Thursday,
15th October, 1885

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXIV

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Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS

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

The Council met at the Viceregal Lodge, Simla, on Thursday, the 15th October, 1885.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.
The Hon'ble Amír Alí.

LAND ACQUISITION (MINES) BILL, 1885.

The Hon'ble MR. HOPE moved that the Report of the Select Committee on the Bill to provide for cases in which Mines or Minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870, be taken into consideration. He said:—

"On the occasion of moving for leave to introduce the Bill I gave so full an explanation of the objects which it was desired to attain that I think I need not trouble the Council with any further detailed remarks upon the subject. The only point which it is perhaps desirable to bring to the notice of the Council is that to the Bill, as first drafted, considerable objections on the part of owners of coal underlying contemplated railways in Bengal were found to exist. These coal-owners consequently submitted some representations to the Select Committee which have received most careful consideration. We found that in some instances the objections taken to the wording possessed considerable show of reason. We have modified the Bill in those and other particulars, and I am glad to say that we have now received from the Bengal Government, and from the coal-owners themselves, the statement that they are perfectly satisfied with the Bill as it now stands.

"Under these circumstances I feel no hesitation in recommending the Bill to the favourable consideration of the Council. Before, however, coming to the next Motion, I desire, with the permission of Your Excellency and the Council, due notice not having been given of it, to move a very small amendment in section 15. It is that in sub-section (2) of that section, after the words 'persons interested in the land' the words 'or entitled under the Land Acquisition Act, 1870, to act for persons so interested' be inserted. The object of this small amendment is to make it quite clear that minors or lunatics can give assent to the proceedings through their legal representatives."

The Hon'ble MR. ILBERT said:—"It appears from the papers that we have received that all the persons interested in the mines affected by the measure have agreed not only that the Bill in its present form shall regulate their rights in future, but also that it shall be applied to pending proceedings. That I understand to be the effect of the communications just received by the Public Works Department. If that had not been the case, there would have been good reason for suspending the Bill until our arrival in Calcutta, but, as it appears to have been distinctly assented to by all the persons interested, I think we may now quite safely pass it into law."

The Motion was put and agreed to.

The Hon'ble MR. HOPE then moved that in section 15 of the Bill, sub-section (2), after the words "persons interested in the land" the words "or entitled under the Land Acquisition Act, 1870, to act for persons so interested" be inserted.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

INDIAN SECURITIES BILL, 1885.

The Hon'ble SIR A. COLVIN moved that the Report of the Select Committee on the Bill to amend the law relating to Government Securities be taken into consideration. He said:—

"When this Bill was introduced, it was explained that, before and since the passing of the Contract Act, the practice of the Indian Public Debt

offices had been to treat the right of suing on and giving receipts for money payable under Government promissory notes as vesting in the survivor or survivors of two or more joint holders. But the law officers of the Government had recently given an opinion that, having regard to section 45 of the Contract Act, it was not safe to continue this practice. The Goverment of India therefore considered that legislation was desirable both for the purpose of confirming what had been done in the past, and for the purpose of laying down a convenient rule for the future. When, however, we came to undertake legislation, we found that, on the one hand, it was urged that any provision which might be contemplated in respect of Government securities should be generalised and extended to other classes of obligations besides those arising on such securities; and, on the other, that the rule of survivorship as applied to instruments of the description in question is one that does not fit in with the habits and ideas of certain classes of the Native population, and might, if extended to those classes as an absolutely binding rule, open a door to the perpetration of frauds. It was, therefore, proposed that we should legalise what had been done in the past, and leave the future to be dealt with administratively. It was suggested that it could be so arranged in the Loan Department of the Government that it should be in the option of persons, in whose favour securities are first issued or to whom they are subsequently transferred by endorsement, either to take them simply in their several names, that is to say, in favour, *e.g.*, of 'A, B & C,' without qualification, in which case the rule of the Contract Act would apply, or to take them under words giving a right of survivorship, as, *e.g.*, in favour of 'A, B & C, and the survivor or survivors of them,' in which case we are advised the rule of the Contract Act would be excluded and the rule of survivorship would apply. This, it was thought, would be likely to afford a more satisfactory solution of the difficulty as regards securities to be hereafter issued than any enactment establishing either the rule of survivorship or that of representation in a hard-and-fast manner, as it would leave it open to all concerned to adopt for themselves the rule best adapted to their requirements. To obviate mistakes or oversight, it was believed that a notice to the above effect might be enfaced on the security in such a manner as to ensure attention. When, however, the matter was referred to the Loan Department in Calcutta, and when the opinions of competent banking authority was taken on the subject, we found that there was considerable objection from their point of view on the ground that it would introduce, for a time at least, doubt and uncertainty in the case of Government securities; and we came to the conclusion that on the whole it would be better to legalise up to the 1st of April of next year the present

