to acquire the right to commit polygamy '*by any change whatever in his religious opinions.*' This wider expression will cover the adoption of Hindúism, as well as that of Muhammadanism. If the declaration were restricted to persons becoming Muhammadans for this fraudulent purpose, unprincipled Europeans would probably be tempted to try whether the pretended adoption of Hindúism, or some religion other than Muhammadanism, which permits, or is supposed to permit, polygamy, might not suit their purpose. It is by no means clear to me that a European could not become a Hindú by religion. It is a well-known fact that Native Christians have pretended to become Hindús, by the performance of certain ceremonies, for the purpose of acquiring the liberty of marrying a second Hindú wife, the first Christian wife being still alive. I fear East Indians who do not happen to be European British subjects might find it possible for them to acquire the same liberty, and I am

acquainted with a case in which a wealthy East Indian brought up his children as Rájput Hindús. The children secured a place in their caste through their wealth, and one of them became manager of the principal Hindú temple in Tinnevelly. I hope, therefore, it will be distinctly declared that no right of practising polygamy will be acquired by any European through his real or pretended conversion to any other religion whatever."

MR. HOBHOUSE thought it would be hard to tell a person in the position of the priest of Tinnevelly, that because his father happened to be an Englishman, he was committing a crime when he married according to the usages of the society to which he belonged.

What he had said was sufficient to show the delicacy and difficulty of interfering with the law, and he believed they ought to wait and see whether it was sufficient to meet the evils apprehended, and at all events ought to invite more discussion before they set themselves to express it better than it was now understood to be.

So much for what the Committee had done. There were one or two things they had refused to do which perhaps deserved mention. One suggestion was made by the Rev. Dr. Caldwell, a missionary of much zeal, experience and learning. He found fault with the penal clauses awarding punishment for solemnizing marriage without due authority. He said that—

"To 'solemnize' a marriage without authority might be supposed to denote the performance of a marriage in due form and order in all particulars, except only the absence of authority on the part of the person performing it."

That was exactly the meaning of the clause.

Dr. Caldwell, however, was desirous to make punishable a certain irregular form of marriage which was much in use. He said:—

"The irregular illegal marriages that sometimes take place among Native Christians, especially amongst converts of the lower classes in the rural districts, bear so little resemblance to the marriages solemnized in churches that the performance of them might naturally be regarded by a Magistrate as not amounting to a solemnization of marriage in the meaning of the Act, and therefore as not punishable. Suppose the only marriage ceremony is the recitation of the Lord's Prayer by a relative and the tying of the symbol of marriage round the bride's neck by the bridegroom; can this marriage be said to be solemnized? And if so, who solemnizes it? the relative or the bridegroom himself? Yet such, and such alone, are the solemnizations of marriage without authority that take place amongst the Native Christians in the rural districts in Southern India. The marriage is of course illegal, but it is regarded by the poor country people as legal enough for their purposes; and as questions respecting inheritance are not likely to come up for another generation, if ever, there seems no possibility of teaching them practically that such marriages are illegal, except by the infliction of some penalty on the parties who are supposed to be

most to blame. I beg to suggest, therefore, that after the words 'knowingly and wilfully solemnizes a marriage' such words as the following be added, 'or knowingly or wilfully performs any ceremonial act purporting to constitute a marriage."

It seemed to MR. HOBHOUSE that this Council would be doing a great evil if they punished the solemnizing of these simple marriages, which were probably very much better than no marriages; and the alternative would probably be no marriage at all. Now the people performed a ceremony, and it must have the effect of rendering marriage more serious and solemn to them; make it illegal, and you would lead either husband or wife to think that they were at liberty to desert one another, and demoralization would be sure to result.

The only other point which MR. HOBHOUSE would mention was an application from certain Ministers of Religion, who would be called in England Dissenting Ministers, and who belonged to various communities. Their complaint of the Bill was this: The Bill provided that Ministers of the Church of England, of the Church of Rome, and of the Established Church of Scotland, should perform marriages according to the rites and ceremonies of their own churches. There were other classes of persons who were authorized to perform marriages, such as other Ministers of Religion especially licensed for the purpose. On a marriage being performed, certain notices were to be given, and also a certificate by the Minister, Registrar, or officiating person, as the case might be, and four days were to intervene between the original application and the issue of the certificate. If, however, one of the parties was a minor, certain consents were required, and if the Minister or officiating person was not satisfied that these consents had been properly given, fourteen days must elapse before a certificate was given. These gentlemen said that Ministers of the Church of England, Rome and Scotland could always get rid of that extra period in the case of minors marrying without proved consent, by means of licenses, and they said that young people who wanted to marry in a great hurry, and who had not got consent, would not go to the licensed Ministers, or to the Registrars, but went by preference to one of the three established Churches, and thereby were enabled to get married quicker, so that these gentlemen lost the privilege of performing these marriages, while others obtained it. This was their grievance.

