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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 Government House on Tuesday, the 19th March 1872.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, K.T., *presiding*.
 His Excellency the Commander-in-Chief, G. C. B., G. C. S. I.
 The Hon'ble John Strachey.
 The Hon'ble Sir Richard Temple, K. C. S. I.
 The Hon'ble J. Fitzjames Stephen, Q. C.
 The Hon'ble B. H. Ellis.
 Major General the Hon'ble H. W. Norman, C. B.
 The Hon'ble J. F. D. Inglis.
 The Hon'ble W. Robinson, C. S. I.
 The Hon'ble F. S. Chapman.
 The Hon'ble R. Stewart.
 The Hon'ble J. R. Bullen Smith.
 The Hon'ble F. R. Cockerell.

INDIAN CHRISTIAN MARRIAGE BILL.

The Hon'ble MR. COCKERELL presented the 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.

PRIVY COUNCIL APPEALS BILL.

The Hon'ble MR. COCKERELL also introduced the Bill to consolidate and amend the law relating to the admission of appeals to Her Majesty in Council from judgments and orders of the Civil Courts. He said that the only alteration of the substance of the present law, provided for by this Bill, was the substitution of the Court of final jurisdiction in India under the law for the time being in force relating to appeals, for the highest Civil Appellate Court, an alteration which, as he had explained when asking for leave to introduce the Bill, had been rendered necessary owing to the modifications of the previously obtaining appellate system introduced by the Oudh Courts Act.

On the occasion to which he referred, the Lieutenant Governor of Bengal had expressed his desire that the present Bill would provide for something more than the consolidation of the existing law; that it would, in short, do something towards mitigating, if not eradicating, the great evil of the present procedure in regard to these appeals, which, as His Honour described it, "enabled a rich man to hang up the decree of a poor man for years and years."

MR. COCKERELL presumed that His Honour's remarks had reference to the rule under which a person against whom a decree had been obtained, and who desired to appeal to Her Majesty in Council, could stave off the execution of the adverse decree, pending the result of his appeal, by giving such security as might be demanded from him by the Court which admitted the appeal.

If so, MR. COCKERELL could only say that the instructions under which this Bill was prepared authorized no change of the law in that direction; but should the Bill be referred to a Select Committee, he apprehended there would be no difficulty in the way of giving effect to His Honour's proposal to such an extent as, upon a full consideration of the circumstances of the case, and after consultation with the several High Courts, might be thought expedient.

MORTGAGE PROCEDURE BILL.

The Hon'ble MR. COCKERELL then introduced the Bill to consolidate and amend the law relating to mortgage procedure. He said that its proposed modification of the existing procedure in regard to the foreclosure of mortgages consisted of the substitution of a right to sue for foreclosure, on or after the expiration of the period within which the loan obtained in consideration of the mortgage was to be repaid, for the issue of notice to the mortgagor, prescribed by the Bengal Regulation XVII of 1806.

Under the Bill, as under the English law, proceedings to obtain foreclosure would commence with a suit, but without prejudice to the one year of grace to which the mortgagor was entitled, for the preservation of his right of redemption, under the existing system, as a decree of foreclosure could only become absolute in the event of the amount found to be due by the mortgagor not being repaid within one year from the date on which he received notice of the institution of the suit. Under the procedure of the English law, a decree of foreclosure became final on the non-payment, within six months from the date thereof, of the amount declared to be due from the mortgagor by the conditional decree.

Whilst, therefore, the Bill in no way deprived the mortgagor of the privilege which the Bengal Regulation was designed to bestow upon him, it went far to remove the abuse of this privilege to which the system prescribed by the Regulation had led, and to place the mortgagee in nearly as favourable a position for the recovery of his just rights as he would be in under the procedure of the English law.

The Bill, in its present shape, contained no provision similar to that of the English law, for the Court's decreeing the sale of the mortgaged property in satisfaction of so much of the mortgagor's debts as might remain unpaid on the debt on which the decree became absolute.

If the Bill was referred to a Select Committee, such a further emendation of the existing procedure might advantageously be taken into consideration.

When the subject was last before the Council, something was said as to the expediency of proceeding very cautiously in the relaxation of measures adopted for the special protection of the mortgagors of land.

To this MR. COCKEBELL would observe that it should be remembered that these special protective measures had no origin in any law or custom anterior to British rule. They were created solely by the Bengal Regulation and had reference to a state of things which did not exist at the present time.

The Hon'ble MR. BULLEN SMITH said:—"My Lord, I readily admit that the Bill which my hon'ble friend has just introduced is an improvement upon the existing state of things, but I desire at once and thus publicly to express my hope that the Committee to whom the Bill is to be referred will not, without very full consideration and proof of necessity, retain the period which must elapse before a mortgagee can enter upon his security at one year—a time which seems to me excessive and unnecessary. When last speaking on this subject, I mentioned that existing Regulations as to mortgage procedure seemed to have been framed entirely in the interest and for the protection of the mortgagor, entirely oblivious of the rights of the mortgagee, and the protection to which he also is entitled. This was probably due to an idea that the lender of money was at same time and always a would-be possessor; that he did not lend as a mere investment or employment of his money, but that there was, behind, a determination, at all costs and by any means, to oust the mortgagor whom he had got into his power, and enter himself upon possession of the property. A similar feeling seems very much to run through the papers which have been circulated to the Council; but I consider it to be entirely erroneous, and believe there are numbers of mortgagees whose sole object in foreclosing is to get

back their money without a thought of themselves retaining the property. I freely admit that all due precautions must be taken in the transfer of real property in a country like this, where its possession is held so sacred and valuable; but I really cannot see why, in the case where a man has entered into a formal covenant to repay certain moneys on a certain day, he should, in the event of his not fulfilling that covenant, be allowed a whole year's grace, during which time his creditor may have to sit with folded arms and see his security depreciating before his eyes. I trust this matter of the length of time to be allowed will receive the utmost consideration at the hands of the Committee."

The Hon'ble MR. STEPHEN had but one single observation to add to what had fallen from the hon'ble member in charge of the Bill. It was proposed that the Select Committee on the Bill should be instructed to report in one month. It was obvious that that instruction could not be complied with, and that, in point of fact, the Bill would remain before the Council for some length of time. Ample time would thus be afforded for obtaining the opinions of the local authorities interested in the measure, and MR. STEPHEN had no doubt that the consequence would be that the important question raised by his hon'ble friend, Mr. Bullen Smith, would receive all the attention it deserved. MR. STEPHEN would observe that both this Bill and another which his hon'ble friend, Mr. Cockerell, had introduced to-day were introduced for the purpose of being deliberately considered in the hot weather, and that the instruction to report within a month was purely a matter of form.

PANJÁB MUNICIPALITIES ACT AMENDMENT BILL.

The Hon'ble MR. COCKERELL also moved that the Report of the Select Committee on the Bill to prolong the operation of Act XV of 1867 (Panjáb Municipalities) be taken into consideration. He said that the Bill as amended by the Select Committee provided for the revival of Act XV of 1867 with retrospective effect from the last day of February, the date on which it expired and for its continuation, but without any of the originally proposed additions or alterations, for the space of one year, that was, until the 1st March 1873.

The retrospective effect gave validity to all proceedings and acts which might have been had or done under the provisions of that Act since the date on which it ceased to have legal operation, and virtually conveyed a personal indemnity to public officers who might have been acting without legal warrant.

Legislation to this extent was unquestionably necessary, but under all the circumstances of the case—circumstances which were entered into at some

length on a former occasion, and on which he need not dwell now—it was deemed inexpedient to submit to the Council at this time a less restricted measure.

If the Bill was passed in its present form, all that was needful would be attained. Existing municipal arrangements could be carried on, and sufficient time would be gained for the preparation by local authorities, and eventual submission to this Council, of a matured scheme of municipal administration adapted to the circumstances and requirements of the Panjáb at the present time, and in harmony with the principles which had regulated the legislation on this subject for other provinces.

The Hon'ble MR. STEPHEN wished to make some observations upon this matter. He had signed the Report of the Select Committee, and had so far given his assent to the passing of the Bill in its present form; but he had done so with some hesitation, and had a right to remark upon the circumstances of the case. He need not repeat what he had said when this subject was last under discussion, but he wished to point out, in confirmation of what he had before stated as to limiting the operation of the Act to one year, that a telegram had been received from the Panjáb Government remonstrating very strongly against the Act being revived for so short a period, and urging very earnestly that the Act should be prolonged for a period of five years. The Local Government referred to the extreme inconvenience of rendering uncertain the operation of the various public works which had been undertaken by the municipalities; and they also stated, in reference to the remarks that had been made, that there had just been published, in the *Panjáb Gazette*, a full statement of the income and expenditure of every municipality in operation. The principles which governed their taxation had in every single instance been approved by the Government of India, and they therefore felt that the remarks made on the manner in which the municipalities in the Panjáb had been administered were unjust. MR. STEPHEN had been induced to give his vote in favour of the present Bill on this ground, and on this ground only, that when the Council re-assembled at Simla, it would have the advantage of the assistance of the local authorities, and the presence of the Lieutenant-Governor of the Panjáb, who would take his seat as an *ex officio* Member of the Council. It would therefore be in His Honour's power to lay before the Council any amended measure on the subject which he might think right. Had it not been for that consideration, which had been suggested by his hon'ble colleague, Mr. Ellis, at the last meeting, MR. STEPHEN would

have felt unable to agree to the Bill in its present form. But under the circumstances he had stated, he did not think it would do any serious harm.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

PATTERNS AND DESIGNS BILL.

The Hon'ble MR. STEWART introduced the Bill for the protection of Patterns and Designs, and moved that it be referred to a Select Committee with instructions to report in a week. When he obtained leave to introduce this Bill, he had endeavoured to explain briefly its principle and aims, and it was unnecessary that he should now take up much of the time of the Council. The Bill proposed to provide for the case of local inventors and proprietors of designs, by adding patterns and designs to the inventions coming within the scope of Act XV of 1859, and by conferring rights and privileges upon such persons analogous to those which were enjoyed in England by persons who there registered their designs. The Bill provided for the case of designs registered in England by authorizing the enforcement in the Indian Courts of the rights conferred by the existing English statutes. He would just add that, though, in view of the desirability of the Bill being disposed of at as early a date as possible, he moved that it be referred to a Select Committee with instructions to report in a week, he did not intend to ask the Council to deal finally with the measure until the Bill had been published in the Gazette in order to elicit remarks from those interested in the measure.

The Motion was put and agreed to.

HIGH COURT JURISDICTION (SIND) BILL.

The Hon'ble MR. CHAPMAN presented the Report of the Select Committee on the Bill to remove doubts as to the jurisdiction of the High Court over the Province of Sind.

NATIVE MARRIAGE BILL.

The Hon'ble MR. STEPHEN reminded the Council that the adjourned debate on the Bill to legalize marriages between certain Natives of India not professing the Christian Religion stood in the List of Business to be resumed. The Hon'ble Mr. Inglis had put upon the paper certain amendments which he would now move.

The Hon'ble Mr. INGLIS then moved the following amendments :—

That, in lieu of the preamble to the Bill as it stands at present, the following be substituted :—

“ Whereas it is expedient to provide a civil form of marriage for certain members of the Brahma Samaja ; It is hereby enacted as follows :—”

And that the Bill be referred back to the Select Committee with instructions to make the necessary alterations in the body of the Bill, and to report in a week.

He said that, when about to discuss the provisions of a Bill calculated, as this was, to affect very seriously the domestic life and social institutions of all classes of our Native fellow-subjects, it was impossible not to feel very strongly the disadvantages the Council laboured under from there being no Native members present, to assist them with their advice, or to inform them of the feeling of the Native public.

In the absence of such assistance, the best means of ascertaining the light in which a measure such as this was regarded by the Native public, was from the petitions presented to this Council : as the subject with which this Bill dealt was one on which the opinion of the people was of the utmost value and importance, and was, moreover, one on which they had a right to be heard, he would confine himself to reading out some short extracts from a few of the numerous petitions which had been received, which showed very clearly that the Bill was regarded by all classes of the community throughout the country, Hindús and Muhammadans alike, with dislike and apprehension.

The first extracts he would read were from letters from some Native gentlemen of the Madras Presidency, men of evident ability and all holding high appointments under that Government.

The Hon'ble V. Ramiengar, C. S. I., Additional Member of the Council of the Government of Fort Saint George, in a letter, dated 28th February 1872, to the Chief Secretary of the Madras Government, said—

“ It (the Bill) appears to me to differ little from Sir Henry Sumner Maine's Bill, so universally condemned, and withdrawn. There are hundreds of young men who may not wish to become Bráhmós, but who would still be eager to avail themselves of the license afforded by this Marriage Bill to contract marriages according to their own individual fancies. Nothing will be easier than for one of them to appear before a Registrar whom he does not know, who does

not know him, and who will hardly have any position as an official, subscribe before him the formula required by the Act, and get the hand of the girl of his choice. This done, there will be nothing to prevent such a person (except when he has married an outcast) from going back to his parents, or his being received as a penitent sinner, to life thenceforward, to all appearance, as an orthodox Hindú. If the Bill, on becoming law in its present shape, is calculated to have this effect (and I firmly believe it will have that effect), would it not, I ask, change very deeply the native law upon *marriage*? Would it not destroy the integrity of that sacred institution, and introduce into it the European conception of marriage? Would it not be tantamount to saying to the Hindús, 'You are at liberty to play fast and loose with your law and religion: you shall, if you please, be at one and the same time a Hindú and not a Hindú?' Would it not, at all events, offer to the young men of the country a premium to break off from their families and set aside those wholesome restraints imposed by their social usages, simply for the sake of contracting marriages on which they were bent?"

After pointing out some objections in detail he said—

"The fourth clause of section one is also, in my opinion, open to exception, in that it seems to afford an unnecessary and wholly uncalled-for license to parties wishing to marry under the Act to break off from those social restraints which, according to the Hon'ble Mr. Stephen, 'provide safeguards against misconduct which it will be mischievous in the highest degree to sweep away as so much rubbish.' The portion of the clause to which I allude is that wherein it is laid down that 'no law or custom, other than one relating to consanguinity or affinity, shall prevent them (the parties) from marrying.' This will be regarded as an invitation to a Bráhma to marry a Pariah girl; to a Mudali, Chetty, or Pariah, to seek the hand of a Bráhma girl; and, in fact, it has already been said that it is tantamount to telling young India—'Do you set at defiance your social customs and usages and your institution of caste, and we shall be ready to stand by you and support you with all the strength of the strong arm of the law?'"

and after some further remarks he concluded by saying—

"I fear the tendency of the Bill, as it stands, is anything but wholesome. Western ideas and Western civilization are producing a ferment in the surface of Native society which must bear its fruit in time. But to hasten on such changes by legislative action seems to me to be highly inexpedient and impolitic. It is the opinion of all those with whom I have had an opportunity of discussing the subject that the Bill, if passed into law, is calculated to promote irreligion and libertinism, and to aim a blow at those social usages and customs which at present bind Native society together."

A. Sashiah Sastri, the head sarishtadár of the Madras Revenue Board, in a letter, dated 12th February 1872, to the Chief Secretary, Madras Government, said—

* * * * *

"2. I am still of opinion that, in the anomalous relation in which the rulers stand to the ruled in this country, it is highly injudicious on the part of Government to undertake to legislate on matters connected with the social and religious movement of the people.

" 3. The Hon'ble Mr. Stephen has conclusively shown that the state of the law as regards the validity of marriages contracted otherwise than in the orthodox form, is by no means what Mr. Cowie has stated it to be, and that, if the case of a Bráhmó marriage was contested and came up before a Court of civil justice, the decision would be according to the rule of equity and good conscience. It need scarcely be doubted in the present day what such a decision would be. The Bráhmós are thus by no means without a remedy at law.

" 4. The policy of Government has hitherto been studiously to avoid identifying themselves with any movement of social or religious reform; to leave such movements to develop themselves and take their own course; and, when a certain state of things has been firmly established, to recognize it in the administration of law to such extent as may be found necessary for the ends of equity and justice.

* * * * *

" 7. The question is repeatedly asked, what do the orthodox people care about a law which concerns only those who renounce the orthodox religion? Those who put this question seem to forget the fact that it is the children of the orthodox who go to swell the ranks of the seceders, and that a law which facilitates, nay aids and abets, their children to swerve from the paths of their forefathers is a subject in which they are, and must be, deeply and painfully interested."