practice, leaving to be settled during the winter the course which should be ultimately adopted; so that during that time we shall have an opportunity of deciding whether the provision which we now propose to introduce should apply only to Government securities, and, on the other hand, whether the administrative arrangement by which we desire to supplement it is open to such objection as practically to require us to adopt some other treatment."

The Hon'ble MR. ILBERT said:—"I entirely agree with my hon'ble colleague, Sir Auckland Colvin, as to the propriety of the course which the Select Committee have recommended for adoption. I had occasion to touch on the main question raised by the Bill in the course of some remarks which I made last January when the Bill to amend the Negotiable Instruments Act was passed into law. The Bank of Bengal had then suggested that the opportunity afforded by that Bill should be taken to declare section 45 of the Contract Act inapplicable to negotiable instruments. I said that I was not aware of any case in which that section had been held to be applicable to such instruments, and that, if the question were to be argued, I was disposed to think that the application of this section might be held to be sufficiently limited by the express saving of any usage or custom of trade and by the provisions of the law with respect to partners, trustees and executors. But however this might be, I thought that, if any amendment of the law in the direction suggested by the Bank of Bengal was necessary, it might be more appropriately embodied in a Bill for amending the Contract Act, since there might well be other cases besides those of negotiable instruments from which the applicability of this section ought to be excluded.

"The Indian Public Debt authorities have now brought up a similar suggestion, but of a somewhat more limited character, and in order to make clear what their proposals amount to, and what they would involve, I think I ought to explain as briefly as I can the existing state of the law as to the devolution of joint rights and liabilities.

"The old rule of the English Common Law was that, on the death of one or more joint tenants, the interest under the tenancy devolved on the survivor or survivors to the exclusion of the representatives of the deceased person; and this rule was applied not only to joint tenants of land and other forms of real property, but also to joint owners of goods and chattels, including that form of personal property which is technically known as a chose in action, that is to say, a right enforceable through the Courts. But it was clear that the rule could not be applied to mercantile rights and interests without causing serious inconvenience

and injustice, and consequently there was engrafted on it an exception which professed to be based on the law merchant. 'The wares, merchandise, debts or duties', it was said, 'which joint merchants have, as joint merchants or partners, shall not survive, but shall go to the executors of the deceased, and this is *per legem mercatoriam* which is part of the laws of the realm for the advancement and continuance of commerce and trade, which is *pro bono publico*, for the rule is that *jus accrescendi inter mercatores pro beneficio commercii locum non habet.*' The Courts of Equity worked out and developed this exception, and formally established the principle that, even where the legal remedy for the recovery of property devolved exclusively on the survivor of two joint owners, he would be compelled in proper cases to account for the share of the deceased person to the representative of that person. The consequence is that, as the English law now stands, on the death of one of several joint creditors, the right to sue on the contract vests in the survivor or survivors, and, on the death of the last of two or more survivors, in his personal representative. But a person recovering money under this right of survivorship may be accountable for it to the representatives of the deceased person. Meanwhile, it was found that a rule which was unjust and inconvenient when applied to beneficial rights and interests was useful and convenient when applied to the rights and interests of a trustee. When one of several trustees dies you do not want his personal representatives to have anything to do with the trust-property; what you want is that the rights in respect of the property should vest in his surviving colleagues in the trust. Accordingly, it has become the practice that, when property is vested in two or more trustees, it is held by them as joint tenants subject to the rule of survivorship. The general result is eminently characteristic of English law. You have an old rule trimmed by judicial decisions into conformity with modern requirements, and adapted by legal ingenuity to purposes which were never contemplated when it first came into existence, neither the rule nor its qualifications being expressed in language adapted for use in a Code.