They did not appear to complain of any hardship or inconvenience upon those for whom the Act was passed, *viz.*, the persons desiring to marry. Their case was summed up at the end of paragraph three of their petition, where they said—"Your petitioners act as Ministers of religion, or as Marriage Registrars, and they find themselves unjustly placed in a humiliating position before members of their own churches by labouring under a disability which attaches to none of the Churches of England, Scotland, or Rome."

Of course the Members of this Council would be the last to desire to humiliate a Minister of any religion; but the Committee had to consider whether it was possible to put all classes on the same footing, and thought it was not. It would be inexpedient to open now a question which had been settled by law for some years without any inconvenience being felt by the persons for whose benefit the law was intended. No doubt the principal reason for these distinctions was simply an historical one. Established Churches having from their establishment to the present day, held a certain exceptional position, that position they retained in a great many cases. The Committee found the law in that state according to the Act of 1865, and the prior Acts which governed that subject, and so they left it. There was also another reason of a somewhat more substantial kind, though it might not be a true explanation of the fact, which was that all Established Churches possessed codes of law which provided better for the regular transaction of business than those religious communities which were not established, and of which a new one might start up at any moment. If they were to try and put every Minister of Religion upon the same footing as the Established Ministers of England and Scotland, they would find it difficult to define the character of the person, or to ascertain the rites and ceremonies according to which marriages should be performed. Without pretending, therefore, to rest the distinction on any very solid principle, the Committee thought there were practical reasons why they should not attempt, at this stage, to alter the Bill in a matter causing difficulty, likely to excite controversy, and by no means essential.

The Hon'ble MR. EGERTON said that, with reference to the motion in regard to sections seventy-six and seventy-seven of the Bill, as now amended, after the explanation which had been given by the Hon'ble Mr. Hobhouse on the subject, there was no doubt that the sections as originally drafted were too large in their scope, and affected persons other than those to whom the Christian Marriage Act applied. But with regard to the general omission of the prohibition of persons who had contracted marriages under the intended Act from contracting another marriage during the subsistence of the first, MR. EGERTON thought it would be advisable to leave the provisions of the Bill as they were. It was shown that a case of this kind had arisen in Madras, and MR. EGERTON understood that the person who offended in that manner had not been indicted for bigamy. The sections seventy-six and seventy-seven as drawn provided that the person who went through the form of marriage under this Act should not be allowed to marry again during the continuance of that marriage, and MR. EGERTON thought that it would be most advisable that some such restriction should form part of the Act. He remarked that in the Bráhmist Marriage Act, III of 1872, there was such a provision against a person

married under that Act who during the lifetime of his or her wife or husband contracted any other marriage, and it seemed anomalous to make such a provision for the Brâhmists while they purposely omitted a similar provision from the Christian Marriage Act.

The Hon'ble MR. BAYLEY said that, while he agreed in the propriety of omitting clauses seventy-six and seventy-seven in the present Bill, for which, he thought, the reasons given by the Hon'ble Mr. Hobhouse were quite sufficient, yet at the same time he thought that the general question of the Marriage Law in India, in regard to connections between persons of classes differing as to their law of marriage, was in many respects in an unsatisfactory condition; and, although, perhaps, decisions of law might in time clear up the present condition of things, and eventually put them in a satisfactory state, yet, he thought, that, as it had failed to do so for the long series of years during which the practice of contracting these connections had existed, there was room for legislation. MR. BAYLEY thought that an early opportunity should be taken of considering the whole subject. He would not confine himself to a particular case, such as that which occurred at Madras; for he was aware of many others; such, for example, as Europeans, in some cases even officers, proceeding to a Muhammadan country, and perhaps there professing the Muhammadan religion, contracting marriages according to the Muhammadan law. Mr. BAYLEY believed that such were *bonâ fide* marriages, and in some instances they had been ignored by the Europeans, who had re-married and re-marrying as Christians, European ladies. Regarding the gross character of this proceeding, there could be no doubt. There were many other similar cases which had actually occurred, and which altogether placed the law in so unsatisfactory a position that MR. BAYLEY hoped an early opportunity would be taken of going through the whole subject, which he admitted was very difficult and delicate.

