

SECOND REPORT

OF

THE COMMISSIONERS

Appointed to Inquire into the State and Operation

OF THE

LAW OF MARRIAGE.

1850

EAST INDIA MARRIAGES.

Presented to both Houses of Parliament by Command of Her Majesty,

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COMMISSION.

VICTORIA R.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To the Right Reverend Father in God, JOHN BISHOP of LICHFIELD, Our Right Trusty and Well-beloved Councillors JAMES STUART WORTLEY, STEPHEN LUSHINGTON, Doctor of Civil Law, and ANTHONY RICHARD BLAKE, and Our Trusty and Well-Beloved Sir EDWARD VAUGHAN WILLIAMS, Knight, and ANDREW RUTHERFURD, Esquire, Greeting.

WHEREAS an humble Address has been presented to Us by the Knights, Citizens, and Burgesses, and Commissioners of Shires and Burghs, in Parliament assembled, humbly praying that We would be graciously pleased to appoint a Commission to inquire into the State and Operation of the Law of Marriage, as relating to the Prohibited Degrees of Affinity, and to Marriages solemnized abroad or in the British Colonies:

NOW KNOW YE, that We, reposing great trust and confidence in your knowledge and ability, have authorized and appointed, and do by these presents authorize and appoint, you, the said JOHN Bishop of LICHFIELD, JAMES STUART WORTLEY, STEPHEN LUSHINGTON, ANTHONY RICHARD BLAKE, SIR EDWARD VAUGHAN WILLIAMS, and ANDREW RUTHERFURD, to be Our Commissioners for the purposes aforesaid: And for the better effecting the Purposes of this Our Commission, We do by these Presents give and grant to you, or any Three or more of you, full power and authority to call before you such persons as you shall judge likely to afford you any information upon the subject of this Our Commission; and also to call for, have access to, and examine all such Books, Documents, Registers, and Records as may afford the fullest information upon the subject, and to inquire of and concerning the premises by all other lawful ways and means whatsoever.

And We do by these Presents will and ordain that this Our Commission shall continue in full force and virtue, and that you Our said Commissioners, or any Three or more of you, may from time to time proceed in the execution thereof, and of every matter and thing therein contained, although the same be not continued from time to time by adjournment.

AND Our further Will and Pleasure is, that you do, with as little delay as possible, report to Us, under your hands and seals, or under the hands and seals of any Three or more of you, your several proceedings under and by virtue of this Our Commission, together with what you shall find touching or concerning the Premises.

AND We further ordain that you, or any Three or more of you, may have liberty to report your proceedings under this Commission from time to time, should you judge it expedient so to do.

And for your assistance in the due execution of these presents, We have made choice of Our Trusty and Well-beloved HERMAN MERIVALE, Esquire, to be Secretary to this Our Commission, and to attend you, whose services and assistance We require you to avail yourselves of from time to time, as occasion may require.*

Given at Our Court at St. James', the Twenty-eighth Day of June, 1847, in the Eleventh Year of Our Reign.

By Her Majesty's Command,

G. GREY.

* Mr. Merivale having received an appointment in the Colonial Office, Dr. Haggard became Secretary.

WARRANT APPOINTING ADDITIONAL COMMISSIONERS FOR
INQUIRING INTO THE STATE AND OPERATION OF THE
LAW OF MARRIAGE.

VICTORIA R.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To Our Trusty and Well-beloved HENRY GRANVILLE HOWARD, Esquire, (commonly called Earl of ARUNDEL and SURREY,) and Our Right Trusty and Well-beloved Councillor Sir EDWARD RYAN, Knight, Greeting.

WHEREAS We did by Warrant under Our Royal Sign Manual, bearing date the Twenty-eighth day of June, 1847, in the Eleventh Year of Our Reign, authorize and appoint the Right Reverend Father in God JOHN BISHOP of LICHFIELD, Our Right Trusty and Well-beloved Councillors JAMES STUART WORTLEY, STEPHEN LUSHINGTON, Doctor of Civil Law, and ANTHONY RICHARD BLAKE (since deceased), and Our Trusty and Well-beloved Sir EDWARD VAUGHAN WILLIAMS, Knight, and ANDREW RUTHERFURD, Esquire, to be Our Commissioners for Inquiring into the State and Operation of the Law of Marriage, as relating to the prohibited degrees of affinity, and to Marriages solemnized abroad, or in the British Colonies: And whereas We have deemed it expedient that additional Commissioners should be appointed for the purposes aforesaid:

NOW KNOW YE, that We reposing great Trust and Confidence in your knowledge and ability, have authorized and appointed, and do by these Presents authorize and appoint you the said HENRY GRANVILLE HOWARD, (commonly called Earl of ARUNDEL and SURREY,) and Sir EDWARD RYAN, to be additional Commissioners for Inquiring into the State and Operation of the Law of Marriage, as relating to the prohibited degrees of affinity, and to Marriages solemnized abroad, or in the British Colonies; with all the powers and authorities vested in the Commissioners heretofore appointed for the aforesaid purpose.

Given at Our Court at St. James', the Nineteenth day of February,
1849, in the Twelfth Year of Our Reign.

By Her Majesty's Command,

G. GREY.

SECOND REPORT.

EAST INDIA MARRIAGES.

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

WE, Commissioners appointed by Your Majesty "to inquire into the state and operation of the Law of Marriage, as relating to the prohibited degrees of affinity, and to Marriages solemnized abroad, or in the British Colonies," present to Your Majesty the following Report in respect of Marriages in the East Indies.

1. The attention of Your Majesty's Commissioners has been directed to the consideration of the law of marriage prevailing in the territories under the government of the East India Company; and in prosecuting our inquiries, we have derived great assistance from the evidence of the witnesses examined, and the documents transmitted to us by order of the Board of Control, and of the Directors of the East India Company. The subject is one of very great importance; for questions of a very serious character arise with respect to the validity of marriages heretofore solemnized; and, consequently, doubts may exist both as to the *status* of individuals, and rights to property. We think that a legislative measure should be passed for the purpose of removing all these doubts, and of ratifying the marriages to which we allude. We also think that the subject should be brought before Parliament as soon as it can conveniently be done; for recently a case, calling in question the validity of very many marriages, has arisen at Bombay; and the publicity so given, and the discussion of the question here, may probably also give rise to more litigation, and increase the uneasiness already excited in families where the slightest doubt can be cast on the validity of their marriage.*

2. With respect to the future, we conceive that it will be admitted, on all hands, that it is essential to the comfort and welfare of the inhabitants of Hindostan, that the law of marriage should be established on safe principles, adapted to the condition of the population of that country.

3. In perusing the following observations, it will be desirable to bear in mind that the population of India consists of various classes of inhabitants, Christians—British or foreign—Mahomedans, Hindoos, Parsees, and other tribes holding various religious tenets. The law of marriage, under such circumstances, may be local and general, or personal—confined to individuals of particular nations or religions.

4. It appears to us, that the general law of marriage, as to British subjects, prevailing in the provinces under the government of the East India Company, is the marriage law of England as it stood prior to the passing of the Act 26 Geo. II. c. 33, called Lord Hardwicke's Marriage Act. The only modification of this law is the 58 Geo. III. c. 84, as to Presbyterian marriages.†

5. It should, however, in the first place, be observed, that the term "British subjects" is generally used in the charters and statutes relating to India in contradistinction to "Native inhabitants," though, in strictness of law, all the native inhabitants within the Company's territories are subjects of Her Majesty, and therefore, in the proper sense of the word, might be considered to be "British subjects." In the cities of Calcutta, Madras, and Bombay the law of England is the *lex loci*, having been introduced by the charters granted to the Mayors and Supreme Courts; consequently, all the inhabitants are subject to the same laws which govern "British subjects," with the exceptions contained

* The case referred to is *Macleay v. Christall* (October 1849), where, in an action in the Supreme Court at Bombay, for criminal conversation, a marriage in 1834, between two British subjects, and members of the Church of England, celebrated at Surat by a missionary not in holy orders, was sustained.

† This statute is in the Appendix, p. 10. See also par. 7, 8.

in the statute of the 21 Geo. III. c. 70, ss. 17, 18, as to the Mahomedans, Gentoo inhabitants, whose civil rights in certain cases are to be determined by their own laws and usages.* In the provinces it has been uniformly held that the English law is only introduced as to that portion of the inhabitants who are "British subjects" in the restricted and technical meaning of the words, and that consequently the English law is not the *lex loci*.

6. It must also be observed, that British subjects residing in the provinces, and the inhabitants of the towns of the respective presidencies, have the benefit of the statute law of England only as it stood when the British law was first introduced in these towns, unless expressly named in statutes passed subsequently.

7. It would follow from these premises that marriages between British subjects, if solemnized by a priest episcopally ordained, whether Protestant or Catholic, whether in or out of church, would be valid to all intents and purposes; † equally valid would be all marriages solemnized, according to the provisions of the statute 58 Geo. III. c. 84, by a minister of the Church of Scotland, being one of the chaplains of the Company, assuming for the present that such marriages are between Europeans being British subjects.

8. The 58 Geo. III. c. 84, requires, that previous to the solemnization of marriage there shall be a declaration by both or one of the parties, that both or one belong to the Church of Scotland; but we apprehend that this is directory only, and that such marriages should be valid if this provision were not complied with. We think that no license, or publication of banns, or particular form of marriage is essential to the validity of any of the marriages already mentioned. ‡

9. All other marriages between British subjects, not solemnized by a Protestant or a Catholic priest, are marriages standing on the same footing as the marriage in the case of the Queen *v. Millis*. The House of Lords were on that occasion equally divided. Without attempting to state particulars, the result of that case seems to be, that marriages in the British dominions beyond sea, where there is no local Act, or where foreign law to the contrary is not in force, if contracted without a priest, would be good for some purposes only, but not for all, especially as relates to real estate. This was the opinion of the Counsel who were consulted, on behalf of the East India Company, at periods antecedent to the decision in the Queen *v. Millis*. § (See Case and Opinions, Appendix, pp. 8 to 13 inclusive.)

10. There is, however, a marriage *ex necessitate* without a priest to be considered.

11. This case presents questions not without difficulty, both as regards the constitution of such a marriage, and its legal consequences. In the first place, what are the circumstances which would be held to constitute the necessity of marrying without a priest? It is manifestly impossible to define them satisfactorily. It is impossible to say, how long parties ought to wait for a priest, or how far to go to him or to send for him; still more difficult would it be in many cases to prove, especially after the lapse of years, the existence of any such necessity. Then are such marriages had in former times when it is clear a priest could not be found, or, lately, in remote parts of India, good and valid to all intents and purposes, or only partially valid? Could it possibly be contended that the parties, having cohabited together for years, ought to be married

* Sec. 7 provides, that inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party, shall be determined, in the case of Mahomedans, by the laws and usages of Mahomedans, and in case of Gentūs, by the laws and usages of Gentūs; and where only one of the parties shall be a Mahomedan or Gentū, by the laws and usages of the defendant. And sec. 18, "in order that regard should be had to the civil and religious usages of the said natives," enacts, "that the rights and authorities of fathers of families, and masters of families, according as the same might have been exercised by the Gentū or Mahomedan law, shall be preserved to them respectively within their said families," &c.

† "Roman Catholic marriages are valid, as their priests' orders are episcopal and good." See Bishop of Calcutta's first letter (August, 1833), to the Governor-General in Council, Appendix No. 3, par. 26; and again in his Lordship's third letter (1839), p. 29, par. 26. See also Evidence Q. 100-102.

‡ See Appendix, p. 37, s. 7.

§ 10 Clark and Finnely, 534. In that case, a member of the established Church of Ireland entered into a contract of marriage with a Presbyterian, in the presence of a Presbyterian minister, according to the rites of the Presbyterian Church; the man afterwards, in the lifetime of the woman, was married to another person. Upon a reference, in argument in the Consistory Court of London, to the decision in the Queen *v. Millis*, Dr. Lushington remarked (in substance), that the House of Lords in that case established, that a marriage, not solemnized by a person in holy orders, would not sustain an indictment for bigamy.

again by a priest? What are the consequences as to the issue where one of the parties has died? These are questions which we believe it would be hopeless to attempt to solve; for we think that the law of England, and all the cases which have occurred in British Courts of Justice, had not reference to marriages under the circumstances stated. It seems that the Courts assumed the possibility of having recourse to a priest, and only considered what would be the legal consequences attendant upon a marriage, had by contract without a priest, when the presence of one might have been had. Whenever, then, the validity of the marriage was not triable at common law, reference was made to the bishop for his certificate upon the issue, *ne unques accouple en loyale matrimoine*,* which would savour of absurdity if done when the presence of a priest had been impossible. It appears, therefore, necessary in any legislative enactment, to provide for these past marriages as well as for such marriages in future.

12. We will next consider the case of Europeans resident within the provinces under the East India Company, not being British subjects.

13. The marriage law of a country is, generally speaking, a local and not a personal law, and thus it seems, that Europeans, being foreigners resident in India, would, if that principle prevailed, be subject to the same marriage law as British subjects. But here again a difficulty occurs; for it has been stated that, in the provinces of the East India Company, British law is confined to British subjects; and therefore, if this view be correct, the law matrimonial in the provinces is not, as is usually the case, local, but personal; and there is no law matrimonial for Europeans not being British subjects. Even if this difficulty did not exist, the application of the principle of British law as to marriages without a priest would be attended by very anomalous consequences; for how could the distinctions between the effects of a marriage before a priest, and one not before a priest, be carried out in a foreign country.

14. With respect to the Christian inhabitants of the respective cities of Calcutta, Madras, and Bombay, they are precisely, as to the law of marriage, in the same condition as British subjects; but the difficulty is, as to what law is to prevail as to the marriage of Christians not being British subjects, and residing in the provinces. The Portuguese and Armenians, and other Christians, the Danes, born at Serampore, the Dutch, born at Chinsurah, together with the illegitimate children of British subjects by native women, form a very considerable and important class, who, as inhabitants of the provinces, appear to be out of the pale of British laws.

15. The legitimate offspring of British subjects, by native women, have been held by the Courts in India to be included in the term British subjects.†

16. With respect to marriages between natives of the Mahomedan, and Hindoo religion, they are to be regulated by their respective laws, and no difficulty can arise in Calcutta or in the provinces; but there are inhabitants of the Company's territories in India who are neither Hindoo, nor Mahomedan, nor Christians, such as the Sikhs, the Birmese and Avaneses, who are Bhuddists, and the Parsees and Chinese, whose marriages are at present solemnized according to their own several national forms, and to whom the existing laws would hardly apply.

17. It is necessary also to observe, that many important questions are suggested by the Missionaries in India as to the marriages of converts; and amongst those questions are the following:—How far conversion will operate as an entire severance of the marriage tie before contracted, and enable the convert to marry again? And what effect a conversion has by law, or ought to have on the property of a married convert?‡ These are questions which we think it our duty to notice, though the suggestion of a remedy does not properly fall within our province.

18. Another question is—What is the law as to mixed marriages? §

* In respect of this mode of trying and determining the validity of marriages, see Roper's Husband and Wife (by Jacob), vol. ii. p. 461, ed. 1826, and reprinted in the Appendix, No. 1, to the "Treatise on the Law of Husband and Wife," by J. E. Bright, Esq., Barrister-at-Law. Vol. ii. p. 385 (1849).

† As to the difficulties attending this subject, and as to the precise meaning that is to be given to the words "British subjects," see the evidence of Sir Edward East before the Select Committee of the House of Lords in 1830, in the Appendix to that evidence; and also the Minutes by the Judges of the Supreme Court of Calcutta, contained in the Fifth Appendix to the Third Report of the Select Committee of the House of Commons in 1831, and the Minutes of the Indian Law Commission on the *lex loci* addressed to the Governor-General of India, dated the 31st of October, 1840. Also *supra*, 5.

‡ Evidence, pp. 1—3, Q. 3. 12.

§ Evidence, p. 3, Q. 61—6.

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19. On general principles, parties of whatever creed or nation, resorting to the marriage forms of the country in which they reside and intend to reside, would be bound by the marriage law consequent on such forms, viz., that if two parties of any nation or religion (there being no special law excepting them) chose to be married according to the English form by a priest, the marriage should be good to all intents and purposes; and if by a Presbyterian minister, it should stand on the same footing as others; so as to marriages by mere laymen. But it is not necessary to speculate upon these points, for there must be retrospective legislation.

20. With a view to remove the existing evils, and provide a fitting remedy for the future, we propose:—

- i. That all marriages, heretofore had within the territories under the Government of the East India Company between any persons whatever, whether by a minister of the Scotch Church not being a chaplain, or by any minister of any other persuasion, or by any layman, when the only objection is that they have not been solemnized by a priest, shall be good and valid.
- ii. That the marriage law of India shall, *mutatis mutandis*, be made conformable to the law now existing in England.

There will be then three kinds of marriages as relates to Christians—

1. Marriage according to the rites of the Church of England;
2. Marriage by Roman Catholic priests, and dissenting ministers of all kinds;
3. By a civil officer.

All these marriages will require regulation.

21. The principles which ought to govern their regulation are clear, viz., the avoidance of clandestine marriages, and the rendering marriage, subject to this caution, cheap and easy, and the proof of it certain; but the application of such principles to the state and condition of the inhabitants of India will require local knowledge and experience. It seems desirable that there should be some form either of giving public notice, or for sufficient reasons dispensing with it, substituting a formal permission; and these principles apply to marriage howsoever solemnized. Registration is very important; a certified copy of the Register should be declared admissible evidence.

22. With a view of attaining these desirable objects, a Bill has been prepared, a copy of which is annexed to this Report. Copies have been sent to the Board of Control, and to the Court of Directors of the East India Company; and we are informed that the Bill has been transmitted to India for the consideration of the Governor-General in Council, and that no communication has hitherto been received from thence. This is a circumstance much to be regretted; but we do not deem it right to delay, any further, making our Report.

(Signed)

JAMES STUART WORTLEY.
STEPHEN LUSHINGTON.
ANDREW RUTHERFURD.
ARUNDEL AND SURREY.
EDWARD RYAN.

18th April, 1850.

DRAFT OF A BILL FOR MARRIAGES IN INDIA.

WHEREAS it is expedient to amend the Law of Marriages in India : be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that in every case of marriage intended to be solemnized in India after the commencement of this Act (except such marriages as are and may be exempted from the operation of this Act under the provision hereinafter contained) one of the parties shall give notice under his or her hand, in the form of Schedule (A.) to this Act annexed, or to the like effect, to the registrar of marriages for the district within which the parties shall have dwelt for not less than seven days then next preceding, or, if the parties dwell in the districts of different registrars, shall give the like notice to the registrar of marriages for each district, and shall state therein the name and surname and the profession or condition of each of the parties intending marriage, the dwelling place of each of them, and the time, not being less than seven days, during which each has dwelt therein, and the place in which the marriage is to be solemnized; provided that if either party shall have dwelt in the place stated in the notice during more than one calendar month it may be stated therein that he or she hath dwelt there one month and upwards.

Preamble.

Notice of every intended marriage in India to be given to the registrar of the district.

II. And be it enacted, That the registrar shall file all such notices, and keep them with the records of his office, and shall also forthwith enter a true copy of all such notices fairly into a book, to be called "The Marriage Notice Book," and the Marriage Notice Book shall be open at all reasonable times without fee to all persons desirous of inspecting the same; and for every such entry the registrar shall be entitled to have such fee as shall be fixed by the regulations hereinafter mentioned.

Registrar to keep notices in a book.

III. And be it enacted, That the registrar shall cause copies of such notices to be exhibited, or otherwise cause such notices to be published, in such manner as by the regulations hereinafter mentioned shall be provided.

Publication of notices.

IV. And be it enacted, That after the expiration of ten days after the entry of such notice the registrar, upon being requested so to do by or on behalf of the party by whom the notice was given, and one of the parties intending marriage having made oath, affirmation, or declaration, as hereinafter required, shall issue under his hand a certificate in the form of Schedule (B.) to this Act annexed, provided that no lawful impediment according to the law of England be shown to the satisfaction of the registrar why such certificate should not issue, and provided that the issue of such certificate shall not have been sponser forbidden in manner hereinafter mentioned by any person or persons authorized in that behalf as hereinafter is provided; and every such certificate shall state the particulars set forth in the notice, the day on which the notice was entered, and that the full period of ten days has elapsed since the entry of such notice, and that oath, affirmation, or declaration, has been made as required by this Act, and that the issue of such certificate has not been forbidden by any person or persons authorised in that behalf; and for every such certificate the registrar shall be entitled to have such fee as shall be fixed by the regulations hereinafter mentioned.

After ten days, certificate of notice to be given, upon demand.

V. And be it enacted, That any person authorized in that behalf as hereinafter mentioned may forbid the issue of the registrar's certificate, by writing, at any time before the issue of such certificate, the word "forbidden," or some word or words to the like effect, opposite to the entry of the notice of such intended marriage in the Marriage Notice Book, and by subscribing thereto his or her name and place of abode, and his or her character, in respect of either of the parties, by reason of which he or she is so authorized, or by letters subscribed in like manner and with the like particulars, and transmitted through the post or otherwise, and delivered to the registrar, before the issue of such certificate; and in case the issue of any such certificate shall have been so forbidden, the notice and all proceedings thereupon shall be utterly void: provided always, that (subject to such regulations as hereinafter mentioned) if either of the parties intending marriage allege that the person forbidding the issue of such certificate is not authorized by law so to do, the registrar shall examine into such allegation, and if he be satisfied that such person is not authorized as

Issue of registrar's certificate may be forbidden.

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aforesaid shall act in like manner, and the like proceedings may be had under this Act in relation to such marriage as if the same had not been forbidden by such person.

Who to give consent if parties under age.

VI. And be it enacted, That the father, if living, of any party under 21 years of age, such party not being a widower or widow, or if the father be dead, the guardian or guardians of the person of the party so under age lawfully appointed, or one of them, and in case there be no such guardian, then the mother of such party, if unmarried, shall have authority to give consent to the marriage of such party; and such consent is hereby required for the marriage of such party so under age, unless there be no person authorized to give such consent resident in India; and every person whose consent to a marriage is so required is hereby authorized to forbid the issue of the registrar's certificate.

Oath to be made before issue of certificate.

VII. And be it enacted, That before any such certificate as aforesaid shall be issued by any registrar one of the parties intending marriage shall appear personally before such registrar, and shall make oath, or shall make his or her solemn affirmation or declaration instead of an oath, that he or she believeth that there is not any impediment of kindred or alliance or other lawful hindrance to the said marriage, and that one of the said parties had for the space of seven days immediately before the day of giving the notice for such marriage had his or her usual place of abode within the district, within which such marriage is to be solemnized, and where either of the parties, not being a widower or widow, shall be under the age of 21 years, that the consent of the person or persons whose consent to such marriage is required by law has been obtained thereto, or that there is no person resident in India having authority to give such consent, as the case may be.

Caveat may be lodged with registrar against issue of certificate.

VIII. And be it enacted, That any person may enter a caveat with the registrar against the issue of a certificate for the marriage of any person named therein; and if any caveat be entered with the registrar, such caveat being duly signed by or on behalf of the person who enters the same, and stating his or her place of residence, and the ground of objection on which his or her caveat is founded, no certificate shall issue until the registrar shall have examined into the matter of the caveat, and is satisfied that it ought not to obstruct the issue of the certificate for the said marriage, or until the caveat be withdrawn by the party who entered the same.

After issue of certificate, marriages to be solemnized in the presence of some registrar and of two witnesses.

IX. And be it enacted, That after the issue of the certificate of the registrar, or, where notice is required to be given under this Act to the registrars of different districts, after the issue of the certificates of the registrars of such districts, marriage may be solemnized in any place mentioned in such certificate between and by the parties described in such certificate or certificates according to such form and ceremony as they may see fit to adopt; provided, nevertheless, that every such marriage shall be solemnized between such hours as shall be fixed by the regulations hereinafter mentioned, in the presence of some registrar, to whom shall be delivered such certificate or certificates as aforesaid, and of two or more witnesses; provided also, that in some part of the ceremony each of the parties shall declare,

"I do solemnly declare, that I know not of any lawful impediment
"why I, A. B., may not be joined in matrimony to C. D.;" or shall declare to the like effect.

And each of the parties shall say to the other,

"I call upon these persons here present to witness that I, A. B., do take
"thee, C. D., to be my lawful wedded wife [or, husband];" or words to the like effect.

Provided also, that there be no lawful impediment to the marriage of such parties.

New notice required after three months.

X. Provided always, and be it enacted, That whenever a marriage shall not be had within three calendar months after the notice shall have been so entered by the registrar, the notice, and the certificate which may have been issued thereupon, and all other proceedings thereupon, shall be utterly void; and no person shall proceed to solemnize the marriage, nor shall any registrar register the same, until new notice shall have been given, and entry made, and certificate thereof given, at the time and in the manner aforesaid.

Marriage fees to the registrar.

XI. And be it enacted, That the Registrar present at the solemnization shall be entitled for every marriage which shall be solemnized under this Act to

have from the parties married such sum as shall be fixed by the regulations hereinafter mentioned.

XII. And be it enacted, That after the solemnization of any marriage under this Act, the registrar present at the solemnization thereof shall forthwith register such marriage in a marriage register book according to the form of schedule (D.) to this Act annexed; and the entry of such marriage shall be signed by the person by or before whom the marriage shall have been solemnized, if there shall be any such person, and by the registrar, and also by the parties married, and attested by two witnesses; and every such entry shall be made in order from the beginning to the end of the book.

Marriages to be registered.

XIII. And be it enacted, That at the end of every month every registrar shall make a true copy, certified by him under his hand, according to a form to be prescribed in the regulations aforesaid, of all the entries of marriage in the register-book kept by him during such month, and shall transmit the same to the secretary to the government of the presidency within which he resides, or to such other officer as may for this purpose be appointed in the regulations aforesaid, and if there shall have been no marriage registered during such month the registrar shall certify such fact under his hand; and such certificate shall be transmitted as aforesaid; and the registrar shall keep safely the said register-book until it shall be filled, and shall then transmit the same to the secretary to the government, or to such other officer as aforesaid, to be kept by him with the records of his office; and the secretary to the government, or such other officer as aforesaid, shall, at the end of every three months in each year, prepare a copy of all the entries of marriage certified to him as aforesaid during such three months, and shall transmit such copy, signed by him, and certified by him to be a true copy, to the secretary of the East India Company; and the secretary of the East India Company shall cause the same to be delivered to the Registrar-General of Births, Deaths, and Marriages in England.

Copies of entries in Marriage Register Books to be made and transmitted periodically.

XIV. And be it enacted, That the certified copies which shall be delivered to the Registrar-General of Births, Deaths, and Marriages in England under this Act shall be kept in the General Register Office in the same manner; and indexes thereof shall be made and searches permitted, and copies, sealed or stamped with the seal of the General Register Office, of entries found therein, shall be given in the like manner as by the Act of the 7th year of King William the Fourth, "for registering Births, Deaths, and Marriages in England, is provided concerning the certified copies (kept in such office under the said Act) of the Registers of Births, Deaths, and Marriages in England; and every certified copy, purporting to be sealed or stamped with the seal of the said General Register Office, of an entry found in a certified copy delivered to the Registrar-General under this Act, shall be received as evidence of the marriage to which the same relates, without further proof of such entry.

Certified copies delivered to registrar-general under this Act to be subject to the provisions of 6 and 7 Wm. IV., c. 86.

XV. And be it enacted, That after any marriage shall have been solemnized, it shall not be necessary in support of such marriage to give any proof of the actual dwelling of either of the parties previous to the marriage within the district wherein such marriage was solemnized for the time required by this Act, or of the consent of any person whose consent thereunto is required by law; nor shall any evidence be given to prove the contrary in any suit touching the validity of such marriage.

Proof of residence of parties, or consent, not necessary to establish the marriage.

XVI. And be it enacted, That every marriage solemnized under this Act shall be good and cognizable in like manner as marriages, before the passing of this Act, according to the rites of the Church of England.

Marriages under this Act cognizable.

XVII. And be it enacted, That it shall be lawful for the registrar before whom any marriage is solemnized according to the provisions of this Act to ask of the parties to be married the several particulars required to be registered touching such marriage.

Registrar may ask certain particulars of parties.

XVIII. And be it enacted, That every person who shall enter a caveat with the registrar against the issue of any certificate on grounds which the Registrar-General shall declare to be frivolous, and that they ought not to obstruct the issue of the certificate, shall be liable for the costs of all proceedings in relation to such caveat, and for damages, to be recovered by suit by the party against whose marriage such caveat shall have been entered.

Persons vexatiously entering caveat liable to costs and damages.

XIX. And be it enacted, That every person who shall knowingly and wilfully make any false declaration or sign any false notice or certificate required by this Act, for the purpose of procuring any marriage, and every

Persons making false declarations, &c., liable to imprisonment and fine.

xii SECOND REPORT of the COMMISSIONERS appointed to inquire

person who shall forbid the issue of any registrar's certificate by falsely representing himself or herself to be a person whose consent to such marriage is required by law, knowing such representation to be false, shall be liable to be imprisoned for such time not exceeding two years and fined, or imprisoned for such time not exceeding two years, or fined only, to such amount and in such manner as the Court before whom such person shall be convicted in due course of law shall direct.

Limitation of prosecution.

XX. And be it enacted, That every prosecution under this Act shall be commenced within the space of three years after the offence committed.

Act not to affect the marriages of Mahomedans or Hindoos, &c.

XXI. Provided always, and be it enacted, That nothing herein contained shall extend or be applicable to the marriages of Mahomedans or Hindoos, or in anywise affect or interfere with the laws in force in India relating to such marriages; and it shall be lawful for the Governor-General of India in Council, by laws or regulations to be made in the manner and subject to the provisions by law required in respect of laws and regulations made by the said Governor-General in Council, to exempt from the operation of this Act the marriages in India of any persons whose marriages by reason of the religious opinions or usages prevailing among the people of India the said Governor-General in Council may think fit so to exempt, and to make all such provisions in relation to such marriages as to the said Governor-General in Council may seem expedient.

Governor-General in Council to make laws and regulations for the purposes of this Act.

XXII. And be it enacted, That it shall be lawful for the Governor-General of India in Council, by laws and regulations to be made in the manner and subject to the provisions by law required in respect of laws and regulations made by the said Governor-General in Council, to provide for the appointment of registrars for the purposes of this Act, for the formation and alteration of districts, for the custody and protection from injury of marriage register books, and the transmission of copies of entries therein, for enforcing the due performance of the duties of the registrars, for appeals from or reference in cases of doubt by the registrars in relation to caveats entered or marriages forbidden under this Act, for fixing and authorizing the fees to be taken for the matters herein mentioned, and generally for giving effect to the provisions of this Act.

Certain marriages in India confirmed.