"This was the state of the law when the Indian Law Commissioners set to work to codify the law of contract for Indian purposes, and the course which they adopted was boldly to throw over the old English rule as to the survivorship of joint rights and to make that a rule which under the English law was the exception,—that is to say, to make the rule of representation the rule and the rule of survivorship the exception,—and they introduced into the Indian Contract Act two sections (42 and 45) which regulated the devolution of joint liabilities and of joint rights. Section 42 declared that—

'When two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons, during their joint lives, and, after the death of any

of them, his representative jointly with the survivor or survivors, and, after the death of the last survivor, the representatives of all jointly, must fulfil the promise';

whilst the other section in corresponding language declared that—

'When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly';

and by way of explanation the Law Commissioners state in their Report—

'In regulating the devolution of rights and liabilities, we propose, in accordance with the rule of English Courts of Equity and of the Indian Code of Civil Procedure, that joint liabilities and rights shall, after the death of one of the persons liable or entitled, go to his representative jointly with the survivor, and after the death of the survivor to the representatives of both jointly.'

"So far as we have been able to ascertain by examination of the papers, this proposal was accepted without any criticism whatever.

"Now, what happened after the passing of the Contract Act was what, I fear, has happened in the case of a good many enactments. People went on, just as they had before, in happy unconsciousness of any change in the law, until they were suddenly pulled up by some authoritative legal opinion or judicial decision which made them aware that their proceedings were altogether irregular and illegal. Thus, the Indian Public Debt officers made no alteration either in their rules or in their practice, and it is only a very short time ago that they were advised that their existing practice was not safe, and that in order to make themselves safe they must, after paying off the security held by the joint owners, obtain a receipt, not only from the survivor or survivors, but from the legal personal representatives of the deceased holder. Having been so advised, they come to us in a great hurry, and beg us to alter the law so as to make it conformable to their practice. But in making this request they raised some extremely difficult questions. For what one cannot help asking is whether, if the law is wrong for Government securities, it is right for other forms of contract; and I was not at all surprised to see that one of the criticisms of the Bill in the papers we have received runs as follows:—

'What is proposed is that there shall be one law for Government securities and a different law for all other securities and contracts—one principle to regulate the rights of Government and its creditors and a different principle to regulate the rights of creditors among themselves.'