J. Vyjia Ragavulu Chetti Gáru, First Assistant, Government Secretariat, Madras, in a letter to the Chief Secretary, Fort St. George, dated 12th February 1872, said—

* * * * *

" 5. The Bill first proposed in general terms was rejected as having been very unpopular, and another for Bráhmós alone put in. But as the Adi Bráhmá Samája objected to the latter, the old Bill is revised with certain alterations which do not in the least diminish the probable injurious effect on the community at large. The alleged grievance of the Adi Bráhmá Samája should have been met by introducing into the second Bill the denomination of the Progressive Bráhmists, by which they distinguish themselves, instead of dragging in the whole body of the Native community. My European and Native friends who know me are aware that I do not oppose desirable and gradual (not forced) changes for the better in either Hindú society or religion; but I consider it the duty of every Native respectfully and constitutionally to object to a law which gives facilities to unthinking young men to declare themselves, on the impulse arising at some unfortunate moment, as having renounced the religious communion in which they were born and have been bred; or, in other words, to make themselves nothing, or in reality to make themselves atheists. It is the duty of every man, of whatever religion, to correct this evil; but the Bill in its present form will only tend to aggravate it. A declaratory Act legalizing marriages among the Progressive Bráhmós, with a section that the Governor General in Council shall have the power by a notification to extend it to other sects of the Native community who may seek relief, will be sufficient to meet the requirements of the present case if legislation is at all necessary. Such a course will avoid the Statute-book becoming 'a regular jungle of Marriages Acts,' if the formation of separate sects does at all become frequent, which is extremely improbable, and will prevent much heart-burning and scandal.

"6. The amount of opposition to this Bill in its present form is not to be judged by the few petitions or letters submitted to Government. The masses do not begin to feel the effects of legislation before the tax-gatherer is at their doors or the law actually affects them. The present Bill, if passed into law, will create, I do not hesitate to say, much heart-burning and scandal in many families in course of time."

T. Muthuswami Aiyár, Judge of the Small Cause Court, Madras, in a letter dated 15th February 1872, to the Chief Secretary to Government, said—

* * * * *

"3. Again, granting that to say that the Bill is superfluous is no serious objection against it, and that it is desirable, if not necessary, to remove a doubt which, however unfounded, is still entertained by a class of Her Majesty's subjects in regard to the status of their wives and children. I am not yet unable to see any necessity for a comprehensive enactment such as is contained in the Bill. Section 9 renders it competent to any person to contract a valid marriage under the Bill, provided that he signs a declaration that he is neither a Hindú nor a Muhammadan, nor a Parsi, nor a Christian, etc., and it is apprehended (and I think not without reason) that this negative declaration is likely to prove very mischievous in practice. Among the educated youth of this country, there are several who have, at least for a time, no settled religious convictions of their own, and who, in fact, are neither Hindús, nor Christians, nor Bráhmós, nor members of any recognized sect; consequently the Bill, instead of being simply a benefit to the Bráhmós, as it is intended to be by its framers, might occasionally hold out an encouragement to atheism and irreligion, and render it impossible for men, virtually without any religion for the time being, to return to Hindúism in the event of their religious convictions since undergoing a change, and make it a necessity to them to fraternise with the Bráhmós. It would therefore be more acceptable to the people at large, while it would in no way interfere with the object which the framers of the Bill have in view, if it were made expressly and exclusively applicable to the Progressive Bráhmós, and a clause were introduced rendering it competent to the Governor General to extend its provisions to any new sects which may come into existence and attain sufficient development in the natural course of things. By this amendment the legislature will not be placed in the false position of holding out encouragement to atheism and irreligion, while it will still be in its power to provide for the social exigencies of any class of persons who may renounce the Hindú, for some other definite religion.

"4. Lastly, the orthodox Hindús in this Presidency consider that the Bill in its present form aims a blow at Hindúism. It has been asserted that the Bill is intended for the exclusive benefit of the Bráhmós, and in the discussion of measures affecting them, the orthodox Hindús have no concern; this is a mistake. They have certainly no right to dictate whether and how the Progressive Bráhmós shall marry; but I submit that they have an unquestionable right to protest against facilities being unintentionally afforded for their children and grandchildren, whose religious opinions are liable to fluctuate and are not settled, being led to adopt the Bráhmó form of marriage, and thereby reduced to the position of outcasts and incapacitated for returning to Hindúism if they should since deem it necessary. It was mainly on this ground, I believe, that the Bill introduced by the Hon'ble H. S. Maine was opposed by the Hindú community in general, and, so far as this objection is concerned, the present Bill is certainly no improvement on the

former. The orthodox Hindús do not desire to see the Bráhmós persecuted and laid under any disability in regard to their marriages; but what they do desire is, that they should not be made to forfeit the opportunity, which they now possess, of reclaiming back to Hindúism their children whose religious convictions fluctuate, at least for a time, after the completion of their English education. Under the present Bill, any young man fresh from school, with no religious convictions founded on any intelligent and critical inquiry, and disposed to be an *Adi Bráhmó* to-day, a *Progressive Bráhmó* to-morrow, and a *Hindú* the day after, may, at a moment of infatuation, contract a marriage under this Bill, and find it beyond his power, very much to the sorrow of his parents, to return to Hindúism when his faith in the new form of religion, hastily adopted by him, is shaken. This state of things should be rendered impossible if the policy of neutrality were to be strictly adhered to."

These extracts shewed the opinions held by some of the leading Native gentlemen of the Madras Presidency.

The Muhammadans of Calcutta, in a petition lately presented to Government, said—

"That the leading members of the Muhammadan community of the town and suburbs of Calcutta, having become acquainted with the provisions of a Bill before your Hon'ble Council, 'to provide a form of marriage in certain cases,' and having observed portions of it to be calculated to interfere with the free exercise by them of certain rights which belong to them by their law, have met at the house aforesaid, and have resolved upon addressing this humble memorial to your Hon'ble Council.

"2. Your memorialists are afraid that the Bill will be misunderstood by the people of the country generally, and that it will be looked upon as indicating an intention on the part of the Government to interfere in their religion."

At a meeting of the members of the British Indian Association, North-Western Provinces, held at Aligarh on the 24th February, a report of which MR. INGLIS had noticed in a Native newspaper and had translated in order to circulate it among the members of this Council, Rájá Jaikishen Dás, C. S. I., spoke as follows :—

"Gentlemen, you must have gleaned from the translation the object of the Bill; you must have considered those things which are not agreeable to the views, customs and habits of our nation. Gentlemen, I can even now predict the probable consequences resulting from the measure. I therefore think it proper to communicate to you, gentlemen, the thoughts which have struck me, and the amendments which to me appear just and necessary. So that, after an unanimity of opinion amongst us, we may represent to the Legislative Council our objections through a memorial."

The Rájá then proceeded to show in detail the manner in which the Bill, if passed in its present form, would affect Hindús and Muhammadans alike.

After him, Khája Muhammad Esuf said—

“Gentlemen, I entirely concur with Rájá Jaikirhen Dás in the objections mentioned by him against the Marriage Bill. But when I consider its sections 15, 16 and 17, it appears to me that this Act is opposed to, and is at variance with, the doctrines of Islam.

“Now, I beg to say that our Government has promised not to pass any Act which would interfere with the religious tenets of the people. I believe I have satisfactorily shown, with reasons as mentioned above, that sections 15, 16 and 17 of the Marriage Bill are in direct opposition to the Muhammadan law of marriage, divorce and inheritance.

“I can never bring myself to believe that Government would sanction any measure which will grieve the loyal hearts of the people, and I am fully convinced that the Hon’ble Members of the Legislative Council would deal with justice by taking these points into their favourable consideration.”

Then Lala Badri Parshad said—

“I have more than once gone through the whole of the Bill, but the more I considered its provisions, the further I became convinced of its evils. Neither can I see the utility nor the pressing necessity which would justify its becoming law.

“Under these circumstances, it would be inexpedient on the part of our just Government to pass an Act which will dishearten and bring shame upon the respectable families in India. I hope that the Hon’ble Members of the Viceregal Council would not, after mature consideration, be sorry to suspend the passing of an Act fraught with such evil consequences.”

The meeting, after several other speeches, separated after passing a resolution that a petition against the Bill in its present form should be drawn up and sent to Government.

This morning the Council received a numerously signed petition from the inhabitants of Aligarh, from which he would read the following extract :—

“That your memorialists have read with great regret and disappointment the Bill that has lately been introduced into the Legislative Council to legalize marriages between persons not professing any religion. That, although the Bill appears to apply to a particular class not professing any religion, yet on your memorialists bestowing full consideration on the subject and anticipating its ultimate effect on all the Indian communities, the Bill seems to them not confined to any particular sect, but as affecting all the Indian sects, at large.

“That the effect of this Bill, as understood by your Excellency’s memorialists, is that it will seriously affect alike their social position and national respectability as well as their religious rites, and will subvert those of their national customs which, owing to their religious and national feelings, they prize higher even than their lives.

“That your memorialists place full confidence in the good intentions and impartiality of their liberal Government, and hope that it will never interfere with their national customs

and religious feelings. That your memorialists, therefore, do not urge that the enforcement of this Act is intended to interfere with their religion, but they most humbly beg to say, that a religious and social interference which the Government by no means intends must of necessity follow its enforcement. That the objections, therefore, which your memorialists have to the Bill, are merely based on the ground that it will necessarily cause a great and intolerable and unprecedented change in their social and religious condition.

“That your memorialists have no objection to the Bill when it applies to those of their community who may relinquish their religion of their own accord and marry under its provisions; but they object to it on the ground that, even with no change of religion, it will affect most of their established rites, whether religious or national. That your memorialists, therefore, deem it expedient most humbly to point out to the Honourable Legislative Council the many evils to which they will be subjected in the end, and the religious and social difficulties they will be obliged to undergo in case of the Bill being made law.

“That your memorialists, foreseeing the evils and disadvantages detailed above, most humbly and respectfully request that Government, after taking into its favourable consideration their religious and social difficulties, will not give its assent to an Act which is evidently calculated to cause disheartening and disgrace to hundreds of millions of its subjects, and that if the Government deem it absolutely necessary to enforce this Act on the ground that the class of people for whom it is intended are also the subjects of Government, and as such have an equal claim on it, then your memorialists beg to point out that they do not object to any law simply because it is law, but because of the evils it may give rise to. That, in short, your memorialists would not object even to the passing of this Bill if the liberal and impartial English Government would take such measures to prevent the evils anticipated from it as would inspire them with a hope of the preservation of their national and family respectability and religious freedom.”

MR. INGLIS might go on reading extracts from many other petitions that had been presented against the Bill, some of them from the North-Western Provinces, numerous signed; but as they were all in effect the same as those from which he had quoted, and as they repeated, in even stronger terms, the objections urged against the Bill in the petitions from Madras and Calcutta, it was unnecessary to take up the time of the Council further, especially as they had been circulated and had been for some time past before the members. The petitions he had read, and which, as he had said before, were fair samples of the rest, afforded sufficient proof that the Bill was looked upon by the great majority of our Native fellow-subjects as certain to interfere most seriously with their religious and social institutions.

On the impolicy of passing a Bill which they were assured on such good authority would have this effect, he would say nothing; but he would ask—where was the necessity for such a measure? This Bill originated in an application made to Government by certain members of the Bráhma Samája

asking for a civil form of marriage. This he was quite ready to vote for; but why not confine the Bill to this? why do more than they were asked to do? why, in order to give the relief asked for by these members of the Bráhmó Samaja, run counter to the earnest prayers and entreaties of the majority of the Natives of this country, who assured them that the Bill as now drawn would, if it became law, affect very injuriously their social and religious customs?

He thought that the very general expression of opinion against the Bill in its present form should carry great weight. He thought that, when about to legislate on any matter which might in the slightest degree affect the religious or social institutions of the Natives of this country, the Council should proceed with the greatest caution, after carefully consulting their opinions. If there was one subject on which caution was more necessary than on any other, it was that with which this Bill dealt.

If the Bill were confined, as he proposed it should be, to certain members of the Brahma Samaj, the object originally intended would be gained, while the objections so strongly urged against it in its present form by Hindus and Muhammadans alike would be removed.

He felt very strongly in this matter. He saw clearly the light in which this Bill would be regarded by all classes throughout the country, Hindus and Muhammadans, and he looked upon the decision the Council were about to come to as of the very gravest importance.

The Hon'ble Mr. COCKERELL said that it was barely two months since the further consideration of this Bill had been postponed, in order to give time to the mass of our Native fellow-subjects to become acquainted in some measure with its provisions, and to consider how the proposed legislation would affect the most important interests connected with their social life. He had seldom, within his experience in this Council, seen such a variety of opinions on any question before it collected in so short a time; he took that to be the strongest evidence of the extreme interest that was felt in the matter, and he thought that the papers received, and specially those which had been read out by his hon'ble friend, Mr. Inglis, indicated the very strong and wide-spread feeling of dissatisfaction and discontent which this measure had excited in the minds of the people. Evidence of this came to the Council through the most intelligent persons—persons well affected to our rule, and who were not likely to misrepresent the feelings of their countrymen for any interested object. The Bill before the Council had but little that was open to objection in appearance. It seemed to be a very reasonable measure. If the intentions with which

its provisions had been framed could with certainty be carried out, it would at least be a very harmless measure. In the first place, the Bill was intended to apply only to those who did not profess any of the specified religions; those who had absolutely given up, or stood aloof from, the known religions of the country. But although it might be a doubtful point whether a Hindú who had renounced his religion could return to Hindúism—and he believed that the late Rájá Rádhákánt Deb, the leader of the orthodox Hindús in this part of country, made some strenuous endeavours to establish a rule by which a Hindú who had apostatized could return to his religion—with regard to Muhammadans, there was no doubt on this question; the propagators and promoters of the Muhammadan faith had always given the utmost facilities to converts to Muhammadanism and to those who had apostatized from that religion to return to the faith of their ancestors, and it was perfectly certain that any body who came and made a profession, solely for the purpose of being married under this Bill, of not belonging to any specified religion, might, if he had previously been a Muhammadan, return immediately to Muhammadanism. Then, again, the Bill, by the first and second clauses of section two taken together with the amendments which the hon'ble and learned member in charge of the Bill proposed to put forward by-and-by, seemed to afford the utmost protection against rash and incautious marriages. Indeed, it seemed that the Bill could only have the effect of providing facilities for marriage in a very limited number of cases; for it was laid down that each party must at the time be unmarried; that each party must have completed a certain age; and that if they were of less age than twenty-one years, the consent of the parents must be obtained; and it might, he thought, be fairly assumed that there were very few Hindús or Muhammadans who, being over the age of twenty-one, remained unmarried. But when it was considered how the thing was likely to work, it was seen that there was no security against the parties who wished to marry understating their age. Nothing was so difficult as to determine the precise age of Natives of this country, and a marriage obtained through a misrepresentation as to age would stand. It was very true that, under section 17 of the Bill, the marriage of anybody who contravened the conditions of the law as to age, amongst other things, might be dissolved. But he could not see how the case was to come before a Court. Under the Indian Divorce Act, one of the parties to the marriage must sue, and he thought it very improbable that any Court would give a decree to a person seeking dissolution of a marriage which he had contracted fraudulently; in short, to allow him to escape from the marriage, and to profit—assuming that he wished to be freed from the marriage—by his own fraud. He (MR. COCKERELL) argued therefore that this proposed legislation, harmless and unobjectionable as

it was in appearance, measured by the intentions with which it was framed, was extremely likely to lead to such practical results as justified the grave apprehension with which it had been regarded in so many quarters; and, for his part, MR. COCKERELL thought it an unwise measure to press this particular form of relief of a comparatively small number of persons, against the very strong and general dissatisfaction manifested by people of all creeds and every degree in the social scale from so many parts of this empire.

Whilst he (MR. COCKERELL) had been led by these considerations to change his opinion in regard to the Bill propounded by the hon'ble and learned mover (Mr. Stephen), and to share fully the objections taken by his hon'ble friend (Mr. Inglis) who had brought the amendment before the Council, he yet felt considerable doubt as to the advisability of the course proposed in that amendment. He was rather disposed to sympathize with the objection taken by the so-called orthodox Bráhmós, who virtually complained of the proposed civil form of marriage, for which they felt no necessity, being so directly connected with the designation which they had adopted, in favour of a section who, though originally united with them, had in fact gone out from their body and assumed a more progressive attitude. He could not but think that there was justice in the demand that a measure for the relief of this section should, by a more appropriate appellation, mark its distinctive object. Still he would prefer the amendment to the Bill, and intended consequently to vote for the former.

The Hon'ble MR. STEWART said:—"MY LORD, I feel deeply the importance of the subject now before the Council.

"When, in January last, I voted for the postponement of the discussion on this Bill, it was because I thought that to have passed it then would have been to have passed it in too great haste; without affording the Council an opportunity of satisfying itself, or the public the means of sufficiently expressing itself regarding the form and details of the measure. Since then, I have given the subject much consideration; but I confess that I cannot support the amendment of my hon'ble friend.