XXIII. And whereas it is expedient to relieve the minds of all Her Majesty's subjects from any doubt concerning the validity of marriages heretofore solemnized in India by persons not in holy orders: Be it declared and enacted, That all such marriages, if not otherwise invalid, shall be deemed and held to be valid in law to all intents and purposes.

Interpretation of "India."

XXIV. And be it enacted, That in the construction of this Act the word "India" shall include all territories for the time being under the government of the East India Company.

Commencement of Act.

XXV. And be it enacted, That this Act shall, so far as respects the authority to make such appointments, laws, and regulations as are herein-before authorized to be made by the Governor-General of India in Council, commence and take effect from and after the passing thereof, and as to all other matters and things commence and take effect from and after the day of , one thousand eight hundred

Publication of Act.

XXVI. And be it enacted, that the Governor-General of India and the Governors of the several presidencies in India shall cause this Act to be published three times in each of the Government Gazettes of the several presidencies; the first of such publications to be made within six weeks after this Act shall have been received in such respective presidencies.

SCHEDULES to which this Act refers.

SCHEDULE (A).

Notice of Marriage.

To the Registrar of the District of _____, in the Presidency of _____

I HEREBY give you notice, that a marriage is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described (that is to say),

Name.	Condition.	Rank or Profession.	Age.	Dwelling Place.	Length of Residence.	Place where the Marriage is to be solemnized.	District and Place in which the other Party resides when the Parties dwell in different Districts.

Witness my hand this _____ day of _____, 18____
(Signed)

SCHEDULE (B).

No. 14.

Registrar's Certificate.

I _____, registrar of the district of _____, in the presidency of _____, do hereby certify, that on the _____ day of _____, notice was duly entered in the marriage notice book of the said district of the marriage intended between the parties therein named and described, delivered under the hand of _____, one of the parties (that is to say),

Name.	Condition.	Rank or Profession.	Age.	Dwelling Place.	Length of Residence.	Place where the Marriage is to be solemnized.	District and Place in which the other Party dwells where the Parties dwell in different Districts.

Date of notice entered 18____ }
Date of certificate given 18____ } The issue of this certificate has not been forbidden by any person authorized to forbid the issue thereof.

Witness my hand this _____ day of _____, 18____
(Signed) Registrar.

This certificate will be void unless the marriage is solemnized on or before the day of _____ 18____.

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MINUTES OF EVIDENCE

Taken before the COMMISSIONERS appointed to Inquire into the STATE and OPERATION of the LAW of MARRIAGE, as relating to the Prohibited Degrees of Affinity, and to Marriages solemnized Abroad, or in the British Colonies.

EAST INDIA MARRIAGES.

19th FEBRUARY, 1849.

The Right Hon. STEPHEN LUSHINGTON, D.C.L., in the Chair.

David Hill, Esq.

David Hill, Esq.

1. You are in the Judicial Department of the East India Company's service at home?—
I am.

2. Can you afford the Commissioners any information upon the subject of marriages had in the territories under the Company's control in the East Indies?—I have brought the latest letter from the Government of India on the subject, and the latest instructions from the Court of Directors to the Government of India, showing how the question stands at present; and also memorials and correspondence relating to the several parts of the question. I have also brought a number of the "Calcutta Review" (No. 6, June, 1845), which is referred to in the Despatch of the Government of India. Besides a statement of the question, it contains in a short compass all the legal opinions taken at different times by the Court of Directors on the subject. [The Case and Opinions are printed in the Appendix, No. 1, p. 8, *et seq.*]

3. Has not the question been afloat since about the year 1817?—I should think in some shape or other much earlier. I can myself remember several years before that, when Earl Minto was Governor-General; being an old lawyer, his alarm was very much excited on the subject of the hazard of marriages being set aside as void. I remember his writing a secret Despatch to the Madras Government, desiring them not to excite public attention on the subject, as he looked upon it as one of a very alarming nature. One point which engages principal interest in India relates to the mode of dealing with the antecedent marriages of converts to Christianity, especially in the case of a plurality of wives. But that, I imagine, is not in the view of this Commission. A Hindoo or a Mahomedan may have married three wives;—he becomes a Christian;—on the other side the party is entitled to a dissolution of the marriage;† but if that right is not enforced, or if a corresponding right is not recognized on the side of the convert, then the missionaries have raised the question, how such a case should be dealt with. [See p. 39, No. 25, *et seq.*, as to marriages of converts.]

4. Has not that become rather a perplexing question in India?—It has; and it is a question which of course will acquire increased influence and a more extended operation. The other points relate, first, to the question of the validity of marriages that have been solemnized otherwise than by a person in holy orders. Upon that point the legal opinions are not conclusive or satisfactory, even with respect to legitimacy and inheritance. They all agree in saying that the parties cannot marry again, but how far the marriage is valid for all purposes of legitimacy and inheritance seems to be, up to this time, a doubtful question.* Then there is the grievance which the Dissenters complain of,—both the ministers and their followers,—that they should not be permitted to marry in the mode most agreeable to their feelings and most according to their consciences, and that any doubt should be thrown over the validity of marriages solemnized in the mode that they themselves consider most satisfactory.† That grievance is distinct from the question of validity, and is very much pressed upon the authorities at home and abroad. Out of that arose a question, a branch of it, as regarding Scotch marriages. A special statute was passed authorizing the Scotch ministers in India to solemnize marriages, if either of the parties belonged to their communion. But the Church of Scotland has since been split into two parts, and the Free Church claims the benefit of this statute. They stand of course on the same footing as other Dissenters. If these questions were settled, then comes the question how validity is to be given to marriages which, through a long course of years, according to the constant practice of India, have been recognized as valid,—marriages solemnized by commanding officers and magistrates as well as Dissenting ministers.

5. Has it ever occurred that there was a distinction between marriages celebrated by lay-

* See Pages 8, 9, 12, 23-5, 32, 37, 47-8.

† See Pages 2, 3, 32-6, 38-47.

David Hill, Esq.

4 G. IV., c. 91,
Appendix, p. 10, pp.
12-37, par. 6.

men, when there was a facility of obtaining clergymen in holy orders, and marriages celebrated by laymen when there was no such facility?—That is, I believe, provided for in one Act, that marriages in cantonments shall be celebrated by the commanding officer, or under his authority, if the parties cannot obtain the services of a clergyman.

6. That applies only, I apprehend, to the case of marriages where the troops are concerned. The question had reference to a case where a civilian, being a layman, takes upon himself to celebrate marriage where there is no clergyman; of which, I believe, there have been a great many instances. In all instances where a layman celebrates a marriage, it is because a clergyman is not to be had;—there is no preference for a lay marriage.

7. The question is, whether any distinction has ever been taken as to the validity of those marriages?—There has been, in the legal opinions laid before the Court of Directors. In the opinions quoted in the review the point has, I think, not escaped notice.

8. Are any instructions given to the civil servants of the Company and the agents in the different provinces, with respect to celebrating marriages, from the government of India, as to the extent to which they are to celebrate them?—So far there were instructions, that they were not allowed formerly to marry, and I imagine not now (but I have not any positive knowledge upon the subject), without a license from some authority at the Presidency, the seat of government, to show that it was not a clandestine or improper marriage. At Madras the license used to be given under the hand of the Governor to the party applying. With respect to common soldiers, I believe they have the license of their commanding officers; but, with respect to persons in other classes of society, a license from the proper authority was always necessary, whether a chaplain or a layman solemnized the marriage. No chaplain ever was permitted to marry without it. [See p. 36, par. 3.]

9. Was it a license for the particular marriage or a licence for celebrating marriages?—I do not know the form, but, in effect, it was a permission to the chaplain to celebrate marriage, or to the commanding officer, in case a chaplain was not to be found.

10. To celebrate that particular marriage?—That particular marriage.

11. But is there any instruction or authority given by the Indian Government to any of their agents in the provinces, regulating the mode in which they should celebrate marriages?—There certainly is nothing in the way of a general license to particular officers, either civil or military, to perform the ceremony more than to others. There are no circular orders, but a long course of practice has established certain rules. A subaltern would not undertake to perform the ceremony, when his superior officers were in the same cantonment with him; he would incur severe censure if he did, as if it were a Gretna-green marriage. It is always an authorised and avowed transaction by the best authority that is to be had, lay, if not clerical.

Converts.

12. You alluded to questions arising from the mode of dealing with marriages previously contracted by the native heathens who are afterwards converted to Christianity: might not difficulties, as regards British subjects and British property, occur with reference to that point in this way: supposing a native heathen to have married, according to his religion, two wives, and one of them to have died, and that he subsequently married a British subject, would not the question then arise whether that was a good marriage, or whether the earlier marriage with the second wife was sufficiently valid to make him already a married man?—The marriage before the conversion?

13. Yes.—That is a point which the missionaries have raised, and they have laid down rules for their own flocks addressed to their discretion and judgment; as, for instance, that they must not marry for three years after their conversion. A body of missionaries have laid down certain reasonable regulations on the subject, but they have no legal validity. [P. 40, No. 26.]

14. Does that embarrassment present a practical difficulty in effecting the conversion of the natives?—The Government have no information on that point. It is a point that the missionaries like to insist very much upon. I have understood that those who do not belong to their vocation believe that they exaggerate it; but prospectively, the difficulty must be of enormous amount.

15. Do the missionaries condemn a marriage had according to the forms of the religion then in force between two Hindoos, and say that the validity of that marriage, in case of conversion, is to be affected by the conversion?—They conceive that, by the Hindoo law, if the husband becomes a convert, being an apostate, he forfeits his condition of husband. [P. 41, sec. v.]

16. And has it not also been considered that the marriage is dissolved by one of the parties becoming a Christian?—The missionaries do not dissolve it; on the contrary, they quote Scripture, and say, that the “unbelieving husband” or the “unbelieving wife” is still to be recognized, and therefore they do not at all wish that the marriage should be repudiated by the convert. But if there is a plurality of wives, I do not know how it could be recognized; in other cases they perfectly recognize the scriptural doctrine, that the convert is to show submission and forbearance to the unbelieving consort. [See p. 41, ss. iv., v.]

17. Your impression is, that so far from urging that the husband is released from the bond of marriage according to the Hindoo law, by his conversion to Christianity, they contend that he ought to adhere to his wife?—If the other party does; but that the other is, by the religion of the natives, absolved from the matrimonial tie. The missionaries have put forth a paper called “Statement and Propositions regarding Marriage and Divorce, chiefly as they affect converts to Christianity:” reprinted (in April, 1845), with some slight alterations, from the “Calcutta Christian Observer.” [See p. 40, No. 26.]

18. What is the paper which you are citing?—This is a paper which was sent home by the government of India in a despatch of 1848, from certain missionaries; a large body of them, I think. After a long preamble, stating all the difficulties of the case, they say:—

"In the total absence, however, of any authoritative or legislative measure on the subject, the missionaries, in order to establish, as far as possible, a uniformity in the mode of procedure in ascertaining the rejection by a heathen, or Mussulman, of a husband or a wife who may have become a Christian"—(the objection is on the other side) "resolved still further unanimously to adopt the following rules and forms of document and communication:—

David Hill, Esq.

"1st. That in cases where there may have been no children, the fruit of the marriage, no new marriage be solemnized within two years from the date of the first friendly application to the repudiating party" (the heathen) "for the continuance or restoration of conjugal rights.

Rules by missionaries in India, as to marriage of converts to Christianity. See p. 42.

"2nd. That in cases where the parties have lived long together as man and wife, or have had children the fruit of the marriage, no new marriage be solemnized within three years from the date of the first friendly application to the repudiating party for the continuance or restoration of conjugal rights.

"3rd. That in both cases one whole year be devoted to attempts at friendly communications in this matter, previous to the adoption of any more formal procedure.

"4th. That should these friendly attempts to accomplish reconciliation and reunion, continued for a whole twelvemonth, fail, the following mode of procedure be adopted:—1st. That in cases where personal communication can be obtained with the party, a notice (written or verbal) demanding conjugal rights be personally communicated to the heathen or Mussulman, in the presence of witnesses, who are to sign a written document recording the fact, a copy of which record is to be left with or communicated to the chief native authority of the village, or thannah, in which the repudiating party may reside. 2ndly. That every six months the above proceeding be repeated until after the expiration of one year in the case referred to in Rule 1, and two years in the case referred to in Rule 2, from the date of service of the first notice. 3rdly. That in cases where personal communication with the party cannot be obtained, the notices above referred to be served on some of the nearest friends or relatives of the repudiating party who may be found at the place of his or her residence, and the same course of procedure be followed as in the former instances.

Mode of procedure where reconciliation and reunion unsuccessful.

"5th. That it be understood that when the repudiating party is ascertained to have committed adultery, or have entered into matrimonial relations with other parties, the repudiated party be considered as immediately at liberty to form a new marriage."

Where repudiating party commits adultery or marries.

These are extremely liberal rules, liberal as regarding the rights of the heathen. They are agreed to by a body of missionaries in the meanwhile, in default of any authorized regulations.

19. Those assume the shape of recommendations by the missionaries to the natives?—To their own flocks.

20. Have they been acted upon to any extent?—They state here that they are unanimously laid down by them, but they can carry no authority.

21. But you do not know that they have practically been acted upon?—It is only from this paper that I know anything of them.

22. Do the papers which you produce contain the whole of the information which you think it necessary that the Commissioners should have upon this subject?—I think they do. I only had notice to attend a few days ago; but all the papers have passed through my hands, and I have no recollection of any other. I feel satisfied that all the points involved in the question of Indian marriages will be found here. We have not all the papers just at hand; it would require searching through a long course of years. I cannot say that the whole papers which the Court of Directors have received are here; I do not believe they are; but I do not think that there is any point involved in the case which is not included in these papers.

23. Is everything requisite to our inquiry in these papers, so far as you know?—I think so, except the legal opinions, which are more conveniently given in the "Calcutta Review."

24. That does not give the case?—No.

25. (*Per Sir Edward Ryan.*) There is the case also which was submitted to other law officers, and among them to the present Lord Campbell, will you furnish us with all the cases and opinions upon the subject?—I will endeavour to do so.

26. There is likewise a letter of Mr. Lawford, (the Company's solicitor) of the 16th of December, 1840, in which he sent out all these cases and opinions to India, and in which he himself observes upon the law; is that among the papers that you have with you?—It is not.*

27. There was a despatch also of the Court of Directors upon the subject, accompanying that letter?—There was.

28. Then there is a letter, addressed by the present Bishop of Calcutta to the Governor-General in Council, of 21st August, 1833, upon the subject?†—I have here a very long letter of the 30th January, 1839, from the Bishop.‡

29. That is a different letter. Then there is an opinion of Sir Herbert Compton, when he was Advocate-General, upon the subject of marriages in India: that is as far back as 1824?—If there was such an opinion, it is on the records of the Court, I have no doubt; but I have no recollection of it.

30. It is to be found in connexion with documents, marked "Judicial Department, 1824, Lower Provinces, Criminal:" the communication is addressed to the Chief Secretary of the Government, 12th August, 1824. The opinion is dated 23rd July, 1824?—I will endeavour to procure it. With respect to future marriages in India, the new Marriage Act will, I presume, afford the easiest solution of the difficulty by means of registration. The Government could appoint a registrar wherever it is thought advisable. The peculiarity of the case in India is that there is a solid continent, 2000 miles in length and 2000 miles in breadth, independently of detached settlements scattered over thousands of miles; and it is impossible to have a clerical establishment to solemnize marriages all over this space; there are not 100 clergymen in holy orders there.

6 & 7 W. IV. cc. 85, 86; 1 Vict., c. 22.

* See Appendix No. 1, pp. 8-13.

† See No. 3, p. 13.

‡ No. 15, p. 27.

Rev. T. Boaz.

13th FEBRUARY, 1849.

The Right Hon. STEPHEN LUSHINGTON, D.C.L., in the Chair.

The Rev. Thomas Boaz.

31. You have been resident for some time in India?—Yes.
32. What length of time?—About 13 years.
33. In what part of India?—In Calcutta.
34. Have you been in any other part of India?—In Madras.
35. You have been a missionary?—I have been pastor of the English Independent Church in Calcutta, and secretary to the Auxiliary to the London Missionary Society. [Also par. 54.]
36. You know the general state and condition of India with respect to the question of marriage?—Yes.
37. Can you inform the Commissioners generally what is considered to be the Law of Marriage within the territories of the East India Company?—The valid marriages, those at least held to be valid for all purposes in the law, are marriages performed by clergymen of the Established Church of England, and the six chaplains of the Established Church of Scotland, viz., two in Calcutta, two in Madras, and two in Bombay.
38. Does any doubt at all arise about a marriage celebrated by a clergyman of the Established Church of Scotland though he does not happen to be a chaplain?—Yes, he is in the same category with the ministers and missionaries of other denominations.
39. Then the apprehension prevailing in India is this, that unless the marriage be solemnized by a clergyman of the Church of England (without restriction to his filling any office), or by one of the six Scotch chaplains, the marriage will then be liable to some question in some respects?—Yes, that opinion is entertained by some persons.
40. Are you aware that about the year 1816 a question arose in India as to the validity of marriages solemnized by Presbyterian clergymen of the Church of Scotland?—Yes.
41. Are you aware that in consequence of that question an Act of Parliament was passed in 1818?—Yes; that Act was obtained by Dr. Bryce, of the Established Church of Scotland, and it was that Act which had the effect of placing all ministers, not Episcopal, in the same category with ourselves. The missionaries of the Church of Scotland were then placed in the same position as the missionaries of other bodies, because this Act declares that marriages shall only be celebrated by a chaplain of the Church of Scotland, and that one or both of the contracting parties shall declare themselves to be members (at the time of the celebration of the marriage) of the Church of Scotland; that declaration must come before the solemnization of the marriage. I may here observe, that before the passing of this Act there were no missionaries of the Church of Scotland in India. The only ministers of the Church of Scotland in India were the ordained ministers of that Church being chaplains of the Company.
42. It appears by the statute to which you have referred that all *past* marriages are expressly made valid, if celebrated and solemnized by an ordained minister of the Church of Scotland, without any additional qualification; but in the second branch of the Act *future* marriages are declared to be valid, if celebrated by an ordained minister of the Church of Scotland as by law established, and appointed by the United Company of Merchants of England trading to the East Indies to officiate as chaplains. The effect of the statute, therefore, being to make *past* marriages valid, if celebrated by a minister of the Church of Scotland; but as to *future* marriages, to make them valid only if celebrated by a minister of the Church of Scotland, being also a chaplain?—Yes, that was the effect of the law in 1818.
43. And you are understood to say that that is explained by the fact that there were no ministers of the Church of Scotland at the time this Act passed, except such as were chaplains?—There were no missionaries of the Church of Scotland at that time in India, and I suppose Dr. Bryce wished the second clause of this Act to be like the first; but it was altered in the House of Lords, and restricted to its present form.
44. As a matter of fact are there many other marriages solemnized in India, not by clergymen of the Church of England, or by Scotch chaplains?—There are; such marriages have been always solemnized in India.
45. Marriages, by ordinary laymen, frequently?—By civilians and military men, and by ministers of different religious persuasions.
46. That has continued to go on?—Yes. With the permission of the Commissioners, I will explain why that was done. In the majority of instances, there were no chaplains in the districts where the missionaries laboured. It was not from any officiousness, or desire on their part to interfere in the matter; but they had no alternative, either they must marry the parties or the parties must live in sin.
47. The constant practice in India was for civilians to celebrate marriages?—Yes, in the absence of chaplains.
48. Are there many districts into which no chaplain ever went?—Many; in the earlier periods of Indian history and missionary labour.
49. Has any apprehension been entertained with respect to the validity of those marriages?—Yes.
50. When did that apprehension arise, and from what cause?—It arose in the first instance before my arrival in India. In the year 1838, it assumed a more important aspect, and excited considerable attention. The cause in both instances was, that doubts had been cast, on the validity of marriages celebrated by dissenting ministers or missionaries, by clergymen of the Episcopal Church in India, one of them going so far as to pronounce such marriages no marriages at all, and threatening to re-marry the parties.

51. Is it considered that the degree of doubt which may be conceived to exist respecting the validity of these marriages is a hardship upon the parties in India?—Very great.

Rev. T.

52. Are you able to state the particular doubt entertained; whether it is as to the validity of the marriage altogether, or as to any consequences of the marriage, or to what?—When doubts first began to arise, they were fully discussed, and application was made to the Government of India upon the subject. The Government very favourably entertained the application, and forwarded it in substance to the Court of Directors, and the Court of Directors took the opinion of learned civilians in this country upon the subject, and those opinions were in substance, I believe, that the marriages were valid for certain purposes, but not for all; not for instance, in pursuing a case in the Ecclesiastical Court as to property. These opinions are embodied in a petition which was presented to the Houses of Lords and Commons last year.

53. Can you supply the Commissioners with a copy of that petition?—I can. The subject was in abeyance for some time after this, when it again came under discussion, and another application was made to the Indian Government, and the Indian authorities once more referred it to the Court of Directors, and the Court again took opinions in England on the subject. In substance these opinions were very much the same as the previous ones. On their reception we determined to adopt measures for bringing the subject before the Imperial Parliament.

See p. 45.

54. What measures did you adopt for that purpose?—I came over to this country, partly for this purpose, bringing with me the outlines of an Act which were presented to the Dissenting Deputies, as the parties with whom I was best acquainted, and they referred the matter to their legal authority, who drew up the draft of an Act. That Act we sent to India, to the parties interested, and, founded upon it, they have sent back a copy of an Act, which they consider applicable to the circumstances of the country (if the principle be recognized). The details of that Act are applicable to the local condition of India. That draft Act has been considered by legal men in India; it has been circulated through that country, for the opinions of the parties interested in the matter, and generally they approve of the proposal as it now stands. [See also par. 103-7.]

55. What do you consider to be the general principle upon which that proposed Act is founded?—To render marriage a civil contract; to be confirmed, if the parties please, by any religious ceremony.

56. That is the draft Act of which you have furnished a copy to the Commission?—Yes. See p. 48.

57. You do not anticipate any objection on the part of any parties in India to the passing of an Act similar in principle to this?—None, I should think, on the part of the local Government. Some of the members of the Government have expressed themselves as decidedly favourable to our application.

58. Have any marriages come within your knowledge between natives in India?—There are marriages contracted between natives, solemnized by persons other than clergymen of the Church of England.

59. Marriages between natives according to their own ceremonies, whether they be Hindoos or Mahomedans?—Yes.

60. But you do not propose to interfere with their marriages in any way whatever?—Not at all.

61. With respect to the marriages which are generally called mixed marriages, do any marriages of that kind take place in India, either between natives of India and Europeans, or between Europeans professing different religious opinions?—There are marriages of that kind between Roman Catholics and Protestants.

62. Are there any marriages between Europeans and natives?—Very few, I should think: none now, I should suppose. In earlier times there were contracts, called by some marriages between Europeans and natives.

63. Are there any half-castes in India?—Yes, there are.

64. Are there marriages between British subjects and native half-castes?—The half-castes, or East Indians, as we call them, are British subjects. They are under the same law, and consider themselves British subjects.

65. They consider themselves somewhat in the same light as Europeans going to reside in India?—Precisely.

66. Marriages occasionally take place between Europeans coming to India and those half-castes?—Yes.

67. Are the half-castes generally Christians?—All, or nearly so. I may state this much on this subject, that there is no impediment to the priests of any denomination, or of any religion, marrying any persons, except in the case of Protestant Dissenters. A Mahomedan priest could solemnize a marriage between two Christians if they chose to submit to his ceremonial.

68. How is it that the Dissenters are under a greater disadvantage than any other class?—That seems to have arisen very much from the same causes which operated in this country before the passing of the Dissenters' Marriage Act here. The English law which was previously applicable to Dissenters, and which prevented their marrying, was supposed to extend to India; at least, I remember the present Bishop of Calcutta making that one of his objections. I am strongly inclined to think, that the real cause is the common prejudice that Dissenters are disqualified. We never doubted the validity of our marriages; but after the opinions, to which I have referred, were taken, of course we were placed in a worse position than before the doubts were raised.

69. But the opinions of those civilians only went to certain consequences arising from the marriage. They did not go to impeach the validity of the marriage altogether?—Just so.

70. As between British subjects, marriages are validly solemnized, in the first place, by clergymen of the Church of England; and secondly, under the Act of Parliament, to which you have referred, by ministers of the Established Church of Scotland?—Yes. See p. 10.

Rev. T. Doaz.

71. Besides that, where no minister of the Church of England, or of the Church of Scotland, can be found, marriages in the remoter districts are solemnized either by civilians or by military men, or by missionaries?—Yes, that has been the practice.

72. Are any such marriages solemnized either by civilians, or military men, or by missionaries in those districts of India, where clergymen of the Church of England are found; for instance, at Calcutta or Bombay?—I should think not now by civilians or military men, but there are by Dissenting missionaries.

68 G. III., c. 84. See Appendix, p. 10.

73. Has that Act of Parliament which legalizes, expressly, marriages solemnized by ministers of the Established Church of Scotland been supposed to place the ministers of any other denomination in a less advantageous position than they were in before that Act?—Yes, inasmuch as it has thrown a doubt upon their validity. By confirming the validity of marriages performed by the six chaplains, it has rendered the others at least dubious.

74. Since the disruption of the Scotch Church, there is a considerable body of persons attached to what is called the Free Church?—Yes.

75. And they would refuse to be married by a minister of the old Established Church?—They have done so, and their own ministers have married them.

76. Then they are now in the same position as all other denominations of Dissenters?—Just the same, and they are parties to the proposed Act. [p. 25]

77. Are you aware of any law in India either emanating from the British Parliament, or from the local government of India upon the subject of marriages, regulating them in any way beyond the Act of Parliament to which you have referred?—I am not aware of any.

See pp. 33—35, 45.

78. The grievance in respect of the doubts thrown upon the validity of marriages celebrated in India, by any other person than a minister of the Episcopal Church or a minister of the Established Church of Scotland, has existed for some time as regards all other Dissenters except members of the Free Church?—Yes.

79. And there must have been very numerous marriages which would come under the operation of those doubts?—A considerable number.

80. But with respect to the members of the Free Church of Scotland, it is a new grievance which has arisen since the disruption?—Yes. [p. 46, No. 31—4.]

81. You said that you apprehended no opposition to such a Bill as that which you have laid before the Commissioners from the government of India; what is the branch or department of the Indian government to which such a matter would be referred?—It would be referred to the Council of India.

82. Is there any officer there now in the position in which Mr. Macaulay was in India?—There is a legal member of the Council.

83. Is Mr. Drinkwater Bethune the gentleman who now fills that situation?—I am not sure. The appointment has been made since I left. A gentleman has been appointed to succeed Mr. Amos. [Mr. Bethune fills the appointment.]

84. The department of the government by whom it would be considered would be the Governor-General in Council?—Yes; I should not anticipate that there could be any opposition but from the Episcopal, or, generally, the ecclesiastical authorities.

85. Do you anticipate any opposition from the Indian government at home here?—I should think not. They have always appeared to be very favourable to our application, and have taken great trouble to obtain legal opinions upon the subject.

86. You have said that you should only apprehend any opposition from the ecclesiastical authorities of the Church of England in India; do you anticipate objections from them?—It is the only source from which I think it could come; it is not impossible.

87. Has there been any indication of opposition in India from that quarter?—Not that I am aware of.

88. Has the Bishop of Calcutta expressed himself adversely to it?—He has expressed himself rather strongly once or twice; but only, I believe, in a private way, by note or minute in connexion with our application to the Indian government.

89. Has there been any written letter or charge to the clergy, or anything of that sort upon the subject?—Not that I am aware of, to the clergy. [But see p. 29, No. 35.]

90. There is no published proceeding from which you collect that there has been hitherto any opposition?—Not that I am aware of.

91. There are a great number of children whose rights, with reference to property, must be doubtful if these marriages solemnized by missionaries and others are questioned?—There must be a very considerable number if you bring into the account the marriages of civilians and military men.

92. Has any question of that sort come into litigation in the Courts in India?—Not that I am aware of.

93. Or in the Courts of Great Britain?—I cannot speak as to the English Courts.

94. In the evidence that you have given, what do you include under the denomination of India?—The whole of the possessions under the rule of the East India Company.

95. British India?—Yes, British India. Allow me to observe, this question very materially affects missionaries with reference to their native converts; because those converts naturally look to them as their guides and teachers; having been the instruments of bringing them from idolatry. If their marriages are rendered doubtful, or any doubt is cast upon their validity, it is exceedingly painful to the missionary, and must impair his influence and interfere with his success.

96. Where there is neither a Church of England clergyman, nor an ordained minister of the Church of Scotland within reach, as in the remoter parts of British India, has any doubt ever been suggested that a marriage before a military officer or before a civilian would be valid?—No; I should think it was considered valid.

97. No doubt has ever been thrown upon such a marriage?—No; I think it is rendered legal by some local law, but I am not quite sure; and, if such law exist, I apprehend it would have no effect in Britain. *Rev. T. Boa*

98. The doubts that have been cast have been rather upon those marriages which have been celebrated by Dissenting ministers?—Yes. *See pp. 23, 33*

99. And those doubts have been enhanced by Parliament having confirmed the peculiar class of marriages, solemnized by others than clergymen of the Church of England, in the statute to which you have referred?—Yes. The present position of the question also has this effect; this happened recently; it was noticed in "The Friend of India" a short time ago,—parties living remotely from an Episcopal chapel, and who had no opportunity of going to an English clergyman, became Roman Catholics, for the time being, to obtain marriage.

100. Do the Roman Catholics stand in a different position from the rest of Dissenters?—Yes; their marriages are in the same position as those of the Episcopal Church.

101. Under what law is it that they are in the same position as marriages in the English Church?—I am not aware of the law; but I never heard any doubt expressed of it.

102. Is it not because the orders of the Roman Catholic Church are acknowledged by the law of England; that is to say, supposing a Roman Catholic priest was to become a Protestant, he would instantly be a minister without fresh ordination, and consequently no objection applies against the validity of any marriage solemnized by him; it being of the same validity as if it had been solemnized by a Protestant clergyman in orders?—Yes; he being a "priest in holy orders," which is the wording of the English Act. The opinions of the learned civilians in England were, that a marriage is only valid when it is performed by a "priest in holy orders." The Indian marriage licence runs in that form, too; so that a Roman Catholic priest would be, according to the terms of the law and the official documents, that which is required, "a priest in holy orders."

103. How far are the Commissioners to understand that you represent different religious bodies in India, and what is the extent of authority you have to act for them?—I was deputed by the Dissenting community, in coming over to this country, to endeavour to get an Act passed. *See pp. 14, 29, N*

104. Is there any Committee or constituted body who act for that community?—There is a Committee who drew up the last draft Act.

105. Of whom does that Committee consist?—It consisted of Dr. Duff, as the representative of the Free Church; the Rev. Mr. Pearce, as the representative of the Baptist community; and Mr. Archibald Grant, an attorney, representing the Independents. That draft Act has received the sanction of all the parties interested. *See p. 25.*

106. Are you yourself a member of that Committee?—I am a gratuitous agent for that Committee.

107. But you are able to assure the Commissioners that your proposal embodies the wishes of the persons composing various religious denominations?—Yes, *they* have sent it home; and I can give extracts from their letters, showing that it is their own act, and sent to me to be presented to Parliament.