"Very possibly this exceptional treatment is justifiable, but *primâ facie* there is something in the objection to it, and one cannot help doubting its propriety when one finds that several of those who are in favour of altering the law would alter it more extensively than was proposed by the Public Debt authorities and by the Bill as originally drawn. In consequence of suggestions to the effect that a more general amendment of the law should be attempted, I tried my hand at an amendment of section 45 of the Contract Act, but I found that the task was very far from easy, and that it was extremely hard to frame a proviso which would not be either too wide or too narrow to suit the requirements of the case. Then, again, among the different legal authorities whom I consulted privately as to the best mode of dealing with the section,—and I may say that I consulted very eminent legal authorities, both in England and in this country,—I find that there is great difference of opinion. Some are in favour of repealing the section altogether; others would keep it, but would qualify it by exceptions more or less wide; whilst others would leave it alone, bringing the practice as far as possible into conformity with the law. Under these circumstances, whatever may be done hereafter, I think there can be no doubt as to what should be done now. You cannot alter past contracts, and I think that the Public Debt authorities have made out a very strong case for ratifying their past practice, and for doing so as soon as possible. I think also that we may with propriety extend this ratification to securities issued during the next four or five months, before the expiration of which time it would be practically impossible to pass a law of a more general character. So much as regards the past; but as regards the future there are two courses open to us: we may either adapt the law to the practice or adapt the practice to the law. The Bank authorities and the Public Debt authorities are naturally in favour of the former course, as giving them the least trouble, but I am by no means satisfied that they cannot by some such expedient as that indicated in the Report of the Select Committee, without inconvenience to themselves and the public, so adjust their practice as to bring it into conformity with the law. If that can be done, no amendment of the law is necessary. I may be wrong in thinking that this is practicable, but before coming to a final conclusion I should like to hear what lawyers and men of business have to say on the subject in Calcutta. It is quite obvious that if the alteration of the law is to be extended beyond the single case of Government securities,—and it apparently should in order to place the law in a satisfactory state,—the form which the amendment must assume will require very careful consideration. Accordingly I am in favour of confining the operation of section 3 of the Bill to the past and to the immediate

future, leaving the two questions whether it should be applied to all Government securities hereafter issued, and whether it should be extended to other forms of contract besides Government securities, to be decided hereafter."

The Motion was put and agreed to.

The Hon'ble SIR A. COLVIN moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

MIRZAPUR STONE MAHÁL BILL, 1885.

The Hon'ble MR. ILBERT introduced the Bill to declare and amend the law relating to the Stone Mahál in the District of Mirzapur in the North-Western Provinces, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir S. Bayley, the Hon'ble Mr. Quinton and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *North-Western Provinces and Oudh Government Gazette* in English, and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

MADRAS CIVIL COURTS ACT, 1873, AMENDMENT BILL, 1885.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to amend the Madras Civil Courts Act, 1873.

MAIMON BILL, 1885.

The Hon'ble MR. AMÍR ALÍ moved for leave to introduce a Bill rendering it permissive to the members of the Maimon community to declare themselves subject to Muhammadan Law. He said:—

"I will not detain the Council long with the few observations which I have to offer, in order to explain the circumstances under which this Motion is brought forward, and the necessity for the proposed enactment.

"Your Excellency and the hon'ble members are aware that at present the Cutchee Maimons are, in matters relating to succession, &c, governed for

the most part by customs of a Hindu origin. In March last a memorial on behalf of the Maimons of Calcutta was presented through me to Your Excellency in Council, praying that a law might be passed 'declaring that in future all disputes among the members of the Maimon community should be settled according to Muhammadan law, as laid down by Imám Abu Hanífa, and not according to Hindu customs conflicting with the Koran and the traditions of the Prophet.' This memorial, briefly but clearly, set forth the grounds upon which the prayer was made for the interference of the legislature. It was referred by the Government of India for the opinion of the Bombay Government, which has now been submitted to Your Excellency, and to which I shall shortly refer. About the same time a memorial was presented to the Bombay Government for submission to Your Excellency in Council by various Maimons of Bombay, which is also now before the Supreme Government. It was the outcome of a great movement among the Cutchee Maimons of the Bombay Presidency, and was adopted at a meeting numerously and influentially attended, which seemed to express the earnest desire of a large body of people to escape from the thraldom which in their view was forced upon them by the British Courts of Justice.

"The history of the movement now set on foot by these Cutchee Maimons is interesting, and requires some mention in order to make their present action intelligible. The Maimons do not constitute a sect; they do not hold any distinctive doctrines, like the Khojás, differentiating them from the general body of Musalmáns or from the principal recognized sects. They are strict Muhammadans, belonging to the Hanafi school of law, as they themselves mention in the memorial; they observe all the religious ordinances which are laid down in the Koran, and the traditions for the guidance of the orthodox Musalmáns. They regularly say their prayers, pay their *zakat*, perform the pilgrimage to Mecca, and keep the fast during the month of Ramzán.