Major-General the Hon'ble H. W. NORMAN said that, though he was doubtful as to the propriety of admitting, even by implication, any show of legal authority for polygamy among British-born subjects who might belong to a religion admitting of such practice, yet he quite agreed that the course proposed to be taken of not referring to the matter at all in this Bill was correct.

With respect to the alleged grievance of Non-conformist Ministers, he would state that, whilst he should be most anxious to remove the slightest cause for dissatisfaction on the part of a class who were deserving of so much respect, he agreed with the Hon'ble Mr. Hobhouse that it would be impossible to conveniently drop the distinction drawn in this Bill between Ministers who have received episcopal ordination, or who belong to the Established Church of Scotland, and the Ministers of the various other denominations.

The Hon'ble SIR RICHARD TEMPLE was of opinion that there should be some clause in the Bill to prevent the recurrence of such a scandal as that which took place in Madras. The Hon'ble Mr. Hobhouse seemed to consider that the law, as it stood, was sufficient to prevent the repetition of such scandals, but he (SIR R. TEMPLE) did not hold that opinion. His belief was that the parties to that scandal acted under the impression that they could not be convicted. If he remembered rightly, the gentleman connected with this disgraceful affair was a member of the legal profession; and if the Advocate General of Madras was clear that this gentleman could be punished under the law as it stood, or the Hon'ble Mr. Hobhouse thought that the consequences of his fraud could be visited upon him, he (SIR R. TEMPLE) would like to know why the law had not been put in force, or why it was that this wrong had been committed without the slightest intervention on the part of the authorities? It seemed to him that this state of things showed the law to be in a very uncertain condition, and he entirely agreed with the Hon'ble Mr. Egerton that a section ought to inserted in the Bill to obviate this difficulty.

The Hon'ble SIR JOHN STRACHEY said that, having been a member of the Select Committee by which the omission of clauses seventy-six and seventy-seven was recommended, he wished to say that, while in deference to the opinion of the Hon'ble Mr. Hobhouse, he agreed to that course being adopted, it was with considerable hesitation he did so, and chiefly because, to use the words of the Report of the Committee, "it seemed to them more prudent to postpone the matter for further consideration, and to make it the subject of a separate Act." SIR JOHN STRACHEY was of opinion with his hon'ble friend Mr. Bayley that the matter demanded serious consideration, and he thought that the consideration which the Select Committee had recommended should at once be given to the subject. If the conclusion arrived at should be, that the law, as it now stood, was not sufficient to prevent the abominable evil against which the clauses in question were directed, he thought it would be the bounden duty of the Government to lose no time in bringing in a separate Bill which should effectually deal with the whole subject. He quite agreed with the Hon'ble Mr. Hobhouse that this was not the proper occasion for discussing the substantive law of Marriage, but to some remarks which the Hon'ble Mr. Hobhouse had made, if he understood them rightly, he could not agree. His hon'ble friend seemed to consider that, under certain circumstances, a European might properly be allowed by the law to practise polygamy after changing his religion. SIR JOHN STRACHEY wished to take this opportunity of saying that, as regarded himself, he accepted, in the broadest sense, the proposition that under no circumstances whatever could it be right that a European British subject should be allowed by the law to acquire the right to practice polygamy by a change of his religious faith.

His Excellency the COMMANDER-IN-CHIEF thought that his hon'ble friend Mr. Hobhouse had made it very clear that the Bill before them was simply a Bill to legalise the celebration of marriage, and that the introduction into the measure of Criminal Law was out of place. His Excellency, therefore, would not have objected to the entire exclusion of the clause relating to the prohibited degrees of marriage, which had been put in a much better position than it held in the original part of the Bill. The conduct of the person alluded to as having changed his religion for the purpose of practising polygamy was one solitary act. His Excellency did not think that a second instance could be adduced. He had no hesitation whatever in agreeing with his hon'ble friend Sir John Strachey that such a practice should be taken notice of and made a subject for separate legislation. In regard to the remarks which had fallen from his hon'ble friend Mr. Bayley, with reference to the practice of officers contracting Muhammadan marriages, His Excellency could only say that during a service of forty years in India he had not heard of a single instance of a military officer committing such an offence as regularly going through the ceremony of a Muhammadan marriage, and afterwards repudiating that marriage. His Excellency did not know whether his hon'ble friend alluded to all officers of the service generally, or only to officers of the army. Such a practice might have obtained many years ago.