N.B.—See, in connexion with the above evidence (No. 103, *et seq.*), Appendix, Nos. 7 and 8, p. 23; No. 11, p. 25; No. 17, p. 32; No. 18, p. 33; No. 30, p. 45.

APPENDIX.

No. 1.

No. 1.

Case for Opinion on behalf of the East India Company.

See Evidence, Q. 2. Case, as to marriages of British subjects in India, by persons not in holy orders (embodying Opinions given in 1816 and 1818,) submitted, in 1840, to Sir John Dodson, the Queen's Advocate, to the Attorney General, (the present Lord Campbell, Chief Justice of the Queen's Bench,) and to the Solicitor General, (Sir Thomas Wilde, Chief Justice of the Common Pleas,) and to Mr. Serjeant Spankie, the Hon. East India Company's standing Counsel, in 1840.

Doubts, prior to 58 G. III., c. 84, as to the validity, for all purposes, of marriages in the East Indies, by ministers of the Church of Scotland, (Chaplains to the Company,) and according to the law of Scotland.

Opinion of Sir Christopher Robinson, and of Mr. Serjeant Bosanquet, as to such marriages, that they were not, for all purposes, valid.

Effect of a contract of marriage, *per verba de presenti*, (by law of England,) previous to 26 G. II., c. 33.

THE attention of Counsel is requested to the accompanying two several Despatches from the President of the Council of India in Council, to the Court of Directors of the East India Company, dated respectively the 3d December, 1838, and the 4th February, 1839, together with the several Enclosures therein referred to; by the former of which the attention of the Court is called to a Memorial from certain Dissenting Ministers on the subject of doubts which have been expressed of the legality of marriages performed by them, and applying for legislative interference to remove such doubts, as well with reference to the past as to the future, and by the latter of which attention is called to a communication from the Bishop of Calcutta, on the subject, expressive of his opinion of the entire invalidity of such marriages, and deprecating all legislative interference on the subject, at least until time shall have been granted to himself, and the Bishops of Madras and Bombay, for remarks and observations, and urging especially that the Archbishop of Canterbury may have time allowed to favour them with his advice upon the matters as they arise. [pp. 17, 22, 31, par. 56.]

Counsel will also be pleased to peruse the Ecclesiastical letter from India of the 27th May, 1835, with two letters from the Bishop of Calcutta, on the same subject, dated respectively the 21st August and 14th September, 1833, in which the Bishop enters at very great length, as well into what he conceives to be the law prevailing in India, in reference to the marriage of British subjects, as into what he conceives ought to be the law in that respect, and in the latter of which communications he gives a sketch or outline of the points which he thinks ought to be kept in view in preparing a Bill, for the purpose of clearing up the doubts which he has pointed out. Upon this, however, the Government of India remarked, that as the Law of Marriage was understood to be under the consideration of the British Legislature, and as the matter was one which it would obviously be improper to regulate locally without any reference to what might be determined on with regard to other British Colonies and Settlements, it had not been thought necessary to found any proceedings on the letters [Nos. 2—5, 13—15.]

Before we set out the Act which passed in the year 1818, in consequence of the doubts then expressed as to the validity of marriages which had been solemnized within the British Territories in India, "by ordained ministers of the Church of Scotland, as by law established," it may be proper to apprise Counsel that the doubts and difficulties which now form matter of discussion were submitted to the attentive consideration of some of the most eminent lawyers of the day, as well common lawyers as civilians, a copy of whose opinions we subjoin.

The first of the opinions to which we refer was given by the King's Advocate, (Sir Christopher Robinson), and the East India Company's then standing Counsel, Mr. Serjeant Bosanquet, on the 4th March, 1816, upon the question then proposed to them, "Whether marriages solemnized at Calcutta, Madras, and Bombay, by the Scotch chaplains (not being ministers of the Church of England), according to the Law of Scotland, would be valid," and was as follows:—

1. We are of opinion that the law by which marriages are governed in India is the law of England as it existed antecedent to the Marriage Act, 26 Geo. II. c. 33.

2. According to that law a minister of the Church of Scotland is not considered as a person in Holy orders: a marriage therefore celebrated in India by a minister of that Church can act only as a contract of marriage *per verba de presenti*, not as a marriage solemnized *in facie ecclesie*, or otherwise by a person in Holy orders.

3. By the law of England, previous to the Marriage Act, a contract of marriage *per verba de presenti* constituted a matrimonial engagement which bound the parties to some effects, and particularly so as to render a second marriage void whilst the engagement subsisted; but it did not carry with it all the rights which the law of England annexed to a marriage solemnized by a person in Holy orders. If the husband should die seized of lands in England, it seems that his wife would not be entitled to dower, (See Hale's Notes on Co. Lit. 33, A, Note 10, in Hargrave and Butler's edition; Perkins dower, 306. If the wife should die, it has been decided that the husband would not be entitled to administration of her effects, *Haydon v. Gould*, 1 Salk 119. Whether the issue of such a marriage would be legitimate does not appear to have been expressly decided. There seems to have been a disagreement on this point between some dicta of great authority in the common law, and the doctrines of Ecclesiastical Courts.

4. We cannot, therefore, advise that the marriages described in the Case are valid in the sense in which we presume the question is asked, that is, so as to afford a complete and undoubted protection to all the very important civic rights that are connected with lawful marriage.

4th March, 1816.

(Signed)

C. ROBINSON,
J. B. BOSANQUET.

This opinion having been much considered, it was resolved to take the opinion of ten of the most eminent Counsel of the day, and accordingly a Case (a copy of which accompanies these

papers, and to which the attention of Counsel is requested) was laid before the King's Advocate, the Attorney-General, the Solicitor-General, Mr. Serjeant Lens, Sir Arthur Piggott, Sir Samuel Romilly, Mr. Cooke, Mr. Serjeant Bosanquet, Dr. Swabey, and Dr. Lushington, for their opinion.

Sir Arthur Piggott and Sir Samuel Romilly, not concurring in all points with the other learned Counsel, nor entirely with each other, wrote separate opinions, which were as follows:—

(a.) I am of opinion that the Marriage Act does not extend to the East Indies.

The marriages mentioned in this Case are at least (as no person has denied) to many purposes valid marriages, and considering the place in which they were contracted, and considering also the provision and establishment which have been made there for the Church of Scotland, and the ministers of that Church, for the due performance of all its rites and ordinances, to the numerous members of it in India, I am inclined to think that the marriages contracted in India, and of which the marriage ceremony has been performed by those ministers according to the ordinances of their Church, and by them duly registered and regularly transmitted through the medium of Government, are to all intents and for all purposes valid marriages, but doubts are entertained by persons of experience and authority, whether they are valid and effectual marriages to all intents and purposes, and as many such marriages have been contracted in India, in perfect confidence of their validity, and as important civil and temporal rights in this kingdom, such, among others, as the legitimacy of families, the title to estates, the succession to other property, and the inheritance of dignities may hereafter depend upon the validity and full effect of such marriages, I think it highly advisable that some legislative provisions should, if possible, be obtained to remove all doubts, and to quiet such a question by declaring the presence and intervention of a priest in holy orders, at the contract of marriage were not essential to the validity of any marriage in any of the British possessions in the East Indies, for any purpose whatsoever, or by such other enactment as shall be deemed more proper for the purpose. If the *ex post facto* enactment should not be sufficient in its terms to prevent a question of such importance in civil society from again arising, it would probably be thought highly expedient to prescribe at the same time such regulations, *de futuro*, as would have that effect.

A. PIGGOTT,

Middle Temple, 14th February, 1818.

(b.) I think that the operation of the Marriage Act does not extend to the East Indies.

I am also of opinion that if the Common Law of England with respect to marriages was established in the East Indies, marriages solemnized at Calcutta, Madras, and Bombay by the Scotch chaplains, according to the forms of the Church of Scotland, though valid and effectual to some purposes, did not confer all the lawful rights of marriage. Whether the Common Law of England with respect to marriages ever was established in the East Indies is a question upon which I entertain much doubt, and it appears to me to be highly expedient that the Legislature should be resorted to, to remove all doubts upon the validity of such marriages as have already been solemnized, if there be any just foundation for those doubts; and if not, and it should be held to be clear that such marriages are not for all purposes effectual, by positive enactment to make them so, and to settle the law upon this subject for the future.

SAMUEL ROMILLY,

Lincoln's Inn, February 21, 1818.

(c.) 1. We are of opinion, that marriages of British subjects in India are governed by the law of England, but that the particular provisions of the Marriage Act, 26 Geo. II., c. 33, do not extend to India.

2. That marriages celebrated in India by ministers of the Church of Scotland are not to all purposes a legal marriage.

3. That such marriages are binding upon the parties, so that a subsequent marriage by either during the life of the other with a third person would be void.

4. That such marriages in Courts of Common Law would be considered as marriages *de facto*, and would entitle the husband *de facto* to maintain personal actions in respect of the property of his wife, but not real actions.

5. That the wife would not be entitled to dower or to bring an appeal of death, or the husband to curtesy of lands in England.

6. That it is at least doubtful whether they would be entitled to administration of each other's goods, or whether the children of such marriage would be entitled to inherit dignities or lands in England, or to administration of the personal property of their parents; or whether, in case of a second marriage, an indictment for bigamy could be maintained.

7. That as doubts have prevailed upon this subject, it is highly expedient that an Act of Parliament should be obtained to legalize such irregular marriages as have already taken place, and to declare the law for the future.

CHRISTOPHER ROBINSON.
S. SHEPHERD.
R. GIFFORD.
JOHN LENS.

WILLIAM COOKE.
J. B. BOSANQUET.
M. SWABBY.
S. LUSHINGTON.

February 24th, 1818.

No. 1.

Sir Arthur Piggott's opinion favourable to the validity of marriages (to all intents and for all purposes) solemnized in the East Indies by chaplains according to the rites of the Church of Scotland, and duly registered.

Legislative enactment suggested—that intervention of a priest in holy orders not essential to a marriage in India.

Sir Samuel Romilly's opinion, that such marriages did not confer all the lawful rights of marriage. Whether the Common Law of England with respect to marriages ever was established in the East Indies.

Opinion of the King's Advocate, the Attorney-General, the Solicitor-General, Mr. Serjeant Lens, Mr. Cooke, Mr. Serjeant Bosanquet, Dr. Swabey, and Dr. Lushington, as to the effect of such marriages.

Act of Parliament highly expedient.

No. 1.

58 G. III. c. 84.
As to marriages in India by ordained ministers of the Church of Scotland, being chaplains of the Company.

In consequence of these opinions the 58 Geo. III. c. 84 was passed. It is entitled, "An Act to remove doubts as to the validity of certain Marriages had and solemnized within the British Territories in India." And after reciting that doubts had arisen concerning the validity of marriages which had been had and solemnized within the British Territories in India, by ordained ministers of the Church of Scotland as by law established, and that it was expedient that such doubts should be quieted, and that the law respecting such marriages should be declared for the future, it thus enacts,—

Declaration to be made by parties.

"That all marriages heretofore had and solemnized, or which shall be had and solemnized within the said territories in India, before the 31st day of December now next ensuing, by ordained ministers of the Church of Scotland as by law established shall be, and shall be adjudged, esteemed, and taken to have been and to be of the same and no other force and effect as if such marriages had been had and solemnized by clergymen of the Church of England according to the rites and ceremonies of the Church of England. And that from and after the said 31st day of December now next ensuing, all marriages between persons, both or one of such persons being members or member of, or holding communion with the Church of Scotland, and making a declaration to the effect hereinafter mentioned, which marriages shall be had and solemnized within the British territories in India, by ordained ministers of the Church of Scotland as by law established and appointed by the United Company of Merchants of England trading to the East Indies, to officiate as chaplains within the said territories, shall be and shall be adjudged, esteemed, and taken to be of the same and no other force and effect as if such marriages were had and solemnized by clergymen of the Church of England, according to the rites and ceremonies of the Church of England. Provided always, that from and after the said 31st day of December, no such marriage as aforesaid shall be had and solemnized till both or one of such persons, as the case may be, shall have signed a declaration in writing, in duplicate, stating that they, or he, or she, as the case may be, are or is members or member of or holding communion with the Church of Scotland by law established.

Minister shall certify the marriage, and shall deliver a duplicate of certificate to the party, and transmit another to the Secretary of the Presidency.

2. And be it further enacted, that the minister by whom such marriage shall be solemnized shall, immediately upon the solemnization thereof, certify such marriage by a writing under his hand in duplicate, subjoined to or endorsed upon the declaration in duplicate hereinbefore-mentioned, specifying in such certificate the names and descriptions of the parties between whom and of the witnesses in whose presence the said marriage has been had and solemnized, and the time and place of the celebration of the same; and such certificate in duplicate shall be also signed forthwith by the parties entering into such marriage and by the witnesses to the same. And the minister officiating shall deliver one duplicate of such declaration and certificate to the persons married, or to one of them, and shall transmit the other duplicate of such declaration and certificate to the Chief Secretary of Government at the Presidency within which such marriage shall have been had and solemnized."

Remarks on 58 G. III., c. 84.

It may not be inappropriate to notice, with reference to the subject of this Act, that although its preamble recites the expediency of declaring the law respecting such marriages for the future, its enacting part does no such thing; it does indeed (after declaring all past marriages in India solemnized by ordained ministers of the Church of Scotland to be valid) enact that future marriages of the same kind shall be good if solemnized with certain preliminary declarations, but it does not say that such marriages shall be invalid if those preliminary declarations are omitted; it provides also that "no such marriage shall be had and solemnized" till the declaration prescribed shall have been made, but does not say that the omission to make it shall be fatal to the marriage. It should seem that the parties disobeying the Act would be guilty of a misdemeanor, but not to follow that the marriage would be void. The Act seems to leave the law in all cases where marriages should be solemnized otherwise than under its provisions as it was before.

Omission of certain declarations not fatal to the marriage. See also Report II., p. 8.

4 G. IV. c. 91.

Marriages solemnized abroad, by ministers of the Church of England, in the chapel or house of the British Ambassador, &c., or within the British lines by any chaplain or officer, declared as valid as if solemnized in His Majesty's dominions.

The only other Act which appears to bear directly on the legality of marriages of the nature now under consideration, is one which passed in the year 1823, entitled, "An Act to relieve His Majesty's subjects from all doubt concerning the validity of certain marriages solemnized abroad;" and which, after reciting that it was "expedient to relieve the minds of all His Majesty's subjects from any doubt concerning the validity of marriages solemnized by a minister of the Church of England in the chapel or house of any British Ambassador or minister residing within the country to the Court of which he is accredited, or in the chapel belonging to any British factory abroad, or in the house of any British subject residing at such factory, as well as from any possibility of doubt concerning the validity of marriages solemnized within the British lines by any chaplain or officer, or other person officiating under the orders of the commanding officer of a British Army serving abroad," declares and enacts, "That all such marriages as aforesaid shall be deemed and held to be as valid in law as if the same had been solemnized within His Majesty's dominions, with a due observance of all forms required by law." [See also 11 and 12 Vict. c. 68, for facilitating the marriage of British subjects resident in foreign countries.]

Not to affect the validity of marriages solemnized beyond seas.

The Act then adds a proviso, that nothing therein contained shall confirm or impair, or anywise affect, or be construed to confirm or to impair, or anywise to affect the validity in law of any marriages solemnized beyond the seas, save and except such as have been or shall be solemnized in the places, form, and manner herein specified and recited.

We would notice, however, that an Act had previously passed (namely, on the 27th June, 1817) which although entirely local in its nature, being "An Act to regulate the celebration of Marriages in Newfoundland," may be properly adverted to here, as well on account of the language of its preamble which unequivocally assumed "that the law of England required

religious ceremonies in the celebration of marriage to be performed by persons in holy orders, for the perfect validity of the marriage contract;” as on account of the peculiarity of its provisions and its language in other respects. It is entitled, “An Act to regulate the celebration of Marriages in Newfoundland;” and after reciting that “a doubt has existed whether the law of England requiring religious ceremonies in the celebration of marriage to be performed by persons in holy orders for the perfect validity of the marriage contract be in force in Newfoundland, and by reason of this doubt marriages have been of late celebrated in Newfoundland by persons not in holy orders; and that great inconvenience and irregularities may arise if these doubts shall continue to prevail,” it proceeds to enact, That from and after the 1st day of January, 1818, all marriages had in Newfoundland shall be celebrated by persons in holy orders; and all marriages which shall be contracted or celebrated in Newfoundland contrary to this Act after that day, shall be and they are thereby declared to be null and void, with a proviso that nothing contained therein shall be construed to extend to any marriages that may be had under circumstances of peculiar and extreme difficulty, in procuring a person in holy orders to perform the celebration, and in which the law might on that account otherwise determine on the validity of such marriages. Provided always that in all such cases the circumstances of the case and the actual contract of marriage shall be certified on the oath of the parties before the magistrate nearest to the usual residence of the parties or either of them, or before some other person duly authorized by the governor or officer administering the Government at Newfoundland to administer such oath. And by the second section it enacts that nothing therein shall be construed to extend to marriages already had, or that shall be had previous to the 1st January, 1818, or to any marriages amongst Quakers, or persons professing the Jewish religion, where both the parties to any such marriage shall be Quakers or Jews.

The foregoing statute was repealed by the 5th Geo. IV. c. 68, which was to be in operation for five years, but has since been continued by the 10th Geo. IV. c. 17, and the 2nd and 3rd Wm. IV. c. 78. It enacts that all marriages which may hereafter be had in Newfoundland, shall be celebrated by persons in holy orders, except in the cases therein specially excepted; and makes other provisions, to which we take the liberty of calling the attention of Counsel.

The question of the extent to which the law of England may be considered to have been introduced into the British Settlements in India has been discussed at considerable length in the case of *Freeman v. Fairlie* (decided by Lord Chancellor Lyndhurst and reported in Moore’s Indian Appeal Cases, 305.) That Case decided that the tenure of land in Calcutta in the hands of British subjects, is to be considered with reference to the English law, and that a permanent interest in land, vested in an English subject, is of the nature of freehold property, and will not, therefore, pass by an unattested Will.

This decision, however, was confined to that particular question, and by no means sanctioned the position that the Law of England, even with reference to real property, had been introduced in all its branches into the British Settlements in India; and accordingly, it has been decided by the Privy Council in the recent case of *the Mayor of Lyons v. The East India Company* (1 Moore’s Privy Council Rep. 175), that that branch of the English Law which incapacitates aliens from holding real property to their own use, and transmitting it by descent or devise, has never obtained a footing in Calcutta.

It may not be inappropriate with a view to the question hereafter proposed, to trouble Counsel with the following sections of 3 and 4 William IV. c. 85, (the last Charter Act of the East India Company,) which gives certain legislative powers to the Governor-General of India in Council, viz. :—

§ 43. “And be it enacted, That the said Governor-General in Council shall have power to make laws and regulations for repealing, amending, or altering any laws or regulations whatever now in force, or hereafter to be in force in the said territories, or any part thereof, and to make laws and regulations for all persons whether British or Native Foreigners or others; and for all Courts of Justice, whether established by His Majesty’s Charters or otherwise, and the Jurisdictions thereof; and for all places and things whatsoever within and throughout the whole and every part of the said Territories; and for all servants of the said Company within the dominions of Princes and States in alliance with the said Company, save and except that the said Governor-General in Council shall not have the power of making any laws or regulations which shall in any way repeal, vary, suspend, or affect any of the provisions, of this Act, or any of the provisions of the Acts for punishing mutiny and desertion of officers and soldiers, whether in the service of His Majesty or the said Company, or any provisions of any Act hereafter to be passed in anywise affecting the said Company, or the said territories, or the inhabitants thereof, or any laws or regulations which shall in any way affect any prerogative of the Crown or the authority of Parliament, or the constitution or rights of the said Company, or any part of the unwritten laws or constitutions of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom or the sovereignty or dominions of the said Crown or any part of the said territories.

§ 44. “Provided always, and be it enacted, That in case the said Court of Directors under such control as by this Act is provided, shall signify to the said Governor-General in Council their disallowance of any laws or regulations by the said Governor-General in Council made, then and in every such case upon receipt by the said Governor-General in Council of notice of such disallowance, the said Governor-General in Council shall forthwith repeal all laws and regulations so disallowed.

No. 1.

57 G. III. c. 61.

Marriages to be solemnized in Newfoundland by persons in holy orders, save in excepted cases, by 5 G. IV. c. 68. See P. 19, par. 7.

Act not to affect marriages already contracted, or Quakers or Jews.

Extent to which the law of England may be considered to have been introduced into the British settlements in India.

3 & 4 W. IV. c. 85. The Governor-General in Council empowered to legislate for India, except as to matters herein mentioned.

If the Court of Directors disallow the laws, Governor in Council to repeal them.

No. 1.

All such laws and regulations to be of the same force as any Act of Parliament.

Restricting the power of punishing with death European subjects, &c.

§ 45. " Provided also, and be it enacted, That all laws and regulations made as aforesaid, so long as they shall remain unrepealed, shall be of the same force and effect within and throughout the said territories, as any Act of Parliament would or ought to be within the same territories, and shall be taken notice of by all Courts of Justice whatsoever, within the same territories in the same manner as any public Act of Parliament would and ought to be taken notice of; and it shall not be necessary to register or publish in any Court of Justice any laws or regulations made by the said Governor-General in Council.

§ 46. " Provided also, and be it enacted, That it shall not be lawful for the said Governor-General in Council, without the previous sanction of the said Court of Directors, to make any law or regulation whereby power shall be given to any Courts of Justice, other than the Courts of Justice established by His Majesty's Charters, to sentence to the punishment of death any of His Majesty's natural born subjects born in Europe, or the children of such subjects, or which shall abolish any of the Courts of Justice established by His Majesty's Charters.

For the guidance of the Court of Directors of the East India Company, your opinion is requested:—

Questions.

1. Whether marriages solemnized in the British Possessions in India, between British subjects, by persons not in holy orders, and not within the provisions of the statutes 58 Geo. III., c. 84, and 4 Geo. IV., c. 91, are valid and effectual for all or any and what purposes? [12 and 13 Vict. c. 68, as to marriage in foreign countries.]

2. Whether if such marriages be not valid for all intents and purposes, it is competent to the Governor-General of India in Council under the powers given by the 3 and 4 Wm. IV., c. 85, s. 43, to pass an Act which shall have the effect of giving them such validity; and that either prospectively only or retrospectively?

3. Whether in accordance with the recommendation contained in the opinion of the late Sir Arthur Piggott hereinbefore quoted, it will be desirable to endeavour to obtain some legislative provision, to remove all doubts, and to quiet the questions hereinbefore adverted to, by declaring that the presence and intervention of a Priest in Holy Orders at the contract of marriage were not, and for the future are not, essential to the validity of any marriage in any of the British possessions in the East Indies for any purpose whatever?

See p. 9.

Or, whether it will be expedient to adopt any other, and what course with a view to the quieting the doubts as to the past, and settling the question for the future?

OPINION.

1. We are of opinion that marriages solemnized in the British possessions in India by persons not in holy orders, and not within the provisions of 58 Geo. III. c. 84, and 4 Geo. IV., c. 91, are not valid marriages for many of the most important civil purposes; and we concur in the opinion set forth in this case, given in 1818 by many of the most eminent lawyers in every branch of English law in consultation on this subject. In this opinion the purposes for which such marriages would be ineffectual or of doubtful validity are specified, which it is unnecessary, therefore, to repeat.

The doctrine, indeed, that marriages may be good for some purposes, though not good for all, is very difficult to comprehend; and it is explained by a learned modern author to mean this,—that such marriages as those under consideration are in themselves invalid, and must so be found upon the point of legality directly raised, but that in certain forms of proceedings by particular parties, for particular purposes, and by the rules of evidence applicable to such forms of proceedings, inferences and presumptions may be admitted to give the effect of marriage, even contrary to the fact of legal marriage where strict legal marriage was not required to be proved. Perhaps, therefore, the more correct doctrine is, that such marriages are not in themselves valid for any purpose, as marriages in the Ecclesiastical Courts, (which the Courts of Common Law follow where the Ecclesiastical Courts decide directly on the point of lawful marriage independently of statute,) though under the old law, till altered by Act of Parliament, they constituted a *precontract*, by which a subsequent marriage might have been declared void.

2. We are of opinion that, by the powers of legislation conferred by 3 and 4 Wm. IV., c. 85, s. 43, the Council of India is competent to pass an Act or regulation to render marriages, in any form presented, valid in the British possessions in India, and consequently everywhere for the future. We have doubts, however, whether an *ex post facto* law made by a local and limited legislature, though operative within its own limits, would be effectual to supersede the rights of third parties in England; for instance, in a dispute with one whose legitimacy might depend upon a marriage illegal at the time and legalised only by such *ex post facto* law. As much ground of doubt and litigation might still remain, we think that an Act of the Imperial Parliament would be the most effectual for quieting all doubt and uncertainty respecting the past marriages in question, if the circumstances are deemed such as to call for its interference.

3. We do not think it necessary or expedient by any Legislative Act to declare as in this query suggested. It will be sufficient, if it is thought proper to legislate at all,

Marriages solemnized in the British possessions in India, by persons not in Holy Orders, and not within 58 G. III. and 4 G. IV. (see p. 10), invalid for important civil purposes. See page 9. On the doctrine that marriages may be good for some purposes though not for all, see Jacob's Roper on the Law of Husband and Wife, vol. ii. Addenda, p. 474, 481. &c. Ed. 1826.*

Expotion of that doctrine.

Council of India competent to legislate as to marriages in India, but an Act of the Imperial Parliament most effectual for quieting doubts.

* Mr. Jacob's learned disquisition is retained in a "Treatise on the Law of Husband and Wife," (1849) by J. E. Bright, Esq., Barrister-at-Law. See vol. ii, App. No. 1, p. 369.

to proceed as the Imperial Parliament and several of the Colonial Legislatures have done, to enact affirmatively in what form, and under what cautions marriages shall be contracted and solemnized. The Newfoundland Act 5 Geo. IV. cap. 68, referred to, and the English Marriage Act 6 and 7 Wm. IV. cap. 85, contain useful precedents for compiling a new marriage code, adapting of course the provisions to the state of society in India. It might be proper also to provide suitable penalties to be inflicted on persons, not authorized by the Act or Regulation, presuming to celebrate marriages.

We may add, however, the subject of marriage, being of universal concern, seems more proper for local legislation, and it would not be advisable for a local and limited legislature to enter upon it without great consideration and urgent necessity.

(Signed) J. DODSON.
J. CAMPBELL.
THOMAS WILDE.
N. SPANKIE.

Doctors' Commons, November 26, 1840.

No. 2.

Extract Ecclesiastical Letter from India, dated May 27, 1835.

WE beg to refer to two letters from his Lordship, dated respectively the 21st August and 14th September, 1833, in the first of which he brought to our notice the circumstance of a marriage having taken place in Calcutta, the ceremony being performed by Mr. Gogerly, a Protestant Dissenter of the denomination called the Independents, and at the same time laid before us an exposition of the law of marriage as it affects British residents in India. The Lord Bishop's second letter contains a sketch or outline of the points to be kept in view in preparing a Bill in Parliament for the purpose of clearing up the doubts referred to in his communication of the 21st August.

The whole subject of the law of marriage being understood to be under the consideration of the British Legislature, and the matter being one which it would obviously be improper to regulate locally, without any reference to what might be determined at other British colonies and settlements, it has not been thought necessary to found any proceedings on the letters in question.

No. 3.

From the Right Rev. the Lord Bishop of Calcutta to the Right Hon. the Governor-General in Council, dated August 21, 1833.

MY LORD,

I HAVE the honour to submit to your Lordship's consideration in Council the circumstances of a marriage lately contracted in Calcutta, for the purpose of requesting of your Lordship to take the whole question of the marriage laws as affecting India under your review, and of directing, if it should seem good to your Lordship, that the draft of a Marriage Bill for India should be prepared, to be transmitted home for the consideration of his Grace the Lord Archbishop of this province and the other proper authorities.

I need not premise that, in a country like India, the clear settlement of the law of marriage is a matter of incalculable moment, affecting, as it does, all the bonds of moral and domestic happiness, spreading in its consequences to every branch of the social, civil, and religious relations of families, and involving the rights of property and the order of legitimacy and succession.

The whole state of the law of marriage, as affecting British subjects in India, has been disturbed by the marriage lately celebrated, and forces upon my attention the uncertain and unsatisfactory, and indeed alarming, position in which multitudes of families are, and may be placed. It is this which has induced me now to address your Lordship, according to the best judgment I have been able to form, in a general and cursory manner, of the whole question of marriage, as contemplated by the law in a threefold light. It is in its origin a contract of natural law, and may exist between two individuals, although no third person existed in the world.

In civil society it becomes, further, a civil contract, regulated and prescribed by law, and endowed with civil consequences.

Lastly, in Christian countries the sanctions of religion are superadded. It thus becomes a religious as well as a natural and civil contract. The Almighty is made a party in the covenant, and the consent of the individuals pledged to each other is ratified and consecrated by a vow to God.

Under the safeguard of this threefold tie, the sanctity of the nuptial bed is placed by the ecclesiastical law, and in this threefold sense, and in no other, that law recognizes a marriage as valid and complete in all its incidents and consequences.

The statute of 26 Geo. II., c. 33 (commonly called the Marriage Act), altered not these essential points, though it added certain regulations which made void all contracts and espousals not followed by the solemnization of matrimony in the manner which it prescribed.

No. 1.

6 and 7 W. IV. c. 85.

Subject of marriage more proper for Imperial than local legislation.

No. 2.

See p. 8.

Ceremony of marriage in Calcutta, by an Independent.
Transmission to the Court of Directors by the Supreme Government in India of the two following letters on the subject of marriage, from the Lord Bishop of Calcutta.

No. 3.

First letter, in 1833, from the Lord Bishop of Calcutta, on the marriage law, in India, affecting British subjects.

Settlement of the law of marriage in India most desirable.

Ceremony of marriage in Calcutta by an Independent, p. 16.

Marriage in a threefold light.