"The origin of the Maimons is to some extent involved in obscurity; they themselves trace their origin to settlers in Cutch and Kattywar from the coast of Oman; but this seems to me only a half truth. It appears that, really speaking, they are the descendants of proselytes to Muhammadanism made by Arab missionaries from the coast of Oman and Hadramaut. These converts, as is usually the case, retained after their conversion a considerable portion of their original Hindu customs. But with the advance of time, and, as they themselves acknowledge, with a growing acquaintance with the tenets of Islam, these customs have gradually relaxed their hold. And now a large body of the community regard them with actual abhorrence.

"I may mention here that the Maimon community is divided into two sections—the Halai Maimons and the Cutchee Maimons. The former trace their origin to Kattywar, the latter to Cutch. The Halai Maimons have long since emancipated themselves from the customs which conflicted with Muhammadanism, and the decision which has had the effect of crystalizing the Hindu customs among the Cutchee Maimons has no reference to them; the learned Chief Justice who decided the case to which I am about to refer expressly excluded the Halais from the scope of his judgment. In the year 1847, a suit was brought in the Bombay Supreme Court, by a Maimon female, for the distribution of certain ancestral property in accordance with the Muhammadan law: the defence was that, by the customs existing among the Cutchee Maimons, females were excluded from inheritance. That and another case, which arose at the same time among the Khojás, were tried before Sir Erskine Perry, then Chief Justice of Bombay, and he held that the Muhammadan law did not obtain with reference to either of these communities, and that they were to be governed by especial customs prevailing among them. Since then every question which has arisen among the Maimons has been decided in accordance with the precedent laid down by Sir Erskine Perry. In each particular case the customs have to be ascertained from oral testimony,—a process always attended with uncertainty and, in this country, with great risk of failure, and invariably entailing heavy costs on the litigant parties. One may say, without being charged with presumption, that Chief Justice Perry's decision was founded upon a misconception. It treated the subject from all points of view,—the Roman, the Frankish, the English,—all excepting the one from which it ought really to have been looked at, that of the Muhammadan law. There can be no doubt that it created considerable excitement at the time among the Cutchee Maimons, and though, as the learned Judge anticipated, no appeal was preferred to the Privy Council by the parties affected, owing probably to want of means, every other measure was adopted for the purpose of expressing the disapproval of the Maimon community. However, owing, it is said, to an unacquaintance on the part of the Maimons generally with the proper mode in which they should apply for redress, the matter remained in abeyance until a few years ago, when the strong movement, of which the present memorials are the outcome, set in among the community to invoke the assistance of the legislature. That a large body of Maimons—if not the bulk—are anxious for the interference of the legislature is evidenced by the fact that those resident in Calcutta have unanimously declared themselves in favour of the change. The meeting at Bombay in the Jakariah Mosque was attended by almost all the leaders, or Sethias, of the Cutchee Maimon community, and throughout the proceedings not a dissentient voice was raised

against the demands of the memorialists. Still it is clear there are some Maimons who are unwilling to abandon their ancient customs. And it is with reference to the wishes of these men that the Bombay Government has recommended the introduction of a permissive enactment, and I have thought it right to put the measure in that form. That the appeal to the legislature by those Maimons who are anxious for emancipation is perfectly legitimate and reasonable will be apparent when it is remembered that with the Muhammadans their religion is their law, and their law is their religion. The Cutchee Maimons urge with reason that their brethren, the Halai Maimons, who have abandoned the Hindu customs as completely as their ancestors abandoned the Hindu faith, do not labour under any such disadvantages as they are subject to. Why then should they, as good Muhammadans as the Halais or any other Muhammadans, be tied for ever to pagan institutions? The Maimon memorialists have put their case very strongly in the following terms :—