[The Hon'ble MR. BAYLEY said that he recollected cases of such marriage having occurred within his own knowledge].

His Excellency continued—He thought it was rather anomalous that a penal enactment should be passed to deal with a practice which had ceased forty years ago. He thought that the use of such expressions was injurious to the Army and required qualification, and he apprehended that he was not wrong in stating that within the last forty years no authenticated instances of such a practice, as connected with the Army in India, could be brought forward.

The Hon'ble MR. BAYLEY said that he could bring forward a case which had occurred within the last fifteen years, but he did not hold that the practice was now in force.

His Excellency understood his hon'ble friend in his former remarks to say that he alluded to the practice as being now in existence and "frequent, if not common."

His Excellency THE PRESIDENT remarked that there seemed to be a general agreement of opinion among the Members of the Council that the Committee were right in their recommendations that the clauses under consideration,

which were inserted in the original Bill for the purpose of preventing monogamists from acquiring the right to practice polygamy by changing their religion, did not properly form part of this Bill, and that it would be advisable to consider them separately. The discussion which had taken place showed the importance and difficulty of the subject, and His Excellency thought that the suggestions of the Committee should be sent to the Home Department for further consideration.

As the Bill had been amended, the PRESIDENT proposed that it should not be passed until the next meeting of the Council.

The Hon'ble MR. HOBHOUSE wished to make a few remarks as to what had fallen from his colleagues, before the question was put for the postponement of the Bill.

With regard to the particular case at Madras, he did not know why the gentleman concerned in the transaction was not indicted; but he could recollect cases in which crimes of various sorts had been committed, and no one thought of indicting the persons concerned, nor was it thought necessary to declare or alter the law on that account. There was a case in point which had occurred not long since, in which a man contracted a marriage within the prohibited degrees. He got tired of his wife and married another woman; taking advantage of the illegality of his first marriage to contract a second. Many cases of the kind occurred in which no one thought it worth while to take the trouble to indict, but this person was indicted, and the law was then found quite sufficient to deal with the case, for he was convicted.

In regard to the more general question referred to by Sir John Strachey in reference to the subsistence of the Marriage Law, it was doubtless his (MR. HOBHOUSE's) fault that Sir John Strachey did not understand him aright. He said nothing in favour of a man acquiring a right to contract a polygamous marriage merely by a change of religion. It was change of domicile and of life that he spoke of, and such cases as the one mentioned by Dr. Caldwell where persons, though they might fall under the description of European British subjects, were tied up with Indian associations, and in a religious, moral and social atmosphere wholly Indian.

The Hon'ble Mr. Bayley took a much wider range and proposed to enquire into the relations of English men with the women of the countries they occupied. It was a subject on which MR. HOBHOUSE was very ignorant; but whether forms of marriage were gone through or not with these women, the subject was an extremely difficult one. One person would think that men who

had induced women to live with them under a form of marriage should be held to their contract, another, that such irregular marriages were evil and should be made illegal altogether. The subject required a great deal of information and a great deal of consideration, to be properly dealt with; but if it was the opinion of the Executive Council that they should legislate on the matter, of course it must be done.

The Hon'ble MR. HOBHOUSE also asked leave to postpone his Motion for a fortnight, that the Bill as amended be passed.

Leave was granted.

PRIVY COUNCIL APPEALS BILL.

The Hon'ble MR. HOBHOUSE also presented a preliminary Report of the Select Committee on the Bill to consolidate and amend the Law relating to the admission of appeals to the Privy Council.

BURMA SPIRITS DUTY BILL.

The Hon'ble SIR RICHARD TEMPLE presented the Report of the Select Committee on the Bill for imposing a duty on certain spirits manufactured in British Burma.

The Council adjourned to Thursday, the 18th July 1872.

SIMLA,
The 4th July 1872.

WHITLEY STOKES,
Secy. to the Govt. of India.

Government Central Press.—No. 603 L. D.—14-8-76.—50.