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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 16th January 1872.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.M.S.I., *presiding.*

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.

The Hon'ble MR. COCKERELL took the oath of allegiance, and the oath that he would faithfully discharge the duties of his office.

NATIVE MARRIAGE BILL.

The Hon'ble MR. STEPHEN moved that the report of the Select Committee on the Bill to legalize marriages between certain Natives of India not professing the Christian religion be taken into consideration. He said:—"The Bill has been under consideration for several years. It refers to a subject of the deepest and most general interest. It has been most fully considered and discussed. For these reasons, I must state the nature of the measure at some length. I am glad to be able to say that the difficulties connected with the subject have been so dealt with as to satisfy those who are principally interested in the Bill.

"In order to make this plain, I will begin by giving the history of the measure. As your Lordship and the Council are aware, a religious body called the Bráhma-Samája, which has been for many years in existence, has for some time past acquired a considerable degree of prominence and importance in most of the great cities of India. It is interesting on many accounts; but, above all,

because Bráhmoism is at once the most European of Native religions, and the most living of all Native versions of European religion. One of the points on which the Bráhmos have most closely followed English views, and one of the most important points in their whole system, is the matter of marriage. Bráhmos, in common with Englishmen, believe that marriage should be the union for life, in all common cases, of one man with one woman; and the most numerous body of the Bráhmos go a step further, and are of opinion that marriage should be regarded in the light of a contract between a mature man and a mature woman of a suitable age, and not as a contract by which parents unite together children in their infancy. Besides this, the Bráhmos agree in objecting to some of the ceremonies by which Hindús celebrate marriage, on the ground that they are idolatrous. So far, they may be regarded as forming a single body with reference to the immediate subject-matter of this Bill.

"There are, however, two classes of Bráhmos, and the distinction between them is curious and interesting on account of its resemblance to similar divisions which exist in many other religions, and, in particular, in every form of Christianity with which I am acquainted.

"The original founder of the Bráhmo body was the well-known Ram Mohun Roy, who founded the sect about forty years ago. Since that time, the Bráhmos have divided themselves into two bodies, the Adi-Bráhma-Samája, or the Conservative Bráhmos, and the Progressive Bráhmos. The Progressive Bráhmos have broken far more decisively with Hindúism than the Conservatives. The object of the Conservatives is to pour the new wine into the old bottles, so that the one may not be wasted nor the other broken. The Progressive Bráhmos undertake to provide at once new wine and new bottles.

"As regards marriage, the difference between the two parties appears to be this,—the marriage ceremonies adopted by the Progressive Bráhmos depart more widely from the Hindú law than those which are in use amongst the Adi-Bráhmos. The Adi-Bráhmos, indeed, contend that, by Hindú law, their ceremonies, though irregular, would be valid. The Progressive Bráhmos admit that, by Hindu law, their marriages would be void. Moreover, the Progressive Bráhmos are opposed both to infant marriage and to polygamy far more decisively than the Conservative party. The former, in particular, adopt the European view, that marriage is a contract between the persons married; the latter retain the Native view, that the father can give away his daughter as he thinks right when she is too young to understand the matter.

"In this state of things, the Progressive Bráhmos took the opinion of Mr. Cowie, then Advocate General, as to the legal validity of their marriages.

I shall have to say much hereafter on this opinion. At present, I confine myself to saying that it was unfavourable to the validity of the marriages in question.

"Upon this, the Bráhmo body represented to Lord Lawrence's Government that they suffered under a great disability by reason of the existence of a state of the law which practically debarred them from marriage unless they adopted a ceremonial to which they had conscientious objections. The marriage law of British India, as he understood and as I understand it, may be very shortly described as follows:—

"By the Bengal Civil Courts Act, which consolidates and re-enacts the old Regulations, and by corresponding Regulations in Madras and Bombay, the Courts are to decide, in questions regarding marriage in which the parties are Hindus, according to Hindu law, if the parties are Muhammadans, according to Muhammadan law, and, in cases not specially provided for, according to justice, equity and good conscience. Custom also has, in most parts of India, the force of law in this matter, although the exact legal ground on which its force stands differs to some extent in different parts of the country. There are also a variety of Acts of Parliament and Acts of the Indian Legislatures which regulate marriages between Christians, Europeans and Natives, and between Pársís. As the Bráhmos were neither Muhammadans, nor Pársís, nor Christians, no other mode of marriage was expressly provided for them by law, and the inference was drawn that they were unable to marry at all. I do not myself think that this inference was correct, but, for the present, I postpone the consideration of that subject. To one most heavy grievance they were beyond all question subjected. No form of marriage legally constituted, and valid beyond all doubt or question, was provided for them, and I do not know whether such a state of things is not a greater grievance than a downright disability to marry.

"The first question which naturally arose was, whether it was not possible to let the matter alone? The sect was a small one. It was in some quarters unpopular, because its members, having given up their own creed, had not adopted Christianity. To have disavowed all responsibility for Mr. Cowie's opinion and to have referred the Bráhmos to the Courts of law would have been easy. Sir Henry Maine did not take that course, and I rejoice that he did not, though I cannot attach quite so much weight as he appears to have attached to Mr. Cowie's opinion. He thought that a clear injustice—and especially a clear injustice distinctly traceable to the influence of English habits of thought—could not, and must not, be permitted, whether the persons affected were few or many, popular or the reverse. I cannot say

how strongly I join in this opinion. I think that one distinct act of wilful injustice; one clear instance of unfaithfulness to the principles on which our Government of India depends; one positive proof that we either cannot or will not do justice, or what we regard as such, to all classes, races, creeds or no-creeds to be found in British India, would in the long run shake our power more deeply than even military or financial disaster. I believe that the real foundation on which the British power in this country stands is neither military force alone, as some persons cynically assert (though certainly military force is one indispensable condition of our power), nor even that affectionate sympathy of the Native populations on which, according to a more amiable, though not, I think, a truer, view of the matter, some think our rule ought to rest, though it is hardly possible to overrate the value of such sympathy where it can by any means be obtained, I believe that the real foundation of our power will be found to be an inflexible adherence to broad principles of justice, common to all persons in all countries and all ages, and enforced with unflinching firmness in favour of, or against, every one who claims their benefit, or who presumes to violate them, no matter who he may be. To govern impartially upon those broad principles is to govern justly; and I believe not only that justice itself, but that the honest attempt and desire to be just, is understood and acknowledged in every part of the world alike.

"I am not going to trouble your Lordship or the Council with any metaphysics about justice, but I would with confidence put this plain question. Is it just, in any natural sense of the word, that men should be debarred from marriage, or that the security of their marriages should be subject to great doubt, merely because they have renounced the native religions without becoming Christians? I am confident that every man's answer will be—'No, it is not.' This being so, it is obvious that the Bráhmos were entitled to a remedy. The only question was, what remedy would be appropriate? The most obvious remedy would have been, no doubt, to give the members of the Bráhma-Samája a Bill legalizing marriages between members of that body only; but Sir Henry Maine felt, and was I think well warranted in feeling, that there was a great difficulty in the way of doing so. The sect, as he said, was 'deficient in stability.' It was new, and, like all new religious bodies endowed with any considerable degree of vitality, its doctrines and discipline were in a very indefinite state. To give a legal quasi-corporate existence, for such a purpose as the regulation of marriage, to such a body, would have been very difficult, especially in the face of the fact that it had already, within a few years of its establishment, broken into two sections, differing from each other upon this very subject of marriage amongst other things. There was another objection to such a measure, to

which Sir Henry Maine did not refer expressly, but which he must no doubt have felt. We are obliged to treat marriage, to a certain extent, denominationally—to use a clumsy word to express a clumsy idea—by the fact that, in this country, law and religion are so closely connected together; but such a system is most inconvenient and ought not to be carried further than is absolutely necessary. The Government could hardly assume a more invidious position than that of undertaking to give a new form of marriage to every new sect which did not happen to like the old ones, and of deciding, at the same time, whether a particular body of men did or did not constitute a new sect of sufficient importance for such a purpose. As an illustration of the impossibility of assuming such a position, I may observe that, shortly before the publication of the last report of the Committee in the Gazette, I received a memorial on this Bill by a body called 'The Radical League,' which is composed partly of Positivists and partly of Theists, who, however, do not at all agree with the Bráhmos. These gentlemen say that it is very hard upon them that their religious opinions should prevent them from being legally married, and that, though their numbers are at present very small, no distinction in principle can be made between them and the Bráhmos.

"There is, again, this further difficulty about a denominational system of marriage. How are we to deal with the case of marriages between people of different denominations? What is to happen if a Bráhmo wants to marry a Positivist? Are we to have a Bill for Bráhmos; a Bill for Positivists; a Bill for half and half couples? If so, when a few more sects have been established, and when a Bill has to be framed on the principle of providing for the combinations of a number of things, taken two together, our statute-book will become a regular jungle of Marriage Acts.

"Under these circumstances, Sir Henry Maine proposed to make the Bráhmo question the opportunity for passing a measure of the most comprehensive nature. He proposed to pass an Act 'to legalize marriage between certain Natives of India not professing the Christian religion, and objecting to be married in accordance with the rites of the Hindú, Muhammadan, Buddhist, Pársí, or Jewish religion.'

"He introduced the Bill on the 18th November 1868 in a speech of characteristic interest and ability, on part of which I shall hereafter make a few observations, and it was circulated to the Local Governments for opinion.

"The answers of the Local Governments were received in due course, and were laid before me on my arrival in India at the end of 1869. They were

unfavourable to the Bill proposed, and stated the grounds upon which it was objected to so fully as to supply the Government with all the information necessary to enable them to deal with the subject finally. All the grounds of objection may, I think, be reduced to one, namely, that the Bill, as drawn and circulated, would introduce a great change into Native law, and involve interference with Native social relations. On a full and repeated consideration of the whole subject, the Government were unanimously of opinion that this objection ought to prevail.

"We thought that the Bill, as drawn by Sir Henry Maine, would involve an interference with Native law which we did not consider justifiable under all the circumstances of the case. No one has a fuller appreciation than I of Sir Henry Maine's high ability, and no one has, I think, so good a right to an opinion on the subject; but I must say that, in this instance, he appears to me to have taken a view of the position of Native law in this country with which I cannot altogether agree. It appears to me that the Hindú law and religion on the subject of marriage (I need not at present refer to Muhammadánism) are one and the same thing; that they must be adopted as a whole, or renounced as a whole; that if a man objects to the Hindú law of marriage, he objects to an essential part of the Hindú religion, ceases to be a Hindú, and must be dealt with according to the laws which relate to persons in such a position. I do not think that Sir Henry Maine would have expressly denied this: but I think that he somewhat understates the binding character of Hindú law upon Hindús, or at least uses language which might give rise to misapprehension on the subject. He said:—

"'Owing to the language of certain Statutes and Charters regulating the jurisdiction of the Indian Courts, the law of their religion became the law applicable to litigants. There being no fundamental law in India, the doctrine thence prevailed (though I should perhaps surprise the Council if I were to state how much doubt attends the point) that the greatest part of the civil rights of the Natives of India is determined by the religion which they profess.'

"It would be a great mistake to infer from these expressions that the legal position of the Hindú religion depended on certain phrases incautiously used. No line of policy was ever adopted with greater deliberation, adhered to with greater pertinacity, or supported by stronger reasons, than the general policy embodied in the expressions in the Statutes and Charters referred to. It is too notorious to require the detailed proof, which it would be easy to give, that the whole government of the East India Company was marked, from first to last, by a reluctance, which I think was equally natural and creditable to them, to interfere with Native usages or Native laws to any greater

extent than was absolutely necessary. Illustrations of this may be found in the practice of furnishing the Company's Courts with Native law officers, whose special duty it was to expound Hindú and Muhammadan law; in the excessive reluctance which was shown by several successive Governments to abolish the practice of suttee; in the vehement opposition which, many years after the abolition of suttee, was excited by Act XXI of 1850, and by the Act (XV of 1856) which legalizes the marriage of Hindú widows. The preamble of this Act contains the following words:—

"'Many Hindoos believe that this imputed legal incapacity, although it is in accordance with established custom, is not in accordance with a true interpretation of the precepts of their religion, and desire that the civil law administered by the Courts of Justice shall no longer prevent those Hindoos who may be so minded from adopting a different custom, in accordance with the dictates of their own consciences'.

"I do not wish to heap up proofs of a very clear proposition; but I may observe that the words which I have just read seem to be a clear legislative recognition of the principle that Hindú marriages are, by Anglo-Indian law, to be regulated by Hindú law, and that, in relation to the subject of marriage, Hindú law and Hindú religion are two names for one thing. For these reasons, I think that, to whatever extent the successive Governments of British India determined to enforce the Hindú law or religion on the subject of marriage, they did so deliberately and upon the most mature consideration of the whole subject.

"This brings me to the questions—To what extent did they determine to enforce it? To what extent is it open to the Government for the time being to introduce alterations into it? In what spirit should such alterations be made? How do the answers to these questions apply to Sir Henry Maine's proposal?

"The answer is to be found rather in broad general principles than in explicit enactments or other authoritative documents. As a mere matter of strict law, as I observed on a former occasion in reference to the permanent settlement, there can be no doubt of the power of the Legislative Council to sweep away, or to alter to any extent, the whole fabric of Hindú or Muhammadan law, just as we have the legal power to do many other things which no one of ordinary sense or humanity would for a moment think of. Our obligation towards these systems of law is a moral obligation, and must be construed accordingly. It seems to me that this obligation is less vague than it might have been supposed to be; that it has been justly appreciated and measured by successive generations of Indian statesmen, and that its true nature may be shortly expressed as follows:—Native laws should not be changed by direct

legislation, except in extreme cases, though they may and ought to be moulded by the Courts of Justice so as to suit the changing circumstances of society. If this principle is fully grasped, it will, I think, serve as the key to nearly every question which can be raised as to the alteration of Native laws; and, in particular, it will be found to justify, in all its leading features, the policy pursued in this matter by the Government of India on previous occasions, and the policy which I now propose that it should pursue on the present occasion. I am sure that the Council will excuse me if I explain the important principle which I have tried to state, and illustrate its meaning and its bearings at some little length.