'Your petitioners venture to characterise this state of things, which has been afflicting their community ever since Sir Erskine Perry's aforesaid judgment, as absolutely intolerable. They deem it a great hardship that they should be Musalmáns and yet be deprived of the benefit of the Muhammadan laws. They deem it a still greater hardship that the Hindu law, which is absolutely unsuitable to their circumstances, but which may at any moment be extended to them, should be applied to them even in matters of succession and inheritance, for which special provisions and laws have been laid down by the Muhammadan religion. They deem it an intolerable grievance that their rights in regard to all their worldly possessions, either in their own life or after their death, should be determined haphazard according to the credit any Judge may choose to attach to any witness in favour of, or against, a custom in a suit in which the community at large has no voice whatsoever.

* * * * * * * * *

'The reasonableness of your petitioners' request will be apparent when it is borne in mind that even a Hindu can rid himself of his own laws and enjoy the benefit of the Muhammadan laws if he *bonâ fide* adopts the Muhammadan faith. What, however, a Hindu, Pársí, Christian or Jew may do without the least difficulty or objection, your petitioners are now absolutely debarred from doing according to the present decisions of the High Court. Is it not absurd, your petitioners venture to ask, that if they were pure Hindus they could, by the mere fact of becoming Musalmáns, at once, without interference of the legislature, have the full benefit of the Muhammadan law; but because they are already Musalmáns they cannot by any act of their own, either individually or collectively, without undergoing enormous trouble, delay and expense, divest themselves of the Hindu laws or have the benefit of the laws enjoyed by their other co-religionists.'

"The Hon'ble Budruddin Tyabjee, who is not given to the use of exaggerated language, in his speech at the Jakariah Mosque declared that nothing could be more scandalous than the present state of the law as applied to the Maimons,

and stated that the relief prayed for by the memorialists was simply just and fair, and that they were as a matter of right entitled to enjoy full freedom like other Muhammadans, in the due observance of their religion, and the benefits of the Muhammadan law. My Lord, in India the legislature has preserved intact the laws of the Musalmáns in all matters relating to inheritance, disposition of property and status. The Muhammadan law is interwoven with the moral and social life of the Musalmáns. Why then, argue the memorialists, should a body of Musalmáns be subjected to customs in direct conflict with their religion? The Judicial Committee of the Privy Council, in the case of *Jowala Buksh* v. *Dhurum Singh*, made use of the following expressions:—

'The written law of India has prescribed broadly that in questions of succession and inheritance the Hindu law is to be applied to Hindus, and the Muhammadan law to Muhammadans; and in the judgment delivered by Lord Kingsdown in *Abraham* v. *Abraham*, it is said that "this rule must be understood to refer to Hindus and Muhammadans, not by birth merely but by religion also."'

"Though the Judicial Committee abstained from expressing a decided view in that case whether it was competent for a family converted from the Hindu to the Muhammadan faith to retain for several generations Hindu usages and customs, yet the tendency of their view is unmistakeable. In order to show that the Maimon memorialists are not wrong in the view they take of their present anomalous position, I will quote a passage from the judgment of Mr. Justice O'Kinealy in a recent case arising among Muhammadans in which also a custom *dehors* the Muhammadan law was put forward:—

'The Muhammadan law of inheritance is based on the Sura Nissa in the Koran, which was revealed in order to abrogate the customs of the Arabs, and on the Hadis or traditions of the Prophet. According to the principles of the Muhammadan law, any attempt to repudiate the law of the Koran would amount to a declaration of infidelity such as would render the individual concerned liable to civil punishment by the Kází in this world, and to eternal punishment in the next. No custom opposed to the ordinary law of inheritance, which was created to destroy custom, would be recognised by the doctors of the Muhammadan law, and in our opinion it follows as a natural consequence that no such custom should be recognised by our Courts, which are bound by express enactment to administer Muhammadan law in questions of inheritance among Muhammadans.'