"It is clear, I think, that every person has a right to expect that he shall be enabled to make a good and valid marriage; a marriage in respect to the validity of which there shall exist no shadow of reasonable doubt. According to the law as it at present stands, and as interpreted by those best qualified to interpret it, it seems at least doubtful whether certain persons and classes of persons can at present contract such marriages; and, this being so, it is, I think,

the duty of this Council to intervene, and, by such legislation as may be required, to provide an undoubted form of marriage for those for whom such is not already provided.

“ It has been objected to this Bill that it will tend to encourage an irreligious life, by removing a serious disability under which those at present labour who may be inclined to adopt such a way of life—a consequence to be deplored; but even if such consequence shall arise, it will not be just, I think, to hold those who support this Bill responsible for it; for it does not follow that, because we declare that, when a man shall have assumed a certain position, we shall thereupon confer on him certain civil rights to which he will then be entitled, we therefore desire that he shall assume such a position; and, at all events, it is surely better, and more to the interest both of public and of private morality, that we should enable a man to declare what he is, and honestly to act on his convictions, than that we should offer him a premium to remain silent and to profess that he is that which he is not.

“ Another important consideration in connection with this Bill is that, in the opinion of many persons well qualified to judge, it will be regarded by certain classes of the Natives as an attempt to interfere with their religion. My Lord, this is a very weighty consideration, and I think that we should avoid adopting any course which is capable of even such a colour, where there is no fair and reasonable obligation upon us to the contrary. But there are cases, I think, in which it is our duty to face the risk of misrepresentation; if misrepresentation shall unhappily arise, to live it down; and inasmuch as I think it is in itself a right and proper thing that we should provide a valid form of marriage for all persons within our borders for whom such is not already provided; inasmuch as I understand that there are persons amongst us, besides the Brahmans for whose relief this Bill is primarily intended, who labour under the very disability from which we propose to relieve that body; inasmuch as we are innocent of even the faintest shadow of a wish to interfere in any way with the perfect religious freedom of our Native fellow-subjects; and inasmuch as they have had, have now, and will have, the amplest opportunity of satisfying themselves that this is the fact, by the whole course of our government and conduct, I cannot say that it is wrong to face the question boldly, and to dispose of it broadly, and with what we may hope shall prove some reasonable degree of finality.

“ It is a source of extreme regret to me that, in a matter of this kind, I should differ from some of my hon'ble friends, who, by reason of longer resi-

dence in the country and more intimate acquaintance with its people than I can lay claim to, possess a decided advantage over myself; but, holding the views I do, I must support the Bill."

The Hon'ble MR. BULLEN SMITH said:—"MY LORD, It is with considerable diffidence that I venture to offer any opinion upon the Bill now before the Council, but the subject is one of such importance that I hardly like to give a mere silent vote in favour of the amendment just proposed by the hon'ble member opposite. When this Bill was last brought forward, I voted for its postponement on the broad ground that it was altogether wrong to pass a measure of this kind, treating of the most intimate relations of life, before the Gazette containing it had almost had time to reach the distant corners of the Empire. The delay was much objected to by some hon'ble members, but I consider that the number of Native opinions since received conclusively show that postponement was both reasonable and called for; and that, in proposing it, my hon'ble friend, Mr. Inglis, saved the Council from legislating with undue haste upon this matter. Since that time I have thought much as to what course I should take this day, the result being that I am led to oppose the passing of the Bill in its present form, on the ground that it is not necessary, and very inexpedient, to pass a general measure of this kind at the present time. In support of this view of non-expediency, I will trouble the Council with very few words, as I have no special experience which would add weight to what is contained in the various papers we have received, and to what has been, and will be, urged by hon'ble members opposite. I would, however, quote to the Council a remark made by a gentleman of marked ability, who lately co-operated with your Lordship in the legislature of the Southern Presidency. I allude to Mr. Norton, whose experience of India is long, and his interest in the people great. In replying to one of the farewell addresses made to him when quitting Madras, Mr. Norton said that he considered one of our chief dangers ahead was precipitancy—a remark which struck me much at the time, and the force of which it seems impossible not to admit. We are legislating fast and much; we are taxing heavily and searchingly; we are introducing new institutions and new systems, and are in many ways troubling the people, no doubt with their intended good in view. The result is, however, that those who ought to know best tell us that there is abroad a feeling of disquietude and unrest; a feeling of bewilderment at what is doing, and anxiety as to what is to come next. Assuming this to be true, it is surely a state of things to be deprecated; a position in which unnecessary legislation becomes more than ever inexpedient, and yet my hon'ble friends opposite give it as their opinion, founded upon their long experience in different parts of the country,

that this Bill is eminently calculated to increase the feeling to which I have alluded. To justify me in going counter to their opinions in a matter of this kind, I would require a much stronger case of necessity for making this measure general than has been presented ; and, therefore, while entirely agreeing with the abstract principle on which the Bill is drawn, I shall support the amendment. On the ground of expediency, I should, for the present, confine relief to those who ask for it."

The Hon'ble MR. CHAPMAN said :—" MY LORD, I intend to support this amendment.

" I think I shall be able to show that this measure, which pre-eminently required to be dealt with after the most mature deliberation and on the most certain basis, was introduced into the Council on hasty and insufficient grounds ; and that the Bill has, subsequent to its introduction, been subjected, from time to time, to the most sudden, fitful, and radical changes at the hands of the hon'ble member in charge of it. I shall try to convince the Council of the necessity for now proceeding with the utmost caution ; of the necessity, in other words, of limiting the operation of the Bill in the manner contemplated by the amendment.

" My Lord, I have said the Bill was introduced on hasty and ill-considered grounds, and I shall endeavour to prove this fact. At the request of certain members of the small but influential sect, called the Bráhma Samája, the Government, in 1868, undertook to pass a Marriage Law for their benefit. It was, I have all along felt, a great mistake ever giving this pledge, the evidence as to the necessity for relief being, to my mind, wholly insufficient. The application was based, not on a solemn judicial decision, but on the opinion of the late Advocate General, Mr. Cowie, given on an *ex parte* statement of facts. And it is very remarkable that the case which was submitted for opinion has never yet seen the light. Further, it will be in the recollection of the Council that the Hon'ble Mr. Stephen, in the lengthy and learned speech he addressed to us a short time ago, showed that, in his opinion, Mr. Cowie's law was all wrong ; and that in point of fact, there was no reason whatever to entertain any doubt as to the validity of these Bráhma marriages. My learned friend seemed to me to prove too much, and to show conclusively that there really was no cause for legislative interference. For my own part, if I felt myself free to follow the bent of my own judgment in this matter, I should vote for the absolute rejection of the Bill. But the Government, whether wisely or unwisely, stand pledged to pass a law for the relief of the Bráhmos, and I am sure neither I nor the members who take my view of the case wish to offer the slightest opposi-

ion to the fulfilment of this pledge. All that is that the original object may be adhered to.

“ To return to the history of the Bill. It was first introduced by Sir Henry Maine in 1868, and was entitled a ‘ Bill to legalize marriages between certain Natives of India not professing the Christian Religion.’ It was, in fact, a Civil Marriage Bill for all sects and denominations other than Christians. Nothing could theoretically be more perfect ; it was based on the most beautiful principles of complete religious freedom and toleration, and, on paper, it looked quite perfect. It commended itself to the approval of the Government of the day, and I dare say, during the course of this debate, we shall be told that we may safely pass the present and more restricted Bill, when the original and wider one met with the approval of an experienced statesman like Lord Lawrence. I can only reply that this fact shows how much more cautious we ought to be when we find a man like Lord Lawrence was unconsciously induced to acquiesce in what I suppose every one will now admit to have been a dangerous and erroneous course of action. No sooner was Sir Henry Maine’s Bill submitted to the impartial judgment of the outside public than it met with almost universal condemnation. It was then seen that it was really of a very aggressive character, and that it would enable men to play fast and loose—to retain all the social and other advantages of the religious communities to which they belonged, while disregarding the obligations imposed upon them by those religions. The orthodox sections of the community naturally objected to the license that would thus be given.

“ Matters were in this state when my hon’ble friend, Mr. Stephen, took command of the Legislative Department, and he proceeded to adopt the recommendations of the several authorities who had been consulted, and framed a Bill for the relief of the Bráhmós. It was entitled a ‘ Bill to legalize marriages between members of the Bráhma Samája.’

“ In fact, he adopted almost precisely the same view that we now urge him to fall back upon. Well, my Lord, we assembled in this room not many months ago for the purpose of actually passing this Bill, when my hon’ble friend announced that, in consequence of a communication he had received from the Adi-Bráhmós, he had made up his mind not to proceed with the measure. The Adis represented that, though they were Bráhmós, they never entertained any doubt as to the validity of their marriages ; that the Bill might do them a serious injury by creating doubts which had never previously existed ; and that all they wanted was to be left alone. I sincerely wish their request had been attended to.

"The next we heard of the matter was when my hon'ble friend introduced the present Bill three months ago, and wished to pass it into law three weeks afterwards. The Council will remember how impatient my hon'ble friend was of any delay, and how anxious he was to pass the Bill then and there. Considering the important amendments he himself now proposes to make, I think he must admit that the delay asked for was not unnecessary.

"Well, my Lord, I have now completed my sketch of the Bill up to the present moment. I have shown how, in my opinion, the Government hastily and unnecessarily committed themselves to move at all in this matter on a mere *ex parte* statement of the case, and on grounds which my hon'ble friend himself believes to be legally erroneous; how the original Bill, theoretically perfect as it unquestionably was, could not stand the test of common-sense criticism; how my hon'ble friend within the last few months intended to adopt the very course which we now advocate; how he hastily abandoned it; how he strenuously objected to the third Bill being delayed for consideration, and how he has himself accepted several important suggestions which have been made in consequence of that adjournment. My Lord, if these facts convey any lesson at all, surely it is the somewhat humiliating one, that we cannot be too distrustful of our own judgment when dealing with matters of this kind.

"I will now proceed to notice the Bill under consideration. We shall be doubtless told, in the first place, that we who object have been the authors of whatever dissatisfaction has been evoked, and that the vast bodies of the people need be under no apprehension whatever, as it does not apply to Hindús, Muhammadans or others who profess the principal recognized religions of this country. My Lord, we, who are sitting round this table, are thoroughly satisfied that the Bill is in itself as innocuous as any measure of the kind can be, and thoroughly sound in principle. But I need not remind hon'ble members that our civilization and education have hardly made any impression at all upon the masses, and that the millions are very much in the same state of ignorance, credulity, and superstition as they were fifty years ago. We solemnly pass laws, of the policy and provisions of which they know nothing and care less. I say, then, that it is hopeless to expect they will ever know of the care that has been taken to render this Bill harmless. All they will be told, and told, too, perhaps, by designing and disaffected people, is that the Government has passed a general marriage law by which any one can marry any one he chooses. I do not maintain that there is a very broad distinction between a law affecting one defined sect, and a general law for all who may choose to forswear the religion of their forefathers;

and that, if you confine the application of the Bill to Bráhmós, the mass of the people, who have never heard of a Bráhmo, will attach as little importance to it as they would to a Bill to legalize the marriage of Hottentots. Mr. Justice Newton, late of the Bombay High Court, when reporting on the first Bill, said the aversion to it seemed to him 'to arise chiefly from an undefined apprehension of troubles in connection with caste and family associations.' My Lord, it is precisely because I believe a general Bill of this kind will give rise to these undefined, perhaps groundless—but not the less dangerous because undefined and groundless—apprehensions that I object to it.

"We shall next be told that the Bráhmo sect is as yet in such an inchoate state, and comprises so many members who hold different tenets, that it is impossible to define who is, or who is not, a member of it. My answer to this is that the same objections would apply to a Christian Marriage Bill; and that, as a matter of fact, the Bráhmós comprise united bodies, who have fixed places of public worship and established forms of prayer, and who are quite capable of taking care of themselves.

"Next, we shall be told that the Adhi and other non-progressive sections of the Bráhmo community will object to the Bill as they did before. To this, I would reply that there is this very material difference between the former Bill and the amendment now proposed; the former was applicable to Bráhmós generally, while this will be restricted to certain members of the Bráhmós; in other words, only to such as choose to avail themselves of its provisions.

"Lastly, we shall be told that the effect of Western ideas and thought has been to make a good number of the Natives of this country absolute infidels, and that it will be very cruel if, having reduced them—or, perhaps, I should rather say elevated them—to this high intellectual state of mind, we do not provide them with a secular form of marriage. I admit the difficulty; but I should say to these gentlemen, 'I am very sorry for you; but since your great minds will not accept any form of recognized religious belief, I must ask you to marry yourselves according to what you consider the superstitious customs of your fathers. We may require you to do a violence to your feelings in obliging you to take part in ceremonies which you dislike and consider idle and foolish; but, on the whole, we prefer subjecting you to this violence, rather than run the risk of disquieting, for your sakes, the minds and feelings of the great mass of the people.' Then, as different other recognized sects arise—as arise they probably will—I would deal with them, from time to time, as we now propose to do with the Bráhmós.

“ My Lord, I feel persuaded that we cannot be too conservative when legislating on a subject of this kind, and too careful to guard against our self-sufficiency leading us into the snare of believing that, because we ourselves are satisfied that a measure is theoretically right and abstractedly just, therefore we are bound to force it on the people of this country who are alien to us in thought, race and feelings. My own belief is that we really are doing a substantial injury in many cases when legislating at all on these subjects. There are many young men who are now devotedly attached to their families, and to their family ties, who have entered on a kind of tacit compromise with their most orthodox relatives, by which both sides show as much affectionate tolerance towards each other as possible. Why, by your meddling legislation, drive them to declare an open breach ?

“ I will conclude by commending to the earnest attention of your Lordship and the Council the advice given by the present Lieutenant-Governor of the North-Western Provinces, Sir W. Muir, than whom I suppose no one has a more intimate knowledge of, and warmer sympathies with, the feelings of the Natives of this country. He said, when writing on the first Marriage Bill, that ‘ legislation should, in all such matters, follow, not anticipate, any great changes of social sentiment or religious feelings.’ In other words, he considered that legislation should be based, not on abstract principles, but on the proved exigencies of the case.

“ My Lord, my contention is that the exigency has not been shown.”

The Hon'ble MR. ROBINSON said :—MY LORD, after much anxious thought I am constrained to support the amendment proposed by my hon'ble colleague from the North-Western Provinces.

“ This Bill, modified in the degree now suggested by his motion, will still convey full relief where it is alleged, rightly or wrongly, to be wanted. The change will comfort those who find in the more general measure reasonable cause for anxiety about their home and social life, and other institutions which they hold dear ; and it will avoid even the appearance of rash, purblind and meddling action on the part of the legislature in respect to matters of a purely domestic, social and religious nature.

“ We propose to legislate for the petitioners before this Council—and, if necessary, other uneasy dissenters may be included—but to leave alone their countrymen through the length and breadth of the land for the present.

“ I would observe, *in limine*, that I think we are much indebted to the hon'ble and learned member in charge of the Bill for bringing this matter to a

broad issue and taking a distinct decision upon it. It is a very important one. And I am confident that your Lordship and this Council will attribute to its true motive, and welcome, a firm expression of opinion from those who, like myself, now venture to tender advice which is at variance with his. For I am sure that one ground for confidence in the deliberations of this legislature lies in the assurance that in it are represented very varied Indian experiences and sympathies, and a wide divergence of view and opinion, which will be honestly stated as occasion arises.

“ I am not afraid of full and earnest canvass of a matter of this kind. I think that the Government of India has done very wisely and considerately in inviting, over and over again, the fullest expression of Native feeling and of official opinion on a matter which may seriously affect the Native institutions of the country and popular good-will, and is at all events a new step in a legislative direction, which requires much forethought and anxious deliberation. I think, in general, there is scarcely a single matter affecting the social or economic government of this country—least of all one which touches, as this does, its family and religious life—which may not be respectfully and with great advantage and assurance submitted to popular Native judgment; for I am sure that, in most matters, we can neither act justly nor wisely without their advice, nor without careful study of their ways and minds. Both we and our Native fellow-subjects derive great benefit from open honest canvass of every matter that can arise between us. But when we have obtained such honest expression of their opinions, we ought not to set them aside, save for very urgent and cogent reasons. Now, I am satisfied that Native opinion is absolutely against the learned member's proposal.