"The main point in which personal differ from territorial laws is that, whereas territorial laws bind all persons within a given territory, whether they like it or not, such systems of personal law as we have in India must, from their nature, admit of a choice. If you have two or more parallel systems of personal law, and if there are no means of deciding which of them applies to any particular person, the only means of arriving at such a decision will be by considering what mode of life he has, as a matter of fact, adopted. If these systems of law correspond (as is the case with Hindú and Muhammadan law) to two different and antagonistic religions, it is necessary either to forbid a man to change his religion (which of course is impossible under a Government like ours) or to permit him to change his law. The second branch of the alternative has been adopted by the Government of India, and has influenced alike its legislation and the judicial decisions of its Courts. Its adoption was solemnly announced by Act XXI of 1850, which provides, in substance, that no law or usage in force in British India shall be enforced as law, which inflicts on any person forfeiture of rights or property, or which may be held in any way to impair or affect any right of inheritance by reason of his having renounced, or having been excluded from, the communion of any religion, or having been deprived of caste. The effect of this enactment deserves careful attention. Sanctions, in all cases, are the essence of laws, and the unfailing tests by which they are distinguished from other rules of conduct. The subject-matter of the personal laws which exist in British India (marriage, inheritance, caste, &c.,) does not admit of their being invested with a penal sanction. Their sanction lies in the fact that, if they are observed, certain civil rights are established, and that, if they are not observed, those rights are forfeited. The *Lex Loci* Act, therefore, by declaring that the renunciation of, or exclusion from, the communion of any religion should not affect a man's civil rights, did in fact deprive the Native religions of the character of law, as against those who might cease to profess them, and

left to them only the character of rules of life, which persons inclined to do so might adopt or relinquish at their pleasure.

"This principle has also been laid down in the fullest and most emphatic manner by the highest judicial authority—the Judicial Committee of the Privy Council—in the case of *Abraham* v. *Abraham*. One of the questions considered in that case was, whether the property of an East Indian Christian, whose paternal ancestors were Hindús, was at his death to be distributed by Hindú or English law? Upon this point, the judgment of the Judicial Committee of the Privy Council was delivered in the following terms by Lord Kingsdown:—

'What is the position of a member of a Hindú family who has become a convert to Christianity? He becomes, as Their Lordships apprehend, at once severed from the family, and regarded by them as an outcast. The tie which bound the family together is, so far as he is concerned, not only loosened, but dissolved. The obligations consequent upon and connected with the tie must, as it seems to Their Lordships, be dissolved with it. Parcenership may be put an end to by a severance effected by partition; it must, as Their Lordships think, equally be put an end to by severance which the Hindú law recognizes and creates. Their Lordships, therefore, are of opinion that, upon the conversion of a Hindú to Christianity, the Hindú law ceases to have any continuing obligatory force upon the convert. He may renounce the old law by which he was bound, as he has renounced his old religion, or, if he thinks fit, he may abide by the old law, notwithstanding he has renounced the old religion.

"'It appears, indeed, both from the pleadings and from the points before referred to, that neither side contended for the continuing obligatory force of Hindú law on a convert to Christianity from that persuasion. The custom and usages of families are alone appealed to, with a reference also to the usages of this particular family; a reference which implies that the general custom of a class is not imperatively obligatory on new converts to Christianity.'

"After some remarks which I need not read, the judgment proceeds:—

"'The *Lex Loci* Act clearly does not apply, the parties having ceased to be Hindú in religion; and, looking to the Regulations, Their Lordships think that, so far as they prescribe that the Hindú law shall be applied to Hindús and the Muhammadan law to Muhammadans, they must be understood to refer to Hindús and Muhammadans, not by birth merely but by religion also. They think, therefore, that this case ought to be decided according to the Regulation which prescribes that the decision shall be according to equity and good conscience. Applying, then, this rule to the decision of the case, it seems to Their Lordships that the course which appears to have been pursued in *India* in these cases, and to have been adopted in the present case, of referring the decision to the usages of the class to which the convert may have attached himself, and of the family to which he may have belonged, has been most consonant both to equity and good conscience. The profession of Christianity releases the convert from the trammels of the Hindú law, but it does not of necessity involve any change of the rights or relations of the convert in matters with which Christianity has no concern, such as his

rights and interests in, and his powers over, property. The convert, though not bound as to such matters, either by the Hindú law or by any other positive law, may by his course of conduct after his conversion have shown by what law he intended to be governed as to these matters. He may have done so either by attaching himself to a class which as to these matters has adopted and acted upon some particular law, or by having himself observed some family usage or custom; and nothing can surely be more just than that the rights and interests in his property, and his powers over it, should be governed by the law which he has adopted, or the rules which he has observed.'

"Such being the nature of Indian personal law, it is, I think, self-evident that it ought not to be changed, except in extreme cases. Laws relating to such subjects as marriage have their root in the very deepest feelings, and in the whole history, of a nation; nor is it easy to imagine a more tyrannical or a more presumptuous abuse of superior force than that which would be involved in any attempt to bring the views and the practices of one nation, upon such subjects, into harmony with those of other nations, whose institutions and characters have been cast in a totally different mould. I should feel as little sympathy for an attempt to turn Hindús into Englishmen by Acts of the Legislative Council as for attempts to turn Englishmen into Hindús by Act of Parliament.

"Before I give my reasons for thinking that the Bill, as originally framed, would constitute an interference with Native law, it may be worth while to show, in a very few words, why it is that the Hindú law as to marriage, differing as it does in many ways from our own, does not form one of those exceptional cases in which we are called upon to interfere with Native customs, though I can hardly imagine that any one could really require to be convinced on the subject. It is, however, possible that some one might say—'The Hindú law permits polygamy in certain cases; it discountenances marriage between members of different castes in particular cases. It involves infant marriage, and appears in many ways to view marriage rather as a contract between the parents than as a contract between the married persons; and, in these respects, it so violates all the commonest and broadest principles of human society that it is our duty to protest against it whenever the opportunity for doing so occurs.' Such an allegation would hardly need refutation. One conclusive argument against it is that it would expose the person using it to this retort:—'If the Hindú system is so utterly bad, why do you enforce it or recognize it at all? Why do you content yourselves with a mere protest, and not forbid, by law, the practices of which you disapprove?' This argument would certainly lose none of its force by its being an argument *ad homines*, and I need not say how strongly I repudiate the principle which would justify its use. I wish, moreover,

to say, as strongly as I can, that I am not one of those who think it right to condemn utterly, and in a peremptory and absolute manner, the social and religious institutions of the Natives of this country. They are of course institutions with which an Englishman cannot be expected to sympathize. We naturally prefer our own, and I should not shrink from justifying that preference in case of need: but this I think is a reason why Englishmen should be extremely cautious about denouncing them, as people often do, as mere organized superstition and immorality. To say anything here upon the theological side of the subject would obviously be out of place; but, looking at the matter politically, I think it may fairly be said that the only reasonable way of criticizing alien institutions is to look at them as a whole, and to form as good an estimate as one can of their results as a whole. If Native institutions are looked at in this light, I think it will be impossible for any candid person to deny that Hindú institutions have favoured the growth of many virtues; have practically solved many social problems—the problem, for instance, of pauperism, which we English are far enough from having solved—in a way which ought on no account to be treated with contempt; that the institution of caste, in particular, whatever may be its evils, has provided safeguards against misconduct which it would be mischievous in the highest degree to sweep away like so much rubbish.

"I should wish to act justly by the Hindús and the Hindú law, because, as I said, I believe justice to be the rock on which our rule should be founded; and I have already shown in what manner this great principle bears on the present subject. But, quite apart from the question of justice, it would not please me at all to strike an indirect blow at the Hindú law or religion. I cannot regard it, or any of the other creeds under which countless multitudes of men have lived and died, as simply evil. I should be grieved at the thought that English civilization was a blind agent of destruction, like the cannon ball shattering that it may reach and shattering what it reaches.

"I now proceed to consider the question whether Sir Henry Maine's Bill does constitute an interference with Hindú law, and to state the reasons which lead me to think that it does. It was based by him upon the following principles:—

"'The *Lex Loci* Act was meant to condone all offences against religious rule, whether they were acts of omission or of commission. But, probably from mistake, probably from attending too exclusively to the immediate question before them, which affected only the first generation of dissidents, they left standing the greatest of all disabilities, the disability to contract a lawful marriage. It is incredible to me that, except by an oversight, they should have expressly provided for the protection of the right of inheritance, but should have omitted to provide for the right of contracting marriage, without which inheritance cannot arise.'

"Sir Henry Maine afterwards described as follows the case of the applicants—

"'They say that the ritual to which they must conform, if they wish to contract lawful marriages, is idolatrous. I don't use the word offensively, but merely in the sense in which a lawyer in the High Court is occasionally obliged to speak of the family idol. They say that the existing Hindú ceremonial of marriage implies belief in the existence or power of, and worship addressed to, idols. No doubt there are some of the Bráhmos who have as little belief in these beings as the applicants, but still do not object to go through the ritual; and, naturally enough, they exhibit considerable impatience at the scruples of their co-religionists. But that is only a part of the inevitable history of opinion. The first step is to disbelieve; the next to be ashamed of the profession of belief. The applicants allege that their consciences are hurt and injured by joining in a ritual which implies belief in that which they do not believe. Now, can we compel them to submit to this ritual? Sir, nobody can feel more strongly than I do that we are bound to refrain from interfering with Native religious opinions, simply on the ground that those opinions are not ours, and that we are bound to respect the practices which are the expression of those opinions so long as they do not violate decency and public order. That is the condition of our government in this country. I will even go further and say that, where a part of a community come forward and allege that they are the most enlightened members of it, and call on us to forbid a practice which their advanced ideas lead them to think injurious to their civilization, the Government should still be cautious. This is the case of those enlightened gentlemen who ask us to abolish polygamy, both as regards themselves and as regards their less informed co-religionists who do not agree with them. Here the Government of India, acting in concurrence with the Government of His Honour the Lieutenant-Governor, has declined to listen to the petition much as may be said for it. Here, however, we have a very different case. A number of gentlemen come forward and ask to be relieved from the necessity of submitting to rites against which their own conscience rebels. They do not ask to impose their ideas on others, but to be relieved from a burthen which presses on themselves. Can we refuse the relief? I think we cannot. I think the point is here reached at which it is impossible for us to forget that we do not ourselves believe in the existence or virtue or power of the beings in whose honour this ritual is constructed. And I say this the more confidently because I believe that such a doctrine is in the true interest of the sincere believers in Native religions. If we once begin trampling on the rights of conscience, it is very far from certain that the process will continue for the advantage of Native religions. The members of these communities have the strongest reason for maintaining the absolute sacredness of the rights of conscience.'

"My Lord, my agreement in the substance of these views is as cordial as my admiration for the vigour and clearness with which they are expressed. As I have observed, we are here as the representatives of equal justice to all; of an impartial application, that is, to all persons and classes, of principles of government which experience has shown to be generally beneficial to mankind; and I do not hesitate to say that it would be far better to abandon, or even to lose, our position here, than to abandon the principle on

which it rests, or to shrink from the responsibilities which its vigorous application involves. I believe that the principle of religious equality, when properly understood, is as much one of those principles as the principle of the suppression of war, rapine and crime; and, by the principle of religious equality, I mean that Christians, Muhammadans, Hindús, Buddhists, and the members of all other persuasions, are to be encouraged, and, if need be, forced to live together in peace, and to abstain from injuring those members of their respective creeds who may think fit to change them for others.

"I fully admit, moreover, that if the law is so arranged that persons who abandon one of these creeds, and do not adopt another, are by law prevented from marrying, or—which comes to the same thing—thrown into a state of uncertainty as to the validity of their marriages, those persons are subject to the most grievous of all disabilities, and, however small their number may be, are justified in regarding themselves as the victims of a crying injustice which we are morally bound to remedy, notwithstanding any objections which may be taken to our so doing by members of the various recognized creeds. If we did not, we should distinctly violate one of the leading principles which we are here to assert.

"So far, I entirely agree with my honourable predecessor; but I must own that the manner in which his Bill was framed and the criticisms which have been made upon it have convinced me that it went a step beyond strict justice, and violated, in its turn, the principle which I have attempted to state as to the proper relation of the British Government to Native religions. It appears to me that the Bill introduced by my hon'ble friend would, by direct legislation, change very deeply the Native law upon marriage. It applies to 'Natives of British India not professing the Christian religion, and objecting to be married in accordance with the rites of the Hindú, Muhammadan, Buddhist, Pársí or Jewish religion.' All such marriages are declared to be valid, if they are celebrated according to a certain form provided by the Act, and upon certain conditions. These marriages would, moreover, be monogamous. The Bill, in short, would introduce the European conception of marriage into the Hindú and Muhammadan communities, and give to it, by law, a place amongst Hindú and Muhammadan institutions. I do not think it can be denied that this would be a change, whether for better or for worse. You may change by addition, as well as by other forms of alteration.

"There is, I think, a distinction in this matter which the Bill, as introduced, overlooks. It is the distinction between treating Hindú law as a law binding only on those who submit to it of their own will, and treating it as a law

binding on those who do submit to it only in so far as they choose to do so. It is surely one thing to say to Hindús—'You are at liberty to change your law and religion if you think proper, and you shall suffer no loss by so doing'; and quite another thing to say to them—'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'. By recognizing the existence of the Hindú religion as a personal law on this matter of marriage, I think that we have contracted an obligation to enforce its provisions in their entirety upon those who choose to live under them, just as we have, by establishing the general principle of religious freedom, contracted a further obligation to protect any one who chooses to leave the Hindú religion against injury for having done so, and to provide him with institutions recognized by law and suitable to his peculiar position. I think that it is hardly possible for us to hold other language on the subject than this—'Be a Hindú or not as you please; but be one thing or the other, and do not ask us to undertake the impossible task of constructing some compromise between Hindúism and not-Hindúism, which will enable you to evade the necessity of knowing your own minds.' The present Bill is framed upon these principles; but, before I turn to its provisions, I must complete the history which I interrupted for the purpose of criticizing the Bill originally introduced, and stating the reasons which have led the Government to modify its provisions.