26 G. II. c. 33.

- No. 3. This Act, however, extended not beyond England and Wales. Even Scotland remained under the old canonical law. 8
- Letter from the Bishop of Calcutta, August 21, 1833. Marriage law in India. The law, therefore, which governs British subjects resident in any British settlement, is the ecclesiastical law received in England before the passing of the Marriage Act. 9
- What is this ecclesiastical law? This is the first question, as it is this law which, I conceive, has been infringed by the late marriage. 10
- I am instructed and believe that this law is not the canons of 1603 (except so far as they incorporate a part of it), but the old canon law or ecclesiastical code of the realm of England, expounded according to the concurring judgments of the best authorities. 11
- Old Canon Law of England. This ecclesiastical code consists partly of the civil or ancient Roman law, partly of canons and constitutions confirmed by 25th Henry VIII., partly of common law, and partly of statute law, which latter includes the rubrics in the Book of Common Prayer, and the marriage office. 12
- Subject to this law every British subject comes out to India, and under the bonds of that law he remains, so far as it regulates any parts of his transactions and contracts, of which marriage is pre-eminently one. 13
- The clergy are yet more completely under its obligations (and of those of the canons of 1603 also, from which the laity, except as it incorporates parts of the old law, are exempt), as all their official acts are directed by its prescriptions, and they are as much and as fully under the whole ecclesiastical law in India, as they were before they quitted England. 14
- What statutes, then, modify the ecclesiastical law affecting marriages in India? This is the next inquiry. 15
- 58 G. III. c. 84, supra, p. 10. I am instructed that there are but two, the 58th Geo. III., c. 84, and the 4th Geo. IV., c. 91 (passed in the years 1818 and 1823) and that these legalize certain marriages, or remove doubts concerning them, and thus take them out from the operation of the law which before bound such marriages as well as others, and which would but for those Acts have bound them still. 16
- By the first of these statutes marriages are declared to be valid if celebrated by chaplains of the Honourable the East India Company, being ministers of the Established Church of Scotland, between persons one or both of whom are members of that church. A declaration in duplicate is to be solemnly made to that effect, one of which, endorsed with the names of the parties, witnesses, time and place of celebration, &c., is to be transmitted to the Chief Secretary of Government at the Presidency. 17
- In this Act as slight a departure as possible is made from the ecclesiastical law, as respectively received in England and Scotland (for they differ), and the natural, civil, and religious branches of the contract as nearly as possible preserved. 18
- 4 G. IV. c. 91, supra, p. 10. The other statute (1823) enacts, that all marriages solemnized abroad by a minister of the Church of England in the house of a British ambassador, or in a factory or house of a British subject residing in such factory abroad, and likewise (which is the important point for my present inquiry) all marriages solemnized within the British lines by any chaplain or officer, or other person officiating under the orders of the commanding officer of a British army serving abroad, shall be valid. 19
- Both these Acts were remedial of doubts subsisting concerning a variety of marriages already solemnized in India and elsewhere. The Acts specify these doubts in their preambles; and the latter declares that it in nowise confirms or impairs, or in anywise affects other marriages solemnized abroad. 20
- Those "other marriages solemnized abroad" include, of course, all but the excepted and exempted ones above provided for, and leave them where they were before—in the hands of the ecclesiastical law of England. 21
- By law of England, marriages not performed by a minister episcopally ordained, incomplete. This law of England, as I am instructed and believe, holds that until a matrimonial contract be sanctioned by a religious ceremony performed by a person in holy orders, it is incomplete; it does not constitute lawful matrimony, and does not confer the civil rights incident to that state.* 22
- So far it concurs with the old canonical law of Christian Europe. 23
- But the law of England holds that no persons are in holy orders but those episcopally ordained according to the Book of Common Prayer, and that no religious ceremony is valid but that prescribed in the same Books, and that no marriage is lawful except banns have been duly published, or a licence from the episcopal authority has been obtained. In these respects the law of England is for substance the same as that which prevails in other Christian nations, though incidentally differing from it and modifying its provisions. 24
- Jews and Quakers, infra, p. 26, par. 14. The law of England, moreover, extends an indulgence to three classes of persons with regard to marriages. Jews and Quakers are allowed to celebrate marriage agreeably to their own forms, the first as out of the pale of Christianity, the second as denying the lawfulness of an oath. 25
- Roman Catholics. Roman Catholic marriages are also made valid, as their priests' orders are episcopal and good, and the three essential branches of the matrimonial bond—the natural, the civil, and the religious—are preserved. [See Report, par. 7, 20, and infra, p. 29, par. 26, 32.] 26
- The gist of the question, then, which I have the honour of submitting to your Lordship in Council on the present occasion is this: is a contract of marriage between competent parties, and before sufficient witnesses, but without a religious solemnization according to the rites of the Church of England, a valid and complete marriage, the case being, of course, that of British subjects, and not falling under the provisions of the particular indulgences I have just mentioned on the question thus narrowed. I am instructed to say that the latest authorities hold that such a contract is not a valid marriage to all purposes, though it is to some; such a con- 27

* See 6 and 7 Will. IV., c. 85, "for marriages in England," cited at p. 3, § 30; p. 13; at p. 22, s. 3; at p. 25, s. 3; at p. 27, par. 11, and at p. 30 par. 39. Also 6 and 7 W. IV. c. 86, for Registration.

- tract gives no right, except to call for a performance of the terms of it by actual solemnization. A contract is a part, and only a part, of legal matrimony.
3. What may be the propriety of extending the indulgence of the legislature to other classes of persons than members of the Scotch Established Church, soldiers within the lines of cantonments, Roman Catholics, Jews, and Quakers, it is not for me to say. The moment such a statute of indulgence should be enacted, I can only assure your Lordship I shall cheerfully submit to the laws of my country with regard to it. I am, however, bound by oath to administer the ecclesiastical law as it now exists and is received in England. By that law all marriages not solemnized according to the rites of the Church, and by a person in holy orders, and not excepted by the statutes I have so often referred to, are not legal and complete marriages: they are civil contracts, and civil contracts only.
3. A marriage that would not have been held a valid and complete marriage in England before the Marriage Act of 26 Geo. II. is not a valid and complete marriage in India now.
3. A matrimonial contract is, I am informed and believe, essentially distinct from a marriage solemnized in "facie ecclesiæ" by a person in holy orders. Such a contract does not confer on the woman the right to dower, on the man the right to the woman's property, or on the issue the rights of legitimacy; nor does it render a subsequent marriage with a third person *ipso facto* void at law, though it forms a ground for the sentence of annulling it. In short, it does not confer conjugal rights, and in common law has no effect, though in some cases, where the parties have lived together and have been reputed man and wife, this may be sufficient evidence for the purposes of some actions in which strict proof is not required.
1. Such is the opinion of Mr. Jacob,* the author of the latest standard collection of authorities on the ecclesiastical law subsequent to the famous judgment of Lord Stowell in 1811,† and to the opinion of Dr. Lushington (1821), and the decision of 11 out of 12 counsel to whom the question was referred about the same time by the Honourable the East India Company. If it should, however, appear, that all the authorities of a preceding date concur with and are confirmed by this last standard opinions of 1826, the united testimony will be allowed to establish what I am now maintaining—that a contract without a religious solemnization is not to all purposes a valid marriage.
2. The great judgment of Lord Stowell held that a contract "per verba de præsentibus," as it is termed (in opposition to a contract "per verba de futuro"), was a valid marriage so far as to vitiate a subsequent marriage with a third person, but did not determine, as I am instructed, that it conferred the civil rights which are incident to a complete legal marriage. That judgment, moreover, proceeded chiefly on the "lex loci," the law of Scotland, the woman being a native of that country. The general ecclesiastical law of Europe, and the particular law of England previously to the Marriage Act, were only touched on briefly and in passing, and what his Lordship delivered on these is not considered to disagree with the received exposition of the law of marriage as above stated.
3. It has been supposed, indeed, that this judgment of Lord Stowell, if it be considered as a direct and full explication of the ecclesiastical English law before the Marriage Act, would leave room to doubt whether a matrimonial contract without religious solemnization was not valid to some, if not to all purposes, besides that of vitiating a subsequent marriage. But the general conviction and belief, under the best instruction, is, that Lord Stowell's opinion does not disagree with the stream of authorities (collected by Mr. Jacob) when maturely weighed in connexion with the occasion on which it was delivered; and the judgment in which it terminated.
4. The next circumstance which I have to mention will much confirm such conclusion.
5. Six or seven years after Lord Stowell's judgment, doubts were entertained whether marriages celebrated in India, by the Rev. the Scotch Chaplains in Calcutta, on the footing of the supposed validity of contracts without religious solemnization, were good and binding to all purposes. These doubts were considered of so serious a nature, that the opinion of 12 eminent counsel was taken by the Hon. the East India Company. On that occasion, all the 12, with one exception, concurred in determining that marriages, without solemnization by a priest, were valid to some intents and purposes, but not to all; that marriages in the British dominions in the East Indies, were governed by the same law which prevailed in England prior to the Marriage Act; that they are binding on the parties, and render void a subsequent marriage; that the children would be to most purposes legitimate: but as there was no priest to perform the ceremony, there are certain rights connected with real property, to which, according to a long series of old cases, the parties would not be entitled.
6. On these grounds, I presume the Act of 1818, before referred to, was enacted.
7. The opinion entirely agrees with Lord Stowell's judgment, as to the operation of a contract on a subsequent marriage; but contradicts it, if it be supposed to hold that such contracts are to all purposes valid.
8. A further opinion of Dr. Lushington, an eminent ecclesiastical lawyer (now chancellor of the diocese of London, by the appointment of the present Archbishop of Canterbury, when Bishop of that see), is confirmatory of the above. He decided that parties (a British officer being one), whose marriage had been celebrated by a military officer at Bombay, in a place where no person in holy orders resided, ought to be re-married by a priest, on the grounds above enumerated, and held by the 11 counsel two years before, of whom he, Dr. Lushington, was one; and the marriage was again solemnized accordingly, by a priest, notwithstanding the remonstrance of the Recorder of Bombay.
9. Such, my Lord, is the plain state of the law as governing marriages in India, as it appears

No. 3.

Letter from the
Bishop of Calcutta.
August 21, 1833.Marriages are not ac-
cording to the rites of
the Church by a per-
son not in holy orders.Effect of such mar-
riage.

See p. 8, et seq.

Contract of marriage
per verba de præsentibus.Opinions of Counsel,
supra, pp. 8, 9.

* See Roper's, "Husband and Wife," vol. ii., p. 455; and Bright's Treatise, (1849), vol. ii., App. No. 1.
† Dairymple v. Dairymple, 3 Consistory Reports, p. 54.

No. 3.

Letter from the
Bishop of Calcutta.
August 21, 1833.

to my understanding, after reading all the books on the subject to which I have access, especially Blackstone's Commentaries, Burn's standard work on the Ecclesiastical Law, and others.

The last authorities to which I have so often referred, are collected and arranged with great care in "Roper's" law of husband and wife; and the judgment of Lord Stowell is there shown to coincide with those authorities.

If these are fairly cited and argued, which I presume, and am assured is the case, then the question is no longer a doubtful one. Contracts of marriage are not marriage in all respects and to all purposes.

But supposing I may be mistaken in the minute legal accuracy of this question in its wide ramifications (not being a lawyer), I propose the matter to your Lordship as one in uncertainty at least, and as requiring a new Marriage Act to remove such doubts.

Your Lordship in Council may naturally ask me, what are the opinions of the Advocate-General, and others, in eminent station or practice in the law? My reply is, I have not been able to obtain their full opinion on the case in all its bearings. These learned persons appear to me, from an honourable feeling, to shrink from uttering any opinion that might possibly disturb the minds of innocent parties in all parts of India. I do not aver this; but it seems to me to be the case. They tell me, however, generally that such marriages are good; that I have no remedy, except the ordinary feelings of mankind, which would lead them to shun all uncertainty in so important a transaction; and that it would be highly inexpedient, publicly, to stir a question which might wound many susceptible minds, especially those of females, without adequate cause.

I should, therefore, never have thought of bringing this grave question before your Lordship in Council at this particular juncture, when the agitation of the East India Charter renewal at home occupies every mind, and when new enactments may be anticipated, if nothing more than ordinary had occurred. Now marriages celebrated in India without religious solemnization, though not covered by the exempting statutes, yet as they rested on usage, and were palliated by the fact of there being no resident clergyman, would not have been noticed by me. I should have continued to hope that they would be included in the next legalizing act that might pass at home.

But a new case has presented itself. Two British subjects are married by a person not in holy orders, on a licence which imposed the express condition of the ceremony being performed by a priest, and, according to the rites of the Church of England. This marriage is celebrated in this manner without any plea of necessity, any usage, any precedent, so far as appears. It is celebrated in the heart of Calcutta, with the cathedral and its clergy within view. It is celebrated by a person long resident in the country. It takes place in a private meeting-house, in the presence of numerous witnesses of various denominations. It is published in the newspapers. A war of words is excited, and the most vehement attacks upon Christianity and the Church of England are made; an imaginary triumph is gained, and a great scandal is created, for the clergy abstain from entering on a debate which might throw all India into confusion, if the truth were honestly known.

The case is the more improper, as the marriage was celebrated by a person reputed and called a missionary, between parties who are also considered and held as missionaries, and who were doubly bound to avoid any infraction of the usages, to say nothing of the laws of their native country. The transaction involved also the assumption of a religious solemnization by a priest, when the missionary who officiated must have known that in the eye of the law the assumption was false and illegal. It tended also to impress the same delusion on the numerous persons who were present.

The whole was aggravated by the three missionary instructors being supported by a society which professes to be friendly to the Church of England, which admits clergymen, as well as others, into the number of its teachers, which regards with equal approbation the doctrine and discipline of all churches, and which collects subscriptions, and has sermons preached in parochial churches in England.

The door is thus thrown open. If one person not in holy orders in the eye of the law may celebrate marriage in places where chaplains reside, and may violate with impunity every condition of the licence on which he professes to act, everybody else may. What is to prevent clandestine marriages of all kinds? What the seduction of young Europeans by natives, or East Indians, or Portuguese? How is the age of parties to be ascertained? How are the degrees of consanguinity to be guarded? What is to give publicity, solemnity, consent of parents, propriety to this most solemn of all engagements; and where is the lawful register of such contracts to be deposited? And what is to become of the questions of legitimacy, inheritance, and a thousand others affecting property?

In short, if this example is to be followed, and it may be followed all over India, a flood of vice and disorder, the ruin and misery of the young, the disturbance of family relations, the wanton riot of headstrong passion and mis-rule, and the contempt of the religious vow of marriage, may break in upon us.

Having the honour to be intrusted with the superintendence and jurisdiction over the church in this diocese, and being bound by the most solemn obligations to administer the ecclesiastical law as it is received in the realm of England, I take the liberty of entering my protest against this unnecessary, as it appears to me, and dangerous innovation. What I complain of is, that this is the first public example of the violation of the usages of this settlement, by the celebration in this city of a marriage in a manner contrary to the stipulations of the licence, and doubtful and uncertain in its validity, being void of the due religious sanction.

I have the honour, therefore, of soliciting at your Lordship's hands, with the advice of your Council, the only preventive for future disorders which I now contemplate—the preparation of

Ceremony of marriage in Calcutta, by an Independent; and without any necessity or usage. See p. 13, No. 2.

Effect of such a violation of law.

a marriage law for India. Should, indeed, similar irregular cases be multiplied, it may become my duty to appeal to your Lordship for aid and support, according to the tenour of His Majesty's Letters Patent, in pursuing such proceedings as the ecclesiastical law may prescribe. But at present, I forbear. I am anxious to allow the public mind to resume its tranquillity. The newspapers are now silent. Public and angry discussion is not the tribunal before which such a cause can be pleaded. I seek only for as speedy a settlement of this most weighty matter as may be, by the competent authorities at home.

2. It is not for me to suggest to your Lordship in Council the course which it might be most expedient to pursue. If your Lordship should deem it right to direct a draft of a Bill to be drawn for the consideration of his Grace the Archbishop, I shall most readily assist in such an undertaking, which I conceive might be sketched in a few days', or even hours' time. If any other method should appear better, under the circumstances, I shall be equally at your Lordship's command.
3. At all events, I trust I shall stand excused with your Lordship and the Hon. the Supreme Council, for calling the attention of Government to the circumstances of a case which has opened again all the doubts and uncertainties attaching to this question, and which, being palliated by no plea of necessity, seems to bid defiance to the pious, and solemn, and reasonable deference due to the laws, so long as they are unrepealed, of our native land.

I have, &c.,

Palace, Calcutta, August 21, 1833.

(Signed) DANIEL CALCUTTA.

No. 3.

Letter from the
Bishop of Calcutta,
August 21, 1833.

No. 4.

No. 4.

From the Lord Bishop of Calcutta to the Right Honourable the Governor-General in Council.
MY LORD,

Palace, Calcutta, September 14, 1833.

I HAVE the honour of acknowledging your Lordship's letter, received September 10th (of the date of August 26th), on the subject of marriages celebrated in India by persons not in holy orders, and in which your Lordship is pleased to promise your best consideration to any "draft of a Bill which I might think it expedient to propose for the purpose of clearing up the doubts referred to in my letter."

Second letter from the
Lord Bishop of
Calcutta, on the sub-
ject of Marriage Law
in India.
September 14, 1833.

2. I beg permission to state to your Lordship in Council, that I have not the temerity to suppose I can prepare the draft of a Bill on so difficult and important a subject, though the rough sketch or outline of the points desirable to be kept in view may, I think, readily be enumerated. All that I intended to promise to your Lordship was, to "assist in the work if your Lordship should deem it right to direct a draft of a Bill to be drawn for the consideration of his Grace the Archbishop." To render such assistance is the object of the letter which I have now the honour of submitting.

3. Before I proceed, however, I will beg permission to state to your Lordship, that all my reading and inquiries since I addressed my last letter (August 21st), have strongly confirmed the opinion I was then instructed to give, that marriages not solemnized by a person in holy orders, though valid as to the *vinculum* or bond, and at times called *ipsum matrimonium*, and held to constitute the full essence of marriage (to which the religious sanction was required in addition, as a matter of order), yet were not complete or valid to all those consequences and privileges which a marriage solemnized by a priest according to the ecclesiastical law insured and conveyed. Dr. Burn* goes so far as to say, in express terms, that even before the Marriage Act (26 George II.) "contracts not solemnized by a priest according to the form of the Church of England, were not attended with the same privileges as those legally celebrated." And in a solemn judgment, pronounced also before the Marriage Act, it was laid down as a point free from any doubt, that the intervention of a priest was indispensable to a marriage, all other celebrations being merely contracts, which, though termed *ipsum matrimonium*, and available for a variety of purposes, and good in the sight of God and man as to the indissolubility of the bond, did not confer the civil rights of property, or the power of suing for the restitution of conjugal rights in the Ecclesiastical Courts.† The elaborate and learned judgment of Lord Stowell, proceeding as it does on another question—the validity of a contract of marriage as to the *vinculum* or bond according to the *lex loci*, the law of Scotland, is yet so far from opposing, that it expressly confirms the general doctrine of the ecclesiastical authorities. His words are—"The common law certainly had scruples in applying the civil rights of dower, and community of goods, and legitimacy, in the cases of these looser species of marriage." I still, however, content myself with taking the lowest ground, and proceeding, in my present letter as in my last, on the assumption that there is at least a vagueness and uncertainty in the law of marriage which requires some new provisions.

By general Ecclesiastical Law of England, marriage not solemnized by a person in Holy Orders is incomplete.

Dalrymple v. Dalrymple, 2 Consist. Rep. 69-9.

4. The importance and even necessity of making such provisions for India will probably become more apparent daily. Your Lordship in Council cannot but have observed that the public journals have recommended their hardy assertions, though not one word has been uttered on the part of the clergy; and my confidential application to your Lordship is, of course, an inviolable secret. The truth is, the very letters written in defence of these irregular marriages admit almost all for which I contend; nor is it improbable that, in spite the silence and reserve which the clergy may impose on themselves, the real honest state of the case will become by degrees too obvious for concealment. How widely the disorders may ultimately spread your Lordship may easily predict, from the following passage of Dr. Burn (2 vol., 472):—"There would then be no occasion for licence or banns, for making oath or giving

* Per Sir E. Simpson, in *Scrimshire v. Scrimshire*, 2 Consistory Reports, p. 395.

† See Phillimore's Ed. of Burn's *Eccl. Law*, tit. Marriage, 2nd vol., p. 466, *et seq.*

No. 4.

Letter from the
Bishop of Calcutta,
September 14, 1833.

Causes of irregular
marriages in India,
and suggestions for
their remedy.

security that there were no legal impediments, but every one might do what was right in his eyes who should get himself admitted of a dissenting congregation.

5. Having offered these additional remarks on the general position of the important question, so far as I understand it, I have the honour to state, that the first evil to be remedied, and that which gives the occasion to all the laxity which has been connived at in India

I. Is that arising from marriages between parties residing where no person in holy orders can be obtained. The cases are, I believe, few, and will lessen as the number of the clergy increases, and is distributed wherever British subjects are found. But the evil exists, and is pressing.

II. A second irregularity is connected with the publication of banns, which if it takes place in India, whilst the relatives and friends of the parties are in England, or in churches at so great a distance from the abode of the parties as to defeat the ends of the publication, neither canonical nor efficient licences, with the accompanying declarations on oath, would in such cases be much more regular.

III. The usage which has prevailed for the few last years, arising from there having been no bishopric established in India, with regard to the issuing of marriage licences, will require in the next place to be examined. The English Ecclesiastical Law intrusts the issuing of marriage licences only to archbishops and bishops, or those representing them, and declares all other licences null and void; and though the decision of contested rights of an ecclesiastical nature, as divorces and other matrimonial causes, is committed to the Supreme Court of Calcutta by their charter, yet the spiritual authority of granting licences addressed to spiritual persons for the celebration of a highly spiritual act in the face of the church by a person in holy orders, must have fallen under the temporal power only from the necessity of the case, and not being specified in the charter would seem to have become at once the province of the See of Calcutta upon its being erected and recognized in India.

IV. The existing insecurity and irregularity of Marriage Registers is a fourth and lamentable inconvenience, which, however, admits of an easy remedy.

V. Doubts floating in the minds of innocent parties is another great and increasing evil, but will find its cure in a clause legalizing all marriages previously celebrated.

VI. Whilst new doubts will be prevented by another clause pronouncing all marriages contracted after such a day contrary to the provisions of the Bill invalid as to ecclesiastical and civil privileges. Such are the chief evils requiring, as I conceive, the medicinal hand of your Lordship in council, without disturbing the platform of things as fixed and acted upon at home, which I presume will not be called in question.

6. In proceeding to suggest such specific remedies for these evils as appear to me to be attended with the least inconvenience, your Lordship will naturally ask me in what manner I should recommend the new Act to proceed; I reply generally:—

I a. That as to the FORM AND EXTENT OF IT, I should recommend to your Lordship to innovate, as little as possible, on the Ecclesiastical Law of England, to leave untouched all the cases and classes of persons provided for already by special statutes, such as members of the Church of Scotland, soldiers within military lines, Roman Catholics, Jews, Quakers, &c. In a word, to take the order of things as administered at home; and without attempting to narrow or extend that platform (which would be to usurp the province of the Imperial Parliament) just to provide for the confessed anomalies of our situation here, neither launching out into a general marriage Act, nor incorporating and harmonizing all past enactments and possible improvements. The shorter and clearer the Bill the better so that it compasses its end. This is the general idea which I take the liberty of suggesting to your Lordship.

II a. I should in the next place, as it respects PRINCIPLES, be most desirous to preserve as nearly as possible inviolate the grand principle of Ecclesiastical Law in Christian states, and, indeed, a plain dictate of Holy Scripture, that matrimony is a religious as well as civil and natural contract. If it must be infringed at all, I would let this general principle be openly recognized, and the exceptions stand on the ground of hard necessity, and allowed for a time only. This is so important a point that your Lordship will excuse me if I pause to illustrate what I intend. I will first cite the words of Lord Stowell. "There can be no question that the legal nature of the marriage contract in this country had its entire root in the ancient canon law of Europe, not indeed, since the reformation, to the extent of that law which considered it as an absolute sacrament, but to the extent of considering it in each case as an act highly spiritual, consecrated by divine authority, and as such, indissoluble by human power for any cause whatever."* I may also quote a passage from Jacob to point out the difference between the laws of England and Scotland, which will illustrate the importance I would attach to the religious solemnization by a person in holy orders:—"The difference between the laws of England and Scotland may be ascribed partly to the different courses which the reformation took in the two countries, and perhaps, partly to the jurisprudence of the latter (Scotland) having been more influenced by the civil law. In Scotland the abolition of episcopacy introduced a different view of the nature of the sacerdotal office; the doctrine of the distinct and indelible character of the priesthood, and of the authority intrusted to them by a divine commission, derived through successive consecrations and ordinations from the apostolic ages, was not retained; and this, together with the change of the ecclesiastical jurisdiction, naturally led to the idea that the ministration of a clergyman could give no peculiar efficacy to a ceremony; and the opinion that marriage was merely a civil contract ultimately prevailed. In England the church departed less widely from its ancient doctrines; episcopal jurisdiction and ordination were retained, and the doctrine of the spiritual nature of marriage was never lost sight of. It is probable from the same cause that another important distinction between the laws of the two countries has

Principles for framing
a local Act as to mar-
riages in India.

Matrimony is a reli-
gious as well as civil
and natural contract.

arisen; the Scotch law allowing divorces, a vinculo, while that of England adheres to the doctrine of the indissolubility of marriage, a doctrine founded on the religious view of the subject.*

But it is on the more simple ground of moral influence and obligation that I chiefly place the importance, politically considered, of retaining the religious part of the marriage contract. The appeal to the Almighty. (2) The affecting considerations of our Saviour's love to his church, as expressly laid down by St. Paul. (3) The sanctity of the tie indissolubly formed in the face of a Christian congregation. (4) The appropriate psalms and lesson read from sacred Scripture, and inculcating the duties of the marriage state. (5) The participation of the Holy Communion enjoined. And (6), the benediction pronounced, after solemn prayers by the authorized minister of religion are all of incomparable importance in strengthening the obligation of a contract which is the seed and spring of all human society, the beginning of states, the source of the religious education of children, and the domestic peculiarity of the Christian faith. I venture to dwell on this principle, because it is a favourite notion of the present day to sink marriage to a merely civil contract—thus facilitating and multiplying the divorces which release from it, and sapping the very foundations of family purity and happiness.

3. This principle being admitted, the very few other remarks with which I need trouble Lordship follow of course, and are involved in it. The care of not desecrating the sacred services by authorizing, except in cases of necessity, the performance of them so far as they can be performed, by any other than a priest (ii.); an avoidance of everything that would render the presence of resident clergymen less necessary, and the erection of churches less important, and a (iii.) general caution against that extreme detriment which the lowering and depraving of divine ordinances from the preceding or like causes, in reference to the sanctity and spiritual nature of these rites, would occasion to the interests of the Christian cause in India, to such an extent; and with this general principle, and these observations, I would venture to suggest to your Lordship in Council, if it should meet your approbation, that a short Bill should be drawn in general conformity with them.

7. Some further assistance to this end may, perhaps, be rendered, if I proceed to notice such Acts of Parliament as involve some of the provisions necessary in the proposed Bill, and may furnish precedents, or, at least, hints for the construction of it. [See p. 13.]

1. The most important of these appears to be the 57th Geo. III., c. 51, intitled "An Act to regulate the Celebration of Marriages in Newfoundland." (1) It begins by reciting that a "doubt had arisen whether the law of England requiring religious ceremonies in the celebration of marriage to be performed by persons in holy orders for the perfect validity of the marriage contract be in force in Newfoundland." It then (2) enacts that "all marriages had in Newfoundland shall be celebrated by persons in holy orders. That "marriages (3) celebrated after 1st January, 1818, contrary to this Act, shall be void." It then proceeds (4) to enact that nothing herein shall extend to any marriages to be had under circumstances of peculiar and extreme difficulty in procuring a person in holy orders to perform the ceremony, and in which the law might, on that account, otherwise determine on the validity of such marriage; provided that in such case the circumstances and the actual contract of marriage shall be certified by an oath of the parties, before the magistrate nearest the place of residence, or before a person authorized by the officer administering the Government of Newfoundland to administer such oath. (5) It lastly declares that nothing herein extends to marriages had previous to 1st January, 1818, nor to marriages among Quakers or Jews, where both parties are Quakers or Jews (*See ante*, p. 11). This Act was repealed by 5 Geo. IV., c. 68, which is to continue in force for five years, and by which "any teachers or preachers of religion, licensed by the Governor or a Secretary of State, are empowered to celebrate marriages in the colony, in places where, by reason of the difficulty of internal communication, it may be inconvenient to attend at a church or chapel of the Established Church of England." These Acts may possibly furnish some hints for remedying the *first and most pressing evil* in India as affecting marriages, that of distance from a person in holy orders.

1a. The positive assertion of the necessity of religious solemnization by a person in holy orders to head the provisions and remove all doubts, may at least be safely followed in the Indian Bill. (2) The declaration that all marriages after a certain date celebrated contrary to the Act shall be void, may likewise be intimated, and for the same reason, to remove all doubt or misconception. (3) The application of the excepting clause will require, undoubtedly, more circumspection, but may, likewise, be in some degree adopted. It was only tried, it appears, for five years, in a thinly populated island, where there is no bishop, and where, during the winter months (there being no roads), internal communication is cut off, and where the instruction of the people is chiefly carried on by schoolmasters and catechists (laymen, and not in holy orders). The excepting clause, therefore, in the Indian Bill, will require modifications in proportion as our circumstances differ. We have here an episcopal see and three archdeaconries, with many chaplains, missionary colleges, and missionaries in holy order, capable of proceeding, if their numbers were increased, to all parts of the country, at all seasons. The Act, however, may still furnish important hints.

II. The regulation of *Banns* may readily be constructed from the 4 Geo. IV., c. 76, which repealed the Marriage Act of 26 Geo. II., c. 33. In lieu of the consent of parties connected with very young persons, especially if under age, and who, being generally in England, cannot readily be consulted, the approbation and permission of the Governor-General or Governor in Council might be required.

3. The *licences* ordinarily required where banns are not, or cannot be published, need only fall back on 4th Geo. IV., c. 76, where it is enacted "that no person shall, after 22nd July, 1822, be deemed authorized by law to grant any licence for marriages, except the Archbishop of

No. 4.

Letter from the
Bishop of Calcutta,
September 14, 1833.
Importance of a religious ceremony.
Ephes., c. 5, v. 22, 23.

Intervention of a priest except in cases of necessity.

See p. 20.

Anti, p. 11.
Newfoundland Marriage Act.

5 G. IV. c. 68, was continued by 2 and 3 W. IV. c. 78.

* Roper on Husband and Wife, vol. ii., p. 475, *in notis*; and Bright's Treatise, vol. ii., p. 398.

No. 4.

Letter from the
Bishop of Calcutta,
September 14, 1833.
Suggestions as to
Special Licences.

Canterbury and York, and the other bishops within their respective dioceses," the temporary usage from the necessity of the Supreme Court ceasing now that the proper spiritual authority has been created.

4. The special licences to be issued by the bishop to parties residing where no persons in holy orders can be obtained being new, would, undoubtedly demand the utmost care, so as to involve the least possible infringement on the general principles of the canonical law.