“ In coming to the discussion of a purely social and religious question like that before us, I feel that one is swayed by very conflicting feelings. On the one hand, the most experienced among us must, I think, feel conscious how ignorant he is of the religious and domestic feelings and home-life of the country—must feel how feeble is his sympathy with what we are apt (very erroneously, I think,) to view as popular weakness and intolerance, and how little he is fitted to form a kindly and considerate judgment on matters which to our minds seem easy of solution, but which may still implicate the very heartstrings of Native social and family life. On the other hand, how strong a hold on us have those abstract principles and theories of English life, which the hon'ble and learned member propounds from time to time with such force and eloquence; predispositions which are perhaps strengthened by the knowledge of what has taken place in European countries under somewhat analogous circumstances. Some

of us, no doubt, think that they foresee a pending necessity of sooner or later passing a Civil Marriage Law for all India, without reference to race, creed or social distinction. And we are apt to think, if this be so, why not have such a law now, or something like it? Yet the conclusion may be thoroughly out of place, very untimely and unjust. I think that this is the position of the matter now before us.

“ No serious exception can be taken to the abstract principle of any one of the Marriage Bills which have been before this Council; but from a practical point of view, both Sir Henry Maine’s Bill and the learned member’s must, I think, be condemned as ill-timed, needless and hazardous.

“ The question of civil marriage for all India was broadly and inconsiderately raised in the first, which was happily abandoned. I think that it is in a great measure revived, in a covered and unintentional manner, by the Bill now before us; for public opinion is, I think, unanimous that no real value whatever attaches to the declaration by which the hon’ble and learned mover of this Bill thinks he gives to it a distinctive and protective character.

“ The declaration is, I think, futile, evasive, and derogatory; and it robs the measure of any usefulness where, possibly, it might have been productive of good, *ex. gr.* amongst the races of Malabar. I think, therefore that the Bill, as it stands, is open to all the grave practical objections to which Sir Henry Maine’s was obnoxious, with, perhaps, this additional bootless blot of its own. I know of no reason—none has been suggested—why any person should not come up and make the hon’ble member’s declaration—with any mental reservations he may conceive—and be as much what he was before as if he had never made it. This being the case, the Bill will not do.

“ I refuse to place this matter in any way whatever alongside of the legislation—having general application—of 1860. Justice required that a man should not be robbed of his property because he exercised his natural right to freedom of conscience, and general legislation was called for. Every woman has a natural right to be a wife and mother, and therefore general legislation for the permissive re-marriage of widows is sound. But the one before us is quite another and special matter.

“ I am willing to concede that every couple has a claim to be married in the absence of even time-honoured national rites to which they have a conscientious dislike, fanciful or otherwise; and therefore I think that the petitioners before the legislature have a personal or sectarian right to the relief they seek.

But the time has not yet come when India really requires an Act to enable every one to be his own Church, wherein to set up his own hymeneal altar—regardless alike of national feeling and social order. And I think that general legislation, embodying in the main this principle, is likely as yet to create far more disorder in a country like this, than any good it can do in comforting the doubts of a few individual sects which can easily be legislated for as need arises. I also think that the legislature will err very seriously if they allow the prayer of a somewhat shifty and immature body of sectaries to influence at this time the general legislation of the country; it will err very seriously if it be drawn into the temptation to thrust upon the wide nationalities of India a general and untimely measure, which is neither needed nor asked for at the present time.

“ I earnestly trust that this Council will see their way to deal with this matter for the present on the narrower basis now proposed; for I think that all the facts and circumstances, all the information before the Council, coupled with those indications of popular feeling on this matter that have been testified to, justify no other mode of dealing with it.

“ I have very carefully examined the whole of the discussions which have taken place on the different measures which have been proposed. Fairness to the country, and to those who are interested in, and have advised on, this matter, requires me to treat the whole as one discussion, and to draw conclusions as to the public estimate of such legislation from the tone of the whole collection of opinions before us. Thus viewed, I am convinced that the verdict is absolutely condemnatory of the Bill before the Council, and that we should accept that verdict without hesitation, and reject the Bill in its present form. It were impossible here to analyse all the opinions contained in the collection under my hand; but my own belief is that the hon'ble and learned member would scarcely register *one* Native vote outside the bodies which we are willing to relieve. I feel satisfied that Sir W. Muir, the Government of Bombay, and almost every other reliable and experienced adviser would recommend him not to force on the general measure.

“ The discussions have, I think, fulfilled very useful purposes. They have thrown much light on the subject of Native domestic usage and feeling in respect to their home and social life, and how the British Government may most wisely and acceptably treat these matters. They have served to illustrate the generous toleration which pervades the higher class of the Native mind in respect to the relief which ought, under special circumstances, to be given when any real need for it has been made out—a toleration which is

naturally coupled with a properly prudent, homely conservatism in respect to social and family life in general, which we cannot but respect and cordially sympathise with. Among the Native papers will be found some which evince a statesman like grasp of the whole subject, and of the duty of this legislature in relation to such matters in India.

“ But perhaps the most important result of the discussions has been that they disclose how much just confidence the people of the country have in the liberty which they really enjoy under their own usages and customs, and how much room for the practical development of any useful movement is really present in the constitution of Native society and in the elastic condition of Native social law. And I most thankfully add that they disclose how little need or excuse exists for us to adopt any course of pragmatical action in relation to social politics and family life in India—such as that now proposed. The hon’ble and learned member has fully appreciated this condition, and has nobly vindicated it against narrow-minded doubts, in a manner which must have conveyed to many an anxious Native heart in this country the assurance and comfort of knowing that the equity and good conscience which guide the givers as well as the administrators of the law, are in absolute consonance with that spirit of liberty which exists in their own institutions. But I think the people have a right to ask the learned member to be consistent in leaving them alone in their contentment and faith, while they concede to him the privilege of relieving the hesitating persons who are asking for relief from ‘ law-opinion’ created doubts—all erroneous though that opinion be.

“ The general deduction to be drawn from the whole discussion is, as I have stated, that there is neither any popular desire nor need for general legislation on this matter ; and that no public purpose can safely be served by going beyond the brief which the petitioners before the Council have placed in our hands. And I venture to add that only evil will result from crude and blind action under our present state of uncertainty as to results. We should, I think, absolutely refuse to incur the risk of running counter to so much good, safe, and earnest advice.

“ To sum up, I support the hon’ble member’s amendment, because, if the state of uncertainty (reasonable or unreasonable) in which some individuals of a highly respectable class of dissenters are represented to be, be true, the Bill as altered, will still give them personally, or as a sect, all the relief they require, and will concede all that is actually asked for, without needlessly disturbing the mind of Native society in general.

“ Now, I think that justice to the promoters of this legislation requires me to notice here *their* forbearance and consideration of their countrymen’s feelings—a consideration which we shall do well to follow. The Progressive Bráhmós have not, so far as I am aware, asked us to thrust a law which they accept as sufficient for themselves on their anxious and more conservative countrymen. They have not devised a measure which may possibly embroil the legislature with people who have not as yet risen to their level of intelligence and free-thinking. They have asked for relief for themselves only. The sweeping characteristics, the anticipatory generalisations of the Bill before the Council, do not, so far as the papers show, emanate from them.

“ I support the amendment, because it will fully redeem the pledge given by the Government of India to the small section of the community who are supposed to be suffering from undue disabilities. For I read the earnest announcement of the late noble President to mean no more than a firm purpose to give comfort where he thought doubts exist—not to mean an unwillingness on his part to listen to conservative anxieties which may reasonably be felt by the vast populations over whom he ruled with such tender consideration.

“ I support the amendment, because I think that tentative legislation in this direction may prove useful. I think that, before many years, the progress of society may possibly necessitate general legislation on this and other matters of a social character; and the limited legislation which we now propose will give us an opportunity of trying, in an experimental manner and under circumstances of special advantage, the practical effects and possible consequences of such legislation. We have, in the sect for whom we propose to legislate, and in the others to whom it may be right to extend the privilege, a highly intellectual and educated body of Natives, who are jealous of the honour of the movement which they are leading, and are living under immediate observation and amidst a watchful public opinion, and they will be vigilant against those abuses which will certainly arise among the uneducated and rural populations under the obtrusive general Bill now before the Council. These sects will work out a problem for us which we can scarcely understand ourselves. They will prepare their countrymen for the reception of wider liberty—if such it be—and will alike teach us to avoid pitfalls and them to disabuse their minds of anxieties which are natural now. I would confide this experiment to the care of these sects without fear that Bráhmóism will be converted into a temporary Cave of Adulám for disorientated and distressed amorous swains from all races and creeds.

“On these grounds I would urge the Legislative Council to grant relief—unnecessary though it seem to me—without delay to any members of the Bráhmó sect who desire to take advantage of a form of civil marriage. And, if any other individual sect is seeking similar relief, I would direct the Select Committee on the Bill (if it be recommitted for alteration) to take notice of their desire.

“I withhold my support from the Bill as it is at present drawn, because I am satisfied that no necessity, real or fancied—certainly no popular call for such a measure—can, in any way whatever, be made out at the present moment; indeed, the almost unanimous consensus of opinion, Native and official, affirms the view held by the learned mover of this Bill, that the fears created by Mr. Cowie's opinion are baseless, and that no general law is at present needed. And because I am satisfied that, on the whole, the people cordially desire to be left to the operation of their all-sufficient customary law and usage. We should not at present pass any measure which may engender distrust amongst the people about the very ground-work of their social life.

“I withhold my support from the Bill as now drawn, because I see reason to fear that legislation on such a matter will gradually and prematurely, though unintentionally, tend to restrain and weaken the abundant liberty which the law and usages of this country now afford, and to raise doubts where none now exist in respect to customary marriages. If this be a possible consequence of legislation in this matter, such an enactment will do infinite harm. On this point I would refer to the opinion (amongst others) of the learned Advocate General of Madras on Sir Henry Maine's Bill. I need scarcely remind your Lordship that Mr. Norton is a statesman of large and varied Indian experience and sympathy.

“The hon'ble and learned Member cannot, I think, assure us on these prospective possibilities, although his section 18 is so constructed as to avoid, so far as he can foresee, this danger. I am a tyro at legislation; but I freely confess to a deep distrust of law-puzzles, which first enact broadly almost anything, and then proceed to except almost every thing from their own operation. The mere fact that this is more or less the character of the Bill before the Council, shows how slippery and dark is the path on which it embarks us and forbids our following it.

“I withhold my support from the Bill, because, while admitting that there does exist an unsettled and immature movement amongst some limited sects of Native society, I am satisfied that that movement is as yet by no means popular, wide-felt or acceptable to the country at large; and I do not think that the legislature can wisely legislate in advance of a well-developed need and

assured disposition for change—legislate, too, in a manner which the state of the public mind in general, and towards these sects in particular, in no way justifies. For a statement of intelligent Native feeling on this point, I refer with assurance to the letter of the late able Minister of His Highness the Rájá of Travancore, Sir Madhava Ráo, K.C.S.I., on Sir Henry Maine's Bill, and to the views of other Native gentlemen which will be found in profusion in the collection under my hand. I think the legislature should await a real and general expression of a desire for change in a matter of this kind. There is certainly none before the Council.

“I cannot support this Bill, because I cannot deny that those instinctive apprehensions are well-founded, which are generally expressed as to the probable effect of such legislation as a direct and powerful menace against many dearly-cherished religious and social usages and distinctions of Native life; and because I believe that they are almost certain of speedy realisation. I think that it is highly probable that the earliest use that will be made of this Act, should it pass with general application, will be to set aside the caste adjustments of Native society—with very irritating consequences in Native family and social life.

“I know nothing of the views or objects of the promoters of this Bill on these subjects, but I have read anonymous allusions to this Bill in connection with expressions about ‘nationality,’ ‘fraternity’ and ‘equality,’ and about dissolution of caste and the like, such as might emanate from a Socialist school in Europe. Now, I do not wish to express any opinion on these matters, but I cannot—while conceding a full meed of relief to all advanced thinkers, by the Bill as we propose to amend it—find it in my heart deliberately to advise this legislature to throw broadcast over the land an enactment which may needlessly stimulate untimely action in this direction, and cause endless heart-burnings in many a Native family. The time may come when legislative action of this kind will do good—or at least little harm; but I am satisfied that, as regards the up-country and rural populations of India, this exigency has not yet arisen, and I would be guided by real wants, not by theoretic proprieties.

“I cannot altogether leave out of sight that the Natives of the country may justly think that legislation of this kind adds a new and sensual incentive to the dissent and schism which are already exciting their minds.

“I cannot support the Bill as drawn, because I think that it tends to convert that narrow religious difference about rites and ceremonies which has arisen between a fragmentary sect (residing about the seats of learning and English

influence) on the one side, and the conservative masses of our vast population on the other, into a possible cause of general public difficulty and complication, or of needless and baseless misunderstanding and misrepresentation in respect to our public policy. It makes a State question of a mere religious difference.

“ Now, I must not be misunderstood here. I should be doing the deepest injustice to the India of the South, which I know and like so well, did I assert that the popular condemnation of an individual measure of the Government of India means disaffection or disloyalty. Nothing is further from my meaning ; no consequence less likely to arise under trials even of a far severer character. But I think that an intelligent Native public may have just occasion to challenge the wisdom of the legislature, should it convert what seems to me a mere sectarian question—which can be so easily disposed of, as we propose, to the satisfaction of all parties and on its individual merits—into a public matter with more or less bearing on the whole population. ‘ Why ’—some have asked in effect, and very pertinently—‘ are we all to be made anxious because some sectaries need relief ? ’ I sympathise with them fully, and think that this needless and vexatious Bill must be abandoned as out of place and time.

“ I am aware that one of the reasons for this thing is a ‘ drafting ’ difficulty. It is difficult to define the fragment or sub-class of the Bráhmó sect that wants relief ; and we have been assured by the hon’ble and learned Member, that there are other wandering minds, with other dogmas and theories about marriage and the like, whom he wishes to include, but is equally at a loss to define. It is apprehended, too, that a definition which might, perhaps, include the sects or individuals intended to be relieved this year, would be left high and dry by the tide of change next year.

“ Well, there can be no doubt that the hon’ble and learned Member has as yet a very bewildering, shifty and immature condition of things to deal with as a subject for legislation. But still I do not consider the confusion hopeless, or that it will baffle the Committee of revision.

“ Be this, however, as it may, I am satisfied that the mere fact that things are in this chaotic state, distinctly, and as it appears to me conclusively, forbids our accepting such disorder as a fitting starting-point of general and nation-wide legislation on such a subject. We cannot allow a difficulty about defining some 20,000 petitioners to be a reason for thrusting unwelcome legislation on over five times as many millions.

“ I sympathise with my learned colleague's difficulties ; but I cannot give in my adhesion to the solution he proposes. It is, I believe, impolitic, premature and vain to attempt now to consolidate—I think we shall likewise stimulate—all possible Native dissent for all time to come under this general Dissenters' Act, which is to be applicable, with its many pitfalls and disagreeablenesses, to all Native society.

“ It is true that our learned colleague dislikes the thought of what he calls a perfect jungle of Marriage Acts on the Statute-book. I am satisfied that he greatly exaggerates both the difficulty and demand for legislation of this kind. But were his utmost anticipations to be realised, I still think that an orderly collection of needful private or sectarian Marriage Acts in the Statute-book were, for some years to come, and in the present state of our ignorance of this subject and the shifty condition of Native mind and opinion, infinitely preferable to the imminent risk of wafting the malaria of ill-judged, blind and untimely legislation from this Council-room out over all Native society in this country.

“ We have, as it appears to me, a fairly easy problem of moderate extent to deal with, and I would most earnestly recommend this Council to deal therewith, and with no more, for the present; and to leave the contended masses of India alone and unharassed by change.

“ We are told that the Act will pass unheeded by the masses; that few will use it; that Government will not appoint Marriage Registrars, and so on. To this I would reply, if the thing be useless; if that which the Act will require is not to be done, why legislate? Why excite the well-disposed and intelligent people of the country for nothing or next to nothing? My advice is to give what is sought, and leave well alone.

“ When this measure was last before the Council, I ventured to draw attention to the great disadvantages of having to discuss and vote on matters which have an exclusively social bearing on the people, both in Council and in Select Committee, in the persistent absence of the aid of Native advice and Native special knowledge and sound judgment.

“ I must repeat that there is something very depressing about deliberating on a matter like this in a legislature from which Natives are not excluded by law, without that all-sufficient means of feeling the pulse of Native opinion and of judging of what is right and suitable for the country. I am satisfied, from the experience I have already had in this Council, that we can

neither safely nor wisely legislate on such a matter in a condition of persistent isolation and separation from those who are most interested in the measures which are enacted here.