"Having decided, upon a full consideration of the mass of opinions, and, in particular, of Native opinion, submitted to us, that the Bill in its original form ought not to become law, it was considered that, notwithstanding the difficulties already pointed out, a Bill might be framed to meet the case of the Bráhma-Samája alone. It was, on the one hand, impossible to leave the Bráhmos without relief, and, on the other, the objections already stated applied to the Bill as it stood. A Bill was accordingly prepared, confined to members of the Bráhma-Samája, and intended as a sort of stop-gap. As the practical difficulty had arisen in regard to them, it appeared probable that a measure adjusted to that difficulty would be all that would be required, at all events, for a considerable time. The Bill was accepted by the Progressive Bráhmos, and, but for a new, and to me unexpected, difficulty, would have been finally submitted to the Council last March. Shortly before the Bill was to be passed, I received a deputation from the members of the Adi-Bráhma-Samája who stated that their body had strong objections to the passing of the Bill approved of by the Progressive Bráhmos. Their objections were as follow:—

"*1st.*—The Bill would give to the sect a recognized legal position; but the sect so recognized would be the Progressive, as opposed to the Conservative, party.

The matter may be thus illustrated.. Suppose that the Wesleyan methodists and the Calvinistic methodists differed on the subject of marriage, and that an Act of Parliament, drawn so as to express the views of the Wesleyan methodists, as opposed to those of the Calvinistic methodists, were to be called 'The Methodists' Marriage Bill?' It is obvious that this would be a grievance to the Calvinistic methodists, and though this may appear to be a matter of words and titles, the right to names is a right which no one can affect to despise. Let any one who doubts it imagine an Act of Parliament relating to Roman Catholics in which the Church of Rome was described, not as the Roman Catholic, but as the Catholic, Church.

"*2nd.*—The Bill would have had to begin with a recital to the effect that doubts were entertained as to the validity of the Bráhmo marriages. Now, the members of the Adi-Bráhma-Samája do not admit that the validity of their marriages by Hindú law is doubtful. They say that, even if Mr. Cowie's opinion on the subject is accepted as correct, it does not affect them; and they declare that they are willing to take the chance of their marriages being held to be illegal if the case should ever arise. They argued, on the whole, that it was a hardship on them to throw doubt upon the validity of their marriages by an Act of the legislature.

"As I explained on a former occasion, their arguments took me by surprise. I was not aware, when the second version of this Bill was introduced, of the division in the Bráhmo body. Sir Henry Maine's speeches did not expressly mention it, and the papers submitted to me upon the subject dealt with the question of a general Bill, such as I have described, and not with the question of a Marriage Bill for Bráhmos only.

"The question, accordingly, had to be reconsidered, and after some intermediate steps, and a very careful consideration of the matter in Council, I asked the representatives of the two bodies of Bráhmos whether the one would be satisfied with, and whether the other would object to, a Bill confined to persons who had renounced or had been excluded from or did not profess the Hindú, Muhammadan, Buddhist, Pársí, Sikh or Jaina religion? I made the offer expecting that it would be accepted by the Adi-Bráhmos, whom it obviously would not affect, and that it would be rejected by the Progressive Bráhmos. I supposed that they occupied one of those intermediate religious positions, which are so common in the present day, in which people dislike to say either that they are or are not members of a particular creed. The proposal indeed was so simple and obvious that I did not see what other reason there could have been for not making it, except the existence on the part of the

Progressive Bráhmos of such a reluctance, I had supposed that Sir Henry Maine must have alluded to such a feeling when he said, speaking of a Hindú becoming a Muhammadan :—

"'The convert is compelled by the principles of his new religion to regard the faith of his ancestors as hateful and contemptible. But if he does not go so far as that, if he retains some tenderness for his old faith, he is prevented from marrying.'

"I inferred from that, and from the known fact that the restoration of primitive Hindúism was one of the original objects of the Bráhmo movement, that the suggestion in question would not meet the case. There was nothing surprising in this. To make a definite and public statement as to the religious belief or disbelief which a man entertains is, to many people, singularly unpleasant. The proposal to have a column in the Census papers in England stating the religious belief of the person signing it has been, I think, more than once rejected, and I know many persons who would not by any means like to have to say, either that they are, or that they are not, members of the Church of England or of any other Christian body. The main reason, indeed, why the Act commonly called the Dissenters' Marriage Act was passed in the most general form was, that people, as they said, 'did not like to be ticketed.'

"If, therefore, the Progressive Bráhmos had declared that a Bill providing a form of marriage for persons not professing the Hindú religion would not satisfy them, I could have entered into their feelings, though I am by no means sure that it would have been possible to consult them for practical purposes; but they took a bolder line. Before the views of Government had been communicated to them at all, they sent in a paper, by way of reply to the Adi-Bráhma-Samája, containing this remarkable passage. The Adi-Samája had said that the passing of the proposed law would lead to complications in regard to questions of succession. This is answered by the Progressive Bráhmos in the following words :—

"'The complications apprehended may be easily avoided by extending to the parties marrying under the proposed law the Indian Succession Act, which is clearly applicable to them. The above Act exempts from its operation only Hindús, Muhammadans and Buddhists (I may add Sikhs and Jainas). 'But the term 'Hindú' does not include the Bráhmos, who deny the authority of the Vedas, are opposed to every form of the Bráhmanical religion, and being eclectics admit proselytes from Hindús, Muhammadans, Christians, and other religious sects.'

"Nothing could be plainer or more straightforward than this, and I wish to add that the subsequent conduct of the sect has corresponded to this distinct avowal of their views. They have unreservedly accepted the offer

made to them by me on behalf of the Government, and the Adi-Samája have, with equal frankness, admitted that the measure is one to which they have no right and no wish to object. As for the views of the general body of the Native community, they appear, I think, sufficiently from the replies which were received to Sir Henry Maine's Bill. The great majority of the Native community would regard, with indifference, a measure applying to persons who stand outside the pale of the Native religions. A minority object to the principle involved in Act XXI of 1850, and would probably like to see defection from a Native religion visited by the heaviest disabilities which it is in the power of law or usage to inflict. The British Indian Association of Bengal petitioned against the first edition of this Bill expressly on the ground that Act XXI of 1850 was passed against the wishes of the Native community. It is, I think, utterly out of the question to act upon their view of the subject, and whatever inconvenience arises from their objection to the measure must be endured. I believe, however, that, to the vast majority of the population, its passing will be a matter of indifference. Inaction is, for the reasons already stated, altogether impossible.

"I will now proceed to say a few words on the provisions of the Bill itself. They need not detain the Council long, as they are few and simple. They provide a form of marriage, to be celebrated before the Registrar, for persons who do not profess either the Hindú, the Muhammadan, the Pársí, the Sikh, the Jaina, or the Buddhist religion, and who are neither Christians nor Jews. The conditions are—that the parties are at the time unmarried; that the man is, at least, eighteen and the woman, at least, fourteen, and that, if under eighteen, she has obtained the consent of her father or guardian, and that they are not related to each other in any degree of consanguinity or affinity which, by the law to which either of them is subject, would prevent their marriage. But no rule or custom of any such religion, other than one relating to consanguinity or affinity, is to prevent their marriage. Nor is any such rule to prevent them from marrying, unless relationship can be traced through a common ancestor standing to each in a relationship nearer than that of great-great-grandfather or great-great-grandmother, or unless the one person is the lineal ancestor, or the brother or sister of any lineal ancestor, of the other. This proviso will permit marriages under the Act between persons of different castes, and also between persons whose marriages are at present prohibited on account of a merely fabulous common descendant. No one who is at present unable to marry his second cousin will be permitted to do so by this Bill; but it seemed to us that a line ought to be drawn somewhere, and that the relationship between third cousins might reasonably be

regarded as so remote that it might be fairly said that a man who had given up every other part of his creed might be permitted to free himself from any custom which restrained his marriage with so very remote a connection. Whilst we have carefully avoided the charge of holding out an inducement to persons to marry by relaxing any rules to which they may now be subject as to prohibited degrees, we have thought it necessary to provide for their descendants, and as they will form a new community for whom it is necessary to provide by express law, we have provided that they shall be subject to the law of England for the time being as to prohibited degrees, and the Indian Succession Act as regards inheritance. We cannot undertake to construct a new Table of prohibited degrees. We are, therefore, compelled to accept some Table already in existence, and that being so, no Table seems so natural as that which applies substantially to the whole of Christian Europe.

"Finally, the Bill contains a saving clause to which I attach great importance. It is in the following words :—

"'Nothing in this Act contained shall affect the validity of any marriage not solemnized under its provisions, nor shall this Act be deemed directly or indirectly to affect the validity of any mode of contracting marriage, but if the validity of any such mode shall hereafter come into question before any Court, such question shall be decided as if this Act had not been passed.'

"This section has more objects than one. One of its objects is to save the whole question of the validity of the marriages of the Adi-Bráhma-Samája; but it is also intended to prevent the Act from being used to give to Native law and custom a degree of rigidity which it would certainly not possess if British India were still under Native rule. This leads me to consider a question of the utmost importance, intimately, though in a certain sense collaterally, connected with this Bill. It is whether part at least of that opinion of Mr. Cowie's which gave rise to the whole discussion is well founded. I will read those parts of it to which I refer.

"'*Question.*—Whether, in the absence of a special enactment, the general spirit of English law is favourable to marriages contracted between individuals of a new religious community, under purely moral and religious necessities and upon principles, and after a ritual not sanctioned by any existing legally recognized communities, or will it hold such marriages to be illegal at once ?'

"'*Answer.*—I hardly know how to answer the first question. Putting out of question marriages solemnized in foreign countries, the only marriages which the general English law formerly recognized, other than marriages solemnized according to the forms of that law, were those between Jews and Quakers. The recognition of marriages between Quakers was of very gradual introduction, and can hardly be said to

have been established until such marriages were referred to in, and exempted from, the English Marriage Act of 1753. Under the more recent Registration Acts, in England, persons belonging to any particular religious body may have their marriages solemnized according to the form adopted by such religious body, but those marriages derive their legal validity exclusively from the presence of the Registrar. In the absence of special enactment, a marriage between two members of a new religious community, such as the Bráhma-Samája, not celebrated in accordance with the provision of any of the Marriage Acts in force in India nor with those required by Hindú law, would, I apprehend, be invalid.'

"'*Question.*—When many such marriages shall have taken place so as to become the established usage of a large community in the course of time, will not the legislature invest them with the importance and weight of custom and feel constrained to recognize their validity? How far has custom or the voice of a large community weight in the eye of law?'

"'*Answer.*—I cannot offer any anticipation as to what the legislature would or would not do. The adoption of a particular form of marriage by the members of the Bráhma-Samája would in the legal sense be no more a custom than their adoption of a particular religious creed.'

"'I would only suggest to the Bráhmist community that it will be of great importance to their interests to obtain, if possible, some authoritative legal decision on the question (one which I regard as at present very obscure) how far the legal vadility, as distinguished from the orthodox regularity, of marriages between Hindus depends on the observance of particular ceremonies, and I need hardly add that marriages solemnized according to the forms adopted by the community are morally binding on the parties, even though no rights which the law recognizes are hereby created.'

"It is quite unnecessary for me to say anything as to the weight which ought to attach to Mr. Cowie's opinion. I believe that every one who knows him would testify that, as the principal legal adviser of the Government of India for many years, he gave full proof of a thorough mastery of his profession, and I fully admit that the fact that he gave the opinion which I have read is one which the Government of India must notice. It throws a doubt, and a heavy doubt, on the validity of their marriages, whatever may be the individual opinions of the members of Government, and that of the Legal Member in particular. I must not omit to remark that Mr. Cowie's

view of the subject is to a certain extent confirmed by Sir Henry Maine, who, without entering at length into the matter, observed :—

"'I do not dissent from Mr. Cowie's opinion, and, indeed, I do not see how he could have given any other from a purely legal point of view.'

"He goes on to say, however,—

"'but it is impossible to have stated a principle of more formidable application,'

and he shows how it might be applied to Sikh marriages.

"In what I am about to say, I must not be taken to express anything except my own personal opinion as a lawyer. I must remark, for the benefit of persons who may read my speech, and suppose that my position gives it some degree of binding authority, that this is not the case. The Legal Member of Council is not a Judge. No Court is bound to attach any weight whatever to his views, or even to listen to a reference to them. My opinion carries just so much weight as may attach to the arguments used and the authorities cited by me, and no more. With this caution I proceed to give my opinion upon those parts of Mr. Cowie's opinion which I have just read. What I have to say is relevant to the matter in hand, because it explains the scope of section 20 of the Bill, and also because it directly affects the question of the validity of Bráhmo marriages, both Adi and Progressive, independently of the Bill, as well as the validity of the marriages of other classes of persons who may not see their way to accepting its provisions.

"Generally, then, I am unable to agree with Mr. Cowie's opinion. I regret that it should have been given so shortly and without reference to authorities. The first question is as follows :—

"'*Question.*—Whether, in the absence of a special enactment, the general spirit of English law is favourable to marriages contracted between individuals of a new religious community, under purely moral and religious necessities, and upon principles and after a ritual not sanctioned by any existing legally recognized communities, or will it hold such marriages to be illegal at once?'

"Mr. Cowie says that he hardly knows how to answer this question. I should answer it as follows :—

"The law by which questions as to marriage between Natives must be regulated is either Hindú law, Muhammadan law, or the law of justice, equity and good conscience, in cases not expressly provided for. Now, the case of a 'marriage contracted between individuals of a new religious community under 'purely moral and religious necessities, and upon principles and after a ritual 'not sanctioned by any existing legally recognized communities,' is surely a

case not expressly provided for. The right of persons to change their religious belief without incurring any penalty thereby is clearly recognized by Act XXI of 1850. The effect of this change upon their power to contract marriage is not expressly provided for by that or by any other Act. Therefore, it must be settled by justice, equity and good conscience.