It should (1) rehearse the circumstances which create the necessity, especially as to the actual distance from a person in holy orders; it should (2) require the ordinary licence, with the usual accompanying oaths to be exhibited; it (3) should nominate the individual, being, if possible, a member of the Church of England, who should be appointed to witness the contract of marriage; it (4) should contain, or be accompanied with a printed form of contract, at the foot of which the names of the parties and of the witnesses should be inserted; and the (5) record should be transmitted to the next resident chaplain, with the due credentials, to be by him entered in his local register, and transmitted to the legal registrar of the diocese, as in other cases. (6) To assist in bringing all these details into practice, especially as to publication of banns, the bishop should be authorized, with the approbation of the Supreme Government (i.), to lay down and define ecclesiastical limits and (ii.) appoint churchwardens, clerks, and other necessary ecclesiastical officers, and (iii.) establish and promulgate forms of registry, the Government furnishing books for the same.

8. Having thus laid before your Lordship (with many fears and apprehensions on the difficulties involved in any question like this) (1) the evils which require specific remedies, (2) the extent and principle on which these remedies should be devised, (3) and the various Acts of Parliament likely to afford precedents or hints in framing the Bill for India, the path seems cleared for sketching out the chief provisions of the proposed Act itself. Almost every provision required in India may be copied, as it appears, from statutes already sanctioned on somewhat similar occasions, and, therefore, likely to meet the approbation of the Archbishop and other authorities at home. And, whilst a general Marriage Act, involving new principles, would be more difficult to draw up, and less secure of success, a brief Act, with specific remedies, proceeding on recognized principles, is, at once, of more simple composition, and may be considered as more certain of acceptance at home.

Sketch of the Chief Provisions of an Act to be intituled "An Act for Regulating the Celebration of Marriages in the Diocese of Calcutta."

Preamble copied from the Newfoundland Bill. *Supra*, p. 10.

This follows the Newfoundland Bill, and removes all doubts on GENERAL POINT OF LAW of Marriage.

This is merely executory.

This regulates BANNS.

This provides against rash marriages by Banns or Licence.

This affects the CLERGY only, and places under the Canon.

This legalizes all marriages already contracted.

This prevents FUTURE DOUBTS, as the former heals past ones.

This follows as near as possible the Newfoundland Act in the first part, and this is merely executory; the details will admit of easy alteration.

This follows the Newfoundland Act.

This is merely executory, but may be omitted perhaps.

WHEREAS doubts have arisen whether the law of England, requiring religious ceremonies in the celebration of marriage to be performed by persons in holy orders for the perfect validity of the marriage contract be in force in the Diocese of Calcutta:

1. Be it enacted, &c., that all marriages had in the diocese of Calcutta (except as excepted) be celebrated by persons in holy orders, by banns, or licence of the bishop, or of those exercising episcopal authority, his or their commissary or surrogate, who are empowered hereby to grant such licence the same as in other dioceses on oath; which licences shall direct the ceremony to be performed within canonical hours, unless specially authorized otherwise, and within such place of divine worship only as shall expressly be therein stated.

2. The bishop to appoint commissaries and surrogates for the purposes of the Act, and to issue commissions to administer oaths.

3. At all stations or places within the diocese having parochial limits, and a church or chapel to which a regular person in holy orders is licensed to officiate, banns be published as the canons direct, provided both the parties or either of them be resident thereat during the period of such publication, and they shall not have obtained a licence.

4. Writers or cadets not appointed to stations, or under age, to obtain the permission of the Governor-General in Council, or Governor in Council, before a licence is issued by the bishop.

5. Any person in holy orders marrying persons without such licence or banns shall be subject to suspension as the canon directs.

6. That marriage contracts celebrated in the diocese of Calcutta without religious solemnities before the passing of this Act be valid.

7. That marriages celebrated after 1st January, 183 , contrary to this Act shall be void as to all ecclesiastical privileges and incidents.

8. Nothing in this Act to extend to any marriages to be had under the bishop's special licence on account of circumstances of peculiar and extreme difficulty in procuring a person in holy orders to perform the ceremony, and in which the law might on that account otherwise determine on the validity of such marriage: provided that in such case the circumstances, especially the computed distance from a person in holy orders (which shall never be less than miles) shall be notified in the licence, and the contract of marriage be declared to be valid, as if it were solemnized with religious ceremonies by a priest, though it be only a contract, on account of the absence and difficulty of procuring a person in holy orders; and provided that the actual contract of marriage shall be entered into and be certified on the oaths of the parties, agreeably to the forms and instructions set forth in Schedule A. appended to this Act, before the magistrate or other proper officer (being a member of the Church of England, if such can be obtained) authorized by Government, and especially licensed by the bishop to this service, and provided an ordinary licence from the bishop be also obtained, as well as this special licence, which special licence the bishop is hereby empowered to issue.

9. Nothing in this Act to be construed to extend to marriages among members of the Church of Scotland, Roman Catholics, Quakers, and Jews, or others, for the celebration of whose marriages special Acts have already provided.

10. The bishop to be empowered, with the approbation of the Supreme Government, to make and pass regulations for the public registers of all such marriages (whether by special licence, licence, or banns), and of baptisms, and of burials not inconsistent with the canons, the Govern-

ment furnishing the books for the same, and with the like approbation to lay down and define ecclesiastical districts and limits for the better publication of banns, and the more adequate superintendence and regulation of the clergy, and Christian laity of the diocese as respects all such ministrations, and with the like sanction to appoint churchwardens, clerks, and other necessary ecclesiastical officers where and when expedient.

Letter from the Bishop of Calcutta, September 14, 1833.

11. This Act to be in force for ten years and no longer, and then to terminate and cease unless it be again enacted by authority of Parliament. [This follows the Newfoundland Act.]

SCHEDULE A.

A marriage contract, made, concluded, and entered into before G. H. (magistrate, officer, or otherwise), nominated, and approved by the licence of the Bishop of Calcutta, and appointed by the Governor-General in Council, this day of in the year of our Lord, 183 , in the archdeaconry of and diocese of Calcutta, between A. B. of , aged 21 years and upwards, and a bachelor, and C. D. of , aged 18 years, and a spinster (and E. F.* of guardian or next friend of the said C. D.) as follows:—

Schedule of Form of Contract.

Any other form may be adopted: this was taken from an old law book before the Marriage Act.

Whereas, the above-named parties, A. B. and C. D., have (with the consent of the said E. F., as the guardian or next friend of C. D., testified by his signing and delivering these presents, agreed upon a marriage to be had and perfected between them; and whereas, no priest or minister in holy orders is now resident or is within the distance of from in the archdeaconry and diocese aforesaid, and the same marriage cannot, by reason thereof, be had and solemnized in the face of the Church, or according to the rights of the United Church of England and Ireland; and it is out of the power of the said parties to obtain a priest or minister in holy orders to solemnize the said marriage. And whereas they have obtained the special licence of the Bishop of Calcutta, according to an Act of the year 183 , intituled an "Act, &c. &c.,"

to proceed to the said marriage before the said G. H., nominated in the said licence, in the presence of competent witnesses, whose names are hereunto subscribed, in manner and form following, that is to say—

* The said A. B., with his right hand taking the said C. D. by her right hand, and repeating these words. "I, A. B., above named, make oath before, and do in the presence of, the said G. H., and of the witnesses whose names are hereunto subscribed, declare that I take thee, C. D., above named, to be my wedded wife, to have and to hold from this day forward, for better for worse, for richer for poorer, in sickness and in health, to love and to cherish, till death us do part, according to God's holy ordinance, and thereto I plight thee my troth."

† The said C. D., with her right hand, &c., &c. are used in the form of solemnization of matrimony in the Common Prayers, down to the "troth.")

Sworn, signed, sealed, and delivered, at
aforesaid, by the said A. B. and C. D., before and in } A. B.
the presence of us, } C. D.
X. M., of
Y. Z., of

‡ Certificate of Magistrate. "I, G. H., above named, do hereby certify and declare, that the above marriage was voluntarily contracted and entered upon between the aforesaid A. B. and C. D., and the contract signed, sealed, and declared by aforesaid, in my presence; and I do certify, that having made due inquiry, and finding that no priest or minister in holy orders could be obtained to solemnize the said marriage at or within the distance of miles, and having received a special license from the bishop of the diocese to witness the said marriage, did, at the request of the said parties, administer to them the oaths and declarations above written, and did then transmit the record of the said marriage to the Rev. , being the chaplain nearest to the place, to be entered by him in the register-book kept for that purpose.

(Signed) G. H., Magistrate.

Sealed and delivered in presence of,
X. M., of
Y. Z., of

9. In concluding this long and anxious letter, I beg to assure your Lordship in Council, that if you should, on consideration, approve of any of the above suggestions, and should direct a Bill to be drawn accordingly, or if you should transmit them, or any part of them, after being modified according to your better judgment, to the authorities at home, to be submitted to the Archbishop of Canterbury, my object in this correspondence will be accomplished. Or if your Lordship should consider the subject to be too delicate to be thus summarily treated, and should prefer leaving the question to be decided by some general Marriage Bill sent out hereafter from home, I shall most entirely acquiesce in your Lordship's decision. I would only further venture to submit to the Supreme Government whether it may not become expedient (if the repetition of these irregular and uncertain marriages should occur), to notify to the public that a correspondence having taken place between your Lordship in Council and the Bishop, you deemed it right to caution British subjects from contracting marriages in any other manner than the Ecclesiastical Law of England, independently of what is termed the Marriage Act, clearly authorizes, as such marriages, though they might be valid in some important respects, were held by many authorities to be uncertain as to their ecclesiastical privileges and consequences. I confess I should deprecate, deeply the necessity of even so slight a notification on the part of your Lordship, but in the present temper of men's minds, and the agitation communicated from home by almost every arrival, and the avowed language of the public journals of Calcutta, it is impossible to say how soon such a necessity may arise.

A general Marriage Bill may be preferable, yet on a repetition of irregular marriages in Calcutta, interference of the Governor in Council may become expedient.

* If C. D. be 21, no need of E. F. being a party.

No. 4.

Letter from the
Bishop of Calcutta,
September 14, 1838.

In every event, I trust your Lordship will believe how unwillingly I have been dragged into this question by the new and inconsiderate marriage which gave rise to my first application, and how happy I should have been if the uncertainties of the marriage law had been allowed to rest till a calmer moment at home, and the settlement of the great question concerning the charter had enabled your Lordship to have submitted to the Archbishop and other authorities a proposition for a full and adequate revival of the Acts affecting marriages in this diocese.

I have, &c.,

(Signed) DANIEL CALCUTTA.

No. 5.

Not necessary nor
expedient for the
Supreme Government
in its legislative capacity
to consider the
above question as to
marriage.

No. 5.

Resolved—That it does not appear to be necessary or expedient for this Government to take into consideration in its legislative capacity the questions submitted by the Lord Bishop in the above letter, the whole subject of the law of marriage being understood to be under consideration of the British Legislature, whose laws will provide for colonial equally with marriages solemnized in the United Kingdom, and the subject being one that it would obviously be improper to regulate locally without reference to what might be determined at other colonies and settlements of the British empire.

(True extract.)

(Signed) H. TORRENS,

Officiating Deputy Secretary to Government.

No. 6.

No. 6.

To the Hon. the Court of Directors of the East India Company, Dated December 3, 1838.

HONOURABLE SIRS,

Letter to the Court of
Directors of the East
India Company, from
the Members of the
Legislative Council at
Calcutta, as to marriages
by Dissenting
Ministers, and the
expediency of a General
Marriage Act for
India, according to
the forms of 6 and 7
W. IV., c. 85.

A MEMORIAL having been submitted to us by certain dissenting ministers on the subject of doubts which have been expressed of the legality of marriages performed by them, and which have given rise to much anxiety and apprehension in a numerous class of people at this Presidency, for the removal of which doubts they have applied to us for a Legislative Act declaring the validity of such marriages, we have deemed it expedient, in consequence of the great importance of the subject, and the difference of opinion prevailing among legal authorities as to the necessity for legislation, to refer their memorial to your Honourable Court, and to suggest, that the opinion of your legal advisers having been obtained on the subject of this memorial, if it should appear that these doubts are well grounded, and the legality of such marriages in India may be disputed, you will give us your orders to prepare an Act, or will adopt such measures as may be deemed fitting to obtain an Act of the Imperial Parliament to legalize marriages performed by dissenting ministers in future, and to provide against the possibility of past marriages of this description being brought into dispute on the score of legality, in like manner as is provided by the Stat. 58 Geo. III., c. 84, with respect to marriages performed by ministers of the Scotch Church.

58 G. III. c. 84,
supra, p. 10.

Marriages by laymen.

2. At the same time it may be desirable to bring to the notice of your Honourable Court, that in consequence of the small number of clergymen, whether of the Church of England or dissenters, compared to that of civil and military stations in the Presidency of Bengal, as well as in other parts of India, many marriages are, and always have been, performed by laymen, magistrates, political agents, their assistants in charge of districts, and others stationed in various parts of the country at a distance from places which are the residence of chaplains or clergymen of any denomination. If the marriages performed by dissenting clergymen should be considered wanting in legality, those performed by laymen must, we presume, be in the same predicament; whilst marriages of the latter description may be deemed to be illegal, although marriages by dissenting clergymen may be legal. Under the circumstances in which the European society is placed in India, it appears to us that, for the purpose of removing all doubts, both as to the past and to future marriages of the nature adverted to, which have not been performed by a clergyman of any persuasion, it is highly expedient that a legislative enactment be passed that shall have the effect of extending the provisions of the 4 Geo. IV., c. 91, which appears to have been passed in order to meet a similar exigency.

4 G. IV. c. 91,
supra, p. 10.

3. In case it shall be thought necessary to legislate upon this subject, it appears to us to be advisable that a General Marriage Act for India should be passed, applicable to all persons now subject to the English common law as to marriages, upon the principles, and, as far as circumstances will permit, according to the forms of the recent English Marriage Act of 6 and 7 Will. IV., c. 85.

6 and 7 W. IV. c. 85,
1 Vict. c. 22.

Supra, p. 13.

4. In case you should desire an Act to be prepared by us, we should wish to receive your orders upon the nature of the Act, as to the point whether it should be confined to the particular inconvenience complained of or should be made more general.

We have, &c.,

W. MORRISON.

W. W. BIRD.

T. C. ROBERTSON.

A. AMOS.

Fort William, December 3, 1838.

(See also p. 26, No. 13.)

No. 7.

To the Hon. the President and Members of the Legislative Council of British India.

The Memorial of the undersigned Protestant Dissenting Ministers in India,

HUMBLY SHEWETH,

THAT, from the time of the establishment of the British power in Bengal, not only the clergy of the Established Church of England, but the clergy of the Scotch Church, of the Roman Catholic, the Greek and Armenian Churches, and of the various Protestant bodies dissenting from the Church of England, have respectively performed the ceremony of marriage in British India; and marriages solemnized by them have been recognized by society at large; and, so far as your memorialists have been able to ascertain, have never been questioned, either in the Supreme Court or any of the Company's Courts.

Your memorialists are Protestant Dissenting Ministers, and in consequence of doubts and apprehensions having been lately expressed as to the legality of marriages performed in British India by such dissenting ministers, and the legitimacy of the offspring of such marriages, much grief and alarm have been created in the religious communities to which your memorialists belong, and in the minds of certain of the members of such communities, who and whose relatives have been married by such dissenting ministers and others, have been constrained by the uncertainty in which the question is supposed to be involved, to apply (contrary alike to their religious principles and inclinations) to ministers of the Established Church for the performance of the marriage ceremonial.

Your memorialists have sought for advice as to the validity of marriages performed by dissenting ministers. Mr. Longueville Clarke is of opinion—"The marriages in British India by dissenting ministers are *bonâ fide* by law lay marriages, and consequently invalid." (p. 24.)

Mr. Robertson, the late senior Presidency chaplain, was of opinion, as appears by a letter addressed to Mr. H. Martindell, viz., that "a dissenting minister is not recognized in law, and his performance of a marriage ceremony is no more than your own. A marriage performed by him, like many in this country by magistrates, is illegal; that is to say, children by it are *illegitimate*, and cannot inherit, and the parties may take another partner without charge of bigamy."

The Advocate-General is of opinion—

"1st. That the Marriage Act of England does not extend to this country.

"2nd. That the question of marriage in this country resolves itself, therefore, into one of general principle.

"3rd. That (on the general principle) marriage is a natural contract, with which law can have little to do further than property is concerned.

4th. That, in looking at it in this light, the intervention of a priest in orders is not necessary to its validity."

Your memorialists, therefore, pray that an Act of the Legislative Council be passed, declaring the validity of all marriages which have been performed by the ministers of the several classes of Protestant dissenters in British India, and to provide against all further doubts on the subject, and for the registration of such marriages.

And your memorialists will ever pray, &c.

(Signed)

THOMAS BOAZ.
W. ROBINSON.
J. PENNEY.
WM. MORTON.

W. B. SYMES.
CHARLES PIFFARD.
THOMAS L. LESSEL.
JAMES BRADBURY.

No. 7.

Dissenting Ministers' Memorial, in 1838 (referred to in the preceding letter), in reference to doubts as to the validity of Marriages performed by them in India.

Opinion of Mr. L. Clarke.

Extract letter from Rev. F. Robertson.

Opinion of Mr. Pearson.

Prayer of Memorial.

No. 8.

No. 8.

From T. H. Maddock, Esq., Officiating Secretary to Government of India, to the Rev. T. Boaz, W. Robinson, J. Penney, W. Morton, W. B. Symes, Charles Piffard, T. L. Lessel, and James Bradbury, dated 3rd December, 1838.

GENTLEMEN,

IN reply to your memorial presented to the Honourable the President in Council, I am directed to acquaint you that a reference on the subject of the legality of marriages performed by dissenting ministers in India has been made to the Home authorities, who have been requested, in case of there appearing a necessity for the measure, to give the necessary directions for a legislative enactment to remove, with as little delay as possible, all doubts on the subject of the legality of such marriages.

I have, &c.,

(Signed)

T. H. MADDOCK,
Officiating Secretary to the Government of India.

Council Chamber,
3rd December, 1838.

Reply to the above Memorial.

No. 9.

No. 9.

MY DEAR PENNEY,

Lollisria Tirhoot, July 22, 1837.

I ARRIVED here this evening for the purpose of marrying our friend Mr. Fusselt to a Miss Finch, for which purpose I was written for; but this morning the mother of the young lady, to the great astonishment of Mr. Fusselt and others concerned, received the enclosed

Letter from a Dissenting Minister.

No. 9.

Remarks of Dissenting Ministers, on their power to perform marriage being doubted.

note from Calcutta, in answer to a question forwarded there as to the legality of dissenting ministers marrying parties. I need offer no comment upon Mr. Robertson's elegant composition; we are certainly much indebted to him, and can see what he, and such as he, would do if they had but the power. I forward the note, in order that you may do with it whatever you and the friends think ought to be done. I think he is liable to an action for libellous matter; he has, in the most sweeping manner bastardized and stigmatized the poor dissenters: when things are at the worst they will mend.

I am now further to beg you will, without a moment's delay, apply for the legal opinion of the first professional men at the Calcutta bar, and, if possible, forward it by return of Dâk, or at least the next, directed to Mr. Fussell, where they wish me to remain till this document arrives; and if a fee be necessary, kindly pay it, and I will have it forwarded to you immediately. Now my dear Penney do this soon, and if you can, sweat that illiberal and bigotted churchman. With kind regards to you and all friends.

Yours affectionately,
(Signed) HENRY BEDDY.

P.S.—I ought to have mentioned that the young lady's mother, though she had previously consented that I should marry the parties at the arrival of the document, demurred, and said she could not consent until something further was said or done: this opinion that I now send for is to satisfy her.

I think you ought to petition.

(Signed) W. S. MACKAY.

I see no other way of setting the matter at rest than by petitioning the Supreme Government.

(Signed) D. EWART.

Supra, p. 23, No. 7;
infra, No. 10.

I think dissenting ministers should go on and marry all that apply to them, notwithstanding Messrs. Clarke and Robertson's opinion. In the mean time the subject might be discussed at the breakfast meeting with a view to determine what steps ought to be taken. If dissenting ministers were generally to officiate at marriages, the Government would see the necessity of making a law in their favour.

(Signed) GEO. PEARCE.

No. 10.

Opinion of Mr. L. Clarke, that marriages by a Dissenting Minister, or by a magistrate are invalid.

Law of Marriage in India.

Dissenting Ministers are, by law, laymen.

Not so, Catholic Priests.
4 G. IV. c., 91.

No. 10.

I AM of opinion that a marriage in the East Indies, when the ceremony is performed by a dissenting minister, or a judge and magistrate; is invalid, unless it be celebrated within the British lines, under an authority from the Commander-in-Chief, according to the 4th of Geo. IV., c. 91. This of course only refers to British subjects who are natives of England or Ireland.

1. The decision regarding the *natt* and post *natt* in Calvin's case, Seventh Report, has long settled that no Act of Parliament extends to India since the first introduction of English law here in the 13th of Geo. I., 1726, unless that extension be specified in the Act itself; consequently the English Marriage Act, 26 Geo. II., c. 33, A.D. 1753, is not the law of this country. The law of marriage which prevails in India is the law which obtained in England previous to 1726; that is common law altered by two statutes, the 58 Geo. III., c. 84, relating to marriages between natives of Scotland by ministers of that church; and the 4 Geo. IV., c. 91, authorizing the solemnization of marriages within the British lines by *any person* officiating under the orders of the officer commanding the British army.

2. The following are the legal positions on which this opinion rests: by law, dissenting ministers are laymen, priests in orders being persons canonically ordained Bishops, whether Catholic or Protestant.

3. By the common law, priests in orders can alone perform the marriage ceremony between natives of England and Ireland. This was not the case previous to the Council of Trent, but it is stated in Bunting's case, Moore's Report, 170, "Le solemnization de mariages ne fut use en l'Eglise devant que le Pope Innocente le 3, co ordaine premes; Meslevant cest ordinance le Mariage fuit solemnize en tie forme," &c. &c. &c. The authority of this decree was never acknowledged in Scotland, but in England it has always been acted upon. This point I can put beyond a doubt; the 12 Charles II., c. 33, was past to legalize the marriages performed by laymen during the rebellion. In more modern times the 57 Geo. III., c. 51, was past to legalize similar marriages which had been inadvertently performed in Newfoundland, and in *Haydon v. Gould*, 1 Salk, 119 (A.D. 1710), the marriage of Sabbatarians by one of their own ministers was set aside as a lay marriage. Here then is the authority of Acts of Parliament, and the decision of the Court against lay marriages; and a dissenting clergyman is in law a layman, although a Catholic priest is not, *Lautour v. Teesdale*, 2 Marsh. (8 Taunt. 830 and 243). If the dissenting minister can obtain an order from the Commander-in-Chief, and will marry the parties within cantonments, the marriage will then be valid, but not otherwise. I have had occasion to consider this subject very often, and have spared no pains in my researches, not a little stimulated from an anxiety to make out the law different from what I find it to be; I wish it were otherwise, and I will willingly lend my aid to procure an Act of Council to alter it.

1st August, 1837.

(Signed) LONGUEVILLE CLARKE.

No. 11.

Proposed Act to be passed in India (framed apparently upon 58 Geo. III., c. 84, Sup. p. 10.) for Marriages by Protestant Dissenting Ministers.

Whereas doubts have arisen concerning the validity of marriages which have been had and solemnized within the British territories in India by ordained Protestant ministers dissenting from the doctrines and precepts of the Church of England as by law established. And whereas it is expedient that such doubts should be quieted, and that the law respecting such marriages should be declared for the future, Be it declared and enacted, and it is hereby declared and enacted, by the Right Honourable George Lord Auckland, Governor-General of India, in Council, that all marriages heretofore had and solemnized, or which shall be had and solemnized within the said territories in India, before the 31st day of December now next ensuing, by any ordained Protestant minister dissenting from the doctrines and precepts of the Church of England as by law established, shall be, and shall be adjudged, esteemed, and taken to have been, and to be of the same and no other force and effect as if such marriages had been had and solemnized by clergymen of the Church of England, according to the rites and ceremonies of the Church of England, and that from and after the said 31st day of December now next ensuing, all marriages which shall be had and solemnized within the British territories in India, by such ordained Protestant dissenting ministers, shall be, and shall be adjudged, esteemed, and taken to be of the same and no other force and effect as if such marriages were had and solemnized by clergymen of the Church of England, according to the rites and ceremonies of the Church of England, provided always that no marriage performed by any such ordained dissenting minister, after the said 31st day of December next, shall be valid, unless the name and place of residence of such dissenting minister shall have been previously to such marriage registered with the Secretary of Government in the Ecclesiastical Department at the Presidency within which he shall reside and officiate as such ordained dissenting minister, and such dissenting minister shall have obtained from such Secretary a certificate of such registry. And it is hereby enacted, that every such ordained dissenting minister shall be entitled to such registry and certificate, and it shall be the duty of such Secretary to make such registry, and deliver such certificate on the application of such ordained dissenting minister, in writing, stating his name and place of residence.

And be it further enacted, that the minister by whom such marriage shall be solemnized shall immediately upon the solemnization thereof, certify such marriage by a writing under his hand, in duplicate, specifying in such certificate the names and descriptions of the parties between whom, and of the witnesses in whose presence the said marriage had been had and solemnized, and the time and place of the celebration of the same; and such certificate in duplicate shall be also signed forthwith by the parties entering into such marriage, and by the witnesses to the same, and the minister officiating shall deliver one duplicate of such certificate to the persons married, or to one of them, and shall transmit the other duplicate of such certificate to the Chief Secretary of Government at the Presidency within which such marriage shall have been had and solemnized.

No. 11.

Proposed Act as settled in 1849, No. 36.

Marriages by any ordained Protestant Minister dissenting, &c., &c., to be valid.

No. 12.

Dissenters' Marriages.

1. This is a question of very great importance; I think it should be sent up to Lord Auckland, as he probably may be of opinion that it will be necessary to consult the Home authorities.
2. If there be a reasonable doubt whether the marriages in question are valid, I think an Act ought to be passed making them valid with as little delay as possible; whereas, if the doubt be an idle doubt, we should, by legislating, create much unnecessary excitement, besides incurring the imputation of ignorance.
3. The question is not merely confined to marriages of dissenters, it extends to marriages where the ceremony has been performed by magistrates. Mr. L. Clarke, it appears, regards all such marriages to be illegal, whereas our official adviser, Mr. Pearson, considers them legal. (*See ante*, p. 23, No. 7, and p. 24, No. 10.)
4. The question depends upon the point whether, according to the unwritten or common law of England, it was necessary that a marriage should be celebrated by a priest? and whether a dissenting minister, not being ordained by a bishop, be a priest for this purpose? I think that this point is more doubtful than would appear from Mr. Pearson's opinion, and the statute of 58 Geo. III., c. 84, respecting marriages by Scotch ministers in India, rather confirms those doubts. The best dissertation on the subject, which is to be found in the English law books, is in the Addenda to Jacob's edition of "Roper on Husband and Wife" (2nd vol., p. 445). The legal authorities are indeed not all adverted to in that dissertation, but it is elaborate, and written by a gentleman of high consideration at the English bar, and the conclusion arrived at is, that according to the law of England before the Marriage Act, a marriage not celebrated by a person in holy orders did not confer the rights of marriage, though, according to the ecclesiastical law (which perhaps may be considered as transferred to India), it gave a right to call for the performance of marriage by actual solemnization.
5. Were it necessary to determine the question immediately, I should advise giving the relief prayed for. But if the Supreme Council be satisfied of the existence of reasonable doubt respecting the validity of the marriages in question, it will next become a question whether we should not apply the like remedy to marriages performed not by dissenting ministers, but by magistrates and others; and further, whether we should not extend to British subjects in India the provisions, as far as they may be applicable, of the recent English Marriage Act.
6. Considering the importance not only of the question whether legislative interference at all is

No. 12.

Minute by the Hon. A. Amos, Dec. 3, 1838, on the subject of marriages performed by Dissenting Ministers and by magistrates

See note to p. 12

As to a marriage, before 26 G. II., c. 33, not celebrated by a person in Holy Orders.

6 and 7 W. IV., c. 85.

* Downing Professor of Law in the University of Cambridge.

No. 12.

See p. 32.

required, but also of that respecting the nature of the Act which it may be advisable to pass and the excitement to which such subjects are calculated to give rise, I should incline in favour of a reference to the Home authorities.

(Signed) A. AMOS.

Calcutta, December 3, 1838.

No. 13.

No. 13.

To the Honourable the Court of Directors of the East India Company.

HONOURABLE SIRS,

See p. 22, No. 6.

IN continuation of our Despatch, No. 20, dated the 3rd December last, we have the honour to forward the accompanying communication from the Right Reverend the Lord Bishop of Calcutta, containing his Lordship's sentiments on the subject of the memorial from certain Protestant dissenting ministers at Calcutta, praying that a legislative Act might be passed declaring the validity of all marriages performed by them, and providing against further doubts on the subject, and for the registration of such marriages, &c., &c.

Yours, &c.,

(Signed) W. MORRISON, W. W. BIRD.
T. C. ROBERTSON. A. AMOS.

Fort William, February 4, 1839.

No. 14.

No. 14.

From J. P. Grant, Esq., Officiating Secretary to the Government of India, to the Right Reverend the Lord Bishop of Calcutta, dated the 31st December, 1838.

MY LORD,

To the Lord Bishop of Calcutta, on the subject of the Protestant Dissenting Ministers' Memorial (p. 23), and embodying the letter of the Legislative Council, Appendix No. 6, p. 23.

I AM directed by the Honourable the President in Council, with advertence to a correspondence which passed some years ago between your Lordship and the late Government on the subject of a proposed Marriage Act for British-born subjects in India, to state, for the information of your Lordship, that a memorial from certain Protestant dissenting ministers, not of the Church of England, or the Church of Scotland, was received by the President in Council on the 27th November last, praying that a legislative Act might be passed declaring the validity of all marriages which have been performed by the ministers of the several classes of Protestant dissenters in British India, and providing against all further doubts on the subject, and for the registration of such marriages.

2. Thinking that the matter of this memorial was one of great importance, and advertent to the difference of opinion prevailing among legal authorities as to the necessity for legislation, the President in Council resolved to refer this memorial to the Honourable Court, and to suggest that the opinion of the Honourable Court's legal advisers having been obtained on the subject, if it should appear that the doubts were well grounded, and that the legality of such marriages in India might be disputed, the Honourable Court would favour the President in Council with orders to prepare an Act, or would adopt such measures as might be deemed fitting to obtain an Act of the Imperial Parliament to legalize marriages performed by dissenting ministers in future, and to provide against the possibility of past marriages of this description being brought into dispute on the score of legality, in like manner as is provided by the statute 58 Geo. III., c. 84, with respect to marriages performed by ministers of the Scotch Church.

Marriages by Laymen.