“The honour which has been done me in permitting me for a time to sit here, will shortly be a thing of the past. But I should be untrue to myself were I to leave this Council without affirming, with all the earnestness I can, that I am heartily satisfied that it would be far better, both as regards the present and the future, both for the lawgivers and for those for whom the laws are made, did we not thus practically learn to do without each other.”

Major General the Hon'ble H. W. NORMAN confessed that he had not been much moved by the arguments adduced by his hon'ble friends against this Bill, nor did he share in their apprehensions, and he still thought the Bill a just and good Bill. The remonstrances which had lately been received appeared to him to have been to a great extent evoked by what had taken place in this Council, rather than a spontaneous genuine product of feeling on the part of any large numbers of our Native fellow-subjects. The Bill appeared to him to be framed in a spirit of entire toleration, and as it was calculated to remove a real grievance from a large and increasing class, he would oppose the amendment, which would restrict the operation of the Bill to only a portion of that class.

The Hon'ble SIR RICHARD TEMPLE said that it was not his intention to trouble the Council with any remarks on the general principles of the Bill. Those principles were very ably and strongly expounded by his hon'ble and learned friend, Mr. Stephen, on a recent occasion, and he believed that that exposition had not in any way been shaken by the vague generalities which the Council had heard that day from the hon'ble members on the left who had spoken against the Bill. His only object in addressing His Lordship and the Council was this: A great deal had just been said by his hon'ble friends, Mr. Inglis and Mr. Robinson, about the influence which Native feeling ought to have upon our legislation, and it had been alleged that this feeling was being pronounced against this Bill. He felt surprised at hearing these statements and could not allow them to pass unchallenged.

If he believed that Native opinion throughout the country, or even amongst a considerable section of the population, was really opposed to this measure, he should be in favour of the view which had been taken by his hon'ble friends, but he affirmed that there was not the slightest evidence of any

such spontaneous opinion. The Council were not without the means of knowing what the opinions of the Natives were; there were the great Native Indian Associations in Bengal, in the North-Western Provinces, in Oudh in the Panjáb, in Bombay, and (with all deference to His Lordship the President's greater knowledge) in Madras also. They had ample means of knowing, from memorials and petitions, and from the published proceedings of these Associations, what the feelings of the Natives were. Moreover, they had the advantage of the Native vernacular newspapers, published in several languages, from which extract translations were furnished weekly for the information of the Government and of this Council. Well now, with all these means, with the right of petition, both public and private, which was fully understood and constantly exercised by the people of every province in India; with all these means of knowing what the opinion of the Natives was, he would ask the Council to consider what really had been adduced as to the nature of that opinion. Why, not one single extract from any Native newspaper had been produced; not one single line from any part of India. Was it credible that, had there been that feeling of dissatisfaction which his hon'ble friends had stated, it would not have found vent in the Native newspapers; that there would not have been many articles upon the subject week after week? Supposing, then, that such a feeling existed, would not his hon'ble friends, after all the research and attention they had given to the subject, have found out those articles? If all this agitation were really spreading, was it credible that they would not have produced quotations from these newspapers?

[The Hon'ble MR. CHAPMAN remarked that the Bill had not been translated into the vernacular languages].

The Hon'ble SIR RICHARD TEMPLE continued. Allowing that there may have been some defect in circulating formal translations, might he ask whether anybody supposed that the Natives of India were not well acquainted with everything that appeared in the English newspapers; whether the Native vernacular newspapers, which had constant allusions to everything that passed in the English newspapers, were not conversant with the objects and details of this Bill; and had not the English newspapers been full of the discussions in relation to this Bill? Further, with reference to the interlocutory observations of his hon'ble friend, he would ask whether there was not a large number of the Native papers printed in English, and in very excellent English too, sometimes even in eloquent English? He would challenge his hon'ble friends to produce almost any quotation—certainly any series of quotations—from any Native paper in India, whether in the English or in the vernacular language.

Then, again, what did the deliberations or addresses of public meetings in this country amount to? Some show of these had been paraded just now by his hon'ble friends, but what were the facts? There were no papers or petitions before the Council, either from Madras, Bombay, Allahabad, Lahore, Lucknow, Nágpúr, or any of the great centres of population in the country. At every one of these places the people conducted their proceedings in a public manner; but from not one of those great centres had there been any utterances of the feelings of the people in regard to the Bill. The utterances against the Bill had come only from Aligarh and Bareilly; from one Native gentleman at Morádabád, who seemed to have moved twice in this matter, because SIR RICHARD TEMPLE observed his name put forward in a letter from Bareilly.

[The Hon'ble MR. INGLIS observed that the Native gentleman who wrote from Bareilly, and the gentleman whose letter was dated Morádabád, were different persons; also that a meeting had been held at Morádabád, and a petition numerously signed had been sent up against the Bill from the residents of that place].

SIR RICHARD TEMPLE continued. He found, on looking again at the papers, that his hon'ble friend was right in saying that there was a petition from Morádabád signed by Sálíg Rám and others.

There were, then, petitions from three places, but from only three places in all India. He did not wish in the slightest degree to disparage the value of the testimony of these respectable Native gentlemen of Bareilly, Morádabád, and Aligarh; but those were places in which his hon'ble friend, Mr. Inglis, had served with distinction in former years, where his opinion carried great weight, and where his name no doubt was a tower of strength in public estimation to any cause which he advocated. That, of course, was natural and proper. But SIR RICHARD TEMPLE would ask whether these objectors had made themselves heard before the months of January or February last, when his hon'ble friend's well-remembered speech in regard to this Bill was made. His belief was that the objections on the part of these Native gentlemen had taken shape and form from the perusal of his hon'ble friend's criticisms. It was a case of *post hoc et propter hoc*.

The Bareilly memorial was adopted at a meeting of some fourteen Native gentlemen, out of whom twelve were persons who were either servants of the Government or Honorary Magistrates, or pleaders, or schoolmasters—just the men who would naturally follow the guidance of our hon'ble friend. There were but two independent Native gentlemen.

[The Hon'ble MR. INGLIS observed that the memorial was signed by over 500 persons.]

SIR RICHARD TEMPLE resumed. But it appears from the official papers that the meeting really consisted of these fourteen persons, and that they sent their memorial about the city by a sort of "round-robin" process, and obtained signatures of persons known or unknown. Without doubt these gentlemen were leaders in the movement: if there were others induced to join, the real movers were these fourteen gentlemen.

At Aligarh there had been a meeting of some nineteen Native gentlemen of more or less rank and position. But the president and spokesman was also a Government servant, a Deputy Collector; and that Deputy Collector in his opening speech pointedly alluded to, and based his speech on, the speech of his hon'ble friend, Mr. Inglis. SIR RICHARD TEMPLE did not say that in order to disparage their testimony; but he said that utterances of this sort must be discriminated and distinguished from the spontaneous opinion which arose from the unassisted movement of the people.

So much for the quantity of the agitation. He would for a few moments consider its quality. To show the sort of arguments by which these opinions were supported, he would read to the Council just one or two sentences in order that their calibre might be weighed. One Native gentleman remarked—

"Polygamy is not allowed by Hindú law, and if it is allowed by Muhammadans, it is a matter of choice. Why do not the Progressive Bráhmós make it a rule or religious tenet amongst themselves not to have more than one wife?"

Was not this a surprisingly incautious statement of the Hindú law as it now exists?

Another Native gentleman remarked—

"The term 'Hindú does not here mean nationality, but community. Hence, it is evident that those who are guilty of practices by which a Hindú would lose his caste or be excommunicated, fall under the head of non-Hindús. If a Hindú makes a voyage across the sea, or takes food (rice, bread, &c.) at the houses of the low classes or *mlechhas*, he is declared by the *sástras* to be an outcast. Thus, it follows that many might take shelter under the proposed Act. Native Civilians, Barristers and Doctors would never think of rejoining the Hindú community by troublesome and humiliating expiations, but gladly avail themselves of the provisions of this Act."

That opinion really meant that those Hindús who chose to cross the sea and to live in England for a time; Native gentlemen who ventured to be enterprising and to leave their country for Europe and study for the Bar, or to compete for the Civil Service, were to be placed under severe civil disabilities. That showed the sort of intolerant feeling which actuated these objectors.

Another Native gentleman distinctly said that he gave his opinion after perusal of the proceedings of this Council. He said, addressing our hon'ble friend, Mr. Inglis—

"I most respectfully beg to say that I feel highly gratified at being invited by you for an opinion of the 'Native Marriage Bill' proposed by the Hon'ble Mr. Stephen, and feel the more grateful because, had you not communicated the subject to me, it is probable I should have remained ignorant of it from its being merely published in English in the *India Gazette*."

Constituted as Native Society is, an opinion thus given may be useful in its way, but it is a very different thing from an original opinion.

Another Native gentleman strongly recommended that—

"Some heavy penalty should be fixed for fraudulent renouncement of one's religion. This is necessary to open the eyes of the designing persons to the result of their ill-conceived plans and ill-meant deeds. The idea of severe punishment may, in some cases, excite too strongly their self-love, so as to prevent them from entering into matrimonial connection without due and proper consideration, and will consequently prove a strong safeguard to protect the caste-system so much desired for the welfare of Native society."

It were superfluous to comment on this passage, the first sentence of which breathed the very spirit of intolerance. It only showed the difficulty of collecting practical opinions from the Natives on questions of this nature.

Again, the Morádabád petition to which his hon'ble friend had recalled attention, averred that this Bill would conduce to "infanticide," would "stand in the way of female education," would "give rise to perjury," would "lead to degeneration," and so forth. Was it too much to say that the petition bristled with misapprehensions?

But his hon'ble friend, Mr. Inglis, had to-day quoted various passages from Native opinions which were adverse to the Bill. He (SIR RICHARD TEMPLE) would just cull a few flowers from the garden of his hon'ble friend's quotations. One objection was that the Bill would greatly accelerate the desertion of Hindús from their religion; but in reality the Bill did not accelerate it. It had no such effect. The truth was, that if the Bill was not passed, there would be left a sort of oppression on all persons who desired to change from one religion to another. The objectors really meant that the law, by enforcing civil disabilities, should prevent people from changing their religion. And that was neither just nor reasonable. Another remonstrance spoke of the Government identifying itself with the people who fostered this sectarian Bráhma movement. He would ask in what way did

the Government identify itself with this movement by saying that the promoters of it should not be subjected to civil disabilities? The Government dealt out the same justice to both Hindús and Muhammadans. Did it therefore identify itself with the Hindús or Muhammadans? Another objection was that we should wait till this sectarian movement was firmly established. Well, that appeared to have been already done. He would ask whether the Bráhma Samájá, whatever that might mean—at all events the different sects which were included under the name of Bráhmós—were not already firmly established, and did not number many communities scattered all over the country, having a social organization of their own, supported with great ability, and with that sort of knowledge which arose from education and a deeply-rooted opinion. He said that, if this test of establishment was needed, the sect *was* firmly established. Another objection spoke of the Bill as aiding and abetting Hindús in deserting the customs of their forefathers; but surely it was not expected that Government would prevent people by the force of law from deserting the customs of their forefathers! Another objection spoke of the facilities that would be afforded by the passing of this Bill to unthinking young men for contracting imprudent or undesirable marriages. But even without this Bill there was little or nothing to prevent their contracting such marriages, if so minded. The law could never undertake such prevention. But the fact was that there were, by law, at present, unjust and artificial impediments to honourable marriages, and these we were bound to remove. Some of the objections alluded to the members of the Bráhmo sect as having become atheists. The term "atheist" was a very unjust one to apply to the members of the sect under consideration. They were men who, whatever their form of creed might be, nevertheless had a great deal of religious principle, which, according to their consciences, their lights, and their principles, they followed. As a sect they might on the whole be more correctly described as well-conducted and God-fearing, and their leaders were persons of pure and lofty character. Whatever they might be, they were not atheists. Another objection spoke of the doubts which were entertained, as to the validity of Bráhmo marriages without this Bill, as unfounded. That was just a specimen of the absurd objections which had been made to this Bill. Why should it be said that the doubts which were entertained were unfounded? It appeared to him that the doubts which were entertained were notoriously well-founded. It was well-known that the doubts had arisen in consequence of the highest legal adviser of the Government having given it as his opinion that there were such doubts. Then, after speaking of religious opinions being liable to fluctuate, and about young men

hastily adopting new doctrines, one of the objectors said that this relinquishment of religion would be impossible if a policy of neutrality were followed by the Government. That objection meant that this Bill was not a law of neutrality that it favoured some sects at the expense of others. Now, if there was one policy more than another that the Government pursued in this Bill as in all other laws, it was absolute neutrality in matters of religion. The truth was, that those who reproached the Government with want of neutrality wanted to perpetuate by law a decided partiality in favour of their own views. That was a position which the British Government of the 19th century would not consent to defend. Then, a great many of the objections were worded in this way, that the Bill would interfere with the existing religions of the country. In what way could the Bill interfere with the existing religions of the country, when it expressly referred to those who did not profess any of those religions? The objectors in effect said that, if there was to be any interference at all, they wanted interference in behalf of the old religions of the country. Another class of objection taken to this Bill was that it was in direct opposition to the Muhammadan law. True, but then the Bill referred to those who were *not* Muhammadans! What could that objection possibly mean, except this, that the doctrines of the Muhammadan law were to prevail amongst sects which did not adopt Muhammadanism? That might be a sound doctrine for the followers of Islam, but could not be accepted by the British Government.

An analysis of these objections should show of what an indefinite and unreasonable character were the remonstrances which were so strenuously put forward by the hon'ble Members on the left. But if his hon'ble friends insisted on the individual opinions of Native gentlemen being entirely against the Bill, of which he contended there was not the slightest proof, why should we not take some of the papers which had been received from the district officers in the Madras Presidency? In that Presidency, a circular was sent to selected district officers directing them to obtain the opinions of respectable Native gentlemen in their districts. From some of these papers, several objections quoted to-day had been taken. He must here again point out that answers to that circular were quite a different thing from out-of-door agitation or any wide-spread feeling of alarm. If the answers to this circular were put in juxtaposition with the objections quoted by his hon'ble friend, it would be found that some of the opinions given by Native gentlemen were more or less in favour of the Bill. The Collector of the Kistna District, in reply to the circular, said—

“These gentlemen have been good enough to favour me with their views in writing, and I forward them as received; the deduction which may be therefrom drawn being that they consider the Bill not entirely necessary, but on the whole a measure to be desired.”

So much for the Native opinion in the Kistna District generally. One Native gentleman of the Kistna District in his reply said—

“I have the honour to inform you that I have carefully perused the papers forwarded to me, and see no objection to the Bill being passed into law.”

Another Native gentleman said—

“There is at least as much probability of the rising generation becoming Bráhmós of some kind or another, as there is of their becoming Christians, for whose marriage special Acts have been passed.

“As section 19 of this Bill provides that nothing in it shall affect the validity of any marriage not solemnized under its provisions there can be no objection to the passing of it. It is simply intended to remove the uncertainty, in the case of those who wish to avail themselves of it, without, at the same time, making it binding on others.”

That was an opinion in favour of the Bill. Another Native gentleman said “that the Bill under review was a necessity of the time.” Another Native gentleman said—

“I am of opinion that, although it is desirable that the passing of this Act should be postponed another year or two, owing to the paucity of the new sect for whom this Act is intended, yet, as it is thought that the non-passing of this Act would materially affect the interests of these people in various ways, I, for my part, would only be too glad to see this Act come into operation ere long; and I fully believe that the passing of this Act would be productive of many good results.”

[The Hon'ble MR. INGLIS said that the opinion just quoted was the opinion of the Reverend M. Ratnam, a Christian Minister.]

SIR RICHARD TEMPLE resumed—He found that it was so; but he would observe that the previous opinions which he had just quoted were from Native gentlemen of the lay community.

The Collector of Malabar wrote that he had consulted several Hindús of this district, and that they saw no objection to the measure as at present proposed.

He would not pursue the subject further at present; he had no doubt that his hon'ble and learned colleague in charge of the Bill would present the opinions collected in these papers in a far better and more systematic manner than he could on the spur of the moment. Indeed, it scarcely needed argument to vindicate this simple and equitable Bill, which did nothing more than legalize honourable, monogamous marriages, contracted in good faith by persons not professing the Christian religion nor belonging to the Hindú nor Muhammadan creeds. But what he would urge on the Council was, that the

only objections worthy of the name had been those stated as individual opinions; and he affirmed that there was no sort of evidence of Native opinion or sentiment being in any large degree against the Bill. He believed that the vast, or a large, majority of our Indian fellow-subjects regarded the Bill with more or less of indifference, and that those who understood its provisions, or interested themselves in studying it, would have a sufficient sense of justice to appreciate the policy of the British Government, which in presence of the law regarded all religious sects and all classes alike. He maintained that while, on the one hand, it was of the first importance that this Council should watch for the signs of popular feeling, should be wise in foreseeing storms in the social horizon; yet, on the other hand, they should be discriminating and judicious in distinguishing between agitation which was real, and agitation which was imaginary.