"Besides these arguments, which may be urged on behalf of the Maimon memorialists in support of their present appeal, there is one consideration which brings this movement, *primâ facie* of sectional interest, to use the words of a writer in a Bombay journal, 'within the wider range of public sympathy.' The Hindu customs prevailing among the Cutchee Maimons have had the effect

of excluding the widows and unmarried women of that community from succession to the estates of their parents and husbands, and from the advantages resulting from the beneficent policy of the Muhammadan law towards females. The Maimon widow, so long as she is under the Hindu customary law, receives a bare maintenance, which she forfeits on remarriage. The first result of a law such as the memorialists ask for would be to improve the status of women. One of the objections which I have to the Khojá Bill, now pending in your Excellency's Council, is that it will have the effect of stereotyping those customs which press so heavily upon women; but whatever may be the reason for introducing such provisions in the Khojá Bill, there is no reason why a large body of people who are urgently asking to be released from such customs should not have their prayer granted, the primary result of which concession would be a decided improvement in the social and legal position of their widows and unmarried women, and will be regarded by the whole of Musalmán India as a boon conferred on their co-religionists.

"The Bill which I ask leave to introduce is absolutely unobjectionable from every point of view. It only proposes to give facilities to those Maimons who wish henceforth to be governed by Muhammadan law to record a declaration to that effect. It imposes no restriction on the voluntary action of any individual; it interferes in no way with those members of the community who desire to continue subject to their ancient customs; it only provides an easy mode of escape for those who are legitimately anxious to free themselves from what they regard as the bondage of heathenism."

The Hon'ble Mr. ILBERT said:—"I am very glad to hear from my hon'ble friend, Mr. Amír Alí, that the measure he is asking leave to introduce is likely to satisfy those members of the Maimon community who desire to be placed under the ordinary Muhammadan law. As I understand it, his Bill is of a purely permissive character, and, if so, it is in entire accordance with the principles which the Government of India desire to apply in similar cases. It has long been recognised that the time-honoured division of Natives of this country into Hindus or Gentus and Muhammadans is not an exhaustive division for legal purposes, and that there are numerous classes who, whilst professing the Muhammadan faith, have retained for certain purposes and to a certain extent Hindu or non-Muhammadan customs or usages with respect to succession and inheritance. If evidence on this point were required, it is to be found in abundance in the interesting compilations of Punjab customs prepared by my friend Mr. Tupper and others. Now, we do not desire to put the slightest pressure on any members of these communities to renounce or abandon their

peculiar customs or usages, but we do wish to give them every reasonable facility for placing themselves under the ordinary Muhammadan law in all respects if they desire to do so; and that I understand to be the object of the present Bill with respect to the Maimon community."

The Motion was put and agreed to.

The Hon'ble MR. AMÍR ALÍ said that, with His Excellency's permission, he would ask leave to introduce the Bill, as it seemed doubtful whether there would be another meeting of the Council in Simla, and especially as he understood that his hon'ble friend Mr. Ilbert was about to visit Bombay, where he would have an opportunity of consulting with the members of the Maimon community on the spot.

Leave was granted.

The Hon'ble Mr. AMÍR ALÍ then introduced the Bill.

BENGAL TENANCY ACT, 1885, POSTPONEMENT BILL.

The Hon'ble SIR STEUART BAYLEY moved for leave to introduce a Bill to postpone for a limited time the operation of certain provisions of the Bengal Tenancy Act, 1885. He said:—

"In making the Motion that stands in my name I have to explain to the Council how it is that I was able to give them only such very short notice of it, and also what is the urgency of the case.

"The urgency arises in this way. Several provisions of the Bengal Tenancy Act can only be brought into operation under rules to be framed by the Bengal Government or by the High Court. But section 190 of the Act prescribes that such rules shall be published in a draft form for at least a month, and only after that period shall they be taken into consideration, and be notified so as to have the force of law.