"The best measure of justice, equity and good conscience with which I am acquainted, and the one which is always resorted to by Indian Courts, is to be found in those parts of the decision of English Courts—and they are very numerous—which deal, not with technicalities peculiar to English law and English customs, but with broad general principles founded on human nature itself, and recognized with various degrees of distinctness by all or by nearly all civilized nations. The English bench has been able to boast of Judges who might be regarded almost as personifications of justice, equity and good conscience, and it so happens that the most distinguished of all of them—I mean the great Lord Stowell—applied the whole force of his mind, in the greatest of his judgments, to the consideration of a question very like that which was put to Mr. Cowie by the Bráhma-Samája. Some of the further applications of his solution of that question were discussed with an unparalleled degree of care by the Irish Court of Queen's Bench, and the House of Lords, who required the opinions of the fifteen Judges on the subject in the case of *Reg.* v. *Millis*. The report of that case forms a sort of Manual of the English Law on the subject of marriage in general. In the case of *Mo'Lean* v. *Cristall*, decided about twenty years ago by the Supreme Court of Bombay, the application of that decision to India is discussed at great length, and it appears to me that these authorities form as good an exposition of the principles of justice, equity and good conscience, applicable to the present matter, as any one could desire. I will proceed to state what I understand them to decide. I will then point out what, in my judgment, is the proper way of applying the principles so laid down to this country.

"These memorable decisions disclose the existence of a state of the law of which I have reason to believe the public in general, and even many lawyers, are ignorant. They establish in the clearest manner the following principles:—

"1. The marriage law of Europe in general was derived from the same sources, and was substantially the same in every part of Europe, subject to certain variations in particular countries:

"2. By that law, marriage could be contracted by a contract *per verba de præsenti* without any religious ceremony whatever, and, in particular, without the presence or intervention of any priest or minister of religion:

"3. By a local peculiarity of the law of England, the presence of a minister in episcopal orders was, by the common law of England, necessary to the validity of marriage:

"4. There is authority in favour of the proposition that this local peculiarity of English law was not introduced into British India or other foreign possessions of Her Majesty.

"With your Lordship's permission I will enlarge a little, and it shall be as little as I can, upon each of these propositions.

"The proposition that the general marriage law of Europe is substantially the same, though there are local exceptions, has obviously a most important bearing on the question put by the Brâhmos to Mr. Cowie—What is the general spirit of English law upon this subject? European Judges in this country, called upon to dispose of cases according to justice, equity and good conscience, can hardly do better than take the general rule which extends over all Europe as their guide, and not local exceptions which must be presumed to be founded upon special local reasons, even if those local exceptions prevail, as in the present case, in two-thirds of the United Kingdom. The proposition itself needs little exposition or proof. It follows from the fact that, in every part of Europe, both religion and law were derived from the same or similar sources.

"The proposition that, by the general marriage law of Europe, marriage could be contracted by mere *verba de præsenti*—'I take you for my husband' and 'I take you for my wife,' without the intervention of any religious ceremony at all, or the presence of any minister of religion—may probably be more novel. It is however established beyond all possibility of doubt by the famous judgment of Lord Stowell in *Dalrymple* v. *Dalrymple*. This judgment shows that the well-known Scotch marriages, which have furnished so many incidents to romance, are not, as has been supposed by some persons, an expression of the re-action of Scotch Protestantism against the Roman Catholic doctrine that marriage is a sacrament, but are a fragment, which still survives in Scotland, of the old law which prevailed throughout the whole of Christendom until it was altered to some extent by the decrees of the Council of Trent in the countries which acknowledged the authority of that Council.

"A very curious history attaches to the next proposition, that, by a local peculiarity of the municipal law of England, the presence of a priest in orders is necessary in England to the validity of a marriage *per verba de præsenti*. The marriage law of England was, in the main, unwritten and undefined, and corresponded in the main with the general marriage law of Europe, down to the year 1753, when the famous Act, known as Lord Hardwicke's Marriage Act (26 Geo. II., cap. 33), was passed. Broadly speaking, this Act annulled all irregular marriages except those of Quakers and Jews. It did not extend to Ireland, nor to the Colonies, nor to British possessions abroad. There, the English common law, or so much of it as had been introduced into each particular colony, remained in force. The Act, however, put a stop to irregular and clandestine marriages in England, and the learning connected with them thus came to be forgotten. In Ireland they continued for reasons connected with the unhappy condition of that country. In the year 1842, a man named Millis was tried in Ireland for bigamy committed by him by marrying during the lifetime of a woman to whom he had been married by a Presbyterian Minister in Ireland. His counsel said that the first marriage was void by the common law of England (which applied to the case), because, by that law, the presence of an episcopally ordained minister was essential to the validity of marriage. The Court of Queen's Bench in Ireland was equally divided in opinion on the subject, and the matter went up to the House of Lords. The House of Lords called for the opinions of the Judges, who, after much hesitation, gave it is their unanimous opinion that the presence of a minister episcopally ordained was necessary to the validity of the marriage, and that the man must therefore be acquitted. The House of Lords was equally divided in opinion. Lord Brougham, Lord Denman and Lord Campbell disagreed with the Judges. The Lord Chancellor (Lord Lyndhurst), Lord Cottenham, and Lord Abinger agreed with them. Upon this, the maxim *præsumitur pro negante* was applied, and as the question was whether Millis was rightly convicted of bigamy, the answer given was that he was not. It follows from this that, though the highest Court of law in England has undoubtedly affirmed the principle stated, it has done so merely by applying a highly technical rule to the decision of a Court which happened to be equally divided. If the question had come before the House in a different shape, the presumption would have acted in the other direction, and the contrary principle would have been affirmed. It would be presumptuous in me to express an opinion as to whether the two Chancellors and the Lord Chief Justice of England, who took one side of the question, or the two Chancellors and the Lord Chief Baron, who took the opposite side, were right, I may observe, in passing, that any one who wishes to see the strength and the weakness of English law illustrated in the highest possible degree would

do well to study this case. The report of it fills 374 large octavo pages, in which, I think, hundreds of authorities must have been quoted on the one side and the other. Nowhere, on the one hand, can there be found greater learning, greater ability, greater power of argument and illustration. Nowhere, on the other hand, will there be found subjects of such vast immediate practical interest, wrapped so closely in an obscurity which might have been removed by two lines of legislation, nor an equal expenditure of every sort of mental resource with a less satisfactory result in the shape of any definite conclusion. I shall not, however, detain your Lordship and the Council with any observations on this extraordinary case, except for the purpose of introducing the last of my propositions, which is, that it appears on the whole probable that the exceptional incident which, as the House of Lords decided, attaches to the English common law on the subject of marriage did not form an item in that part of the common law which Englishmen carried with them into foreign countries. In such a conflict of authority we may, I think, be permitted to doubt whether the doctrine in question did really form part of the common law of England. If it did, we must suppose, to use the words of Lord Brougham, 'that England 'alone is the one solitary but prominent exception to that law, that rule, that 'polity, that system' (which prevails all over the rest of Europe), 'and alone 'adopts a principle not only irreconcilable with, but in diametrical hostility 'and opposition to, the polity and the legal and ecclesiastical system of all 'Christian Europe.' It would further be necessary to believe, in the words of Lord Campbell, 'that Quakers and Jews, believing they were living 'in a state of lawful matrimony, had been living in a state of concubinage, 'and that their children, who had been supposed to be legitimate, are all to be 'considered as bastards.' Also, 'that marriages performed by Presbyterian 'ministers in England' (probably it should be Ireland), 'in India and other parts 'of the Queen's dominions, which have been considered as lawful, are unlawful, 'and that the parties are living in a state of concubinage and that their children 'are illegitimate.' It would be necessary to account for the fact that one of the most famous cases ever decided on the subject (the case of *Lindo* v. *Belisario*) expressly recognized and proceeded upon the supposition of the existence of a valid form of marriage amongst Jews, though it decided that, in the particular case before the Court, that form had not been observed. It would be necessary to account for the fact that Lord Hardwicke's Marriage Act and various reported cases assume the validity of such marriages as well as that of Quaker marriages. It would further be necessary to suppose that the English settlers in America, and Englishmen resident in India, had entirely mistaken the law under which they lived, for there can be no doubt that, in the United States, marriages without the intervention of any ecclesiastical cere-

money or the presence of a priest were and are regarded as valid at common law, and it is equally certain that, for a great length of time, marriages were celebrated between English people in India otherwise than in the presence of episcopally ordained clergymen.

"I need not detain the Council with an account of the manner in which these difficulties were dealt with by the great authorities who did not regard them as conclusive, or with the difficulties which attach to the opposite view, and which are stated with the utmost force by Chief Justice Tindal, in delivering the opinions of the Judges; but I must observe that the Judges who were unanimous in thinking that a contract *per verba de præsenti* was not actual marriage were equally unanimous in the opinion that such a contract was at common law indissoluble, even by the consent of both parties, and that, but for Lord Hardwicke's Act, specific performance of it by a public and regular celebration of the marriage might have been compelled.

"The immediate inference which I wish to draw upon these matters is a most important, though in a sense a somewhat narrow, one. It is that, whether the peculiarity in question did or did not form part of the common law of England, it was not, at all events, an item of that portion of the common law which the English carried with them into India. The general rule upon this matter is well known and perfectly reasonable. It is that Englishmen carry with them into foreign countries in which they settle so much of the common law as is suitable to their circumstances. It is almost too plain to require illustration that that part of the English common law which required the presence of a priest in episcopal orders to render a marriage valid would be altogether unsuitable to the circumstances of Englishmen in such a country as this, in which it might, in many cases, be all but physically impossible to fulfil the condition in question. Upon this point there is an express decision of the Supreme Court of Bombay. It is contained in a judgment given by Sir Erskine Perry in the case of *Mc'Lean* v. *Cristall.* The case went up to the Privy Council afterwards, but was decided upon a different ground.

"This review of the authorities on the subject seems to me to authorize the following statement:—'The law of Christian Europe in general, and that part of the law of England in particular, which has been introduced into India, regards the good faith and the intention of the parties, and not the form in which a marriage is celebrated, as the principal test of its validity. If the deliberate opinion of great bodies of men, expressed by their laws, is to be taken as an exponent of justice, equity and good conscience—and I know of no better—this

would appear to be the teaching of justice, equity and good conscience upon the point in question. To conclude what I have to say on this head, I ought to remind your Lordship of the intensity of the strain which, at the most memorable period of European history, this principle sustained and survived. I refer to what happened at the Reformation. Christian Europe was then split into hostile camps, animated against each other by the most determined and desperate hostility. Such epithets as blasphemers and idolators were freely exchanged between the opposite parties, and the wars between them carried fire and sword over every part of Europe, and over every sea in the world, for at least eighty years. There was, however, one reproach which neither party in their highest exasperation levelled against the other. When they racked their ingenuity to discover names and phrases which would throw contempt on all that their antagonists held most sacred, they never went so far as to deny the validity of each other's marriages. Protestants might speak of the mass in a way which Roman Catholics described as blasphemy. Catholics might apply to Protestants language which they felt as an intolerable insult, but neither said to the other—'Your marriages are void; the women you call your wives are harlots, and the children born of them are bastards.' The fact that, even at the height of the most furious religious excitement that the world has ever seen, that last reproach was spared in most cases (for I would not venture to say that there were no exceptions) appears to me to have been a practical triumph of justice, equity and good conscience; a practical recognition of the fact that religious differences do not go to the very foundations of human society, and that there are common principles of union which lie too deep to be affected by theological disputes. Such, I think, are the principles by which this matter should be governed.

"I proceed to point out the way in which they bear, as it seems to me, upon the question put by the Progressive Bráhmos to Mr. Cowie. The case which the Bráhmos contemplate is that of a newly formed body of persons professing a common religious belief, and known by a common name, who have, for reasons of their own, adopted forms of marriage differing from those commonly in use. Are such marriages, they ask, valid or not? A second question to which Mr. Cowie refers as being very obscure is, whether, if a new sect of Hindús forms itself in the general Hindú body and adopts forms of marriage of its own, those forms would be regarded as valid by the law administered by the High Courts? The answer to the first question would determine the validity of the marriages of Progressive Bráhmos apart from this Act. The answer to the second question would determine the validity of the marriages of the Adi-Bráhmos.

"I should be inclined to answer these questions in the affirmative, but to couple that answer with qualifications which render it obviously desirable that the matter should be dealt with by the Courts of Law, as occasion requires, and not by the Legislature by a declaratory enactment. The line which, in my judgment, should be drawn between the provinces of direct and judicial legislation is this. Each has its advantages. When we are sure of our ground; when we clearly understand our objects; where we are laying down rules for institutions with which we are familiar; where, in a word, we have full experience to guide us, there can be no doubt that direct legislation is best. It is the shorter, simpler, more accessible, and more distinct of the two. Great, however, as these advantages are, there are cases in which they are counterbalanced by others which belong to judicial legislation. By leaving cases to be settled by Courts of Law when and as they arise, the necessity for settling an immense number of cases at all is altogether avoided. They settle themselves in a natural way, by the good sense of the parties concerned. In other cases, by delaying the decision of a question till it actually arises and by then deciding nothing more than is required by the circumstances of the particular case, much needless discussion and irritation is avoided, and—which is far more important—the possibility of inflicting grave injury on classes of persons whose interests are unknown to, or overlooked by, the Legislature is, to a great extent, avoided. I think that a person who should attempt to lay down by a declaratory Act general principles as to the conditions under which irregular Native marriages are to be held void or held good, would be very rash. I should certainly entirely decline the responsibility of attempting to do so. An opinion may be given on a case clothed in all its circumstances; but to draw up a general Native Marriage Law, declaring what forms of marriage are, and what are not, valid, and within what limits, and by what means, existing forms may lawfully be varied, would require an amount of knowledge and of wisdom which no human being possesses, and which no rational person could, for a moment, suppose himself to possess.

"For these reasons I think that the answer to the question put by the Brâhmos is one which should be given by the Courts of Law on particular cases as they arise, not by the Legislature; but I venture to make some observations on the principles on which, as it appears to me, they ought to be decided. How those principles would apply to any particular case is a question on which I can, of course, express no opinion. The way in which the Courts would deal with such a question, I think, would be somewhat as follows.