The Hon'ble MR. STEPHEN said—"MY LORD, I wish, before beginning what I have to say on the main questions which have been raised, to deal with one or two important points which have been referred to in the course of the speeches of my hon'ble friends. The first point to which I shall refer is one which has been commented upon by the hon'ble Mr. Robinson. He spoke very strongly towards the end of his speech of the absence from this Council of Native members. My hon'ble friend had a right to make such a reference, and he has exercised that right. I regret it because it renders it necessary for me to say a word or two upon the topic referred to. My hon'ble friend probably forgot at the moment that a Native Prince is a member of this body. I refer to the Mahárájá of Jaipur, who is accidentally detained in his territories by ill-health. I must remind my hon'ble friend that, in speaking as he did, he was in fact criticizing the manner in which the late Lord Mayo exercised a personal discretion vested by law in his hands. Every member of Lord Mayo's Government knows, that there are few objects which he had more at heart than the appointment of Native Members to this Council. He made enquiries far and wide for Native gentlemen worthy of so high a distinction. It was Lord Mayo's opinion that, to be a member of a legislature which legislates for the whole of India, is an honour which ought to be accompanied by a suitable degree of influence and rank. And I may confidently say that there is hardly a Native Prince, that there is hardly a Native ruler, whose qualifications he had not carefully considered with a view to his appointment as a member of this Council. I may add that none but those who have had experience of them can be aware of the difficulties connected with such a nomination. In many instances, persons who were otherwise worthy were ineligible by reason of minority or other disqualifying circumstance. In other cases, there were

reasons which might easily be imagined which rendered the persons selected unwilling to serve in the Council. I am sorry that it has been necessary to make this explanation ; but I think these facts ought to have been taken into account by the hon'ble member before making the observations he thought it right to make.

“The second point upon which I wish to make some remarks is the history of the Bill which my hon'ble friend, Mr. Chapman, has given. He said that the whole course of the proceedings in regard to this Bill showed extraordinary precipitancy. It seems to me strange that a charge of precipitancy should be made in regard to a measure which has been under discussion in one form or another for the past four years.”

[The hon'ble MR. CHAPMAN explained that what he said was that the measure was introduced with precipitancy.]

The Hon'ble MR. STEPHEN continued—“I will repeat that the Bill was not introduced in a precipitate manner : it was introduced upon good grounds and after long consideration, because Sir Henry Maine, and Lord Lawrence with whom he was associated, after considering the subject in all its bearings, found that it was practically impossible to draw a Bill for the relief of the members of the Bráhma Samájá alone. The Bill was accordingly framed, in the first instance, after careful deliberation ; it met with an unfavourable reception. But that reception was attended by an expression of opinion which was before the Government at the time when the present version of the Bill was brought in, and furnished ample materials for the opinion I then expressed, an opinion which has not been changed by anything which has since occurred. I knew, when I brought in the Bill in its present form, that it would be unwelcome to a certain section of Native society. I said, when it was proposed to defer the settlement of the question, that there was no good in opening a discussion which would lead to but one result. I have been confirmed in that opinion by a perusal of the papers which have come in since, and I shall now proceed to enter into the subject, and to give to the Council more in detail my reasons for what I have said.

“My hon'ble friends have more local knowledge on this subject than I can claim, but I feel complete confidence in the propriety of the course for which I shall give my vote, and all the arguments used have failed to make me doubt it. Shortly stated, the argument of my hon'ble friends, as I understand it, is this :—‘ We do not contest the justice or the good intentions of this Bill ; but we say that, to pass it in its present form would be politi-

ally dangerous, because it is sure to be misunderstood; because it affords a handle for misrepresentation; because, being a general Bill, it goes beyond the present necessity, which is merely to provide a form of marriage for the Progressive Bráhmós; and because it really will, to a certain extent, interfere with the domestic affairs of the people, by enabling their sons to make imprudent marriages from which they will afterwards be unable to withdraw.' In support of this argument, my hon'ble friends referred to various papers which have been sent in to the Council since the first debate on the Bill, in which various Native gentlemen express great alarm on the subject, and request that the Bill may not be passed. The argument, in short, is—'Do not pass the Bill, because Native public feeling has been excited against it.'

"I will endeavour to meet this argument as directly as I can, and in doing so, I wish to say, once for all, that though I shall have occasion to refer to my hon'ble friend Mr. Ingli's conduct, I wish it to be clearly understood that I do not in the smallest degree complain of it. I have no sort of doubt that the course taken by him in this matter was one which he conscientiously believed to be proper, and it was certainly one which he was on every ground entitled to take. I must, however, observe that it is difficult for me to read my hon'ble friend's speech and to compare it with the papers which have been sent to him by his Native friends in the North-West, without feeling that the answers are, to a considerable extent, the echo of the questions. My hon'ble friend in a characteristically vigorous manner, draws a picture of the evils which, in his opinion, the Bill will cause to Native society, and then sends to ask the opinion of a number of gentlemen, whose answers I think show that, whatever may be their merits in other respects, they are not very familiar with legislation. Of course, they say 'ditto to Mr. Burke,' adding some deeper colours to the picture which he has drawn. I am well aware of the immense importance of not offending Native feeling. I am also well aware of the fact that a feeling which is not in itself reasonable is not on that account to be treated as if it were of no importance. I do not at all deny that the course which my hon'ble friend has considered it his duty to take with respect to this Bill has raised up a real objection to it which did not exist six weeks ago, and which, if he had taken a different view of his duty, would never have existed at all. I believe that, unless attention had been specifically directed to the matter by the delay which I then deprecated, the Bill would have become law without remark, and that its operation would have attracted no notice at all, and inflicted not the shadow of a shade of a grievance. Now, no doubt a certain amount of opposition to the Bill has been excited, and it is necessary to weigh its importance and consider whether it is of such a character that the Government ought, in deference

to it, to recede from a position deliberately taken up, and to abstain from doing that which it has unanimously declared itself to be bound in justice to do.

“No doubt, my Lord, it is a great thing to legislate in opposition to the wishes and feelings of any section of the Native community; but it is also a grave, a very grave, thing for the Government of India deliberately to abstain from doing that which it has declared to be just and right. I do not say that under no circumstances whatever could such a course be justified; but I do say that very strong and peculiar reasons would be required for its justification.

“I need not detain your Lordship or the Council with any further argument upon the question of the justice of the principles on which this Bill is founded. This is indeed fully admitted by every hon'ble member who has spoken against it, though they qualified their remarks by some observations about 'theoretical' and 'abstract,' to which I was unable to attach any particular meaning; nor do I think it necessary to insist on the fact that the Government deliberately pledged itself to that view of the subject. Every hon'ble member who was present at the least debate knows how this matter stands.

“It is proposed that the Government should recede from what they then stated, because, in certain quarters, dissatisfaction has been expressed at the Bill, and because certain persons regard it as an interference with Native law and custom. It appears to me that, by taking the course suggested, we should set a precedent which would greatly weaken all government, and which would in particular put it in the power of any person to defeat any measure by getting up a Native agitation against it. We should, in short, enable every section of an enormously large and varied community to veto any measure which they did not happen to like by criticizing it in a similar manner. To show what the consequences of such a power may be, I may refer to the very first measure of importance which it was my duty to propose in this Council—the Hindú Wills' Bill. It was earnestly represented, in relation to a clause in that Bill which restrained the power of tying up land by will to lives in being and twenty-one years afterwards, that it was opposed to Hindú law and religion, and the Bill was represented, in one of the Native papers, as being 'full of horrors to the Hindús' and as striking a blow at the authority of the Sástras.

“How far, then, are the objections made real and reasonable, for of course we must not give way to them merely because they are made?

“I hold in my hand a printed copy of the various papers which have been received upon this subject. Some of them come from the North-West Prov-

inces, in answer to letters from my hon'ble friend, Mr. Inglis, and others from the Madras Presidency, in answer to inquiries made by my hon'ble friend, Mr. Robinson. A considerable number of the persons consulted are favourable to the Bill. Others are opposed to it on grounds which would condemn the most characteristic part of our English policy and legislation. Others oppose it, not only in complete ignorance of its principles, but although they themselves propose in its place measures of a much wider nature. Others oppose it merely on the ground that it will be misunderstood.

“ First, let me state the effect of the views expressed in the Presidency of Madras.

“ Mr. Hannington, the Acting Collector of Kistna District, forwards the views of five Native gentlemen consulted by him, and says that ‘ the deduction which may be drawn ’ from their opinions is ‘ that they consider the Bill not entirely necessitous, but on the whole a measure to be desired.’ It appears to me that this fairly sums up the effect of their opinions. One gentleman would be unfavourable even to a Bráhma Bill.

“ The Collector of Malabar, Mr. MacGregor, says—

“ ‘ I have consulted several Hindús of this district and they see no objection to the measure as at present proposed. There are scarcely any members of Bráhma Samája in this district, so that the Act, if passed in its present shape, could hardly have any effect, unless by holding out an inducement to Hindús to swear their religion in order to contract binding marriages such as would admit of their property passing to the issue of such marriages. Of this there seems no danger.’

“ The Acting Collector of Madura, Mr. McQuhae, says that he obtained the opinions of a few Hindú gentlemen on the Bill. He says—

“ ‘ I find they object to the Bill on the ground that it is founded on the same principle as the Act which legalizes the re-marriage of Hindú widows, and Act XXI of 1850. This latter Act they regard as a great blow to their religion; but as the law now stands, they are of opinion that the proposed Bill can have no very injurious effect upon their religious and social system, except in so far as it confirms Act XXI of 1850, and removes another obstruction from the path of those who may desire to renounce their religion.’

“ The Collector of Tanjore, Mr. Cadell, gives an opinion to which I attach peculiar importance, because it shows that thoroughly fair and reasonable means were taken to ascertain Native opinion on the whole subject. Mr. Cadell says—

“ ‘ In order to ascertain the views of the Hindú community as far as the limited time would allow, I called a meeting at Tanjore of a few gentlemen of intelligence and had the Bill explained to them.’

“ He then points out how, at first, they viewed it with apprehension ; but he says—

“ At last, however, the conclusion arrived at by the more enlightened among the members of the meeting, after ascertaining the precise intent and scope of the Bill, and, indeed, the only rational conclusion which can be arrived at, is that the Bill cannot operate beyond legalizing marriages as among the communities concerned, and that inasmuch as the right of inheritance to the property of a Hindú is not interfered with any further than it has already been by Act XXI of 1850, they may well look upon it with indifference.’

“ These are the Madras opinions ; and though, no doubt, a certain number of individual unfavourable opinions are recorded, I think I am entitled to say that the general effect of them is that the Bill would, at all events in that quarter of India, excite no particular opposition, although it would be more or less unpopular with that part of the population which objects to Act XXI of 1850, the Hindú Widows’ Re-marriage Act, and generally, to that tendency to favour religious equality which is, I think, altogether inseparable from our position in this country. This, I have little doubt, is the true state of the case and this, I think, appears even more clearly from an examination of the answers of Mr. Inglis’ correspondents in the North-West.

“ Mr. Inglis’ correspondents are six in number, and all of them express themselves in strong terms against the Bill ; but I confess their remarks upon it do not lead me to think they have understood it. One gentleman, Bábú Ganga Parshád of Morádabád, after vehemently attacking the Bill, makes this curious remark :—

“ I acknowledge the truth of the Hon’ble Mr. Stephen’s statement that, if we will have Bills for marriage for each sect, the possibility is that the Statute-book becomes a regular jungle (as he calls it) of Marriage Acts ; but to this I reply, why frame separate Bills ? Why not acknowledge in one brief Act the validity of all marriages which may in future be solemnized in British India, no matter in what form they may be, and let the Bráhmós invent their code, which will equally be valid under the Act ?’

“ Really, for a staunch conservative and opponent of interference with marriage-customs, this gentleman is as thorough-going a radical as one would wish to see. He goes far beyond me, and proposes a Bill which would do ten times more than either Sir Henry Mains or I ever thought of proposing.

“ The next gentleman, Lála Lachmi Narain, Honorary Magistrate of Bareilly, says that the masses will think, though he does not himself share the opinion that the enactment of this Bill is to be a means of converting them to Christianity. Of course, it is impossible to say what misrepresentation may be made

on the subject, or to argue with people who are not open to argument. If we are never to do anything which is capable of being misrepresented, we cannot govern the country at all; but how any reasonable man can suppose that this Bill can be used for the purpose of converting people to Christianity passes any understanding altogether. A man who takes the benefit of it must begin by declaring that he is not a Christian.

"In the main, however, and without going through all that is said upon the subject, I think that the arguments against the Bill are two. They were much pressed by my hon'ble friend, Mr. Inglis, and are re-echoed by his Native correspondents. The first is the argument that the Bill will lead to clandestine and improper marriages. The second is the argument that the limitation of the Bill to persons who are not Hindús, Muhammadans, &c., will be trifling, and will be evaded by persons anxious to take advantage of its provisions to get married. My answer to both of these arguments is, that experience has shown them to be ill-founded, and thus I prove it:—The Christian Marriage Act, V of 1865, is open to precisely the same objections, and has never been found in practice to involve the consequences which it is said will follow this Bill. Indeed, the fact that we have provided a form of marriage for Christians shows conclusively that we ought to provide an undenominational form of marriage for those who do not profess any one of the more popular religions, unless we are prepared to admit that want of religious belief ought to put men under a disability to marry. Let me now invite your Lordship's attention to the provisions of Act V of 1865, and compare the facilities which it gives for clandestine marriages, or marriages by Hindús or Muhammadans who wish to evade the dictates of their religions, with anything which can be apprehended under this Bill. By part V of the Act in question, any two Native Christians of upwards of sixteen and thirteen years of age, respectively, may contract marriage by simply repeating in the presence of two credible witnesses certain words, and a Registrar appointed by Government is obliged to give a certificate of marriage to persons who have gone through that form, which certificate is conclusive proof of the performance of the marriage. No notice; no consent of parents or guardians; no declaration even, on the part of the persons so married, that they are Christians, is essential to the validity of such a marriage. Does not this Act, of which no one complains, open a door to clandestine marriages ten times wider than any opened by the Bill now before the Council? Do not all the arguments urged by my hon'ble friend, Mr. Inglis, to show that the limitation of this Act to persons who are neither Hindús nor Muhammadans, and to show the futility of the declaration required of the parties, apply with ten-fold

force to the fifth part of the Christian Marriage Act? If I were in my Hon'ble friend's place, and were arguing against that Act, with what vigour and force I should be able to point out the hardships which such an Act would impose upon Muhammadans and Hindús. I should, of course, bring up the dancing girl and the son of the man of property and family, and I should then ask triumphantly what security there is against such a marriage under the Act in question? I should say—the Act is indeed limited to Native Christians; but what is a Native Christian, and how is the fact of the Christianity of the parties to be known? On what single doctrine, except perhaps the unity of God, can Christians be said to agree? and the unity of God is the cardinal doctrine of Muhammadanism. It has often been alleged, and it is by no means easy to disprove the allegation, that there is no great theological difference between a Muhammadan who honours Christ as a great prophet, and the Unitarian who regards Christ as a good man, and Mahomet as one of the greatest preachers of the most important of all truths. At all events, the fact that, at a given date, a man was a Native Christian in some sense or other, and that he had made use of the expression—'in the name of our Lord Jesus Christ I take thee as my wife'—would oppose no greater obstacle to his subsequently becoming a perfectly orthodox Muhammadan or Hindú, than the fact that he had said before a Registrar—'I am neither a Muhammadan nor a Hindú.' Moreover, how is the fact that a man is a Native Christian to be proved? The Registrar has no judicial powers, and if he had, how could he use them? Christianity is a vague word, no doubt, but whatever it means, it means something inward and spiritual, which no one can see. It means some state of mind; belief in some sort of religious doctrine. If two people come before a Registrar appointed under the Act and say 'we are Native Christians; we are not within the prohibited degrees' (which, by the way, the Act does not define); 'neither of us is married, and we hear repeat in your presence the proscribed words', the Registrar must give a certificate. He has no right to say 'are you baptized?' first, because he has no right to ask questions, and next, because many Christians are not baptized. He has no right to say, 'do you belong to any congregation?' for, whatever else Christianity may be, it is wider than any denomination. He cannot ask what their creed is; for a hundred creeds pass under the Christian name. He cannot even say to the boy of seventeen and the girl of fourteen, do 'your parents consent? for such consent is not necessary as the law stands now, through that blot will, I trust, be removed by the consolidated Bill now before the Council. He can only witness the ceremony and give the certificate, which is conclusive proof of the marriage. When it is given, the marriage is valid, and, as I believe, indissoluble; and yet it is open to the parties, as they leave the Registrar's presence, to change their religion. They may say the next moment, 'we are

Christians no more'—the man may say 'I am a Mubammadan'; the woman 'I am a Hindú.' We have contracted our marriage, and we are now convinced that the religious opinions which we then held were erroneous, and resume those in which we were brought up.' That is the law as it stands, and those who maintain it think that this Bill will be attended with the most serious consequences, because it opens a door to license and enables people to marry as non-Hindús, when, in point of fact, they are Hindús. I never saw a better illustration of straining at gnats and swallowing camels.