3. At the same time it was brought to the notice of the Honourable Court, that in consequence of the small number of clergymen, whether of the Church of England or dissenters, compared to that of civil and military stations in the Presidency of Bengal, as well as in other parts of India, many marriages are, and always have been, performed by laymen, magistrates, political agents, their assistants in charge of districts, and others, stationed in various parts of the country, at a distance from places which are the residence of chaplains or clergymen of any denomination. It was observed, that if the marriages performed by dissenting clergymen should be considered wanting in legality, those performed by laymen must, it was to be presumed, be in the same predicament; whilst marriages of the latter description might be deemed to be illegal, although marriages by dissenting clergymen might be legal. Under the circumstances in which the European society is placed in India, the President in Council recommended that for the purpose of removing all doubts, both as to the past and to the future, regarding marriages of the nature adverted to, which have not been performed by a clergyman of any persuasion, a legislative enactment should be passed that should have the effect of extending the provisions of the 4 Geo. IV., c. 91, which appears to have been passed in order to meet a similar exigency.

6 and 7 W. IV., c. 85.

4. The President in Council added, that in case it should be thought necessary to legislate upon this subject, it appeared to his Honour in Council to be advisable that a General Marriage Act for India should be passed, applicable to all persons now subject to the English common law, as to marriages upon the principles, and, as far as circumstances will permit, according to the forms of the recent English Marriage Act.

5. Deeming the matter to be pressing, and one that ought to be brought to a conclusion with as little delay as possible after the mooted of the questions involved in the memorial, the whole of the papers were transmitted to the Hon. the Court of Directors by the last overland mail, which was about to start when the memorial was received. It was consequently impossible to refer the matter previously for any observations which your Lordship might like to make

upon it. But if your Lordship should be desirous of forwarding any observations or suggestions to the authorities at home, connected with the subject of the memorial in question, the Hon. the President in Council will be happy to be the means of conveying the same to the Hon. the Court of Directors.

No. 14.

I have, &c.,

(Signed) J. P. GRANT.

Council Chamber, December 31, 1838.

Officiating Secretary to the Government of India.

No. 15.

No. 15.

From the Right Rev. the Bishop of Calcutta to His Honour the President in Council,
dated the 30th January, 1839.

SIR,

1. I HAVE the honour of acknowledging the letter of the President in Council, communicating to me that a memorial had been presented to the Supreme Government, which prayed that a Legislative Act may be passed, "Declaring the validity of all marriages which have been performed by the several classes of dissenters in British India, and providing against all further doubts on the subject, and for the registration of such marriages."

From the Lord Bishop of Calcutta, in answer to the preceding letter Jan. 30, 1839.

2. The Government is pleased further to advert to the cases of marriages celebrated in British India by magistrates and political agents, where no priest can by possibility be procured, under the sanction of the Governor-General, and to inform me that it has been suggested to the Honourable Court at home, to "procure an Act generally for British India, upon the principles, and, as far as circumstances will permit, according to the forms of the recent English Marriage Act.

Refers to Dissenters Memorial, suggesting an Act to be founded upon 6 and 7 W. IV., c. 85, 86.

3. The Government is good enough, moreover, to furnish me an opportunity for offering such observations and suggestions as may occur to me, and to assure me that the Hon. the President in Council will be happy to be the means of conveying the same to the Hon. Court of Directors.

4. I beg, in reply, to tender my sincere acknowledgments to the Supreme Government for this and all similar communications affecting the interests of morals and religion. Without the due support, indeed, of the Civil Government, no bishop of our Protestant Established Church can discharge satisfactorily those various spiritual and ecclesiastical functions in India which touch upon questions of secular right and the temporal Courts.

5. On my first perusing your Honour's important letter, the thought occurred to me that, as the reference home had already been made, I might better repose entirely on the wisdom and religious feeling of the Government, here and in England, on this grave subject, without entering at all upon the questions involved. Any measures proposed by the Hon. Court of Directors would, I was sure, be aided by the counsel of the ablest ecclesiastical authorities, and be based on the broad principles of ecclesiastical law and usage, and would reflect as slightly as possible, if at all, from those prescriptions of the canon law which have placed Christian marriage under the protection of the most solemn religious sanctions.

6. Unfeigned respect, however, for the authority of the Supreme Government has induced me to depart from this intention, and to attempt the hazardous duty of making some remarks on the pending questions, the immense importance of which, in such a country as India, cannot but awaken my liveliest solicitude.

7. My letters addressed to the late Governor-General in Council, of the dates of August 21st and September 14th, 1833, are in the hands of Government, and have been, I conceive, transmitted in due course to the Hon. Court of Directors. I will only proceed, therefore, to add some observations, in continuation of those letters, on the case as it now stands.

Supra, p. 13, of seq.

8. I would, in the first place, venture to submit that the present state of the law of marriage in India can in no sense be called doubtful. I believe I speak the mind of almost all the highest authorities when I say that the old canon law of Christian Europe, recognized in our ecclesiastical courts at home, binds British subjects here, except where special statutes interpose, or an overwhelming necessity is shown to exist as to some forms not absolutely and abstractedly essential to the sacred contract, though required to regulate marriage.

Additional remarks upon the Marriage Law in India,

9. Those special statutes are two only—that which sanctions marriage by the reverend chaplains of the Scotch Church, where one or both of the parties is of that confession, and that which authorizes marriages by any chaplain, or officer, or other person officiating within the British lines under the orders of the commanding officer of a British army serving abroad. (58 Geo. III., c. 84. and 4 Geo. IV., c. 91.)

58 G. III., c. 84,
4 G. IV., c. 91.

10. For parties not thus excepted the old canon law is understood to require that, in order to the full and certain enjoyment of all ecclesiastical privileges and advantages, their marriages should be celebrated by a person in holy orders, and in the face of the church.

11. Such, I have reason to think, is the law; for I need scarcely observe that the English Marriage Acts of 1752 and 1836 (26 Geo. II., c. 33, and 6 and 7 Will. IV., c. 85) are specifically confined to England. The repeal, therefore, of either of them cannot affect India.

12. But though the law stands thus, I have been instructed, I believe, that where a strict necessity can be shown, as, for example, the impossibility of obtaining a priest, the ecclesiastical Courts would protect such marriages. So again, if a *lex loci*, a law of the country, where a British subject is domiciled, can be shown, and it can be proved that a marriage was contracted *bonâ fide* according to it, the Courts will support the marriage. In like manner a marriage celebrated by a person pretending to be in holy orders and believed by the parties married to be in holy orders, would be protected; for "the parties," observes Lord Stowell, "could not ask for the minister's letters of orders, and could not distinguish forged ones should the orders be

Marriages, ex-necessitate, from the impossibility of obtaining a Priest, par. 25.

Hawke v. Corri.
2 Consist. Rep. 288.

No. 15.

Letter from the
Bishop of Calcutta.
Jan. 30, 1839.
Ruding v. Smith.
2 Consist. Rep. 391.

asked for and produced." On the question of the *necessitas rei* also, the same distinguished judge lays down "that the law of England did not say that its subjects should not marry abroad. The case before him, he thought, as nearly entitled to the privileges of strict necessity as could be;" language which seems to imply that an unavoidable defect in the forms of regular marriage, where all was done *bonâ fide*, would be covered by the Ecclesiastical Courts. [par. 25.]

13. The statute of 57 Geo. III., c. 31, confirms this conclusion, for, after declaring void marriages in Newfoundland not solemnized by clergymen, the statute—"except: marriages that may be had under circumstances of peculiar and extreme difficulty in procuring a person in holy orders to perform the celebration." [Suprà, p. 11.]

Marriages of Quakers,
also par. 32.

14. The *animus* of the British Ecclesiastical Courts is still further apparent in their view of the marriages of Quakers,—I cite Jacob on Roper, p. 481, which marriages at a time when their only legal effect could be derived from their being contracts *de presenti* (the Act of 26 Geo. II. merely declaring that that Act did not extend to them), would still be supported, because "the Courts would, no doubt," says Jacob, "be strongly inclined, upon obvious principles of reason and justice, as well as from the number and respectability of the persons interested to support them, whatever difficulty there may be in finding grounds upon which their validity can be reconciled with the former law." [Also Mr. Bright's Treatise, Vol. i., p. 4; Vol. ii., p. 386, 403-5.]

Marriage law in
India, as to British
subjects, adequate and
clear: see par. 25-6.

15. The state of the law, then, I humbly submit, may be considered, on the whole, as this—(1) The English Marriage Acts do not affect India; (2) the old canon law binds British subjects not exempted by special privileges; (3) the members of the Scotch Church are *nominatio* exempted; (4) and parties married within British lines, under the sanction of the commanding officer or troops serving abroad; (5) cases where a strict necessity as to some form can be shown (as the impossibility of obtaining a person in holy orders), especially if supported by public usages considered to amount in authority to a law of the country, or *lex loci*, and where all is done *bonâ fide* with respect to the parties united, and under the sanction of the supreme civil authority of the country openly expressed, and in accordance with a well-known and established rule (itself the offspring of necessity), would be protected by the Ecclesiastical Courts should any questions call for a judicial decision.

16. In the mean time these last kinds of marriages would still more certainly draw after them all *common law* rights, and would generally be interpreted as widely and favourably to the parties as possible with respect to all questions, whether affecting the *vinculum matrimonii*, or incidental privileges and advantages of regular marriage. The marriages, in a word, would be valid, nor could any power short of an Act of Parliament avail to dissolve them.

17. I should venture to submit, therefore, to the civil and ecclesiastical authorities here and at home, that the law of marriage affecting British subjects in India is sufficiently clear, and protects adequately the several classes of persons to whom its indulgence is extended.

Lay marriages—

18. In the next place I beg leave to state that this entire class of marriages adverted to by the Honourable President in Council, as celebrated by local magistrates or political residents in India, is extremely small, and is guarded by every kind of precaution of which circumstances will admit.

19. The marriages regularly celebrated in the year—

1833	were	408	by local magistrates	4
1834	"	457	"	3
1835	"	415	"	3
1836	"	374	"	5
1837	"	333	"	5
1838 to Sept.	"	282	"	4
		2269		24

Effect of necessity.

20. I have reason to think that reports have prevailed of the number of these lay marriages under the sanction of the Governor-General being numerous: but the case is what I have stated; and most of these marriages took place in stations where the clergyman was unavoidably absent from sickness, or at times between the removal of one chaplain and the arrival of his successor; or in small places on the Arracan coast where the approach, for a large part of the year, is impracticable—cases which will totally cease as more chaplains come out.

21. Nor is anything neglected in these rare cases of giving them all the publicity and religious sanction practicable.

Usage as to the per-
formance of.

22. The Governor-General steps in, according to a long-established and perfectly well-known usage, with a healing and paternal authority, where no clergyman can by possibility be had. The civil magistrate, or medical officer, or political agent, as the case may be, is designated in Council, and directed to perform the ceremony. The religious appeal of Christian marriage is made before witnesses, the whole solemn service of the Church of England is read, the publicity of the names of the persons to be united, the administration of oaths, the consents, the registration of the legal registrar of the diocese, the transmission to the Honourable Court for purposes of reference and legal testimony, and the communication to the bishop (stating the necessity of the case), are duly made.

23. There is here no wilful omission of the religious solemnities of Christian matrimony; there is no contempt, there is nothing clandestine; there is no immoral and loose general tendency; all is done that can be done.

24. The contract of natural law, *per verba de presenti*, is perfect. The contract in civil and ecclesiastical law is regulated, but only so far as stern necessity demands; and that under the highest civil authority of India. The sanctions of religion are also superadded, in a manner imperfect indeed, but unavoidably so, and only so far as is unavoidable.

25. Accordingly it has never occurred since the British rule in India has created the necessity that any one marriage so celebrated has ever been called in question or doubted of. Nor has it ever been thought needful to procure an Act of the British Parliament to declare their full validity, though on the late prominent opportunity of providing for the marriages of members of the Church of Scotland in India such an Act would naturally have been thought of, and as easily have been procured.

26. The Honourable Court of Directors have hitherto considered all their civil and military servants sufficiently protected in their matrimonial rights, by obtaining sanctions for the members of the Scotch Church, and for marriages in cantonments, leaving their other Protestant servants (the Roman Catholic clergy are priests in holy orders, and celebrate marriages here legally amongst their own people), to the old canon law, on the presumption that during their temporary residence in India the few amongst them who might not be members of the Church of England would not object to be united in marriage according to the usages of that Church rather than throw everything into confusion by venturing on illegal forms of matrimony.

27. No complaint that I am aware of has ever been laid before Government previously to the Memorial which your Honour, in Council, has informed me of; nor does it appear that any of the Christian laity in India have joined even now in this Memorial. It is signed, as I understand from your Honour's letter, by "certain Protestant Ministers not of the Church of England or the Church of Scotland." By how many does not appear; of what class of dissenting bodies is also not stated. I apprehend they must be for the most part missionaries sent out by various benevolent and deserving societies in England for the instruction and conversion of the natives of the Christian religion. If there be any ministers of another class than missionaries I am unacquainted with the fact.

28. It will be for the Government, therefore, to consider whether a Memorial presented, not by the Christian communities in India, but only by certain ministers, chiefly missionaries, whose main duties lie with the heathen, and only their incidental and self-imposed duties with the Honourable Company's servants (if any such form a part of their congregation), is of such a description as to call at present for an Act of the British Parliament to regulate the marriages of this widely spread and anomalous country.

29. The time undoubtedly may hereafter come when the numbers of your servants in India dissenting from the Churches of England and Scotland may lead a paternal Government to provide for their conscientious difficulties; at present I have never heard of such difficulties existing at all. I have never heard of a single case of a marriage where the parties scrupled to conform to the usages of the Church of England, for the one important, moral, and religious purpose of securing all the civil and ecclesiastical privileges of that holy state, without disturbing the existing law.

30. If, however, the ministers petitioning Government, however few, or however unsupported by any considerable number of the community of your servants, had come before you in the first instance, and had interceded for a change of the law, awaiting your reply before they ventured on illegal or even doubtful acts, the case would be exceedingly different from what it now is. At present the facts are these—certain missionaries or ministers not of the Church of England, and who are in the eye of the law lay persons, and nothing more, begin at once to celebrate marriages between British subjects, without making any adequate inquiries, or laying any petition before Government or alleging the least necessity.

31. The first case that I heard of was in the year 1833. I immediately entered a protest against the dangerous innovation in my letter to Government of August, 1833 (*supra*, p. 13). I suggested the importance of a law being obtained for settling all doubtful questions.

32. The object of the kind of law which I then took the liberty to suggest, was to prohibit *nominatim* these new and irregular celebrations, by declaring the old canon law of Christian Europe to be binding on British subjects in India, except those already clearly exempted by special statutes, viz., the members of the Scotch, and parties within cantonments, with consent of the commanding officers, I recommended also that the cases of Jews, Quakers, and Roman Catholics should stand as at present. I further suggested that the Bishop should be empowered to issue a special licence for marriages where no priest could by possibility be obtained; lastly, I expressed a hope that all marriages celebrated without the regular forms previously should be declared valid; but any solemnized contrary to the Act, when passed, should be held void as to all ecclesiastical privileges and incidents.

33. Such was the healing measure which I submitted to Government in 1833, and I had fondly hoped that the irregular marriages by missionaries and others, in places where priests could be had, would have ceased, and that the law, as it then stood, would have been obeyed, at least till the legislature should be pleased to alter its provisions.

34. I am grieved to say that I have found myself mistaken; marriages have ever since been occasionally performed, in the teeth of the laws of their country, by missionaries and teachers of religion. These marriages have taken place in Calcutta within the sound of the cathedral bell. They have been celebrated by persons who must and did well know that a doubt at least did and would rest on these matrimonial contracts. They were celebrated when it was publicly known that the Bishop had complained of the innovation to Government, and had declared that he considered them invalid as to many of the civil and ecclesiastical privileges attendant on Christian marriage. They were persisted in though warnings were continually given in a semi-official form, partly by letters, partly by printed documents. They were persisted in when none of the parties to be united, so far as appears, objected to the regular forms, and when nothing but a spirit of innovation and contumacy to the existing law could, as it seems, have dictated the misconduct.

35. At last, after nearly six years, the Bishop, having been compelled in his charge to the clergy to declare authoritatively his view of the law, a Memorial is for the first time presented

No. 15.

Letter from the
Bishop of Calcutta.
Jan. 30, 1839.

Lay marriages, ex-
necessitate, not ques-
tioned.

Marriages of Roman
Catholics, by Roman
Catholic Priest, legal.
See also p. 14, par. 26.

Remarks on the Dis-
senters' Memorial.
See p. 23.

Difficulties that may
hereafter require a
remedy.

Object of the statute
suggested by the
Bishop in 1833. See
p. 20.

Contemporaneous
charge to the Clergy.

No. 15.

Letter from the
Bishop of Calcutta.
Jan. 30, 1833.

Conditions of mar-
riage licence: case of
a marriage in contra-
diction to the licence.

to the Government of India, of which his Honour the President in Council has been good enough to inform me.

36. An aggravation has attended these illegal acts, which it does not become me to pass over. In every case, so far as I know, a licence has been applied for and obtained; and then all the conditions prescribed in that very document openly violated. A specimen of this conduct fell under the Venerable Archdeacon's notice lately. A minister of a dissenting denomination applied to the Archdeacon for a licence: the parties were sworn—the licence issued, the Archdeacon observing to them that the marriage must be celebrated in one of the churches authorized by the Supreme Government and the Bishop for that purpose. The minister and parties retired, and proceeded to a meeting-house or conventicle (to use the ecclesiastical language), and the marriage, or rather the contract, was solemnized by a person—a layman in the eye of the law,—in contradiction to the licence.

Form of a licence.

37. It is, I confess, difficult for me to conceive on what principles of common decorum, or even honesty, parties can apply for and obtain a licence which expressly directs the marriage to be solemnized by a "minister in holy orders, lawfully authorized to perform the same," [I use the words of the licence itself.] "within the church of the station where one of the said parties do reside; or if there be no church, then at the place where public worship hath usually been performed at such station according to the rites of the said united church." "We do grant this episcopal licence," proceeds the document, "to such minister in holy orders as may be lawfully authorized to solemnize the said marriage between you according to the rites of the Book of Common Prayer, set forth for that purpose by the authority of the Parliament of Great Britain." How parties can apply for and obtain such a licence, and then take it to a minister not in holy orders,—not lawfully authorized to perform the same,—not in the church or place where public worship according to the rites of the Church of England is usually celebrated, and not according to the form prescribed in the Book of Common Prayer,—I cannot explain.

38. And it is still more difficult for me to conceive how such persons can imagine a licence thus violated to be of the slightest force, or marriages thus celebrated to be valid, in the sense of those regularly solemnized according to the canon law of England.

39. At home, when large and most respectable bodies of all ranks, not members of the Church of England, whose ancestors, however, had for centuries been dissenters from it, wished to be relieved from the necessity of being married according to the rites of the Church of England, they began with their respectful application to the British Parliament, and then complied cheerfully with the existing laws, till they were exempted by what is called the New English Marriage Act, 6 and 7 Will. IV. c. 85, August 17, 1836.

40. Had the persons who have now, after six or more years, presented their Memorial to his Honour in Council, began with that measure, and complied as the missionaries who preceded them did, with the laws of their country till relieved by the authority of the Supreme Government, their case would have stood clear for a fair and candid examination.

Prayer of Dissenters
Memorial, see p. 23,
also p. 33-4, 39,
6 & 7 W. IV., c. 85,
86.

41. There is another circumstance to be considered with respect to this Memorial; it prays that, "an Act may be passed declaring the validity of all marriages which have been performed by the ministers of the several classes of Protestant dissenters in British India, and providing against all further doubt on the subject, and for the registration of such marriages."

See p. 20.

42. There are points brought forward which go far beyond the New English Marriage Act. That Act says not one single word about Protestant dissenting ministers;—that Act acknowledges no persons as in holy orders, except those lawfully ordained;—that Act says nothing of such persons celebrating marriage. There is nothing in that Act that approaches to that overthrow of all canonical and ecclesiastical law, which would be involved in granting the prayer of the present petition. Still more widely is the Memorial removed from those provisions which, in 1833, I ventured to suggest as forming the basis of a legislative Act for British India. The whole fabric of our canon law will be loosened if the present prayer is conceded. All the principles of the English Reformation,—all the indelible character of the Christian priesthood,—all the solemn sanctions and mysteries which Christianity throws around the marriage bond,—all the highly-spiritual accompaniments of an old Act consecrated by Divine authority, and setting forth the union which is between Christ and his church, will be carried away and laid prostrate.

Who is a Dissenting Minister?

43. And who is a dissenting minister?—what constitutes a person such?—what doctrines of faith and morals does he inculcate?—what creeds does he hold?—what parts of Christianity does he believe, and what not?—who has examined his education, principles, competency?—who is to ensure his performing the essential parts of the threefold tie of marriage—natural right—civil law—religious sanction?

44. Is a Socinian, denying the Divinity of our Lord, and perhaps the inspiration of Scripture, a dissenting minister? Is a follower of Jobanna Southcote, or the prophet Brothers, or the Fifth Monarchy men, or the Ranters? Is a civil servant of the Company, or a military officer, or a bookseller, or a printer, or a schoolmaster, a dissenting minister, if he collect an auditor and assumes the office of a preacher?

See p. 23.

45. If a person calling himself a dissenting minister is now, for the first time since England was a Christian nation to stand in the place of the priest in holy orders, with the authority of a Divine commission derived through successive consecrations and ordinations from the Apostolic ages, some totally new provisions must be enacted different in all their principles from those of the English Marriage Act, or any other Act passed in a British Parliament.

46. But the Memorial prays for a registration of these contemplated marriages by dissenting ministers. In vain, however, will the English Act avail them in this respect. That Act provides for the registration of marriages, in common with that of baptism and burials.

It is connected with a numerous and expensive establishment of registrars and superintendent registrars, planted all over the land, with an office in the metropolis, and an entire arrangement of superior functionaries. It is connected, also, with parochial divisions, with Poor Law Unions, with boards of guardians, with magistrates, and secretaries of state.

47. Whether the Honourable Company will be disposed to abolish their present very effective system of registry in the different presidencies of India, and to attempt to follow the burdensome system enacted at home, it is not for me to judge.

48. Upon the whole, therefore, of the case, I would humbly represent to Government, both here and at home, that no sufficient ground has been laid for the sweeping innovations in ecclesiastical law, and the new and expensive frame-work of Indian registration, prayed for in the Memorial; that the law of marriage, as to British subjects in India, cannot be considered doubtful; that the unions of members of the Scotch Church, and of parties within cantonments, are provided for;—that the very rare defections from the regular forms of marriage, in cases of necessity, are sufficiently protected by that very necessity, and by the salutary usages of the Supreme Government;—that other cases, not resting on any plea of necessity, but urged by persons dissenting from the Church Establishment, are at present few in number, and not supported so far, as appears by a single complaint, from the parties;—that the rashness which has begun at the wrong end, by first marrying contrary to law, and then praying to have its own misconduct repaired and perpetuated by laws, strange and unheard of in our Protestant country, is not particularly entitled to consideration;—and that the especial prayer of the Memorial goes far beyond even the new English Act, and is apparently extravagant and inadmissible. [p. 23.]

49. Whether the Supreme Governments will endeavour to devise any legislative measure on the subject of the marriage law in India it is not for me to conjecture. Certainly it would be desirable to go as far as the sketch of the provisions of an Act submitted by me to the Governor-General in 1833, that is,—(1) to the declaring all past contracts of marriages *bonâ fide* celebrated, valid; (2) to the granting a power of issuing special licences addressed to lay persons, for witnessing marriages where no priest can be obtained, under the sanction of the Supreme Government, and by the authority of the ordinary; (3) and to the declaring all marriages, or pretended marriages, contracted after such a date, in a manner contrary to this Act, void as to all ecclesiastical privileges and incidents. [p. 20.]

50. *When* the Honourable Court and the Government of India may judge the time to be come to provide an apparatus similar to that of the new English Act for the celebration of marriages in places and by persons not now lawfully authorized, I cannot foresee. At present it seems to me there is no case—no grievance—nothing worth speaking of, which requires a remedy. All the marriages in India do not exceed those of a single populous parish of 20,000 or 30,000 souls in England yearly (about 400), and how these can be provided for over a geographical surface, not of an English parish, but of 3000 miles from Singapore to Simla and Loodianah, and of almost as many from east to west, if they are to be celebrated by all sorts of persons, and registered by a new set of officers and secretaries, I cannot pretend to say.

51. Two cautions in any such enactments I would venture most earnestly to interpose: that no person be recognized as a dissenting minister but one who is *bonâ fide* such and not merely a missionary to the heathen, and that nothing be done to separate the solemn sanctions of Christianity from the marriage vows. Even the present circumstances of India are fearful as to the demoralization which the total loss of the primitive Divine law of marriage amongst the native population has occasioned; already too many instances of Mahomedan marriages, as they are termed, between Europeans and natives occur, which are in truth a fraud practised upon the ignorant female party. Everything therefore should be done to strengthen the religious hold upon the conscience of the Christian in this solemn engagement: everything to increase the protection and safety of the virtuous British female: everything to exhibit the contrast between the licentiousness of the heathen and Mahomedan usages, and the sanctity of the Christian nuptial bed.

52. The example of the English Marriage Act in this respect I deprecate therefore for India. Whatever evils it may generate, thereby allowing the separation between religious vows and the marriage union in India, the effects would be disastrous.

53. Nor do I doubt that if the question could have been put to the parties who have been already illegally married by dissenting missionaries, they would avow that they would cheerfully have been united in the Church as required by law, whatever preference they might abstractedly entertain for other forms, and that they would at this moment declare their readiness to waive any supposed scruples in their minds, in order to maintain the honour of Christian wedlock in India.

54. Even at home the Marriage Act is at present said to have been a failure. The moment the political and party questions had ceased, and men and women were left to their own religious feelings, they are stated to have preferred, and to prefer, the old Protestant usages of our National Church, which base Christian marriage on Christian vows and engagements, to the new civil and non-religious system.

55. Is it worth while then to make the experiment in the small scattered temporary shifting Christian stations in India, and where not a matter of complaint has been heard.

56. But in conclusion, allow me, Honoured Sir and President in the Council of India, to entreat of you and of the Honourable Court at home, that nothing may be done prematurely;—allow me to entreat that time may be allotted for your calm examination of the facts of the whole case;—allow me to beg that my brother bishops of Madras and Bombay, as well as myself, may have timely notice of your intentions, and space granted us for remarks and observations;—allow me especially to entreat that his Grace the Archbishop of Canterbury,

No. 15.

Letter from the
Bishop of Calcutta.
Jan. 30, 1839.

Law of marriage, as
to British subjects in
India, not doubtful.

Reference to draft
Act, p. 20.

Annual marriages in
India of British
subjects about 400.

6 and 7 W. IV. c. 85.
6 and 7 W. IV. c. 86.

No. 15.

Letter from the
Bishop of Calcutta.
Jan. 30, 1839.

under whom my brother bishops and myself are placed by our Letters Patent, may have time allowed for his Grace to favour us with his directions and advice upon the matters as they arise.

I have, &c.,

Bishops' Palace, Calcutta,
30th January, 1839.

(Signed) D. CALCUTTA.

No. 16.

Remarks of the Legis-
lative Council upon
the preceding letter
of the Bishop of Cal-
cutta. Weight due to
his Lordship's objec-
tions.

No. 16.

Minutes by the Hon. W. W. Bird, Esq., Hon. T. C. Robertson, Esq., Hon. Colonel Morrison,
and the Hon. A. Amos, Esq., dated the 4th February, 1839.

1. HAVING perused the communication from the Right Reverend the Lord Bishop of Calcutta, dated the 30th ultimo, I feel it incumbent on me to say, that had I been aware of the circumstances represented by his Lordship, I should have hesitated to concur in that part of our application to the Honourable Court in favour of the Memorial from the dissenting ministers. It appears to me that the objections to such a measure possess very considerable weight, and that the communication in question should be forwarded by the earliest opportunity, that it may be taken into consideration at the same time with our former reference.

February 4, 1839.

(Signed) W. W. BIRD.

Not safe to grant
prayer of memorial,
p. 23.

2. I ENTIRELY concur with Mr. Bird, and apprehend, for the reasons stated by him, that the indulgence sought for by the dissenting ministers of various denominations cannot be safely granted.

February 4, 1839.

(Signed) T. C. ROBERTSON.

Past marriages to be
valid, whatever else
may be expedient.

3. THE Lord Bishop's letter should of course be forwarded to the Honourable the Court of Directors as soon as possible, that it may receive the Court's consideration at the same time with the Memorial already transmitted. I do not think that an Act, at least for what has already been done, the less necessary from anything advanced by the Lord Bishop, because the individuals who may have been married under any misconception of the existing law ought not to be sufferers, whatever may be deemed expedient prospectively.

February 4, 1839.

(Signed) COLONEL MORRISON.

Propriety of recogni-
zing past marriages by
Dissenters, and of
legislating for future.

4. OUR Advocate-General having given an opinion that the marriages performed by dissenting ministers are valid (an opinion which would also seem to recognize as valid marriages in India, though not performed by ministers of religion), and believing myself that the matter is not so free from legal doubt as it appears to the Advocate-General, I think that the question should be settled with as little delay as possible. Marriages made consistently with, and, perhaps, made in pursuance of the opinion of the first legal officer of the Company, ought, I think, to be placed out of peril or doubt; especially as I know that several eminent lawyers in England would agree with Mr. Pearson, and consequently that such marriages have not been contracted in wilful contravention of any law, about which no reasonable doubts could be entertained. If Mr. Pearson be right, I wish that the law may be so declared. If he be wrong, or even if the question be doubtful, I think there can be no difference of opinion with regard to what is proper to be done as to the past; as to the future, I hope the principle may be settled by the Home authorities. In determining this principle, there appears to be much that is deserving of grave consideration in the observations of the Bishop of Calcutta, though the arguments on the other side of the question are also of much weight.

See also p. 25, No. 12.

February 4, 1839.

(Signed) A. AMOS.

No. 17.

No. 17.

To the Right Hon. the Governor-General of India.

YOUR LORDSHIP,

Further application
for a remedial law, as
to Marriages by Dis-
senter, &c.

We have the honour to acknowledge the receipt of Mr. Secretary Maddock's letter, dated Council Chamber, the 1st March, 1841, with its accompanying enclosures, being copies of a despatch from the Hon. the Court of Directors, dated the 1st January, 1841, and its enclosures, which relate to our Memorial, forwarded to your Lordship on the 27th November, 1839, relative to marriages by dissenting ministers in India, and take this opportunity of tendering our acknowledgments to your Lordship and the Hon. the Court of Directors for the interest your Lordship and the Hon. Court have taken in the subject matter of our Memorial.