"Taking, first, the case of an entirely new religious body with marriage ceremonies of its own, they would proceed to consider by what law the question

of the validity of such marriages must be determined. The question assumes that the parties have renounced the Hindú religion (I omit the mention of the rest for the sake of brevity) and to be subject to no other personal law. This they have a clear legal right to do, without incurring any penalty, both by Act XXI of 1850 and by the law explained in the case of *Abraham* v. *Abraham*. Questions between them must, therefore, be determined according to justice, equity, and good conscience. Is it, then, just or equitable, or according to good conscience, that if two of them make a contract of marriage, that contract should be held to be void? I think not. Most people regard marriage as a contract and something more, but I never yet heard of any one who denied that it is, at all events, a contract, and by far the most important of all contracts. It certainly is not regarded in this country, in all cases, as a contract between the persons married, as it is in Europe; but it certainly is regarded as a contract between some persons—the parents of the parties, or the parent of the girl and the husband. Whatever words we may choose to employ, it is clear that all the elements of a contract must, from the nature of the case, be found wherever a marriage occurs. There must be an agreement as to a common course of conduct; there must be consideration for that agreement, and there must be, as the consequence, a set of correlative rights and duties. Call this what you will—an institution, a state of life, a sacrament, a religious duty. It may be any or all of these, but it is a contract too, and, in the very nature of things, it always must be so. Where, then, is the connection between these two propositions—A and B are not under the Hindú law. Therefore, A and B cannot enter into a binding contract to live together as husband and wife? It would, I think, be as reasonable to say that, because A and B are not Hindús, they cannot make a binding contract of sale or of personal service. Surely, if any two propositions about justice can be regarded as indisputably true, they are these. It is just that people should be able to enter into contracts for good purposes. It is just that they should perform such contracts when they have been made. But, if this is admitted, it must inevitably follow that it is just that they should be able to make, and should be compelled to keep, when made, a contract of marriage; and the fact that they are not subject to Hindú or Muhammadan law would prove only that their non-compliance with Hindú or Muhammadan ceremonies did not invalidate their contract. It is very common to enact that the observance of certain forms is essential to the validity of certain contracts. In England, land must be conveyed by a deed; contracts of certain sorts must be in writing, and so on. This is peculiarly true of marriages. The observance of special forms is directed by the laws of most nations, though such forms were not, or, at least, used not to

be, in most European countries (as I have shown), essential to the validity, as distinguished from the regularity of the marriage. The manner of celebrating marriage, however, is matter of form. The intention and the capacity of the parties to contract is the essence; and if, as in British India, a person is able, at his pleasure, to exempt himself from the operation of the law which prescribes the form, it appears to me to follow, not that he is prevented from contracting at all, but that he is not obliged to contract in any one particular manner. To say that people who have ceased to be Hindús cannot contract marriage because they cannot practise the Hindú rites, seems to me like saying that, if a man were not subject to the Statute of Frauds, he could not bind himself by a verbal contract to sell goods worth £100, because the Statute of Frauds says that such contracts must be in writing. The inference surely is directly the other way. If a certain law prescribes a particular way of doing a given act lawful in itself, and you happen not to be subject to that law, the result is, not that you cannot do the act at all, but that you need not do the act in that particular manner.

"I confess that I cannot see how this argument can be answered, except by the assertion that the Hindú law is of such a nature that a person who by birth and race is subject to it is permanently incapacitated from contracting marriage except under its forms. That is an intelligible proposition, and would be true if the Hindú law was a territorial law, like the law of England, or the Penal Code in India, or if it were a personal law from which a man could not withdraw himself; but this is precisely what it is not, and to hold that it is would be to repeal Act XXI of 1850, by inflicting a penalty, to wit, disability to marry, upon persons who renounced the Hindú religion, and so much of the Hindú law as is dependent upon, and substantially indentical with, it. Sir Henry Maine supposed that the omission in Act XXI of 1850 of all reference to the subject of marriage arose from inadvertency or from too rigid an adherence to the policy of dealing only with the immediate point which required decision. It may have been so; but I am myself disposed to think that the authors of that Act took account of the very arguments which I have stated, and agreed with me in thinking that, if the matter ever came before the Courts, they would hold that, when a man exercised the right assured to him by the Act, of changing his religion, he acquired, by that very circumstance, the right to form a contract of marriage in ways other than those authorized by Hindú law. Mr. Cowie's opinion seems to assume that people have no right to marry, except under the provisions of some specific law which prescribes for them a form of marriage. The cases which I have quoted appear to me to establish, in

the broadest way and on the most general principles, that it is just, equitable and according to good conscience that all men should have a right to marry, although the law to which they are subject may prescribe the manner in which that right is to be exercised. In India, as we all agree, there is no fundamental common law, other than the law of justice, equity and good conscience, upon this subject. If a man is not a Hindú, nor a Muhammadan, nor a Pársí, nor a Christian, nor a Jew, no form of marriage is prescribed for him by law. Does it follow that he cannot marry at all? Certainly not. What follows is, that his rights must be determined by the general maxim that contracts for a lawful object, and made on good consideration, are valid and must be performed; and I have yet to learn that marriage is, in a general sense, unlawful or immoral, or that the promise to perform conjugal duties by the wife or husband is not a good consideration for the promise to perform reciprocal duties by the husband or wife.

"It is of the utmost importance to add to this broad statement of principle an earnest caution against the supposition that it can or ought to be applied to practice without qualifications, which greatly diminish its apparent latitude and simplicity. If justice, equity and good conscience require that people should not be debarred from marriage, they may also be said to make wide, though certainly somewhat vague, demands on the parties who contract a marriage otherwise than according to established rules; and what those demands may be no one can, I think, undertake to say, until cases arise which raise the question. I will suggest a few points which will show the extreme delicacy of such questions, the impossibility of deciding them beforehand, and the uncertainty which must in consequence attach to the validity of every marriage which is not solemnized according to some well-known and established rule. In the first place, I think that Judges before whom the validity of such a marriage was brought into question might well take a view of the mode of celebrating marriage closely analogous to that which was taken by the twelve Judges in the case of *Reg.* versus *Millis* as to the common law of England. The Judges in that case thought that, though great latitude was allowed as to forms of marriage by the common law, the performance of some sort of religious ceremony by a minister ordained in a particular way was essential to its validity. Indian Judges might well say, in analogy to this, that, taking into account the habits and feelings of the Natives of this country, and in particular, taking into account the fact that in some cases marriage-contracts are made rather by the parents than by the parties, it is neither just nor equitable nor according to good conscience that a binding marriage should be contracted without any witnesses, any ceremonial, any sort of social sanction derived from the habits of some body of persons connected together by common religious

belief or common social habits. Scotch law goes far when it enables a man and woman to marry each otLer by a few words exchanged in the course of a casual conversation; but Anglo-Indian law would go infinitely further, if it held that two people could, in that manner, convert their children into man and wife. It may well be considered equitable that, if such a thing is to be done at all, it should be done under the sanction of some degree of publicity, and according to some mode of procedure known to, and practised by, a considerable number of persons. On such a point the Indian Judges might, perhaps, take as their guide the case of the Jew and Quaker marriages, and say (as the Judges said in *Reg.* v. *Millis*) that the validity of these marriages in England was recognized, not because all marriages *per verba de præsenti* are valid, but because they were marriages performed amongst classes of persons who had attained a recognized and peculiar position for their peculiar religious rites. If the Court took this view, they would have to adjust it to particular cases, and to be guided in so doing by particular facts. They would have to try the question whether this or that marriage had been contracted according to any known rite whatever, and whether the body which practised that rite had such a degree of unity and consistency as to deserve the name of a distinct sect or body of persons. The view they might take upon any of these questions might determine their view as to the validity of any given marriage or class of marriages.

"Another set of questions would arise as to what are the conditions essential to marriage, apart from the established laws of particular sects. Nothing is better established than the principle that an immoral contract is void. But in the matter of marriages between Natives of India regulated by no personal law, what is immoral? Is polygamy immoral? Is polyandry immoral? Is permanence of the essence of marriage? Again, how is the question of prohibited degrees to be solved? I mention these difficulties as instances of the extraordinary difficulties and uncertainties with which the whole subject of irregular marriages is surrounded. I do not at all say that these questions are insoluble. Many of them probably might be solved if they were brought before a Court of law in a regular manner, and in some individual case which could be considered in all its circumstances, and with reference to all the matters which might be found to bear upon it. For instance, I can well understand an Indian Court holding that, in the case of marriages which, if valid at all, are valid only as contracts, and not under any positive law, they could not recognize polygamy as moral; I can also understand that they might hold that such a marriage must have reference to some recognized rules as to prohibited degrees, though difficulties might, no doubt, arise which a Court of Justice

could hardly solve. It is, however, unnecessary to go minutely into the subject. My own opinion is, that, if a considerable body of men, bound together by common opinions and known by a common name, appeared to be in the habit of celebrating marriages according to forms and on terms unobjectionable in themselves, the Courts ought to recognize such marriages as valid, though, in any particular case, there might be circumstances which do not suggest themselves to my mind and which would invalidate the marriage. The fixity of the sect, the propriety of its forms, and the propriety of its terms, would all have to be considered by the Court. I think, in short, that, though it cannot be affirmed with confidence, on the one hand, that all persons who are not Hindús, &c., can marry in any way which sufficiently expresses their intentions, and on whatever terms they think proper, it may also be affirmed that a marriage between persons so situated would be valid, unless circumstances existed which led the Courts to treat it as invalid; but if pressed to say what those circumstances are, I should be unable to answer the question, unless I had the facts of some particular case brought fully before me.

"I could, if time would permit, show at length that the case of the recognition of the validity of Quaker marriages in England confirms this view with singular exactness, but I pass over this in order to refer to a precedent of more immediate application, which, I must own, appears to me conclusive.

"It is the case of marriages between Native Christians before 1851, when the Act 14 & 15 Vic., cap. 40, was passed. That Act had several objects, the most important of which was to provide a form of marriage 'where one or both of the parties is or are a person professing the Christian religion.' It was followed by a good deal of Indian legislation—V of 1852, XXV of 1864, and V of 1865—Acts which, I hope, will soon be consolidated into a single enactment. Act V of 1865 prohibits, for the future, irregular marriages between Christians, though 14 & 15 Vic., cap. 40, protects all marriages which would have been valid without it, and confirms all marriages celebrated by laymen before it was passed. It was, however, the first express enactment which provided Native Christians with any form of marriage at all, though there were Native Christians in India long before 1851. I say nothing of the Roman Catholic communities, which were in existence long before the rise of the British power, and might, no doubt, claim to have their marriages recognized on the ground that they are a valid custom. But there have been large numbers of Protestant conversions of a much more recent date, and marriages took place amongst the converts often, as I am informed, in a very irregular manner. Were all these

marriages void, or were they good? The assertion that they were void would be so repugnant to every principle bearing on the subject that I need not discuss it. I cannot imagine a more ignominious position for any Government than that of being exposed to such a reproach as this. Your own countrymen converted these people to your own religion, and your law rewards their conversion by annulling their marriages contracted according to your own forms, and bastardizing their issue born of those marriages. I am, then, entitled to assume that these marriages were valid; but by what law were they valid? I say they were valid by the law of justice, equity and good conscience, which, as I have shown, would apply to the Bráhmo marriages. There is no other law which meets the case. Certainly Hindú law does not, nor does the law of England, for the domicile of the parties was not English. If it is said that they were valid by Christian law or the law of the Christian Church, I reply that the expression is improper and, indeed, unmeaning. Christianity is a system of religious belief, and imposes, not legal, but moral and religious obligations. The Christian Church in this country is a voluntary association, or rather a common name for a number of voluntary associations, and the rules of the different bodies to which the name is applied are binding only as contracts upon those who agree to observe them. If, therefore, it is said that these marriages are valid by Christian law, that expression must mean that they are valid, because by the law of justice, equity and good conscience the parties have a right, if they please, to contract to live according to Christian practices and habits; and if this is conceded, I do not know why they should not have had a right to make such a contract, although they might not have adopted Christianity.

"It appears to me impossible to draw any line between the Bráhmo marriages and the marriages of Native Christians before the year 1851. I cannot believe that Hindús who deserted Hindúism and adopted Christianity thereupon acquired a right to marry in a manner foreign to Hindú notions, whereas Hindús who deserted Hindúism and did not adopt Christianity thereupon came under a disability of contracting marriage on any terms whatever. The only possible way of justifying such an opinion would be by making, in some form or other, the assertion—which, no doubt, a great many people would like to make—'Christianity is true and every other creed is false. Therefore, if a man becomes a Christian, he shall be favoured in every possible way. If he continues to be a Hindú or a Muhammadan, he shall be left alone. If he becomes an infidel or sets up a new religion for himself, he shall be afflicted by every sort of disability which the law can impose.' To express such a principle clearly is to refute it. We have no right to legislate, and the Courts have no right to decide, on the principle that any system of religious belief or disbelief what-

ever is either true or false. Our business is to do equal justice to all, independently of their comparative claims to truth. Every one who affirms the validity of Native Christian marriages before 1851 must either admit the validity of the Bráhmo marriages, or he must affirm that, by the law of British India, Christianity occupies a peculiar and dominant position; that it constitutes one of several castes, within the pale of any one of which are to be found law and civil rights, whilst, for those who are outside of them all, no civil rights are possible. This is a position in which, as it seems to me, no Christian can wish to see his religion placed. It would make it a party to a conspiracy to persecute between four or five dominant creeds, each denying the truth of all the rest, but all combining against those who deny the truth of them all.

"It may be asked, if this view of the law is correct, what is the necessity for this Bill? Why not leave the various sects as they grow up to take their chance under the cover of this general principle? The answer is that, though the view in question is my view, it is not the view of the late Advocate General. It is surrounded, as I have pointed out, by uncertainties and difficulties, and, in a matter of this kind, uncertainty is the worst of evils. I consider that the persons to whom this Bill will apply have precisely the same right to have a distinct and indisputable form of marriage provided for them, as the Native Christians had, for whom such a form of marriage was provided by the Acts of 1852, 1864, and 1865.