"I wish upon this point to guard against misconception. I do not for a moment mean to assert that the Christian Marriage Act is abused, or that persons who are not Christians do, in fact, marry under its provisions. I only wish to show that it is far more liable to such an abuse than the Act now under consideration; and I use the fact that the one does no harm as an argument to show how groundless are the fears entertained about the other. If, in fact, people are not willing to go through the form of Christian marriage, and to call themselves for that purpose Native Christians, why should we fear that, for the same object, they will repudiate the Hindú or Muhammadan religion?"

"I would found another argument upon the Christian Marriage Acts, which answers nearly the whole of my hon'ble friend's suggestions. It is this—they show that, in dealing with the question of a man's religion, it is absolutely necessary to take his own statement and conduct as conclusive, and the only alternative is, to lay down strict definitions of the religions with which it is proposed to deal, and to invest some one or other with power to determine, judicially, whether a man does or does not belong to them. If you will not take a man's word for his being a Christian or a Bráhmó, or for his not being a Hindú, then you must define with precision the meaning of those expressions, and appoint some one to decide whether or not they apply in the particular case; and if you do this, whenever you provide any new sect with an established form of marriage, you create, as it were, a new established religion, and this, I say, is to put the Government in a position which it is quite impossible for it to occupy. If we are to lay down rules to-day, defining what Bráhmós are orthodox and what Bráhmós are heretical, we may, for what I know, be called on to-morrow to say what Positivists are orthodox and what Positivists are heretical. On the other hand, if you do not define what you mean by a Bráhmó, the Bill proposed by my hon'ble friend will be open to every objection which is brought against the Bill now before the Council.

"You are reduced, then, to this alternative. If you treat marriage denominationally, you must either take a man's own word for his religion, or you

must enter upon a set of theological definitions and classifications which are improper for any legislative body, and, perhaps, more ludicrously improper for such a body as this Council than for any other in the world. If you take a man's own word for his religion, then, of course, you are open to the remarks made by my hon'ble friend, Mr. Inglis; but you are open to them equally whether you take his word for the fact that he is a Christian, or for the fact that he is a Bráhmó, or for the fact that he is not a Hindú. It appears to me that the Hindús have exactly the same right to say—'You have no business to let a man marry according to new-fangled plans of your own, merely because he says he is a Christian' as to say 'you have no business to let him do so merely because he says he is a Bráhmó, or merely because he says he is not a Hindú.' They can say with perfect justice 'a man does not break his caste merely by saying he is a Christian'; nor does he do so merely by saying he is a Bráhmó, any more than he does merely by saying that he is not a Hindú. The objection is good for all these cases, or it is good for none. As I have shown, the Christian Marriage Act is drawn in defiance of it; a Bráhmó Marriage Bill must equally defy it; why then should we not settle the question once for all upon a perfectly sound basis? There is one reason, and only one really consistent and satisfactory one, and it is this: We do not like free-thinkers; we had rather that people should worship Káli and regard a cow as a sacred beast, than that, not being a Christian, they should think of idolatry as Christians think of it. We look upon any religion, even those which we regard as degrading superstitions, and which we try to subvert by Missionary societies, as better than none, and we cling to a state of the law which gives a man who has in his heart renounced Hindúism this reason for not renouncing it openly—that if he speaks his mind honestly, he cannot be sure of being able to contract a valid marriage. This we do, although the form of marriage which he wishes to contract is one which all civilized men, and especially all Christian men, regard as the indispensable condition of a sound state of human society.

"Our answer to those who object that such declarations as these are useless is, as it appears to me, the same in all cases. It is no business of ours to protect your religion as you wish it to be protected. We cannot force people to eat beef or pork before we treat them as not being Hindús or Muhammadans. We recognize a man's right to change his religion (which you deny), and we take his word for the fact that he has changed it, which, from our point of view, we have a perfect right to do. It is very natural for you to regard change of religion as an awful evil, and to declare that you will not believe it has occurred till you have some peculiar kind of proof of it; but we do not regard it in that light, and cannot require that sort of evidence of it. If you want

to protect your religions against the gradual progress of thought, do it yourselves. You have a perfect right to do so. Make the public renunciation of your creed a religious offence, for which a man may be put out of caste, and then you may be sure no one will make the declaration which you say is useless. It lies in your own power to make it stringent. But with what face can you come before us and say—'Our religion sits so loose upon us; we care so little about it; we are so ready to renounce it publicly for a mere whim, and we think so little of such a public renunciation when it is made, that you really ought not to attach any weight to our doing so'? How can we be expected to protect a religion which has so little force to protect itself?

"My Lord, I have thus far been observing upon the objections made to the Bill. I have, I think, noticed what is most material in them, and have shown pretty clearly that the real objection to the Bill is, that it recognizes the existence of a wide-spread dissent from Hindúism, and that it is another step in the direction of Act XXI of 1850, the Hindú Widows' Re-marriage Act and the Christian Marriage Act. To make this quite clear, and to show how unreal the other objections to the proposed measure are, I will read two other papers on the subject, written by gentlemen whose experience of India is not inferior to that of my hon'ble friends who oppose this Bill. The first of these papers arrived only yesterday, and owing to my having detained it at my house accidentally, has not been circulated to the hon'ble members of the Committee. It is the reply of Colonel Keatinge, the Chief Commissioner of the Central Provinces, to an inquiry upon the Bill, and is in these words :—

"The Bill, as it now stands, seems free from all objections. It seeks in no way to interfere with the Hindú or any other religion, but its provisions are exclusively directed to providing a remedy for the doubtful legality which attaches to the marriages of certain new sects that have separated themselves entirely from the great religions of India.

"All the objections which could have been urged against the original Bill, as it stood when circulated in 1869, have been removed, and the Officiating Chief Commissioner does not think that the mass of the people will feel aggrieved or injured, or affected in any way, if the Bill becomes law. So far as any objection has been made to the tendency of the Bill by Native gentlemen who have been consulted, the objection raised is, that persons abandoning the Hindú faith are still allowed to inherit under the Hindú law, and cannot be made to suffer for their change of faith. But this is not a provision of the present Bill, and the objection made is, not to the present Bill, but to Act XXI of 1850. The paper accompanying this letter contains the opinion of Mr. Balwant Ráo, a pleader, resident at Nágpur, and a man of great intelligence. He urges against the Bill all that can be urged against it by the most orthodox Hindú, and this opinion is therefore communicated; but it must be remembered that Mr. Balwant Ráo does not represent any large class or section of the people. Other

Native gentlemen of equal intelligence and ability take no exception to the nature of the relief which it is proposed to grant to the individuals to whom the Bill will apply, while the people at large have no opinion in a matter of which they know nothing, and which in no way affects them.'

"The second is a passage from a private letter, which I am permitted to use, from Mr. Egerton, the Financial Commissioner of the Panjáb. I need hardly remind the Council, of which he was so lately a member, that no man in India is better acquainted with Native life, or lives upon terms of more intimate intercourse with Natives, or has greater influence over them. This, then, is what Mr. Egerton has to say on the subject [I omit some remarks of a private character]—

"I was very much interested in the debate on the Bráhmó Marriage Bill. I think the objection that a man will use the law to contract a new marriage on which he is bent is quite groundless. One of the conditions under which a marriage may be contracted is, that the parties must be unmarried. Another is, that they must be of a certain age. Putting these two conditions together, there is no chance whatever of the law being abused. And, indeed, if the conditions of it are examined, it is a law which is stricter by far than the existing Hindú or Muhammadan marriage laws. There would be no reason whatever for a young man infatuated by a passion for some dancing girl to abjure his religion in order to marry her; by Muhammadan law, he could marry her easily enough. These people are always Muhammadans. And if the young man were a Hindú, he need only become a Muhammadan, as many have done, in order to marry the woman: but he could not marry her under the new law, because he is certain to be already married. This condition is a most effective one in a polygamous country; and no law which stops polygamy can be considered as enlarging the license of marriage.

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The single condition that 'each party must, at the time of the marriage, be unmarried', cuts away the whole of the objections. I think the Bill a very good one, and am surprised at the objections raised to it. Just see what it does * * * * *. It imposes the strictness of the Christian marriage law on a people who are extraordinarily polygamous. What chance is there that a man who does not conscientiously dissent from the established religions will profess dissent in order to bring himself under a stricter marriage law than that of his own religion? I think it utterly absurd. * * * * *. It is a question upon which the opinions of Natives of the old religions are not particularly valuable. How can you expect them to help in making a law which must appear to them in every way undesirable, as it removes the disabilities of those whom they consider apostates.'

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"These letters, Mr. Inglis' own correspondents, and the Madras papers to which I have referred, appear to me to make the case absolutely plain. It is, that this Bill is regarded as objectionable by what I may call the orthodox Hindús and Muhammadans, because it carries a very short step further the principle of the *Lex Loci* Act, the Hindú Widows' Re-marriage Act, the Christian Marriage

Act, the abolition of Satti, and, I may add, the admission of Christian Missionaries into India. Of course, it is open to any one to take this view, and that orthodox Hindús should take it is no matter of surprise to me. I said on a former occasion that we must be prepared for such objections, and that I saw no use in a delay which could have no other effect than that of producing an expression of them. Such an expression has accordingly been produced, and it is for the Council to consider whether or not they will give way to it.

“Much has been said as to the prudence and policy of doing so. I confess I feel that, after what passed here six weeks ago, and with reference to the general policy of the Acts which I have mentioned, it would be an act of feebleness in the Government to give way to the expression of a feeling of which they were aware when the Bill was introduced; and as something has been said about prudence, I must remind those who warn us upon the imprudence of disregarding Native feeling on such a matter as this, that there is quite as much danger in having no distinct principles of your own, or in avowing, in the most solemn and unequivocal manner, that you are afraid to act upon them, as there is in overruling, quietly but firmly, the opinions of a section of Native society upon a matter on which their principles and ours are diametrically opposed to each other. It appears to me that it is absolutely impossible, and out of the question, for us to think of governing this Empire on any other principles than those of religious liberty and religious equality. It is just as impossible to reconcile those doctrines with Hindú or Muhammadan orthodoxy, as to reconcile them with a certain form of Roman Catholicism. The result is that, if the two clash, one must give way, and the plain issue raised on the present occasion is, which is to give way? Is the Government of India to say, publicly and emphatically—‘We own that, in our judgment, it would be just and right to pass this Bill in its present form: but we dare not do it, and we will not do it, because we are afraid of offending Hindú and Muhammadan orthodoxy. We will give it up, and introduce instead of it another Bill, which, though in principle equally offensive to them, will perhaps not offend them quite so much in practice, and may possibly be less liable to misrepresentation. That, stripped of all disguise, is the course which my hon’ble friend recommends to the Government of India in the name of prudence. I own it is a form of prudence which by no means commends itself to my mind. I do not believe that any Government in the world ever stood in a position in which a firm and quiet determination to do justice and to justify its own conduct on intelligible grounds was so essentially necessary to its dignity and to its very safety as it is to our’s. Many of the most eminent Indian Statesmen said of the mutiny of 1857—‘This would

never have happened if you had not, in various ways, allowed your troops to suppose you were afraid of them, and if you had not apologised for principles which you held, but did not dare to avow.' A timid rider is not safer in his seat than a bold one.

"On this point, I will make only one further observation. Sir Henry Maine's Bill, which was far stronger than this, was introduced with the consent and approbation of Lord Lawrence. Was Lord Lawrence ignorant of Native character? Was he likely to be rash and inconsiderate in dealing with such questions as these? Was he not rather one of those bright examples who show in their whole career how courage and prudence go hand in hand?

"My hon'ble friend, Mr. Chapman, anticipated this remark, and said in answer to it that Lord Lawrence was shown to have been mistaken by the objections made to the Bill of which he approved. I reply that there is no proof that Lord Lawrence would have thought it right to give way to those objections, that it is impossible that he should not have been aware that they were likely to be made, and that Act XXI of 1850 was carried in the teeth of infinitely stronger objections, far more emphatically expressed, and is now maintained by the Government although, as I believe, it is most unpopular with the bulk of the population.

"I object so strongly to the principle of my hon'ble friend's amendment, that I have little to say of its practical difficulties; but I must just observe that, if he can succeed in drawing a Bill for the relief of the Bráhmós, or rather of certain members of the sect, which will not be open to the following objections, he will have performed a wonderful feat—

"*First*, his Bill must either be open to every objection brought by himself against this Bill, or else it must define a Bráhmó and give some one or other power to determine whether a man is a Bráhmó or not; and I assert that it is utterly impossible to do either of these things.

"*Secondly*, he will find it practically impossible to draw his Bill without throwing doubt gratuitously on the marriages of Adhi-Bráhmós, or without sanctioning a principle wider by far than the principle of this Bill. Indeed, the Bill in itself, by the very introduction of the name of Bráhmós into it, will be an injustice to half the sect, on grounds which I have already stated at length.

"*Thirdly*, he must provide for the case of a marriage between a Bráhmó and a person who is not a Bráhmó. If he permits such marriages, every objection

made to this Bill applies to them. If he forbids them, he puts a restriction on marriage utterly alien to the whole spirit of English law, and to justice, equity and good conscience.

"*Fourthly*, as soon as he has passed his Brahma Bill, he will be applied to by a body called the Radical League, which is composed of persons who have repudiated all forms of religion, for a Bill to meet their case, and what will he say to them? He may say, 'you are but a small and unpopular body, so I will do you an injustice;' but that, I say, is not an answer which an English legislator can venture to make to any one. He may say, 'I, and many other English people, regard your opinions with horror;' but that is no answer at all, amongst other reasons because very many, perhaps most, English people regard idolatry with horror; whilst many other English people regard the opinions of the Radical League with considerable sympathy.

"The Bill now submitted to the Council will, if accepted; avoid all these and other difficulties which I will not stop to point out.

"My Lord, I have detained the Council for a long time, but not, I think for a longer time than the great importance of the subject requires; but I have a few words to say in conclusion. I advocate the Bill as it stands, not merely on the grounds stated, but on more general and positive grounds. I say it does complete justice to the Native religions on the one hand, and to those who leave them on the other. To the members of the Native religions, it says—'those persons who choose to abide by the Native religions shall abide by them, and shall not play fast and loose with them.' To those who dissent from the Native religions, it says—'You are exercising your undoubted right, solemnly secured to you by the statute-law of the land, and you shall be subject to no disability for doing so, although you may not embrace any definite form of religion whatever. As to that, do as you please, and as your consciences dictate: but we will not weight the scale in favour of religion by making the profession of it the price of civil rights.' There is a remarkable passage in a paper by one of Mr. Ingils' correspondents which throws great light on the importance of this.

"The Bill defines only negatively the persons who are to be allowed to take advantage of its provisions. The effect of this would cause a great gap in the Hindú community. Now, the Bill takes cognizance of those who are not Hindús. The term 'Hindú' does not here mean nationality, but community. Hence, it is evident that those who are guilty of practices by which a Hindú would lose his caste or be excommunicated, fall under the head of non-Hindús. If a Hindú makes a voyage across the sea, or takes food (rice, bread, &c. at the houses of the low classes or *Mlechhas*, he is declared by the Sástras to be an out-cast. Thus, it follows that many might take shelter under the proposed Act. Native Civilians, Barristers

and Doctors would never think of rejoining the Hindú community by troublesome and humiliating expiations, but gladly avail themselves of the provisions of this Act. What is more strange, even the Bráhmós of the Adhi-Samája, or the First Church, if so disposed, might declare themselves non-Hindús, as they are notoriously guilty of many ultra-Hindú observances. The vagueness of the term 'not Hindú' would thus cause these and many other unforeseen evils, and thereby thin the ranks of the Hindú community. Hence, it becomes absolutely necessary that the small fraction for whose benefit the Bill is exclusively intended should be clearly defined by the term 'Progressive Bráhmós,' or otherwise called Kesobites, or any other name which might be found more appropriate.'