"Now, we are advised that the publication of draft rules, although it can be made by executive authority, will not have effect for the purposes of this section unless made after the law itself comes into force. The Government of Bengal have decided, with the consent of His Excellency the Governor General in Council, that the law shall come into force on the 1st November, so that the month during which the draft rules have to be published can only run from that date; and as a matter of fact, owing to the vacation of

the High Court, the draft rules to be framed by that authority cannot well be published till late in November. It follows that, on whatever date the law comes into force, whether that date be the 1st November or any subsequent date, there must always be an interval, which in practice cannot be much less than six weeks, between the date on which the law comes into force and the date on which the rules can be legally notified as binding.

"This is an inconvenience which can be avoided in future legislation of the same kind by prescribing that the draft rules may be published before the Act comes into force, and I regret that a provision of this kind was not inserted in the Tenancy Act.

"In these circumstances we consulted the Bengal Government as to the best means of meeting the difficulty, and asked them, should they consider legislation necessary, to consult the British Indian Association, as representing the landlords, on the subject.

"Unfortunately the Lieutenant-Governor was on tour in the flooded districts, and we therefore only received his final reply the day before yesterday. He explains that he was unable, owing to this cause and to the absence of many of the leading representatives of the British Indian Association during the Doorga Pooja, to consult them with any hope of getting an answer before the 1st of November, and he therefore decided to recommend that a short Act should be passed, which should continue in force the provisions of the existing law relating to distraint and deposit—the only two points on which the temporary absence of legal rules is likely to cause difficulty—till such time as the rules themselves are officially notified.

"There appears no serious objection to this course being followed, but in view of the fact that the Act comes into force on the 1st November, and that it is necessary for the parties interested to have as much notice as possible, with a view to making their own arrangements, it was clearly necessary to bring in the Bill on the earliest opportunity and pass it through without the delay attending the usual process of legislation.

"Coming now to the scope of the Bill, it will be observed that it merely keeps in force the provisions of the existing law on these two subjects pending the legal notification of the rules, which we may be sure will be effected by the 1st February, and that it involves nothing but a temporary suspension of the particular sections of the new law relating to distraint or deposit.

"Without this there would be no power for landlords to distrain for rent, and there might be a difficulty about their receiving such rents as their raiyats may wish to deposit in Court; and, in order to obviate any inconvenience which might arise from the temporary absence of such power, it devolves upon me to ask the Council to carry into effect the suggestions of the Lieutenant-Governor of Bengal."

The Motion was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also introduced the Bill.

The Hon'ble SIR STEUART BAYLEY having applied to His Excellency the President to suspend the Rules for the conduct of Business,

THE PRESIDENT declared the Rules suspended.

The Hon'ble SIR STEUART BAYLEY moved that the Bill be taken into consideration.

The Motion was put and agreed to.

The Hon'ble SIR STEUART BAYLEY then moved that the Bill be passed.

The Motion was put and agreed to.

After some preliminary observations in regard to the next meeting of Council, His Excellency THE PRESIDENT spoke as follows:—

"As, however, in any case I shall be precluded from being present should such a Council be held, I desire to take this opportunity, on behalf of my colleagues and of myself, to express the very great regret which we all experience at the fact of this being the last occasion on which we shall have the co-operation and assistance of our hon'ble colleague Mr. Amír Alí.

"Every one of us has fully appreciated not only the great ability, conscientious industry, good sense and large and thorough knowledge of affairs which Mr. Amír Alí has brought to bear upon our deliberations, but we have also had occasion to admire the unfailing courtesy and good temper with which he has discharged his important duties. I may add for myself that he never speaks without exciting my personal envy at the eloquence and facility with which he uses the English language.

"In conclusion, I can assure him that he carries with him the personal respect and regard of us all, and that we are united in our deep regret at the loss of his valuable assistance."

The Council adjourned to Thursday, the 22nd October, 1885.

D. FITZPATRICK,

SIMLA; *Secretary to the Government of India,*

The 22nd October, 1885. *Legislative Department.*

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