"I now come to the last point on which I shall have to address your Lordship and the Council. It relates to that part of the saving section which applies to, and which is intended to save, such rights as may belong to what I may call the dissenting sects of Hindús, of which the Adi-Bráhma-Samája may be regarded as a specimen. The validity of the marriages of such bodies is obviously to be determined by the Hindú law by which the members of the sect elect to abide. It would be presumptuous in me to express an opinion on the question whether the Hindú law would treat such marriages as valid, and, if so, under what limitations. But I wish to make some remarks on the subject which I think will be found to have an important bearing on the question. The information received in connection with this Bill, and the great general increase which has of late years taken place in our knowledge of Native religions and institutions, has brought to light the fact that there is far more variety and far less immobility about them than was formerly supposed to be the case. Our predecessors looked upon the Hindú religion as one definite thing, and regarded the castes and other institutions connected with it as universal and capable of a simple

classification. Experience has shown that this is as far as possible from being the case, that the Hindú religion can no more be described as one than the Christian religion, and that, in common with most other creeds which have extended over any considerable section of the human race, it has a tendency to throw off sects of all kinds, and to generate customs even more numerous than the bodies which may be regarded as distinct religious sects. The Sikhs are, perhaps, as prominent an instance as can be given of this, and I may add that, within a very few years, as we all know, the Kukas have established themselves as an off-shoot of the Sikhs. I apprehend, indeed, that there would not be much danger in affirming that the facility with which new sects form themselves, establish customs of their own adapted to the varying circumstances of the time and country, and yet continue in some sense or other to be, and to be considered, as Hindús, is one of the most characteristic features of Hindúism. English law is the very antithesis to this. The first rule as to the validity of a custom is this—'It must have been used so long that the memory of man runneth not to the contrary.' Now, the memory of man runneth, according to English notions, to a particular point (I need not here enquire precisely what point) in the reign of Richard the First; that is, to the end of the twelfth century, or, at present, for not much less than seven hundred years. No one, of course, would say that this rule ought to be applied to India. Its rational equivalent would be, that usage for a considerable period of time, usage of which the origin cannot be traced, is essential to the validity of a custom. I must say that even such a rule as this appears to me to be open to very great question, if it is to be applied to such a subject as the validity of particular forms of marriage. I hope that any Court of law in India would hesitate long, and look cautiously at the possible consequences of their decision, before they decided that a marriage was void merely because it was celebrated according to the rites of a Hindú or other religious sect of recent origin. Surely it would be monstrous to deprive the Hindú religion, by judicial decisions, of what has hitherto been its most characteristic feature—its power of adapting itself to circumstances. It would, I should say, be a less evil to hold that the most irregular marriage was regular than to bastardize, for instance, the whole Sikh community, on the ground that an English Court considered that the Sikhs were not orthodox Hindús. Yet this consequence seemed to Sir Henry Maine to be so closely connected with Mr. Cowie's opinion that he distinctly referred to it, and declared, on the strength of it, that Mr. Cowie's principle was one 'of most formidable consequence.' I may be asked where the Court should draw the line? I answer that I do not know, but that, if such a question is meant to suggest that no line can be drawn, it shows ignorance of the

nature of one of the most important functions of Courts of Justice. It is their duty—and it is impossible to imagine one of greater delicacy or importance—to decide questions of degree; questions of more or less, questions in which circumstances impossible to foresee modify the application of general principles in an unexpected manner. This is the case in all parts of the world, but I can imagine no country in which such a function can be either so important or so delicate as it is in India. Give a specific case, and it is possible to say what are the leading circumstances in it which enable the Court to give judgment upon it. Try to lay down a general rule beforehand, or try to say, before the case actually occurs, what the effect of the addition or subtraction of various circumstances would be, and you may find it impossible to do so. To show how immensely important it is to be cautious to the extreme in this matter, I would refer to a case which has been suggested to me by my hon'ble friend Mr. Robinson. It is the case of the Nayárs on the coast of Malabar. Amongst the Nayárs there is, Mr. Robinson tells me, legally speaking, no such thing as marriage at all. On the principle that you cannot tell who is a child's father, the rule of inheritance is, that the sister's son inherits. I am also told by Mr. Robinson, who has great special knowledge of the subject, that, in spite of this custom, marriage is practically as common and as binding amongst the Nayárs as in many other races. The connections which they form usually last for life, and are marked by a great degree of mutual fidelity. Many of them, I am told, feel that this way of life is degraded and bad. They wish for the institution of marriage. They cannot, of course, accept it at our hands, and it would hardly occur to them to ask relief of this Council. Suppose that they were to adopt marriage customs of their own, not, indeed, regulated by our notions, but founded on principles which to them might appear natural! Why should our Courts treat such marriages as void? Why should they bind upon the Nayárs a custom which, according to our principles, is hideous and unnatural, merely because they do not propose to escape from it by the precise road which we should be inclined to point out? If it were not for English law and English Courts, no difficulty would have arisen on matters like these. New sects which might have arisen would have adopted their own usages, and would have lived or died according to the degree of vitality which they might contain. Their marriages and other customs would, if they lasted, have taken their place amongst the other customs of the country, and would have been treated as equally valid with those which are in more general use. Why should we interfere with this state of things? Why should we constitute ourselves guardians of Hindú orthodoxy? Why should we determine at all what is, or is not, orthodox, according to Hindú notions? Why should we interfere with the natural course of events? There can, I imagine, be but one answer to these

questions, namely, that no course can be more unwise, more opposed to our settled policy, more unpopular with the Natives, or more unjust. All that can be said for it is, that it is more or less favoured by certain analogies which may be drawn from a part of English law which has less in common with India than almost any other part of it. It is upon these grounds, my Lord, that I think it impossible to lay down, beforehand, with any approach to completeness, all the essentials to the formation of a new and valid custom as to marriage. It is possible to affirm, in general, that the mere fact that a Hindú sect is of recent origin, and that it has adopted forms of celebrating marriage differing from those commonly in use, are not sufficient to prevent such marriages from being held valid by Hindú law as interpreted and administered by our Courts. The application of this general principle to particular cases cannot, of course, be made without a full inquiry into the circumstances of the particular case, and it would obviously be improper for me, on this occasion, to enter upon such an inquiry in relation to what is called the Adi-Bráhma-Samája.

"I have been informed that some of my hon'ble friends wish that this Bill should not be passed to-day, but that its consideration should be delayed, for what length of time I cannot say. Their reason for making this proposal is that sufficient time has not as yet been afforded since the publication of the Bill, as at present framed, for the expression of public, and especially of Native, opinion upon this subject. I cannot agree in this view of the case. The question now before the Council is substantially the same as that upon which Native opinion was so freely expressed three or four years ago. This Bill has been before the public in Bengal at least for a month, and a considerable expression of opinion upon its provisions has taken place, which, as far as it goes, has been favourable to the Bill. The Council must also bear in mind the fact that the Bill is not a measure of detail. It is a matter of principle upon which, after all, the Council must decide, and as to which it has now as good materials for decision as it is ever likely to have. I see no advantage, but great inconvenience, in soliciting objections to the principle of a measure upon which it is idle to expect unanimity amongst the Native populations. The real substantial objection to this Bill is, that it recognizes the fact that a considerable number of persons have left their old religions, and that they had a right to do so. No doubt many persons have that feeling, and do object to the principle of this Bill as they objected to the principle of Act XXI of 1850; but surely this is an objection to which the Government cannot possibly give way, whoever may entertain it, and what use can there be in provoking the expression of an objection to which we do not intend to give way?

"I hope, too, that the Council will recollect that a delay in passing this measure is a substantial and very heavy grievance upon the persons principally interested in the Bill. They have been kept in suspense for four years, and I submit that it will be a grievous hardship upon them to suffer the matter to be again postponed.

"There is a personal matter on which I must say a word, though I can only place myself in the hands of the Council. In the course of my communications with the different persons interested in this Bill, I have, as far as it was in my power to do so, pledged the Government to the measure, and promised that it should be enacted. Of course I could not, nor could the Executive Government, answer for the Council, but I think that the fact is one which should be before the Council for their consideration in giving their decision on the subject. Of course they will attach to it such weight as they think right, and no more.

"The amendments, of which I have given notice, are not, I believe, objected to by my hon'ble friends. Their proposal is that the passing of the Bill as amended should be deferred.

"These, my Lord, are the observations which I have to make on this important Bill."

The Motion was put and agreed to.

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

"That the following new section be inserted after the preamble as section 1, and that the numbers of the subsequent sections be altered accordingly:—

"'1.—This Act extends to the whole of British India, and shall come into force on the passing thereof.'

"That clause (4) of the present section 1 be altered to stand as follows:—

"'(4). The parties must not be related to each other in any degree of consanguinity or affinity which would, according to any law to which either of them is subject, render a marriage between them illegal.

"'*1st Proviso.*—No such law or custom, other than one relating to consanguinity or affinity, shall prevent them from marrying.

"'*2nd Proviso.*—No law or custom as to consanguinity shall prevent them from marrying, unless a relationship can be traced between the parties through some common ancestor, who stands to each of them in a nearer relationship than that of great-great-grand-father or great-great-grand-mother, or unless one of the parties is the lineal ancestor, or the brother or sister of some lineal ancestor, of the other.'

"That in the present sections 3, 5, 6 and 7, instead of the words 'five days,' the words 'fourteen days' be substituted.

"That the words 'unless she is a widow' be inserted after the word 'guardian,' in line 8 of the present section 9.

"That the following be substituted for the present section 20: —

"'20.—All persons who have heretofore contracted marriages in the presence of at least two witnesses, according to any form whatever, may at any time, previous to the 1st January, 1873, have such marriages registered under this Act, and such marriages shall thereupon be deemed to be and to have been as valid as if they had been contracted and solemnized under this Act: Provided that persons who register marriages under this section must, on such registry, sign a declaration in the form given in the fourth schedule to this Act.

"'No marriage shall be registered under this section, unless conditions (1), (3) and (4) of section two were complied with; and no such marriage shall be registered under this section if, during its continuance, either party has contracted a subsequent marriage.'

"And that the schedules be amended in accordance with the foregoing amendments."

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 Hon'ble MR. INGLIS said:—"With Your Lordship's permission I beg to move that this Bill be recommitted, and referred for report to the several Local Governments, in order that we may obtain the opinion of the Native public on its provisions.

"I wish to state here that I agree with the Hon'ble Mr. Stephen that a Marriage Bill such as that proposed by him, to give validity to the marriages of the Progressive Bráhmos, should be passed; but while I agree with him so far, I am decidedly of opinion that, in the settlement of the details of such a Bill, we should not only invite, but should seek, the assistance of Native advice. If we do not do this, I fear there is reason to apprehend that, unintentionally doubtless, we shall open a door to many abuses we cannot now foresee, but which may hereafter cause much trouble and misconstruction. I think that free and unreserved communication with the Native public would prevent our falling into mistakes of this kind.

"I signed our report on the Bill with much reluctance, and on the distinct understanding that the Bill was to be published in the Gazette, in order

that, before it was again brought before this Council for consideration, the Native community of all classes and creeds should have ample opportunity given them to express their opinion on it, and to offer suggestions for its amendment or alteration.

"The Bill introduces, for the whole of British India, an entirely new marriage law, entailing consequences certainly opposed to the feelings of the majority of our Native fellow-subjects, and contains provisions on which I am at present quite unable to form a decided opinion, and on which, before I give my final vote for the Bill, I should like to have time to consult my Native friends.

"For instance, the only material difference between this Bill and that introduced by Mr. Maine, which was universally condemned, is that it requires a declaration from any one desirous of being married under its provisions that he does not profess the Christian, Jewish, Hindú, Muhammadan, Párs, Buddhist, Sikh or Jaina religion.

"The Hon'ble Mr. Stephen, as I understand, holds that this declaration will not be made by any one who has not, after full thought and reflection, determined to abandon for ever the particular one of these religions in which he was brought up; and further, that such a declaration will for ever bar the return of the person making it to the religious communion he then states he does not belong to; that it is, in fact, a lasting and binding renunciation on his part of his former religious persuasion, and that, consequently, the dangers anticipated from Mr. Maine's Bill have been avoided in this one.

"Now, I am unable to agree in this opinion. I am doubtful as to what the effect on the social position of a Hindú, Sikh or Buddhist would be of a mere declaration before a Marriage Registrar, probably of a different race or caste from himself, that he does not profess the Hindú, Sikh or Buddhist religion. I doubt whether such a declaration, made under such circumstances, would exclude him permanently from his caste, or, indeed, that it would carry any social penalties with it.

"If the effect of such a declaration is not to permanently exclude the man making it from his caste, and would not of itself prevent his resuming, immediately after the marriage, his previous position in the community he belongs to, then it will have little or no force at all, and would not operate to deter a man from contracting a marriage he was bent on, but could not compass except under the license afforded by this Bill; so that the Bill differs very little in fact from that formerly introduced by Mr. Maine: for if, notwithstanding the declaration

required, a man may obtain for himself a marriage law altogether at variance with the feelings of his brethren, and opposed to their religious tenets, while it entails on his children new laws relating to marriage and inheritance, and still remain a member of the Hindú, Sikh or Buddhist communities, then it seems to me that the objections urged against Mr. Maine's Bill apply with almost equal force to this.

"I need not refer to the arguments against such a Bill. They have been fairly and fully stated just now by the Hon'ble Mr. Stephen, and are contained at length in the reports submitted by the Local Governments, which have been seen by all the Members of this Council.

"It may be replied that section 22 of the Bill renders the persons making a false declaration under it liable to punishment under the Indian Penal Code; but this section would not cover the cases I now refer to: it would be impossible to prove that the declaration was false; the man would say, it was true that on the date I made that declaration I did not profess the Sikh religion, but since then I have reconsidered the matter, made the necessary offerings, given the usual dinner, and have returned to my former faith.