"It is obvious from this, that the orthodox Hindús wish to subject 'Native Civilians, Barristers and Doctors' who have really abandoned their creed, to 'troublesome and humiliating expiations, in order to force them into outward conformity with Hindúism. I wish that they should be free to profess their real opinions and suffer no disability for so doing, and this is the precise point in issue between us. My hon'ble friend, Mr. Chapman, treated this lightly and as a small matter. There could be no hardship, he said, in saying to a young sceptic 'you must follow the customs of your forefathers unless you see your way to professing Christianity.' I say there would be, in such a case, the greatest and most cruel injustice. I say that such a course would be a disgrace to the English name and nation, and to every man who takes part in the government of this Empire. Take a case—A Native accepts the hand which our Government holds out to him; he studies in an English College; he crosses the sea in an English steamer; he wins a place in the Civil Service by an examination in England, and when he returns here with no belief in Shiva and Kálí, or in the doctrines about Bráhmans and cows, English law says to him—'you must either pretend to be a Christian or a disciple of the sect of the Progressive Bráhmós, or you must forego all lawfull marriage, unless, indeed, you like to drink cow's urine and have your tongue bored with a hot iron, to expiate your guilt in crossing the sea in a steamer and sitting at dinner by English people.' This, as Mr. Inglis' correspondent says, would be troublesome and humiliating, no doubt, for the Native Civilian; but is it not far more humiliating for English law and English legislation? 'Where 'I can fancy such a man asking (when his tongue was cured), 'where are the days of Act XXI of 1850, which was passed in the face of petitions signed by more than 60,000 persons, and which, as I fondly and foolishly supposed, had secured to me the right of religious liberty in the name of that English law which I am now to administer to others?' What would be his feelings towards a Government which subjected him to cruel and foul humiliations for learning the lessons which it had so anxiously and assiduously taught, and which insisted that he should either stain the most sacred act of his life by the lying profession of a creed which

he does not believe, or else purchase, by public shame and disgusting humiliations, the right to celebrate it by recognizing as true that which his English education has taught him to regard as a degrading superstition? For my part, I would dare the displeasure of orthodox Hindús in the North-Western Provinces, rather than have to submit to such taunts as that. It would make me blush *hoc dici potuisse et non potuisse refelli*. The master objection made against this Bill, of which the rest are but shadows, and which unites in opposition to it men who mutually denounce each other's creeds, and men who seem to despise those who care enough about religion to be unwilling to call that sacred which they hold to be a lie, is that it will favour unbelief. The objectors to it say that young men who have abandoned the Hindú and Muhammadan religions in their hearts will be enabled by its provisions to abandon those creeds formally and definitively. I do not wonder that Hindús or Muhammadans should say this, but I do wonder that Englishmen should say so, and in particular do I wonder that it should be said by those who promote Missionary schools and other forms of European education. What is the great agent by which unbelief in Native religions is produced in this country? Can any one doubt that it is European education in all its forms? Whether Missionary schools will ultimately lead to Christianity or not, is a question on which I need say nothing; but that English education in all its forms leads straight away from all forms of Native orthodoxy, is a proposition which I have never yet heard disputed. How can we sow the seed and refuse to recognize the crop? How can we encourage men to learn that which we know with positive certainty will utterly destroy their religion, except in so far as mere nominal conformity to it is concerned, and yet put them under the heaviest of all disabilities for learning the lessons we teach, unless they will consent to add hypocrisy to unbelief. When we shut up our schools and universities; when we put Missionaries under a ban; when we repeal the *Lex Loci* Act and the Hindú Widows' Re-marriage Act and the Christian Marriage Acts, and look indulgently at sati and wink at infanticide, we may possibly get credit for sincerity in objecting to the spread of unbelief as to the Native religions. Till then, I think, people will say that what we really fear is, not the spread of unbelief, but the hostility of believers."

His Excellency THE COMMANDER-IN-CHIEF said, that he should not have ventured to say a word with regard to the merits of this Bill, as it would be extreme presumption in him to do so after the manner in which it had been defended by his hon'ble and learned colleague (Mr. Stephen). But HIS EXCELLENCY thought it would not be proper that a person holding the important position which he held with the Government of India should refrain entirely from giving his reasons for supporting the Bill. It would not be proper to give a

silent vote, which might be supposed merely a formal concurrence with the Government with which he was connected. It was the policy of this Government to view with equal justice every religion, every form of belief, which the boundaries of India embraced. It had been his duty as Commander-in-Chief of the Army in India to view with impartiality every form of belief which was found in the British ranks, and which the British flag covered. He believed that there was no one who could have pursued a long military career in India but must have been at times associated most closely with members of every creed which was found in the country, and, he might say, who had not grasped in friendship the hands of the members of the several creeds, Muhammadan, Hindú, Sikh, or Mahrátha. With each of these HIS EXCELLENCY had been intimately allied, and from each of them he had received the deepest obligations, and he hoped that he had not been altogether wanting in returning those obligations. He might, therefore, safely say, that nothing would induce him to vote for a Bill which did injustice to any one of these forms of religion. But he was sure that nothing which had been urged against the Bill had shown that it would inflict the slightest shadow of injustice. He had seen the most contradictory objections made to the Bill. He had seen one that it would tempt youths to the most improvident marriages. But, on the other side, he had seen it objected that the youths could not escape from the penalties of these improvident marriages. He should be extremely sorry to see the class of people who had been described by his hon'ble colleague (Mr. Stephen) deprived of that protection and liberty which he sought to give them. He would therefore support the Bill, and oppose the amendment proposed by the hon'ble Mr. Inglis.

HIS EXCELLENCY THE PRESIDENT said:—"The measure which we have before us has gone through many stages. It has occupied the attention of two successive Legal Members remarkable for their knowledge of jurisprudence; it has been repeatedly sifted in Committee; it has been submitted to exhaustive debates in Council; and now it has been the subject of a discussion in which all that can be urged for and against it has been conclusively stated with ability and eloquence. I cannot flatter myself that I can produce any new arguments or matter worthy of the attention of Council, and yet I do not like to give a silent vote on a question which has been referred to all the Provinces of India for deliberation, and which is believed to affect the interests and sentiments of so large a number of our fellow-subjects.

"In the remarks which I have now to offer I shall assume two things as granted: *First*, that the Bill, as now presented to this Council, embodies true

principles of justice and religious equality, and that it is theoretically right. This has been admitted on all hands. *Secondly*, that there is an actual existing necessity for legislation. This has been conceded by every speaker, except my hon'ble friend, Mr. Chapman, who has denied the necessity, or recognized it in a qualified manner.

“The question before us is, therefore, not whether legislation is necessary, but whether the Bill, as now presented by the hon'ble Mr. Stephen, or the Bill as amended by the hon'ble Mr. Inglis, is best adapted to meet the exigencies of the case; whether we should adopt the broader views of the measure now drafted, or the more restricted scope of the modified enactment proposed by the hon'ble gentleman on the opposite side of the table.

“I give my unhesitating adherence to the Bill, embodied in the present draft, and I am unable to recognize the validity of the objections which have been offered to its provisions. These objections fall under the three following heads:—

“1. It is urged that the widely permissive character of the Bill opens a door to precipitate and immoral marriages :

“2. That the Bill goes beyond the actual necessities of the case :

“3. That the measure is calculated to produce uneasiness and discontent in the Hindú and Musalmán communities throughout the country.

“I am not disposed to attribute much importance to the argument that the Bill, even in its original form, would have acted as a provocation or facility to imprudent or demoralizing connections. If we regard the powerful influence exerted by family relations and the prescriptions of caste in this country, it does not seem probable to me that many persons would have availed themselves of the liberty embodied in the measure to contract engagements of an unworthy nature. But all hazard of such an evil has been obliterated by the limitations of age now imposed, with reference both to the man and the woman, in the case of persons marrying without the consent of parents or guardians. The stipulations in this respect are now so prudent and guarded that there does not seem to be the least room left for the operation of deception or passion.

“The fact that the Bill as now drawn is not limited to existing necessities, but that it contemplates and embraces the contingencies of a remote future, is, in my mind, an argument in favour of the measure, not against it. It seems far more consistent with the principles of our legislation and government to admit religious equality as a general right, than to grant it as a favour in

particular cases. The contention of the opponents of the measure is, that as one sect after another separates itself from the ancient religious communities of the country, each band of fugitives should be specially admitted to the prerogative of lawful marriage. I deem it more conformable to the maxims and principles of our administration that the rule of religious equality should be broadly and boldly laid down, and that all should be freely and spontaneously admitted to claim and enjoy its benefits. Nor can I think it desirable that questions of a delicate and irritating character should be frequently raised by reiterated legislation. By adopting the provisions of the present Bill, we put a stop to agitation. By sanctioning the proposed amendments, we should revive and exasperate agitation for an indefinite period.

“The capital argument urged against the present measure is the apprehension that it will be susceptible of misinterpretation; that it will create a feeling of alarm in the minds of the old Musalmán and Hindú communities, and be regarded as a covert attack upon their religious and national customs and institutions. I confess that I do not see anything in the nature of the alleged provocation which is likely to maintain durable suspicions and resentments. Things have, no doubt, been done, or things might be done, to create and entertain discontent in the minds of our Native fellow-subjects; the Government might prescribe acts, or tolerate disabilities and abuses, which would create disaffection; but, to have this effect, there must be something in the action of Government of a practical character, affecting the senses, the interests, or the sentiments of men. The prescription of a new head-dress, the use of a new carriage, the exaction of a new tax, may produce disaffection, however mistaken and unfounded. The exclusion of the lower castes from Government schools, or from Government employment, or from the use of roads, or from the enjoyment of equal rights of habitation, might afford legitimate causes for dissatisfaction and impatience while they lasted. But I question whether the concession of a speculative privilege, which attacks and affects no visible interest, which operates silently and unseen, would ever be a ground for perpetuating popular discontents, unless the people are taught by ourselves to be offended; unless the irritation, artificially excited, is artificially sustained. Nor do I see that any dissatisfaction or suspicion that might temporarily exist would be of a general and dangerous character. In what class, I ask, would this alleged discontent exist? Not in the educated and respectable, though restricted, class who have enjoyed the full benefits of European culture, and who have broken with the customs and institutions of their forefathers—for it is for the protection of these that the present measure is contrived: not

among the numerous and valuable order of Natives, who have appropriated to themselves the advantages of highest English education in the highest degree, but who, from real conviction, or from a sentiment of national piety and pride, have remained attached to the beliefs and habits of the past—for this class, from which our most valuable public servants are drawn, are thoroughly convinced of the earnest desire which the English Government cherish to occupy an impartial position, indulgent and benevolent to all : not among the dark and dense masses of the lower castes, industrial or agricultural—for to these, this Bill and all similar measures will remain for ages, or at least for years, absolutely unknown. The impressions which have been so much spoken of might, I admit, have more sway with a certain middle-class of Natives, who are partly educated ; who are disposed to criticize and appreciate the policy of Government without being fully cognizant of its real views ; who are strongly attached to the old standards of faith and social life and are suspicious of innovation from authority—in fact, who are half-enlightened. I admit, with my hon'ble friend, Mr. Robinson, that there is a class among whom a Bill of this character may be regarded as an aggression on the part of Government, or, if not as a direct aggression, as a measure under cover of which the institutions of religion and caste may be gradually sapped and weakened. But, even here I think that, if the question is allowed to subside into silence, little durable effect will be produced. The operation of the Bill will be rarely felt or seen. It will cease to attract attention. It will die out in the popular memory, and be forgotten. Nor must we forget that, as education becomes more diffused, the suspicions and resentments to which I have alluded will have less and less force. What gives offence now will give no offence a few years hence.

“In the rare cases in which the operation of the Act becomes felt and known, I am not without a hope that the effect will sometimes be rather good than evil. The seceding communities from the old religions are not at all likely to be of a profligate character. They will probably be composed of men of intelligence and morality. When the middle class public in the provinces come to understand the movement better ; when they see that these speculative religionists are persons of worth, and that marriage with them, far from being a careless, precarious, secular contract, is a religious tie solemnized by a decent and holy rite, the Native public will, I suspect, regard the motives and provisions of the Bill rather with favour than repugnance. In a word, I am disposed to believe that the provisions of the measure, as drafted by my hon'ble friend, Mr. Stephen, will give substantial and permanent satisfaction and protection to the classes for whose welfare it is destined, and will not produce those prejudicial results in other classes which the opponents of the Bill would persuade us to expect.

“ Having thus briefly stated the grounds which induce me to reject the amendments proposed by the hon'ble Mr. Inglis, I think it right to advert to the remarks made by my hon'ble friend, Mr. Robinson, respecting the want of Native members in this Council. I agree with my hon'ble friend that this want is to be deplored; it is one to which my attention was immediately drawn when I became associated with the labours of the Council, and I am enabled fully to corroborate the statement of the hon'ble Mr. Stephen, that it is a defect of which the late Viceroy was deeply sensible. But I submit that the absence of Native members is a misfortune for which the Natives themselves are partly responsible. The late Viceroy was not only desirous to introduce Native Princes or gentlemen who would do honour to your deliberations, but he desired to give the Council as general and representative a character as possible, by embodying in it elements derived from every part of India. It is thus that Lord Mayo, three years ago, empowered me to offer a seat to a member of a reigning house in the South of India—a person who by his knowledge of our language, literature and politics, was conspicuously fitted to perform this duty. The Prince referred to declined the nomination, and I deeply regretted His Highness's decision. The refusal of two other Native Chiefs from the North followed shortly afterwards. Since my arrival here I have myself offered a seat to a Native gentleman of high caste, distinguished family, and mature official experience—a gentleman who really appeared to embody every qualification of natural ability, acquired information, manners, and station, which could recommend him for this employment; but he has declined to accept the office. I know that substantial reasons may be adduced in each case for the refusal, but these incidents are in the last degree discouraging to Government, which sincerely desires to avail itself of Native assistance; and, if repeated, they may appear to imply a want of patriotism and self-sacrificing spirit which the Government would deeply lament.

“ It only remains for me to repeat that I feel bound to oppose the amendments suggested by the hon'ble Mr. Inglis, and that I give my cordial support to the original measure.”

So the amendment was negatived.

The Hon'ble MR. STEPHEN then moved the following amendments:—

“ That, in section 2, line 2, instead of the words “ who do not profess either,” the words “ neither of whom professes ” be substituted.

“ That in section 2, instead of the third clause, the following be substituted:—

“ (3). Each party must, if he or she has not completed the age of twenty-one years, have obtained the consent of his or her father or guardian to the marriage.”

“That, instead of section 18, the following be substituted:—

“The issue of marriages solemnized under this Act shall, if they marry under this Act, be deemed to be subject to the law to which their fathers were subject as to the prohibition of marriages by reason of consanguinity and affinity, and the provisoes to section 2 of this Act shall apply to them.”

“That section 19 be omitted ;

“And that the numbers of the subsequent sections be altered accordingly.”

The Motion was put and agreed to.

The Hon'ble MR. STEPHEN, also, with the permission of His Excellency the President, moved the following amendments :—

“That, in section 2, instead of clause 1, the following be substituted :—

“(1). Neither party must, at the time of the marriage, have a husband or wife living.”

“That throughout the Bill, instead of the words and figures “Act I of 1872,” the words and figures “Act III of 1872” be substituted.

“That, in section 8, paragraph 2, the words “or if the decision of the Court be that such marriage would not contravene any one or more of the conditions prescribed in clauses (1), (2), (3), or (4) of section 2” be inserted after the word “paragraph.”

The Motion was put and agreed to.

The Hon'ble MR. STEPHEN then moved that the Bill as amended, together with the amendments now agreed to, be passed.

The question being put,

The Council divided—

Ayes.	Noes.
His Excellency the President.	Hon'ble Mr. Inglis.
His Excellency the Commander-in-Chief.	Hon'ble Mr. Robinson.
Hon'ble Mr. Strachy.	Hon'ble Mr. Chapman.
Hon'ble Sir R. Temple.	Hon'ble Mr. Bullen Smith.
Hon'ble Mr. Stephen.	Hon'ble Mr. Cockerell.
Hon'ble Mr. Ellis.	
Major General the Hon'ble H. W. Norman.	
Hon'ble Mr. Stewart.	
So the Motion was carried.	

The following Select Committee was named:—

On the Bill for the protection of Patterns and Designs—The Hon'ble Messrs. Stephen, Chapman and Bullen Smith and the Mover.

The Council adjourned to Tuesday, the 26th March 1872.

CALCUTTA ;
The 19th March 1872. }

H. S. CUNNINGHAM,
*Offg. Secy. to the Council of the Govr. Genl.
for making Laws and Regulations.*