Reference to opinions
of Counsel. See
Appendix, p. 8, *et seq.*

We have perused and deliberated on the case laid before the learned lawyers on behalf of the Hon. the Court of Directors, and the opinion expressed by these lawyers on that case, and viewing as we do the great importance to many of the British-born inhabitants of India the finally settling the point of the validity of marriages celebrated in India by dissenting ministers and others not in holy orders, have determined, as advised by the learned lawyers, to petition the Legislature of England for an Act to declare all marriages already solemnized by dissenting ministers and others not in holy orders good and valid in the law, and to declare all future marriages to be celebrated by persons in connexion with the different denominations mentioned in our petition to the British Legislature also good and valid in the law, to all intents and purposes.

Indulging the hope that your Lordship will continue to afford us the aid of your influence in forwarding to a favourable conclusion the important object we have in view, we beg to enclose

a copy of the petition which we have prepared to forward by the next overland mail for presentation to the Legislature.

Your Lordship doubtless is aware that for many years past, and more especially in the earlier years of the British rule in India, many of the marriages contracted in India were solemnized by officers in Her Majesty's and the Hon. Company's military and civil services, and that down to the present day marriages are still solemnized by such officers, as well as by dissenting ministers and others not in connexion with the Church of England as by law established, under the impression that such marriages are valid and good in the law to all intents and purposes. Your Lordship will, however, have seen, from the opinion of the before-mentioned lawyers, that these marriages are invalid for many important purposes, and do not give the parties and their issue the advantages which a marriage solemnized by a priest in holy orders or a chaplain of the Kirk of Scotland, in the service of the Hon. East India Company, would do.

Your Lordship will readily perceive the necessity of enacting a law declaring all such marriages good and valid in the law.

It is within our knowledge that many British-born subjects, not in communion with the Church of England, have conscientious objections to the ceremony of marriage as performed by that church, and that many ministers not in connexion with the Church of England, yet regularly ordained according to the forms of their respective churches, have, in those parts of India which were, or now are, otherwise destitute of religious instruction, ministered to the religious necessities of the people, and having obtained thereby the confidence, respect, and esteem of their charges, it is but natural that the members of such congregations should prefer the marriage ceremony and other religious ceremonies to be performed by their own pastors. Moreover many persons in communion with the Established Churches of England and Scotland reside in different and remote parts of the country from the residence of chaplains connected with either of these churches, and having no conscientious objections to the ceremony of marriage as performed by ministers dissenting from, or not in connexion with the Church of England or Scotland, and who have derived important religious advantages under their ministry, would, on this ground, as well as those of economy of time and expense, prefer the marriage ceremony to be performed by such ministers.

Your Lordship will observe, from the prayer of our petition, that we have merely asked for permission to perform the marriage ceremony by those ministers, regularly ordained and recognized as such by these respective churches, which ordination is as distinctly defined by them as it is by the Church of England as by law established. And we hope your Lordship will coincide with us in thinking that we are not urging an unreasonable prayer in asking for the extension of that privilege to India which has been granted to our brethren in Britain, the preliminary steps, however, greatly modified.

From the above referred-to despatches of the Hon. the Court of Directors, we perceive that Her Majesty's Government and the Hon. Court have taken this matter into their serious consideration, with the view of recommending a remedial measure to the British Legislature; and being desirous of forwarding the sentiments of those dissenting from, or not in communion with, the Church of England without loss of time, and being confident that we express the sentiments of all such as reside at the numerous stations in the country, we have not circulated our petition through those stations for the signatures of our brethren in the interior, which, had we done, the number of signatures would have been very considerable. For the same reason, namely, the saving of time, we have not obtained the signatures of the laity, who fully coincide with us in the sentiments contained in our petition relative to this matter. Should such signature be required, they can, time permitting, readily be obtained and forwarded to the British Legislature. Having thus laid our case before your Lordship, we again intreat your favourable recommendation of the matter to the home authorities, and have the honour to be, &c.

(Signed)

THOMAS BOAZ, *London Society*,
ALEXANDER DUFF, *Church of Scotland Mission*,
—And 14 other Missionaries.

Calcutta, April 24, 1841.

No. 18.

To the Queen's Most Excellent Majesty in Council.

The humble Petition of the undersigned Ministers of the Gospel,

SHEWETH,

THAT your petitioners are ministers professing the Protestant holy religion, and belong to divers denominations of Christians dissenting from or not in communion with the Church of England as by law established, and are resident or domiciled in the British territories in India, to wit, ordained ministers of the Church of Scotland, not in the service of the East India Company, and ordained ministers of the Independent, Baptist, and other known Protestant denominations.

That many ministers duly and regularly ordained according to the ceremonies of their respective religious denominations, as hereinafter more particularly mentioned and set forth, have for many years resided in the cities, towns, and districts of the British territories in India, and have erected places of worship and collected congregations, formed churches (which are still increasing in numbers), and have administered all the sacraments of the Christian Protestant religion, according to the forms of their respective denominations.

That the said ministers have for several years performed the ceremony of marriage.

That in past years, in consequence of the paucity of ministers in the interior of British India, in the service of the East India Company, connected with the Established Churches of England

No. 17.

Letter of Dissenting
Ministers, &c., to
Governor-General.

Opinion of Council on
marriages not by Priest
in holy orders, &c.

Necessity of a Decla-
ratory Act; see p. 35.

Marriages to be by
Ministers recognized
as such by their re-
spective Churches.

Limited number of
signatures explained.

No. 18.

Petition of certain
"Ministers of the
Gospel" in India for
a Marriage Act.

Grounds of their
petition.
Marriages in past years
by officers, magis-
trates, &c.

No. 38.

Dissenting Ministers' Petition to Her Majesty the Queen in Council.

and Scotland as by law established, and the great distance of the residences of many of the Christian inhabitants of India connected as well with the Established Churches of England and Scotland as those of divers denominations of Protestant Christians dissenting from or not in communion with the Church of England, from the residence of a priest in holy orders connected with the Church of England or a minister of the Church of Scotland, divers marriages have been solemnized by and in the presence of officers in the military services of your Most Excellent Majesty and the East India Company, and by and in the presence of judges and magistrates in the service of the said East India Company.

Doubts, in 1838, as to marriages performed by Ministers (not in holy orders) and by magistrates & officers.

That all such marriages, so performed by ministers dissenting from or not in communion with the Churches of England and Scotland, officers, judges, and magistrates, were, by all classes of society in India, recognized as good and valid in the law for all intents and purposes up to or until a late period, and the legitimacy of the issue of such marriages has never been disputed in any court of law in England or in India so far as your petitioners can learn.

That in the course of the year One thousand eight hundred and thirty-eight doubts were expressed by divers individuals in India on the legality of such marriages as had been solemnized by and in the presence of ministers dissenting from or not in communion with the Church of England or Scotland as by law established, and by officers, judges, and magistrates as hereinafore set forth, which caused great grief and alarm in the minds of such dissenting ministers and others that solemnized the said marriages, and of those individuals whose marriages had been so solemnized; and in consequence of such doubts having been expressed, many persons professing the Protestant religion, but dissenting from or not in communion with the Church of England or Scotland as by law established, have, in violation of their conscience and contrary to their religious feelings and principles, been constrained to apply to priests in connexion with the Established Church of England to solemnize the marriage ceremony.

That a great many individuals, members of the Church of England or Scotland, have been put to great inconvenience, trouble, and expense arising from the distance of their residences from a priest in holy orders in connexion with the Church of England.

Supra, p. 24.

That in consequence of such doubts divers dissenting ministers resident in Calcutta laid a case before Mr. Longueville Clarke, of the Calcutta bar, for his opinion on the legality of such marriages as aforesaid, who expressed his opinion, that marriages in the East Indies, when celebrated by a dissenting minister or a judge and magistratè, are invalid.

That this opinion greatly disturbed the quiet of mind of your petitioners, and of many others, especially of those who had performed the ceremony of marriage and those whose marriages had been so solemnized.

Supra, p. 22.

That in order to remove such doubts as to the validity of marriages solemnized by dissenting ministers, divers of dissenting ministers resident in Calcutta in the year One thousand eight hundred and thirty-eight, memorialized the Indian Government to pass a local Act of the Legislative Council, declaring the marriages which had been solemnized by the ministers of the several classes of Protestant dissenters in British India to be good and valid in the law, and to provide against all further doubts on the subject, and for the registration of such marriages.

That the reply to the said Memorial of the said memorialists, they were informed that a reference on the subject of the legality of the marriages performed by dissenting ministers in India had been made to the home authorities, who had been requested, in case of there appearing a necessity for the measure, to give the necessary directions for a legislative enactment to remove all doubts on the subject of the legality of such marriages.

Supra, p. 8, et seq.

That on such reference being made by the Legislative Council of India to the home authorities, the Court of Directors of the East India Company took the subject of the validity of marriages solemnized in the British possessions in India by dissenting ministers and others not in holy orders into their serious consideration, and laid a case before your Most Excellent Majesty's Advocate the Attorney and Solicitor-General, and the Company's standing counsel.

That the said memorialists received a copy of the said case, and opinion through the Secretary to the Government of India in the legislative department, by order of the Governor-General in Council.

That your Most Excellent Majesty may clearly understand the nature of the said case, your petitioners here beg to transcribe the said case and the opinion of the said learned lawyers thereupon. [Case on behalf of the Hon. the Court of Directors, submitted to Her Majesty's Advocate, the Attorney and Solicitor-General, and the Company's standing counsel, and their opinion were inserted here. See p. 8, et seq.]

That a great majority of the marriages which have been solemnized by dissenting ministers and others not in holy orders in the British Indian territories were and are those of and between British-born subjects, many of whom hold or may have and hold real property in Great Britain, and that agreeably to the opinions of the learned lawyers above quoted doubts and disputes may arise and litigation may ensue regarding the rights, titles, and interest of the issue of such marriages to take by descent or otherwise such real property; and that such issue may also be deprived of divers other great and important rights, privileges, and advantages which accrue, attach, and belong to British subjects born in wedlock.

That those on whose behalf your petitioners pray that the right of celebrating marriage may be conceded, or ministers dissenting from or not in communion with the church of England as by law established, namely, such persons as are ordained and set apart to the office of the Christian ministry, agreeably to the forms prescribed by the respective denominations to which they belong, and recognised by them as accredited ministers of the Gospel, to wit, ordained ministers of the Church of Scotland not in the service of the East India Company, and ordained ministers of the Independent, Baptist, and other known Protestant denominations.

That it is of the greatest importance to your petitioners and to a large portion of British-born subjects, residents in India, and also to large numbers of British-born subjects who have

returned from India, and are now resident in Great Britain, and who have extensive connexions in and with England of a civil nature, whose marriages have not been solemnized by priests in holy orders according to the rites and ceremonies of the Church of England as by law established, but by dissenting ministers, officers, judges, and magistrates, that all such marriages be declared and confirmed good and valid in the law to all intents and purposes.

That many of the members of the congregations of the different dissenting and other churches within the British territories in India have conscientious objections to the rites and ceremony of marriages as performed by the Church of England.

That many British-born subjects reside in remote districts of the territories of the British India, at great distances from any priest in holy orders according to the Church of England, and from any minister of the Church of Scotland as by law established, and that delay frequently takes place, much time is consumed, and expense incurred, and inconvenience experienced in consequence thereof to parties desirous of entering into the alliance of marriage.

That it is expedient, in the judgment of your petitioners, for the reasons before stated, that all ordained ministers of the Church of Scotland not in the service of the East India Company, and ordained ministers of the Independent, Baptist, and other known Protestant denominations should have the option or be lawfully authorized to perform the ceremony of marriage within the British territories in India, according to the ceremony of their respective denominations, and that all marriages which in future may be solemnized by dissenting ministers or other ministers as aforesaid within the British territories in India should be good and valid in the law to all intents and purposes as if the same were solemnized by a priest in holy orders.

Your petitioners therefore humbly pray that an Act of the British Legislature may be passed, declaring all marriages which have been solemnized in British India by dissenting ministers and others not in holy orders, be declared and confirmed good and valid in the law to all intents and purposes as if the same had been solemnized by a priest in holy orders, and that all ministers of the Church of Scotland, not in the service of the East India Company, and ordained ministers of the Independent, Baptist, and other known Protestant denominations, shall have the option or lawful authority to perform the ceremony of marriage within the British territories in India, according to the ceremonies of their respective denominations, and that all marriages which in future shall or may be so solemnized by dissenting ministers and other ministers aforesaid within the British territories in India, be declared to be good and valid in the law to all intents and purposes whatsoever, as if the same were solemnized by a priest in holy orders, and according to the rites and ceremonies of the Church of England or Scotland.

And your petitioners shall ever pray, &c.

THOMAS BOAZ, *Londen Society,*
ALEXANDER DUFF, *Church of Scotland Mission,*
And 16 others.

Calcutta, April 24, 1841.

No. 18.
Dissenting Ministers'
Petition to Her Majesty
the Queen in Council.

Object of a proposed
Statute—to give same
effect to marriages by
Dissenting Ministers
as by Priests in holy
orders, &c.

See Petition to Par-
liament in 1848,
No. 30, p. 45.

No. 19.

*From the Rev. William Thompson, Missionary, L. M. S., to the Secretary to Government,
Fort St. George, dated April 24, 1843.*

SIR,

ON the 8th of August, 1842, I had the honour to address you on the subject of the validity of marriages solemnized by dissenting ministers in this country, and on the steps necessary to be taken on their part in order to give legal effect to the exercise of this privilege. The hope I have entertained of receiving an answer to my inquiries has been disappointed, and I am under the necessity of bringing the subject under your notice again. The immediate occasion of doing so is, that application has again been made to me to solemnize the marriage of parties who prefer the services of their own minister to those of the garrison chaplain; and the only course that appeared to be consistent with the honour of Government and with my own character as a minister of the gospel, was to decline compliance until the highest legislative authority should give to such marriages their entire sanction. In doing this, however, the waiving of a right almost undisputed has arisen from an earnest desire to know and to carry out the orders of the Civil Government. What those orders are I have not been able to learn. It is surely not befitting the policy of the most enlightened government in the world to allow a matter of such vital importance to the welfare of the community as the marriage of its subjects, to rest in its civil aspect on any other foundation than positive legislative enactments. The non-interference of Government in marriages solemnized by different classes of religionists during a period almost co-extensive with the British rule in this country has hitherto been regarded as having the force of an express statute; and now to set such marriages aside would be attended with the most calamitous consequences. The paternal character of the British Government warrants the belief that it regards such marriages to be legal, and a public acknowledgment thereof has virtually been given in allowing such of its servants as have been married by dissenting ministers and others to enjoy all the advantages of those persons married by ministers of the established communions. But to remove the doubts of those who, sincerely attached to the Government, and desirous of yielding an intelligent obedience to its laws, wish to obtain relief in a matter affecting their conscientious principles and most sacred feelings, I again take the liberty of asking, what are the orders of Government on the following points? viz. :—

1. Are marriages solemnized by dissenting ministers legal?
2. Is the publication of banns of marriage, or is a licence from the Right Hon. the Governor necessary?
3. If so, may the banns of marriage be published in the place of public worship where the

No. 19.
See infra, page 36,
Inquiries by a Mis-
sionary Minister
(L. M. S.) as to validity
of marriage by Dis-
senting Ministers, and
the forms in reference
thereto.

Same queries as at
end of No. 20, p. 38.

No. 19.

marriage is to be solemnized, and can licences be obtained from the civil authorities without the intervention of the ecclesiastical authorities at Madras?

4. Is it the intention of Government that the registrar of the archdeaconry should receive and put on record the certificates of such marriages?

I have, &c.,

(Signed)

WILLIAM THOMPSON,

Missionary, L. M. S.

Bellary, April 24, 1843.

No. 20.

Letter (referred to in No. 19, p. 35) on a marriage by a Missionary Minister (L.M.S.) in a Mission Chapel, of two members of his congregation, under a "permission to marry" granted by the commanding officer of Her Majesty's 4th regiment to a sergeant of the same regiment, and in which "permission" the name of the Missionary Minister was inserted, being referred to the Advocate-General at Madras for his opinion, such marriage was by him reported to be valid. *Infra*, No. 21.

SIR,

I. I HAVE the honour most respectfully to bring to your notice a charge of breach of the laws which has lately been preferred against me by the garrison chaplain of this station. It is not customary for men to place themselves in the hands of the executive power by becoming their own accusers, but it is sometimes necessary, in order publicly to free the character from unjust imputations which, to a conscientious mind, are more difficult to be borne than civil penalties based on the principles of equity. The circumstances are briefly as follows, viz. :—

2. On the 16th of March last, William Hood, paymaster-serjeant, H. M. 4th or King's Own Regiment, and Rose Brown, spinster; and on the 28th of April last, William Ward, corporal (now serjeant) of the same regiment, and Mary Maria Wicks, widow, the two serjeants being at the same time members of the Church of Christ under my pastoral care, were respectively united together in marriage by me in the mission chapel, Bellary. The legality of these marriages having been since called in question, and occasion taken to declare all the marriages solemnized by dissenting ministers in past years to be illegal, and the children of such marriages illegitimate, I have been recommended by Lieut.-Colonel Breton, commanding H. M. 4th or King's Own Regiment, by the Zillah Judge of Bellary, and by his Excellency the Commander-in-Chief of the Madras army, to whom the case was referred, to bring the subject before the notice of Government, and ask its opinion.

3. The "permission to marry" was, in the first case, granted by the Commanding Officer in the usual form, without specifying by whom the ceremony was to be performed. In the second case, my own name was inserted by the Commanding Officer, in consequence of some supposed but unintentional irregularity in the first case, in the serjeant not having requested, in his application, to be married by me.

4. The marriages in question were publicly solemnized in the mission chapel, in the presence of witnesses, and then duly registered in a book kept for the purpose by the Church of Christ in connexion with the Bellary mission, and also in the register belonging to H. M. 4th Regiment. Both marriages have received the full sanction of Lieut.-Colonel Breton, and the men have been put on the list of married persons, and receive pay accordingly. The legality of the marriages is questioned by the garrison chaplain only, and this, as it appears, not from any positive knowledge of the orders of the Supreme Court on the subject, but from the statements of private letters from Madras.

5. Although repeated inquiries have been made for the law and usage of the country, no Government orders have yet been pointed out as proving the illegality of the above marriages; the presumption is that such do not exist. It is believed that, for a long series of years, marriages have been solemnized by dissenting ministers, and the legality of them never called in question by a competent authority. In the absence of Government regulations they have regarded precedent, long established and universal in its adoption, as having the force of law. The formal concession of religious privileges to ministers of the Church of Scotland, and to Roman Catholic priests, are supposed sufficiently to indicate the intention of Government to all others. To prevent, however, the recurrence of a breach of the law on the part of dissenting ministers, and of a violation of Christian courtesy and right feeling on the part of those who differ from them, may I solicit the favour of the orders of Government on the following points? viz. :—

1. Are the marriages of European soldiers, when solemnized by dissenting ministers under permission of the Commanding Officer, legal?

2. Is the publication of the banns of marriage, in the case of private soldiers, or is a licence from the Right Hon. the Governor, in the case of those of the rank of gentlemen, necessary?

3. If so, can licences be obtained from the civil authorities without the intervention of the ecclesiastical authorities at Madras?

4. Is it the intention of Government that the registrar of the archdeaconry should receive and put on record the certificates of such marriages.

I have, &c.,

(Signed)

WILLIAM THOMPSON,

Missionary, L. M. S.

Bellary, August 8, 1842.

No. 21.

From Geo. Norton, Esq., Advocate-General, to the Acting Chief Secretary to Government, dated August 27, 1842.

SIR,

I. I HAVE the honour to acknowledge the receipt of an extract of Minutes of Consultation, No. 147, dated 22nd instant, referring, for my opinion, certain questions respecting the validity of two marriages solemnized at Bellary by a Wesleyan missionary at that place.

No. 21.
Opinion of the Advocate-General.

Queries as in No. 19.

2. The statutes regulating the course and solemnities of the marriage rite do not apply in India, and accordingly it becomes necessary to inquire whether the marriages in question, of Protestant British subjects, soldiers serving with the British army, by a Protestant dissenter, officiating in the same way as if a priest in holy orders, in a chapel used for the public divine service of a dissenting Protestant congregation (the marriages so solemnized being, one with the express previous sanction of the Commanding Officer, and the other with such implied previous sanction, and both subsequently sanctioned by him), are valid by the English law as stood previous to those statutes.

3. By the canon law such a course of solemnization of marriage is forbidden and unlawful *rimâ facie*, because that law provides that the marriage should be by a priest, and in a church. But even that law (which is of Papal origin, and had reference to Popish ritual) must be subject to occasional modification and exception, as for instance, in cases abroad, where a priest and a church might not happen to be available. The English law, however, does not in any way regard the canon law than with reference to its spiritual jurisdiction and punishments *ro salute animæ*, and does not (except for the Marriage Acts) invalidate a marriage on the ground merely of its not being solemnized according to due order. Whatever ecclesiastical, ensures parties may have exposed themselves to by performing or solemnizing the ceremony otherwise than in due canonical course, such consequences would not affect the validity of the marriage itself.

4. By the English law before the Marriage Acts, and such as British subjects live under in India, the solemnization of matrimony is not required to be in a church, nor (as I gather, is to be implied from some of the authorities) even by a priest. The case of *Lautour v. Teasdale*, in Taunton's Reports, p. 830, corroborating several other cases to the same import, decides that the marriage of British Protestant subjects clandestinely in a private house at Madras, upon the customary licence of the Governor having been expressly refused, by a Roman Catholic Portuguese priest (whose solemnization of the ceremony does not make a marriage of Protestants legal by the Roman Catholic law, and who so expressly informed the parties), was nevertheless valid. As I cannot suppose the solemnity could, according to English principles of law, be the more sacred or canonical from being performed by a Roman Catholic priest towards Protestants, by the Roman Catholic doctrines considered heretics, I cannot deem the circumstance of such a priest having officiated as in any way affecting the question of the validity of the marriage; still less could I suppose the circumstance of a Roman Catholic priest so officiating would add greater strength to the validity of a marriage between Protestants than that of the ceremony having been solemnized by a Protestant dissenting minister, possibly of the same persuasion, officiating according to the ritual of the Common Prayer.

5. Notwithstanding this decision and others of a similar import, there exists still much conflict of opinion as to whether any marriage between Protestants could be good under the law of England previous to various Marriage Acts unless solemnized by a priest in holy orders. Those, however, who maintain that proposition have much less strength of authority and reference on their side in applying it to marriages out of England than they have in applying such rule to marriages in England. The proposition militates in terms against the decision in *Lautour and Teasdale*, and it seems impossible to maintain it as of absolute force under all circumstances, or even in those of religious difficulties only, such as are likely to occur abroad. The Legislature has been busy of late years in relieving every sect and quality of religionists and of dissenters from the Church of England from the operation of the Marriage Acts, so that a priest is hardly necessary to the solemnization of matrimony between any such dissenters. It would seem strange to me if the marriages of all such dissenters, and of all Protestants, should be held invalid when solemnized abroad, merely on the ground that the old common law was thought to require the solemnization to be performed by a priest, which priest must have originally by that law been a Roman Catholic, and one who could not perform it to Protestants or dissenters by the law binding him, and from whose religion the Church of England itself, as well as the parties married, dissent.

6. The Act of 4 Geo. IV., c. 91, makes valid all marriages solemnized within the British Isles by any "chaplain, officer, or other person officiating under the orders of the Commanding Officer;" and it appears to me that the marriages in question would be legalized (even if not otherwise valid) by this Act. [12 and 13 Vict., c. 68, as to marriages abroad.]

7. I am, therefore, of opinion that the marriages adverted to are valid. I am further of opinion that neither banns nor licence from the Governor or the ecclesiastical authorities are essential to the validity of any marriages between British subjects in this country.

I have, &c.,

(Signed) GEO. NORTON,
Advocate-General.

Fort St. George, August 27, 1842.

No. 22.

From the Right Rev. the Lord Bishop of Madras to the Right Hon. the Governor in Council,
&c. &c. &c., Fort St. George, dated September 12, 1842.

MY LORD,

IN acknowledging the receipt of copies of a letter from Mr. Thompson, a dissenting missionary at Bellary, and of the opinion of the Advocate-General thereupon, I have the honour to inform your Lordship in Council that, until the receipt of this communication, I was ignorant of the matter to which those documents refer. I will, however, immediately write on the subject to the Rev. the Chaplain at Bellary, and transmit his statement to your Lordship in Council. It is not competent to me, neither do I conceive it within my province

No. 21.

Opinion of Advocate-General at Madras, that a marriage under "a permission to marry" to a sergeant by his commanding officer—the marriage being performed by the Missionary Minister named in the permission—was valid. (See No. 20, par. 3.)

Marriage law, as to British subjects, in India.

No banns nor licence necessary, &c.

No. 22.

Letter from the Bishop of Madras on receiving Nos. 20, 21.

No. 22.
Letter from the Bishop
of Madras, &c.

to offer any remarks on the legal opinion of the Advocate-General on the law of marriage as applicable to this country, although I feel it my duty to observe that the last paragraph in that gentleman's letter seem to me to sanction a most dangerous facility in the contracting of a matrimonial engagement from which society ought to be protected.

I have, &c.,

Bishopstoke, Katugherry, September 12, 1842.

(Signed) G. T. MADRAS.

No. 23.

No. 23.

To the Honourable the Court of Directors of the East India Company.

January, 1847.

Memorial of Wesleyan Missionaries in the Madras Presidency, &c., for the privilege of performing Marriages, &c.,

THE following memorial most respectfully presented by the Wesleyan Missionaries residing in the Madras Presidency and the territory of Mysore refers to their disability for the solemnization of matrimony both for Europeans and East Indians—a restriction which is felt and acknowledged to be a hardship by themselves and their several congregations. It is true there are other missionaries who do perform that solemn rite for all classes, from a belief that the marriage laws of England do not apply in the same way as at home in the dominions of the Honourable East India Company; yet the Wesleyan missionaries above referred to having doubts as to their legal right to celebrate the marriage ceremony (notwithstanding it is performed by their brethren in their native land) do most earnestly entreat the Directors of the Honourable the East India Company to grant unto them that important privilege.

and that they shall be reported to the Registrar of the Diocese, &c., and inserted in the official documents of Government, &c.

From a belief that it will not be considered obtrusive, it is suggested that a civil registration, as in England, is not expected, but that all marriages shall be reported to the Registrar of the Diocese and Archdeaconry of Madras, as all baptisms performed by the aforesaid missionaries now are, and that their insertion in the official documents of Government, in addition to those kept by the missionaries, will ensure all the accuracy and security which is desired.

In the hope that this petition will be granted, the memorialists as in duty bound will ever pray.

(Signed) JOSEPH ROBERTS,

General Superintendent of the Society's Missions in the Presidency of Madras and the Mysore Territory.

And 15 other names appended.

No. 24.

No. 24.

To the Honourable the Court of Directors of the East India Company.

The humble Memorial of the undersigned Ministers and Office Bearers of several Protestant denominations in Calcutta—

SEWETH,

September 6, 1847.

As to marriages by persons not in holy orders.

THAT doubts having been raised on the validity of marriages performed by ministers not in connexion with the Church of England, created great grief and alarm in the minds and consciences of those ministers not in connexion with the Church of England who had performed the ceremony of marriage, and of those whose marriages had been so solemnized.

That very many marriages have been performed in India by ministers not in connexion with the Church of England, in the belief that such marriages were legal to all intents and purposes.

See p. 23, No. 7.

That in consequence of such doubts having been expressed, a Memorial was presented by several Protestant ministers in India, not in connexion with the Church of England, to the Honourable the President and Members of the Legislative Council of British India, in the year 1838, praying for an Act of the Legislative Council of India, declaring the validity of past marriages performed by the petitioning ministers, and to provide against all further doubts on the subject, and for the registration of such marriages.

See p. 23, No. 8.

That the said memorialists were, on the 3rd of December 1838, favoured with a reply to their Memorial, to the effect that a reference on the subject of the legality of such marriages had been made to the home authorities, and that such reference was supported by the favourable recommendation of the Indian Government.

See p. 12.

That your Honourable Court took the subject into your serious consideration, and obtained the opinion of Her Majesty's Advocate, and the Attorney and Solicitor General, and the Company's standing Counsel on the subject, which was that the Imperial Parliament alone were competent to declare such marriages as had been already performed by such ministers as aforesaid, valid. The case submitted to those learned gentlemen and their opinion thereon were forwarded to the Indian Government in the Despatch of your Honourable Court, No. 1 of 1841, a copy of which was, by the Indian Government, furnished to the said memorialists, under date March 1, 1841, and also a copy of the Despatch of your Honourable Court which accompanied the case and opinion to your Indian Government, being your said Despatch No. 1 of 1841, in which the following encouraging clause appears, namely, "We trust that the subject will be disposed of, as suggested by Mr. Lawford, in the ensuing Session of Parliament."

See p. 32, No. 17.

That in accordance with the recommendation of the learned lawyers to seek the aid of the Imperial Parliament, your memorialists forwarded, in April, 1841, a petition for presentation to

Parliament, praying for an Act to remove the disabilities under which they laboured with respect to the solemnization of marriages; but that a change of Her Majesty's Ministers having taken place immediately after the petition was presented, the subject was never afterwards brought before the Imperial Parliament, a copy of which petition was at the same time furnished to your Indian Government.

That the question still remains unaltered and uncertain, wherefore much alarm still remains on the minds and consciences of your memorialists and the members of the several Christian denominations which they represent, and such as are desirous to enter the matrimonial state being either compelled to be married by their own ministers, and thereby expose themselves and their offspring to all the doubts and uncertainties at present entertained on this important subject, or obliged at great expense and inconvenience, and against their conscientious belief and religious principles, to apply to a minister of the Church of England to perform the ceremony of their marriage.

That your memorialists and those of the denominations to which they belong are desirous of again renewing their application to the Imperial Parliament for an enactment to remove the disabilities under which they lie; with this view petitions have been forwarded to England for presentation to the Imperial Parliament in the first session of Parliament, after the expected general election of the members of the Commons House of Parliament shall have taken place.

That from the serious interest hitherto displayed by your Honourable Court on the subject, and the importance of the subject itself, affecting, as it does, in a most vital manner, the consciences of a large number of British subjects scattered over your vast provinces, your memorialists are encouraged to seek the aid of your Honourable Court, in procuring from the Imperial Parliament an Act for removing the disabilities under which they lie with respect to the important matter of marriage.

Your memorialists therefore humbly pray your Honourable Court to render to them your aid in procuring an enactment of the Imperial Parliament, declaring all marriages which have been solemnized in British India by dissenting ministers and others not in connexion with the Established Church of England to be valid in law to all intents and purposes whatsoever. And that all ordained ministers of the different Protestant denominations of Baptists, Independents, Methodists, Free Church of Scotland, and several other denominations not in connexion with the Church of England, or of the Established Church of Scotland, though not in the service of the East India Company, may legally perform the ceremony of marriage within the British territories in India, according to the ceremony of their respective denominations.