"Again, it seems to me deserving of serious consideration whether the facilities afforded by the Act for clandestine marriages may not cause serious evils. I think there is ground to fear that advantage might be taken of them by designing parties to entrap young lads of family position, infatuated with some dancing girl, and utterly reckless of consequences, into a marriage which can only end in disgrace and ruin. The extraordinary influence frequently obtained by women of this class over young men is well known to all who have seen much of Native life. Men under such influences would not, I believe, hesitate a moment, while their frenzy lasted, to make the declaration required by the Act in order to obtain their ends.

"It must be remembered, too, when considering how far the Act may be abused in this manner, that a marriage under its provisions will be a very different matter from the half-marriages now occasionally contracted by lads under such circumstances and influences. Their after-life is not materially affected by them; but a marriage under this Act, once declared to be binding by the Registrar, cannot be dissolved, except under the provisions of the Indian Divorce Act. The man can contract no other marriage during the woman's life-time, and the children born after the marriage inherit under the Indian Succession Act.

"I feel that I am at present quite unable, without consulting Native opinion, to say how these questions should be answered, or how other provisions in the Bill, which militate against Native habits of thought and feeling, will be viewed by our Native fellow-subjects; but I think I have said enough to show that it is very necessary we should have their opinion on the details of the Bill before it receives your Lordship's assent.

"As yet the people of the country have not had this opportunity given to them. The original Bill, the only one on which the opinions of the Natives of the country has been asked, was received throughout India with the strongest expression of disapproval from all classes of our Native fellow-subjects, and was accordingly given up. In its place the Bráhma Marriage Bill was substituted which was on the eve of passing last year, when, owing to the remonstrance made against it by the members of the Adbi-Bráhma-Samája, it was withdrawn, and the Bill now before us substituted in its place, which was published for the first time about three weeks ago.

"If the Bill were a mere Stamp Act, or one for consolidating the Regulations relating to the Civil Courts, or something of that kind, I would not press for delay; but as it is one which may affect very seriously the private life of the whole Native community, as it is certainly liable to misconstruction, and as the full effect of some of its provisions cannot be predicated by us now, I think it advisable that it should, before it becomes law, be subject to the freest discussion, and that the Bill itself, together with the speech of the Hon'ble Mr. Stephen explaining the reasons which have led to its introduction, should be made generally known through the Local Governments to the Native public of India, in order that their opinion on its provisions may be obtained and carefully considered before we come to a final determination on it.

"I think it certain that if this is done, and full time is given, the Bill being circulated, as I propose, throughout the country, we shall receive many very valuable suggestions for its improvement and amendment. I trust, therefore, that the Council will grant the delay I ask for."

The Hon'ble MR. COCKERELL said:—"I fully approve of the principle of this Bill; and, as at present advised, I am entirely at one with the hon'ble and learned mover as to the form in which it is proposed to give effect to that principle. I do not share the apprehensions suggested in the remarks of the last speaker as to the tendency of the Bill to bring trouble and disgrace into respectable families, by promoting or facilitating disreputable marriages. It does not

admit of the contracting of marriages where the male party thereto is of less than eighteen years of age, has not, in fact, attained his legal majority.

"Now, I think that every man in such a position must be left to the exercise of his own free will, and that the further imposition or maintenance of legal restraints on such exercise is unnecessary and impolitic.

"In Western countries, where no such legal restraints have ever existed, disreputable marriages of the kind apprehended by my hon'ble friend (Mr. Inglis) are of comparatively rare occurrence; social considerations, family influence, and regard for the credit and reputation of the family name—these prove sufficient deterrents, and I do not think that, here, such restraining influences are likely to be in any degree less effective.

"I do not therefore think that any cause has yet been shown which should prevent us from eventually passing the present Bill into law; but I am also of opinion that, under all the circumstances of the case, the time for its enactment has not yet arrived, and I concur in the view of my hon'ble friend (Mr. Inglis) that its further postponement is necessary. It is true that the project of relieving, by special legislation, certain persons who are assumed to be under legal disabilities in regard to their marriages has for a very long time been under discussion, and it may well be conceded that the application of a remedy is extremely urgent; but it is also true that the Bill, in its present shape, represents the *third* phase of the attempt to legislate in this very important matter, and that circumstance alone should, in my judgment, constrain us to proceed with extreme caution; for the slightest reflection on the radical changes which the measure has already undergone during its progress through Committees must show conclusively how very imperfect the information on which we have acted has been, and how completely dependent we are, in the consideration of such a matter, on the opinions of the Natives of this country.

"It is said that so much time has already been expended on this measure that we are not justified in allowing further delay to take place; that we have admitted the existing evil, and we are bound to apply a remedy without loss of time. I hold that, whatever may be the evil of delay, the danger of precipitancy in such a matter is much greater, and that this has been clearly demonstrated by the circumstances of the present legislation; for, as has been remarked by the last speaker, only a few months ago we were on the point of passing the Bill in its last preceding form; it was by the merest accident that we escaped placing on the Statute-book an enactment which we

all now agree would have been very unsuitable: yet the Bill, in that form, had been so fully discussed that it was thought ripe for enactment, and the motion for its passing into law had been entered on the List of Business. It was positively at the eleventh hour only that a pressing remonstrance reached the hand of the learned mover, and so arrested the consummation of the enactment in its then proposed form.

"It is admitted by the hon'ble and learned mover that the present form of the Bill has been before the public for little more than a month; so sensible were the members of the Select Committee of the necessity—having regard to the previous history of the proposed legislation—of giving time and opportunity for an expression of public opinion upon their latest conclusion in this matter that, in their report on the Bill, they recommended its publication in the official Gazette.

"Scarcely more than three weeks have elapsed since it was so published; and when we take into consideration the limited circulation of the *Gazette of India* and the delay which must take place ere its publications are extended over a wider area by transfer to the various local Gazettes, we must realize the fact that to proceed with this Bill now is to reduce its previous publication to an empty and useless formality; and that, were the Members of the Select Committee who made that recommendation now to assent to the immediate passing of the Bill, they would, by so doing, stultify their previous action in the matter.

"On these considerations I shall support the amendment."

The Hon'ble MR. BULLEN SMITH desired to record his entire concurrence in the views which had been expressed by the last two speakers. It might be, and certainly was, a matter of great regret that any body of men should labour under disabilities so great as those which had been put so clearly before the Council by the Hon'ble Mr. Stephen. But, at the same time, he (MR. BULLEN SMITH) was disposed to consider it a still greater evil that anything savouring of precipitate legislation should emanate from this Council. He considered it a minor evil that an important, but still somewhat small, body, who were specially interested in the speedy passing of this Bill, and who had already remained for a considerable period in the condition which had been described, should continue to remain in that condition for a short time longer than that a charge of precipitance should be applied to this measure, such as had been sometimes applied to measures of a different character which had emanated from this Council. As his hon'ble friend, Mr. Cockerell, had said, any publication of the Bill which could have taken place since the Select Committee had signed

their report on the 21st of last month could not have been a publication of any effect in the sense of making the provisions of this Bill known throughout the length and breadth of this country to every part of which it was to apply; and therefore, whilst recognizing to the full the regretfulness that any body of men should labour under a disability of this kind, he (MR. BULLEN SMITH) concurred in asking for further time, inasmuch as, if this measure were passed now, it might involve the still greater evil to which he had referred.

The Hon'ble MR. STEWART desired to say that he also concurred with the Hon'ble Mr. Stephen in the expediency, if not necessity, of this measure; but, for the reasons which had been stated by the three preceding speakers, he thought that the delay which was asked for was advisable, and he should therefore vote against the motion before the Council.

The Hon'ble Mr. CHAPMAN said:—"I am constrained to vote against the immediate passing of this Bill.

"I readily admit that the small sect at whose instance this measure has been introduced have a perfect right to represent the disabilities under which they believe themselves to be suffering, in respect to the legal celebration of their marriages. And I conceive the Government are doing no more than their duty in affording them relief from these disabilities. Nor do I, as far as I understand it, object to the Bill itself. It seems to me to deal with a most delicate subject in as cautious and safe a manner as possible. As a member of the Select Committee, I can bear testimony to the scrupulous care and anxiety with which my hon'ble friend, Mr. Stephen, has endeavoured to frame it so as to avoid doing violence to the feelings of the great mass of the people, who reverence and adhere to their ancient forms of faith.

"But what I do complain of is the unseemly haste with which it is proposed to enact this Bill. When I signed the report three weeks ago, it was with a recommendation that the Bill be published in the Gazette. It is true that this recommendation has been literally complied with; but, practically, the country will not hear of the Bill until it has been passed into law. Now, my Lord, I do not suppose it is possible for this Council to touch on any subject which is more calculated to arouse the apprehensions of the people than the one with which this Bill deals. Surely they are entitled to make known their views in such a matter; and surely it ought to be the special care of this Council to allay and remove the distrust and misapprehension which the very notion of legislating on such a subject is almost certain to evoke. There is nothing whatever to conceal, nor is the measure one that calls for immediate or pressing action; and I would therefore ask what possible objection there can

be to inviting the fullest and freest criticism? There may, even after all the care and attention that have been bestowed on this Bill, be some important suggestions which we might, with advantage, have adopted. Only late last night I received a communication from certain influential gentlemen in Calcutta, containing their views on the Bill, and offering certain suggestions. I had to pass on the paper at once to other members, and therefore had not time to form a judgment on it; but it is quite possible the representatives of other communities, in other parts of India, may be desirous of expressing their opinions on what they rightly consider so important a topic. And I think they will have just cause of complaint if they are denied the opportunity of doing so. They will have the greater reason for reproaching us when they consider the different and varied proposals that have from time to time been put forth in this Council, and which have been withdrawn or altered, mainly on their representations. There was, first, Sir Henry Maine's Bill, of which I shall only say that I am heartily glad it was abandoned; there was then the special Bráhmo Bill of my hon'ble friend, introduced only a few months ago, and which was also withdrawn in deference to the views of a certain section of the community; and now there is this third measure, which we are asked to pass into law within three weeks of the date of its introduction. There are those who may, perhaps, consider that, if the Government have made up their minds to a certain line of action, they had better adopt it at once without further discussion. A Native Chief, whom I once took to witness the proceedings of our Bombay Council, was of this opinion. After all the different forms of first and second readings and committal had been explained to him, he turned round to me and said 'Saheb, I cannot see the use of all this. Why, if the Sarkár are satisfied that a certain law is good and necessary, don't they pass a hookum to that effect and have done with it?' My Lord, I can understand such a line of reasoning commending itself to the mind of a despotic Native Chieftain, but I trust it will never find favour with your Lordship or the Members of this Council.

"I earnestly trust my hon'ble friend will consent to postpone the final consideration of this Bill until the latest convenient date, in order to ensure, as far as possible, its provisions being made public and thoroughly discussed."

The Hon'ble MR. ROBINSON said:—"My Lord, I beg to support the amendment just proposed by the Hon'ble Member for the North-West Provinces, namely, that this very important measure, having regard to the social feelings and family interests of the Native community throughout the length and breadth of the country, be *not* passed into law without giving to those who are not in

the immediate vicinity of the seat of your Government ample opportunity for fully declaring their views on the subject and for considering its effects.

"The measure is one of general application and of great moment; for I believe that there is not a race or family in the country which may not sooner or later have a direct interest in its provisions. It is therefore worthy of the maturest deliberation and widest discussion, and has no claim to be treated as if meant for the special relief of a limited class and to be passed hurriedly in their interest.

"I wish to explain that I signed the report of the Committee on this Bill with the utmost reluctance and hesitation, because I think that it is neither seemly, safe nor right to discuss or pass a measure of this very general character, on a subject which affects the most intimate relations of Native family-life, without having deliberately provided for the fullest expression of Native judgment and feeling on its provisions, both in this Council and in Committee.

"I need scarcely say that this has not been secured for the measure now before the Council. For all practical purposes, the Bill is a new one. But beyond a few petitions which have been circulated on the subject, whose authors may be called the direct promoters of this Bill, Native society throughout this country has of necessity been silent as to the probable effect of its provisions; and, if this Bill be now hurried through the Council, all opportunity of discussing it will be practically denied to the country. How widespread are the interests involved may be inferred from the learned exposition to which we have listened.

"The history of our attempts at legislation on this important matter, and the almost unanimous condemnation of *two* abortive Bills which have been brought under the consideration of Native society, must warn us to accord to the country ample time to consider the effects of this new Bill, and to express their views on it in the only way now left to them, that is, through their respective Governments, who must again deliberately call the attention of their people to this Bill.

"I support the Hon'ble Member's motion with much earnestness and assurance, because, ever since I have been honoured with a seat in this Council, I have been painfully conscious—as in this matter—of the very serious disadvantage under which the discussion of almost every measure which comes before it lies, from the entire absence of Native judgment—and I will add Native loyalty—from its deliberations.

"I will not trust myself to say more on this, to my mind, very weighty matter, for I believe Your Excellency is alive to the anomalous condition of things and anxious to correct it.

"But I cannot, under the circumstances, bring my mind to hurry a measure of this kind through Council, without a single Native being present to tell us—under the responsibility of a seat in this Council, and judging from a Native point of view—what its effects may be, and what are the feelings of our Native fellow-subjects in general about its provisions. I cannot assent to a motion which will practically preclude our learning the feeling of the vast Native populations who do not reside immediately round the seat of Government.

"It were futile to think that the Native public have as yet had any chance with this Bill. Brought on immediately before the Christmas holidays, I believe that I am not wrong in conjecturing that it can scarcely have appeared in the Gazette of the Presidency from which I come. If any Hon'ble Member will take the trouble of turning to the papers from that Presidency which have been circulated to the Members of this Council, they will see how careful the Government of Madras are to ascertain, by direct appeal to many of the ablest men in the country, the views of Native society on a subject of which that Government certainly realizes the importance. My Lord, I claim for the people of the South another hearing at your hands on this new measure.

"I forbear any discussion of the provisions of this Bill. They have, in general, my approval, subject, however to the result of further and wider discussion by those most interested; by those who, I believe, are alone competent to advise us safely on a matter of this kind."

His Excellency THE PRESIDENT said:—"I was not aware till yesterday that there could be any reason urged against the immediate passing of this Bill.

"The Hon'ble Members who have taken objection to the proceedings which my hon'ble friend has recommended in Council seem to have forgotten that this important question has been before the Indian public for about *four* years; that every Native authority in India has had an opportunity of giving an opinion upon the subject, and that the main provisions of this Bill have been more or less discussed in connection with former proposals which have been made.

"The Bill, as it is now framed, explained and described by the powerful arguments of my hon'ble friend, is necessary to relieve a portion of our fellow-subjects from a distinct disability, nay, even from a penalty, under which they labour. It is in thorough harmony with the principles upon which the Govern-

ment is founded, namely, complete and entire liberty and tolerance in respect of every religious creed within the limits of the empire. I cannot conceive that any man will venture at this time of day to object to this principle, the existence of which is coeval with our rule in India. On the part of the Government I must say that I am quite prepared to declare that we are determined to carry out that great principle in this matter, and that we intend to relieve this, the Bráhma-Samája, or any other sect, of our fellow-subjects from any disability under which they labour. Other religious sects in India have been similarly relieved; and, no matter what reasons may be brought to the contrary, I am prepared here to say that this Government will never consent to continue a state of the law which has the effect of imposing a severe disability upon a portion of our fellow-subjects, going, possibly, even to the extent to making their wives concubines, their children bastards, and rendering the devolution of their property insecure. As far as the principle of the measure, therefore, is concerned, the determination of the Government is to enforce it.

"With regard to the details, we are convinced that, as the Bill now stands, it interferes in no way with the religious freedom, practice, or authority of any sect or creed, be it new or old,

"I do not believe that the most orthodox Hindú—a Hindú who is most attached to his religion—would ever declare that persons who secede from that religion are to suffer disabilities with regard to marriage; in fact, if I am not mistaken, it will be found, in the earlier papers which have been published on this subject, that Hindú authorities have declared that laws affecting the marriage of persons other than those who profess the Hindú creed are matters of indifference to them, and that, in the discussion of such measures, they, as Hindús, had no concern. It therefore seems to me that the plea for delay in this case is somewhat overstated. We must further recollect that those who enforce or try to press this plea of delay on this occasion, one and all, profess themselves entirely favourable to the principle of the Bill, as I believe every Englishman in the country must be. All that can be said, therefore, is, that if nothing can be urged against its principle, perhaps, from some remote quarter of India, some person may raise some particular objection to some of the details.

"No one is more unwilling than I am to give even colour to the cry of hasty legislation which has occasionally been brought, with great inaccuracy, against this Council.

"In the present instance, the allegation is altogether groundless, seeing that the question has been discussed over and over again in every shape and form for four years.

"At the same time, if there are members of this Council who really believe that there is a possibility of a valid objection being made to the details of this Bill, or of suggestions coming up from any part of India for the improvement of its provisions, I for one should not be prepared to offer any objection to the plea for postponement for a very short time. But the postponement must be limited; and, in agreeing thereto, I must again repeat that it is the firm determination of the Government to pass this Bill. My hon'ble friend (Mr. Stephen) referred to a personal promise which he gave to some of the members of the Bráhma-Samája who are most interested in this measure, and most naturally desire a speedy relief from the disability under which they lie, the disadvantage of which they deeply feel. I myself informed one of the most distinguished members of the Bráhma-Samája that their case for relief was complete and ought to be met, and therefore, in consenting to the short postponement of this measure, I hope it will be distinctly understood that we intend to pass the Bill as nearly as possible in this form—at all events embodying its leading principle—and that, no matter what objection may be taken by any community in any part of India, the Government is pledged to the passing of the measure, and intends to redeem that pledge.

"In confirmation of what I have said, it is only necessary for me to call the attention of this Council to the words of that great proclamation which was issued in 1858, when the administration of the empire passed from the hands of the East India Company to the Crown.

"The old policy of the Company was then thoroughly approved, and a distinct pledge was given to the people of this empire, that no man should be permitted to lie under any disability on account of his religion. The words are, 'that all should equally and alike enjoy an equal and impartial protection of the law.'

"The sect of the Bráhma-Samája have proved that, in respect to their marriages, they do not enjoy an equal and impartial protection of the law. That being so, we intend to give the necessary relief.

"In consenting, therefore, to the postponement of the further progress of this Bill for one month, I distinctly announce that it is the intention of the Government to press and pass it into law as soon as possible."

The Hon'ble MR. STEPHEN said that, after what had fallen from His Excellency the President, he desired to make but one observation in respect to the postponement which had been asked for. He thought that if we re-committed the Bill, and if the Bill was sent to the Local Governments for further opinion, the time which would be occupied in that process would be much longer than

one month, and it would be in reality postponing the measure for an indefinite time, when the whole constitution of this Council might be altered. He thought that, if the motion were agreed to, it should be distinctly understood that it should not be submitted to the Local Governments for opinion, but that anybody who wished to do so might submit any observations or suggestions which he desired to make.

The Hon'ble MR. STRACHEY would only add a few words, to say that he completely agreed with what had just fallen from the Hon'ble Mr. Stephen. While he thought that there could be no particular objection (though he personally regretted even a short delay) to the postponement asked for, if the object were merely to give to the Native public the opportunity of bringing forward any spontaneous expression of their opinion, he earnestly deprecated any further reference to the Local Governments on the subject. Besides the objection which the Hon'ble Mr. Stephen had made, on the ground that it would tend to extreme delay and would practically hang up the measure *sine die*, MR. STRACHEY thought there was another reason which made that further reference extremely undesirable. It seemed to him impossible that anybody could look through the voluminous mass of papers on this subject without seeing that we had before us already as complete information regarding the views of the Native public on every point of importance relating to this measure that we could possibly ever expect to get. Now this, he thought, was by no means a question regarding which we could safely go on for an unlimited period, asking for criticisms and opinions from the Local Governments. We all knew how prone the minds of the people of this country were to all sorts of ignorant fancies and suspicions in regard to matters which seemed to affect their religion. He thought the Council would be doing a most foolish thing if it were to run any risk of stirring up doubts and difficulties respecting this measure, which it was perfectly certain had now no existence and which would never have any existence unless we went out of our way to excite them. He thought it was certain that the Council had now before them quite sufficient information to authorize them to pass this Bill, which, they might confidently hope, whilst it provided a sufficient remedy for the particular evils it was designed to meet, did not run counter to the opinions and the religious feelings or prejudices of any class of their Native fellow-subjects. There was now an opportunity of settling this matter in a quiet and reasonable way, and he thought it would be very wrong to defer for any length of time a measure of justice to a respected body of our fellow-subjects—a measure of justice which had been a great deal too long delayed already.

The Hon'ble MR. ELLIS was glad that His Excellency the President had suggested a postponement of this Bill for a short period, on the general principle that it was never advisable to hurry through this Council any Bill to which the objection was taken that full opportunity had not been afforded for its discussion. But, at the same time, he was sure that, in this special case, there was as little occasion for delay as there could be in any case whatever; for, not only had the subject-matter of this Bill been under discussion for four years, but even the principle involved in this measure had virtually been already fully discussed in the papers which had been presented to the Council on the occasion of the introduction of the former Bills on this subject. To all those Bills objections had been taken, and MR. ELLIS thought most reasonably, by the Native communities, and by the Local Governments, on the principle that the religion and creeds of other people were being interfered with for the benefit of one sect of the community. At the same time that that objection was urged, every Local Government without exception, and every Native community that expressed any opinion at all upon that point, assured the Council that there was no objection to a Bill framed upon the principle upon which the present Bill was based. He thought, therefore, that we had every assurance that the Native communities and the Local Governments had no valid objection to offer to this Bill, because they had already discussed it, and had already virtually expressed an opinion in favour of it. No one was more opposed to the former Bill than he was, or to any Bill that would interfere with the orthodox creeds of those who maintained the faith of their fathers; and he was pretty sure of his ground when he said that he was convinced that those who objected to the former Bill would have no sort of objection to raise to the principle upon which the present Bill was based. Moreover, he believed that the matter had been sufficiently discussed here, and had even been discussed in distant Bombay. He had carefully watched the Native papers, and the weekly reports on the Native papers submitted to the Government; and he might say that, in all those papers, there had been no expression of the slightest dissent from the Bill. He would read to the Council an extract from one Native paper fully approving of the Bill :—

"We think this is a very fair decision of the question which has proved a crux to the Legislative Council of the Viceroy for more than the last two years. No party, we think, can fairly complain of the measure as it now stands after the amendments and changes it has undergone in the Select Committee."

This was from the *Indo Prokash*, which represented the opinions of an influential portion of the Hindú community. Apart from what he saw in the papers, he also took the precaution of writing to a gentleman who occupied a high

position in Bombay as a member of the Hindú community, and MR. ELLIS asked him whether he saw any objection to the Bill as it stood. He told MR. ELLIS that, although strongly opposed to the former measure, he was thoroughly satisfied with this Bill, and that he could not conceive that any reasonable man could offer any objection to it.

MR. ELLIS thought that, if the hon'ble members who asked for delay had taken the trouble to write to their friends in Madras and Bombay, they would have been in a position to afford some information of the Native feeling on the subject in their Presidencies. He had done so in a small way, and he thoroughly believed, from what he had observed in the Native papers and from what he had ascertained on the subject, that there was no objection on the part of the Native community to the Bill as it now stood. However, as he had before said, as it was not wise to hurry the Bill through the Council, and as some delay was required, he completely agreed in the suggestion made by His Excellency the President that it should stand over for one month, and he would suggest to his hon'ble friend, Mr. Inglis, to frame his amendment in the form, that the final consideration of the Bill be postponed till the first meeting after the 16th of next month. The Hon'ble Members would then have ample opportunity for consulting any Local Government, or any Native community, as to their views and opinions on the Bill.

MAJOR-GENERAL the HON'BLE H. W. NORMAN entirely concurred with the Hon'ble Mr. Strachey that there ought to be no delay; but, in deference to the opinions of other hon'ble members, he should not object to a short postponement for the purpose of affording to the public an opportunity of making itself further heard. He must strongly deprecate any reference to the Local Governments, which would, as the Council knew from experience, probably involve a delay for the best part of the year. The Bill was earnestly desired by those most interested in it and had been under consideration for a long period, and he (MAJOR-GENERAL NORMAN) did not think that, by a further postponement, we were likely to receive any useful practical suggestions.

The Hon'ble SIR RICHARD TEMPLE, although very unwilling to add anything to this discussion, felt bound in one or two words to express his entire concurrence with all that had fallen from his hon'ble colleagues in the Executive Government. He thought this Bill involved a plain, clear principle from the beginning to the end, and he could hardly see a section which did not contain a principle. These were principles upon which every member was bound to have an opinion of his own, which could not possibly be altered by anything that might now be said. After all that had been heard upon this Bill, he thought he might say that every one of the sections in it was of such a character that

Members ought to be able to say "yes" or "no" regarding it. For his own part, he was prepared to say "yes" to every one of them, and, that being the case, he was prepared to vote for the immediate passing of this Bill. He thought, however, that there could be no objection to a delay of one month; but after that, he did hope that the Bill would be passed as soon as possible. He might add that he did not think that the objections which had been urged by his hon'ble colleagues to the left were very just to the Legislative Department. That Department was not open in any way to the charge of precipitancy; nor was it open to the charge of not consulting Native opinion. The principle of this Bill had been under discussion, not for one month—that was an entire mis-description: it had been under discussion for four years; it had received the consent of the Native communities most concerned, and those, too, from every part of British India; and, if the Council were not in a position to pass this Bill to-day, he did not see how they ever would be in such a position. If there was to be a delay for some indefinite period, it might be just as well to say that the Bill should never pass.

The Hon'ble MR. STEPHEN said that he still retained the opinion he had before expressed, but, after what had fallen from the majority of the Council, he supposed there must be a postponement. At any rate, he most earnestly hoped that this would be the last delay; for he felt it was very hard upon the Bráhmos that they should have to remain for a still further period in the uncertain and undefined state in which they were at present in regard to their marriage contracts.

The Hon'ble MR. INGLIS' motion to re-commit the Bill being put—

The Hon'ble MR. ELLIS moved, by way of amendment, that the debate on the Bill be adjourned.

The question being put,

The Council divided—

AYES.	NOES.
His Excellency the President.	Hon'ble Sir R. Temple.
Hon'ble Mr. Strachey.	Hon'ble Mr. Stephen.
Hon'ble Mr. Ellis.	Major-General the Hon'ble H. W. Norman.
Hon'ble Mr. Inglis.	
Hon'ble Mr. Robinson.	
Hon'ble Mr. Chapman.	
Hon'ble Mr. Stewart.	
Hon'ble Mr. Bullen Smith.	
Hon'ble Mr. Cockerell.	

So the amendment was carried.

The Hon'ble MR. ELLIS then moved that the words "until the first meeting of the Council after the first March next" be added to the motion.

The Hon'ble SIR RICHARD TEMPLE, in voting against Mr. Ellis' amendment, said he did so merely on the ground that the one month's period which had been mentioned by His Excellency the President, and to which he (SIR RICHARD TEMPLE) had agreed, seemed amply sufficient. In the existing state of public business, further delay carried into March might cause inconvenience without any counterbalancing advantage.

The question being put,

The Council divided—

AYES.	No.
His Excellency the President.	Hon'ble Sir R. Temple.
Hon'ble Mr. Strachey.	
Hon'ble Mr. Stephen.	
Hon'ble Mr. Ellis.	
Major-General the Hon'ble H. W. Norman.	
Hon'ble Mr. Inglis.	
Hon'ble Mr. Robinson.	
Hon'ble Mr. Chapman.	
Hon'ble Mr. Stewart.	
Hon'ble Mr. Bullen Smith.	
Hon'ble Mr. Cockerell.	

So the amendment was carried.

The Council adjourned *sine die*.

CALCUTTA;
The 16th January 1872.

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

C. I. C. P. O.—No. 164 L. D.—2-7-01.—50.—F. J. H.