And your memorialists shall ever pray, &c.

(Signed) M. HILL,

*London Missionary Society, and acting Pastor of the
Christian Church assembling at Union Chapel.*

And by 33 other Missionaries and Pastors.

Calcutta, September 6, 1847.

No. 24.

Memorial, &c., for a Statute to legalize marriages, according to the ceremony of different Protestant denominations.

Prayer, &c.

See Petition to Parliament in 1844, p. 46, No. 30.

No. 25.

To the Honourable the President in Council.

The Memorial of the undersigned Christian Missionaries—

HUMBLY SHEWETH,

September 15, 1847.

1. THAT your memorialists are impressed with a deep sense of the growing importance of the subject of marriage and divorce, in the case of the native converts of this land, or that class of Her Majesty's subjects who have been led, from various causes, to renounce Hinduism, or Mahomedanism, or any other ancestral faith.

2. That this is a class which, in point of numbers, is already very considerable, and is yearly increasing in different parts of the British empire in India; while with respect to intelligence and higher motives impelling to individual and social improvement, it seems fitted and designed in the providence of God to exert an augmenting beneficial influence on the destinies of our general India population.

3. That, for the regulation of the momentous subject of marriage and divorce in the case of this numerous and increasingly influential class of British subjects, there exists no legislative provision whatever; and that the absence of such provision has been already severely felt, and may certainly be expected to be felt still more severely in the time to come.

4. That, under a deep conviction of existing evils, and of the imperative necessity of a legislative interposition to rectify and adjust them, your memorialists (in April, 1841) addressed the Right Hon. the Earl of Auckland, Governor-General of India in Council, on the subject, and that his Lordship, after courteously listening to the oral representations of a deputation appointed to wait on him, was pleased to state that the matter would be referred to the Law Commission, and would in due time receive his own best consideration.

5. That again, in a memorial, dated 25th April, 1845, to the Right Hon. the Governor-General in Council, the same subject was introduced by your memorialists, along with some others suggested by the official publication of the draft of the *lex loci*.

6. That after the delay of so many years, your memorialists are distressed by the constant occurrence of cases for which, in the absence of all legislative enactment, they can neither suggest nor apply any adequate remedy, while they are left to mourn over the increasing complication and confusion that is in the progress of unhappy development around them.

No. 25.

Memorial as to legislative enactment on marriage and divorce in the case of native converts.

See p. 32, No. 17.

No. 25.
—
On marriage and
divorce of native
Converts.

7. That, in the case of native converts who were previously unmarried, or who, in consequence of death or otherwise, have become liberated from previous matrimonial obligations, your memorialists and their predecessors have been in the habit, for the last 50 years, of administering the ordinance of marriage agreeably to the forms and ceremonies of the churches or denominations to which they respectively belong, and that in order to remove, at once and for ever, any possible doubts or uncertainty with reference to the validity of such marriages, it is in the highest degree desirable that an Act of the Supreme Legislature of India should be passed, declaring such past marriages to be valid to all intents and purposes, and asserting the validity of all similarly constituted marriages in the time to come.

See p. 2, Q. 17, of sup.
Series of Propositions.
See infra, No. 26. !

8. That in the case of native converts who have been married, as very frequently happens according to the recognized law and usages of their ancestral faith, your memorialists have been oppressed and harassed with numberless difficulties, that, in the absence of all civil law on the subject, they have been driven by absolute necessity to frame regulations for their own practical guidance, founded on the spirit and principles of the Christian Scriptures; that the conclusions at which they arrived, after repeated deliberations on the subject in all its varied bearings and relationship they were led to embody in a series of propositions, of which a few copies for the sake of convenience were printed, and that of this document an authenticated copy is herewith sent for the information and consideration of your Honour in Council.

9. That your memorialists, having fully weighed and anxiously examined the whole subject in the light of Scripture, the only authoritative rule and standard of Christian morals and practice, and having conscientiously arrived at the results set forth in the accompanying printed document, are deeply and were overwhelmingly impressed with a sense of the unspeakable desirableness and importance of having the Scriptural principles, on which these results are based, distinctly recognized, and embodied in any legislative enactment which, it is earnestly hoped, may soon be passed for the regulations of the marriage and divorce of such of the native converts as have embraced, or may yet embrace, the Christian faith.

That your Honour in Council may be long spared effectively to promote the real and lasting welfare of the people of this great empire, is the humble prayer of the undersigned—

(Signed) JOHN ANDERSON,
Established Church of Scotland.

And by seven other missionaries.

No. 26.

No. 26.
See p. 2, Q. 17.

Statement of Propositions, appended to the preceding Memorial, regarding Marriage and Divorce, chiefly as they affect Converts to Christianity.

[From the Calcutta "Christian Observer" for April, 1841, and September, 1842.]

Calcutta, April 1845.

On the importance of the institution of marriage to the peace and well being of society it were idle to dilate. Contemporaneous with the origin of man, it has survived the wreck and ruin of the fall. Scarcely any tribe, however barbarous, has been known wholly to disregard it; and in the progress of society, the true observance of it has ever been found at once a cause and a consequence of advancing civilization.

State of converts as to
marriage, &c.

It cannot therefore be without the deepest injury to any community, should any class or classes be found to exist therein whose intermarriages, and all the grave and momentous interests which these involve are wholly unprovided for, and, consequently, wholly unregulated by any recognized law; but such is the state of things in India. For certain classes of British-born subjects, Mahomedans and Hindoos, laws have been framed and promulgated; but for individuals of other races, whether pure or mixed, and more especially the large and constantly increasing body of natives who have renounced their ancestral faith, no laws whatsoever have been enacted by any established authority.

The deplorable consequences of this absence of all law on a subject so intimately interwoven with the best interests of man has long been sincerely lamented by the friends of native improvement, and by none more so than by the Christian missionaries of all denominations. In Calcutta, in particular, these have heretofore united for the purpose of endeavouring to secure some commensurate remedy for the great and the growing evil. The subject has been repeatedly discussed in all its bearings and relationships; and the result of these discussions has been briefly embodied in the following propositions:—

Propositions of Mis-
sionaries.

I.—The Bible being the true standard of morals to a Christian Government, and its Christian subjects, it ought to be consulted in everything which it contains on the subjects of marriage and divorce, and nothing ought to be determined evidently contrary to its general principles.

Note.—This proposition is too self-evident to require any comment.

II.—It is in accordance with the spirit of the Bible and the practice of the Protestant Church to consider the State as the proper fountain of legislation in all civil questions affecting marriage and divorce.

Note.—This is one of those propositions which has been not improperly pronounced "nearly a truism." "No marriage or divorce," as has been remarked, "is legal unless it be according to the law; and whatever the law enacts, or even recognizes, is to be held valid;" thus the law practically defines marriage and divorce. It may define wrongly, and place them on other than a scriptural foundation; but so it may do in regard to everything with which it meddles. Under these circumstances the duty of the Christian is plain. He needs not to seek for such marriage or

divorce as is forbidden by the Bible, though legally free to do so : and if the law refuses what the Bible allows, he must submit to its ordinance (Roca. xiii. passim).

The duty of the minister is a little more complicated.

Though the State may tighten or loosen the marriage tie more than the Bible sanctions, it is plain enough that it has no power to force him to use improperly the authority it may have delegated to him ; and accordingly, it may be his duty, in certain cases, to refuse both marriage and divorce. But it seems impossible to deny the validity of either, when sanctioned by the State, on the ground of its wanting the authority of Scripture, otherwise, as Christians are commanded to marry only in the Lord, we would be unmarried nearly the whole world. The law, for instance, might allow two persons to marry within the forbidden degrees of relationship ; but, however, much be lamented this, no Christian minister would feel himself at liberty to remarry one of those parties to a third party while the other was still alive, and the legal union undissolved. If the contracting parties were Christians, and aware of their guilt, it would be a case of Church discipline ; but in other cases, surely common sense and charity require that the offenders should be excused. To conclude, marriage and divorce are to be held legal and valid when recognized in any way by the State ; but there may be cases where, though the Christian allows the legal right, he denies the moral rightness : it is his duty to suffer them, but not to form or share in them to bear his testimony against them, and to search the Scriptures, that he may be enabled to choose his own path aright.

No. 26.

On the marriage, &c., of native converts.

III.—A mere contract, oral or written, between the parents of two parties proposed to be united in wedlock, without the actual celebration of the marriage ceremonial, not being regarded by the natives themselves as of the essence and validity of marriage, ought not to be regarded by the Christian Church, or the Christian legislature.

Note.—It is found, on inquiry, that such contracts are occasionally entered into ; but that they are not held by the contracting parties themselves to be of the essence or validity of actual marriage. Either parent may renege from his promise, only the party so renegeing is liable to reproach or disgrace.

IV. When the marriage ceremonial, authorized by Hindu and Mahomedan law and custom, is formally celebrated between the parties, whatever be their age, we are called on by reason and Scripture to regard such marriage as civilly and legally valid, and, consequently, its obligations as mutually binding.

Marriage ceremonial, by Hindu and Mahomedan law, valid.

Note.—It ought ever to be borne in mind that marriage is a contract both civil and religious. As its essence seems to consist in the union of a man and woman, who are pledged to live together as husband and wife, its validity cannot depend on the mode or form of the ceremonial by which it is ratified. That ceremonial may be wholly civil, or partly civil and religious ; and it may vary indefinitely with the manners, customs, and sentiments of different nations in different ages. In every country, whether civilized or barbarous, there is some act, form, or ceremony, which is generally held to constitute marriage and to legitimate the children. When the question, therefore, is raised whether we, as Christians, are called upon to regard those marriages as valid and legally binding which are considered as such by the tribes or nations to whom the married parties belonged at the time when the matrimonial alliance was contracted, and the matrimonial rites duly celebrated ?—it is humbly submitted that we are so called upon. The very expression of the Apostle, "unbelieving wife, unbelieving husband," i. e., heathen wife, heathen husband—of necessity imports that he regarded them as legitimately husband and wife, while in their heathen state, because so constituted and accounted by their own customs and laws. So our Saviour, when he says, "What God hath joined together, let not man put asunder," seems to imply that those were "joined together by an ordinance of God," or lawfully married, or were so united and regarded by the laws and customs which prevailed in his time, though none of the parties had then become believers in Christ.

V. Renunciation of Hinduism or Mahomedanism being regarded by Hindu and Mahomedan law and usage as tantamount to civil or legal death, the non-renouncing party is at liberty to treat the other as repudiated or divorced ; but the Christian convert is not entitled to avail himself or herself of the Hindu or Mahomedan law, and regard his or her voluntary renunciation of ancestral faith as, of itself, releasing him or her from the obligations of the previous conjugal alliance, or as rendering him or her free at once to contract another.

Effect of apostasy, by Hindu and Mahomedan law, as to marriage.

Note.—The law of the unbelieving party may entitle it to regard the other as civilly or dead or legally repudiated. But the law of the believing party does not entitle it to regard the other as, *ipso facto*, civilly dead or legally repudiated. A change of religious opinion does not, according to Christian law, dissolve any previously contracted bonds or obligations. Should the unbelieving party, therefore, not avail itself of the connected right or permission of its own law, but still think it good or well (*Eurewobaca*), i. e., consent, wish, or will, to live with the believing party, and discharge, as before, the duties of husband or wife—it is concluded that the latter, or believing party, is bound, by the previously contracted obligation, to treat the unbelieving party as husband or wife, precisely as if no change of religious sentiment had taken place.—See 1 Cor. ch. vii. ver. 12, 13, 14.

Conversion does not, *ipso facto*, entitle the "believing" party to renounce his marriage.

VI. If the unwilling party wilfully desert or appear obstinately to refuse to live with the believing party as husband or wife, such wilful desertion or continued refusal being presumptive evidence of a real or an intended divorce, it is supremely desirable that some legal plan or measure should be devised for universal adoption, whereby the believer might satisfactorily ascertain whether he or she has been definitely cast off or formally repudiated.

Presumption of repudiation from conduct.

Note.—This proposition assumes it as indisputable that in no case whatever, save that of adultery, is the believer entitled to sue for divorce (see Matt. xix. 6-9, and 1 Cor. vii. 10, 11). Whether the Hindu or Mahomedan law declares a renunciation of Hinduism or Mahomedanism to be, *ipso facto*, a just ground of divorce or not, the law of the Christian utterly disclaims the validity of any such ground. Accordingly, if the unbelieving party be willing to abide by the antecedently formed nuptial bond, the believer has no option, no alternative ; as in that case there neither is nor can be any dissolution of the original marriage. But if, in consequence of the permission and sanction of Hindu or Mahomedan law, the unbeliever depart, i. e., separate himself or herself—

Fig. 26.

On the marriage, &c., of certain countries.

Difficulties (regarding a marriage) considered on the subject, it is often impossible to leave the real ground of the undividing party, particularly if that party be the wife. She may be barred in consequence in her father's house or in that of some other friend. Her husband, on his conversion, becoming an out-cast, may be possibly debarr'd all access to her: how then is he to discover her own mind, her own sensations, will or desire, concerning the continuance of her conjugal alliance with himself? how is he to know whether she is voluntarily bent and determined to stay herself by her own law, and so to disown and repudiate him for ever? or, whether from natural affection towards him or any other cause, she is willing to forego the rights and privileges connected by her own law, and consequently willing still to live with him in conjugal union? Some unobscured laws or methods by which these important points can be legally ascertained, without doing unnecessary violence to natural feeling or national custom, seems imperatively demanded alike by the conditions of private and social well-being, and the pressing exigency of circumstances. But what plan or method it may be asked, can be proposed for the clear attainment of so desirable an end? Without presuming to dictate in so delicate and important a point, the writer wishes unreservedly offer the following suggestions, viz. —

That, in order to ascertain the true sentiments of the undividing party, the appropriate be authorized, on petition of the husbanding party, to have the former (being at least 14 years of age in the case of a male, and 12 in the case of a female) brought before him, in open court, or in his own private house, or in any other convenient place, there to be questioned, as to the presence or absence of the petitioning party and friends, as to his or her willingsness or unwillingness to live with and be considered the husband or wife of the latter; that if the husbanding party be found willing thus to live with the other, he or she be at once pronounced at liberty to do so, and immediate steps be taken to ensure the consummation of such voluntarily expressed wish; but that, in the event of a positive refusal on the part of the subduer at the first examination, the same party (after the lapse of at least a two-weeks' interval, during which there may be ample scope for reflection on the one hand and consultation on the other) be again brought before the magistrate and similarly interrogated as before; that, after all possible means of conciliation have been tried, should the refusal be still persisted in, the fact be publicly announced and officially recorded, and that a copy of such record, countersigned by the magistrate, be furnished to the petitioning party, as the voucher of a legal divorce.

Male suggested.

The promulgation of an order or enactment to this effect would go far to secure the great practical object, the speedy realization of which the interests alike of justice and humanity require in demanding.

In the total absence, however, of any authoritative or legislative measure on the subject, the magistrate, in order to establish as far as possible a uniformity in the mode of procedure in ascertaining the rejection by a husband, or a woman, of a husband or a wife who may have become a Christian, resolved still further unreservedly to adopt the following rules and forms of document and communication:—

It is to ascertain the rejection by a husband, or a woman, of a husband or a woman, Christian or non-Christian, see also p. 4.

Rule 1. That in cases where there may have been no children, the fact of the marriage, as now marriage be solemnized within two years from the date of the first friendly application to the magistrate for the continuance or restoration of conjugal rights.

Rule 2. That in cases where the parties have lived long together as man and wife, or have had children, the fact of the marriage, as now marriage be solemnized within three years from the date of the first friendly application to the magistrate for the continuance or restoration of conjugal rights.

Rule 3. That, in both cases, one whole year be devoted to attempts at friendly communication, before in this matter proceeds to the adoption of any more formal procedure.

Rule 4. That should these friendly attempts be unsuccessful, reconciliation and reunion considered for a whole month, the following mode of procedure be adopted:—

1. That in cases where personal communication can be obtained with the party, a notice (written or verbal), demanding conjugal rights, be personally communicated to the husband or woman, in the presence of witnesses, who are to sign a written document respecting the fact, a copy of which record is to be left with or communicated to, the chief justice or authority of the village, or town, in which the residing party may reside.

2. That every six months the above proceeding be repeated until after the expiration of one year, in the case referred to in Rule 1, and two years in the case referred to in Rule 2, from the date of service of the first notice.

3. That in cases where personal communication with the party cannot be obtained, the notices above referred to be served on some of the nearest friends or relatives of the residing party, who may be found at the place of his or her residence, and the same course of procedure be followed as in the former instance.

Rule 5. That in the understood that, when the residing party is ascertained to have committed adultery, or have entered into matrimonial relations with other parties, the repudiated party be considered as immediately at liberty to form a new marriage.

A thing or new marriage by continuing party, unless the court.

N.B. Forms of documents were annexed as follows:—

1. A form of document that may be signed by the witnesses for the purpose of being recorded and deposited with the village and thanah authorities, referred to in Rule 4, Section 1.

We, the undersigned, do hereby assert that A. B., of _____, Christian, did in our presence this day require (orally, or by writing, served personally, according to circumstances) of C. D., of _____, to live with him (her) as his (her) wedded wife (husband), and that she (he) refused to comply with his (her) request. Dated this day of _____, 184 .

2. A form of the first written communication to the party referred to in Section 2.

I, A. B., of _____, do hereby require of you, C. D., of _____, to state whether or no you are willing to fulfil the obligations contracted at our marriage, by coming with me, and living with me, as my wedded wife (husband).

3. A form of notice referred to in Section 3.

I, A. B., of _____, do hereby inform you or your, X., Y., Z., &c., as the friends (or relation or guardians) of C. D., of _____, that I require of her (him) to state whether or no she (he) is willing to fulfil the obligations contracted at our marriage, by coming to me and living with me as my wedded wife (husband), and having no opportunities of personal communication with her (him) I call upon you to communicate to her (him) this my application.

Dated _____
We, the undersigned, do hereby assert this document was delivered to X., Y., Z., &c., in our presence this _____ day of _____.

4. Addition to the above three forms when notice may be served for the last time.

Having now, for the last _____ years, repeatedly made the above or similar applications without effect, I hereby give you final notice that unless a satisfactory reply be received within a month from this date, I shall consider you (him or her) as having altogether rejected me as your (her or his) husband (wife), and that consequently the marriage relation between us will be considered and pronounced as finally dissolved.

No. 26.

Forms of documents applicable to the preceding rules, in respect of the marriage, &c., of converts.

No. 27.

No. 28.

To the Right Honourable the Governor-General of India in Council.

The Memorial of the undersigned Christian Ministers of various denominations resident in Bombay.

HUMBLY SHEWETH,

October 15, 1847.

1. THAT your memorialists have long and deeply felt the difficulties and hardships to which native converts to Christianity in India are subjected in regard to the very important subjects of marriage, divorce, and inheritance.

On the anomalous position of converts, in regard to marriage and divorce.

2. That native converts to Christianity seem to be at present in the very anomalous position of having no law directly applicable to them.

3. That Christian missionaries have been in the habit of marrying the members of their own communions, but that there appears to be no law securing the validity of such marriages unless they are performed by persons who are held by law to be in "holy orders."

4. That in regard to divorce, there exists much doubt as to the law which would be applied to native Christians, and whether the Courts in this country have power to pronounce or recognize a divorce even in the case of proved conjugal infidelity.

5. That according to the present law as usually understood, the renunciation by a Hindoo or Mahomedan of his ancestral creed, entails the loss of ancestral property.

Loss of ancestral property by apostasy.

6. That distinct and specific enactments, clearing up whatever doubt may rest on these important points, and in full accordance with the tolerant and enlightened spirit of British legislation seem imperatively required.

7. That in regard to marriage, an enactment is required which shall distinctly secure the validity of marriages performed by Christian missionaries among the adherents of their respective communions, an effective system of registration open to public inspection being at the same time maintained.

8. That further, the injured party should be enabled to obtain effectual redress in the case of conjugal infidelity or abandonment on change of religion.

9. That in regard to inheritance, a man's religious principles should be allowed in no way in the eye of the law to prejudice his civil rights.

10. That your memorialists have not deemed it necessary to dwell at length on the above-mentioned particulars, believing that the simple expression of their decided conviction that a speedy enactment in regard to them is demanded by the interests of justice, and essential to the well-being of India, will secure the best attention of your Excellency in Council to this important subject, for which reason also, your memorialists have abstained from everything like public discussion on the subject, and from any attempt to procure a larger number of signatures.

11. That your memorialists offer up the fervent prayer that Almighty God may bless your Excellency with bodily health, and endow you with wisdom from on high to guide you in the administration of the affairs of this great empire.

(Signed) JOHN STEVENSON, Minister of the Church of Scotland,
And by eight other Missionaries or Pastors.

No. 28.

No. 28.

To the Right Honourable the Governor-General of India in Council.

The Memorial of the undersigned Missionaries of the Free Church of Scotland, resident at Naghore.

HUMBLY SHEWETH,

October 16, 1847.

Hardships, as to converts, from the state of the law as to marriage, divorce, and inheritance.

1. THAT your memorialists feel deeply the hardships to which natives embracing Christianity are subjected, from the doubt that prevails regarding the laws of marriage, divorce, and inheritance.

2. That missionaries are in the habit of performing marriages between native Christians of their own communions, but that it is doubtful whether such marriages are legally valid.

3. That it is not clear whether in cases of conjugal infidelity the injured party can sue for and obtain a divorce.

4. That it is generally believed that a Hindoo or Mahomedan, on professing Christianity, forfeits all claim to his hereditary property.

Marrriages by Christian missionaries among their own communion to be valid. See No. 34.

5. That it appears to your memorialists not more in accordance with the tolerant spirit of British legislation than conducive to the happiness and prosperity of India that enactments should be passed, securing to native Christians their civil rights in regard to inheritance, and declaring that such marriages as are performed by Christian missionaries among the members of their own communions, shall be held to be valid in the eye of the law, as they are in the sight of God, and that in any instance of conjugal infidelity after their solemnization, the injured party shall be entitled to obtain redress in the Courts of the land.

(Signed) STEPHEN HISLOP,

And by three other Missionaries.

No. 29.

No. 29.

To the Right Honourable the Governor-General of India in Council.

The Memorial of the Presbytery of Katywar in connexion with the Presbyterian Church of Ireland.

HUMBLY SHEWETH,

April 27, 1848.

Memorial for full privileges to marriages performed by Christian missionaries among members of their own communion.

THAT at a late meeting of the Presbytery, the state of the law in India as regards marriage, divorce, inheritance, &c., was specially brought before our notice.

That it appears to us that the law in its present state is at least of a doubtful character in its application to converts to the Christian faith, and that Christian missionaries have no security that they are not acting illegally in the celebration of marriage.

That ever since our arrival in this land we have been under the impression, till lately, that marriages celebrated by us or by other Christian missionaries in India were regulated by the same laws which prevail in Great Britain and Ireland, and in consequence we as Christian ministers would have celebrated marriages among the people of our own communion with the most perfect confidence, that in doing so we would have acted according to, and our people been protected by, the law of the land.

Change of creed ought not to affect property.

That we have with regret been led to understand that such is not the case; and we humbly submit our opinion that the Government should rectify and render explicit the laws on these subjects, as well as express our earnest desire that they may do so in such a way that Christian missionaries in India may enjoy the same privileges, and their people the same protection in the enjoyment of their rights which the law secures to them in Great Britain and Ireland.

That in our opinion no change of creed should in any sense be allowed to affect private property, or to prove in any case a cause for disinheritance or other deprivations in temporal matters; that we believe it to be the inalienable right and privilege of every man to inquire and decide for himself respecting that form of religion which he should adopt, and that it is one of the happiest functions of Government to protect the convert from that temporal injury which arises from the persecuting effects of sectarian animosity.

That we humbly entreat the Government to adopt such arrangements and to enact such laws on these subjects as may secure to all converts to Christianity all their temporal rights and possessions, and to Christian missionaries the same privileges under like restraints as they would enjoy if ministers of congregations in Great Britain or Ireland.

And your petitioners as in duty bound, shall ever pray, &c. &c.

(Signed) JAMES HENRY SPIERS, *Moderator,*

And by five other Members of the Presbytery.

No. 30.

No. 30.

*Copy of the Petition presented to both Houses of Parliament in 1848.*See Evidence, p. 5,
Q. 63.

The humble Petition of the undersigned Ministers and others representing the Baptist denomination of Christians in North India, and others,

SH EWETH,

THAT the ministers of the denomination of Christians to which your petitioners belong have or many years resided in British India, and erected places of worship, collected congregations, formed churches (which are still increasing in numbers), and administered all the ordinances of religion.

Petition from ministers and others of the Baptist denomination of Christians in North India.

That the ministers of your petitioners' denomination have for several years performed the ceremony of marriage between parties in connexion with them.

That, in consequence of the limited number of chaplains in the interior of India, and the great distances of the residences of many British subjects in connexion with the Established Church, and of other denominations of Protestant Christians from the residences of any chaplain or person called a priest in holy orders, many marriages have been solemnized by officers in the military service of Her Majesty, and by military officers, and judges, and magistrates in the service of the East India Company.

Former marriages by dissenting ministers, military officers, and magistrates. See p. 3, Q. 30.

That all marriages performed by the ministers of the denomination of your petitioners were recognised as good and valid to all intents and purposes up to the year 1838, when, for the first time, doubts arose on the legality of such marriages, in consequence of which many persons in connexion with your petitioners' denomination have been compelled to apply to ministers in connexion with the Established Church of England to perform the marriage ceremony, and many individual members of the denomination of your petitioners have, from this cause, been put to great inconvenience, trouble, and expense, arising from the distance they have had to travel on the occasion of their marriage.

Recognized as valid until 1838.

That, in consequence of such doubts, several dissenting ministers resident in Calcutta laid a case before Mr. Longueville Clarke, of the Calcutta bar, for his opinion on the legality of such marriages, who expressed his opinion that marriages in the East Indies, when celebrated by a dissenting minister or a judge and magistrate, is not valid for many important civil purposes; which opinion greatly disturbed the quiet of mind of your petitioners.

Trouble and expense consequent upon doubts.

That, in order to remove all doubts as to the validity of such marriages, the dissenting ministers residing in Calcutta in the year 1838 memorialized the Indian Government for a local Act to remove such doubts, and to legalize all such marriages.

Invalidity of such marriages as to many civil purposes. Report, p. 1, par. 1; Evidence, p. 8, 9, 12, and p. 24, No. 10.

That in reply to the said memorial, the memorialists were informed that a reference on the subject had been made to the home authorities, who had been requested, in case of their appearing a necessity for the measure, to give the necessary directions for a legislative enactment to remove all doubts on the subject.

That the Honourable Court of Directors of the East India Company took the subject into their serious consideration, and laid a case before Her Majesty's Advocate, the Attorney and Solicitor-General, and the Company's standing Counsel, for their opinions for the guidance of the Honourable Court.

Opinion of the law officers of the Crown, &c., also adverse to such marriages. See p. 8-13, No. 1.

That a large majority of the marriages which have been solemnized by the ministers of the denomination of your petitioners and others in British India were those between British-born subjects, many of whom hold real property in Great Britain, and that, agreeably to the opinions of the learned lawyers above quoted, doubts and disputes may arise, and litigation ensue regarding the rights of the issue of such marriages to take, by descent or otherwise, such real property; and that such issue may also be deprived of divers other great and important rights and advantages which accrue, and attach, and belong to British subjects born in wedlock.

Rights of issue as to real property affected.

That those on behalf of whom your petitioners pray that the right of celebrating marriage may be granted are ministers not in connexion with the Church of England, but being such persons as are set apart to the office of the Christian ministry, and recognised as such by their respective denominations as accredited ministers of the Gospel, to wit, accredited ministers of the Church of Scotland, not in the service of the East India Company, and accredited ministers of the Independent, Baptist, and other Protestant denominations. [p. 4, No. 38.]

Necessity of a declaratory statute, &c., as to marriages in India where not performed by ministers in holy orders of the Church of England, or otherwise received.

That it is of the greatest importance to your petitioners, and to a large number of British-born subjects resident in India, and also to a large portion of British-born subjects who have returned from India, and are now resident in Great Britain or Ireland, whose marriages have not been solemnized by persons called priests in holy orders, but by dissenting ministers, officers, judges, or magistrates, be declared and confirmed good and valid in the law to all intents and purposes.

That it is expedient, in the judgment of your petitioners, that all marriages which in future may be solemnized by dissenting ministers or other ministers, as aforesaid, within the British territories in India, should be good and valid in law to all intents and purposes.

Your petitioners, therefore, humbly pray that an Act of the British Legislature may be passed declaring all marriages which have been solemnized in British India by dissenting ministers and others, not being ministers in connexion with the Established Church, be declared valid in the law to all intents and purposes whatsoever, and that all accredited ministers in connexion with the Church of England, of the Church of Scotland, not in the service of the East India Company, and accredited ministers of the Independent, Baptist, and other Protestant denomi-

No. 30. — nations, may perform the ceremony of marriage within the British territories in India according to the ceremony of their respective denominations.
And your petitioners shall ever pray &c.

N.B.—This petition was signed by about 580 persons, including all the ministers and missionaries of the Baptist, Independent, and other bodies in Bengal and Bombay. Other petitions were forwarded from the other Presidencies in a distinct form.

(Signed) T. BOAZ.

No. 31.

No. 31.

* * * *The following Letter and Petitions were communicated by the Board of Control.*

RIGHT HONOURABLE SIR,

Bombay, March 15, 1848.

Letter to the President of the Board of Control, with the two petitions following, to be presented to Her Majesty.

As the moderator of the Free Presbytery of Bombay, I forward to you a petition to Her Majesty from that body, which you will oblige us by presenting on an early occasion. It refers to the present state of the law of marriage in India, which we hope you will see, with ourselves, to be a great grievance in our case.

I enclose a similar petition from the Free Church Congregation at Poona, in behalf of which I also request your kind services in laying it before Her Majesty.

We have addressed Her Majesty in this case rather than the Government of India, because we have been advised that the question of marriage, being one of very great and general importance, is a fitter subject for Imperial than local legislation.

I am, &c.,

The Right Hon. Sir John Hobhouse.

(Signed) JOHN WILSON, D.D.

No. 32.

No. 32.

To the Queen's Most Gracious Majesty.

MAY IT PLEASE YOUR MAJESTY,

Petition, from the Free Presbytery of Bombay, claiming, in effect, the benefit of 58 Geo. III., c. 84.

WE, Your Majesty's subjects, the ministers and elders of the Presbytery of Bombay, in the East Indies, in Presbytery convened, beg leave, with all humility and respect, to represent to Your Majesty the peculiar disadvantage under which the branch of the Church of Christ to which we belong labours with regard to the celebration of marriage amongst its members, and to implore Your Majesty's Government to extend to us that relief of which we stand urgently in need.

See p. 10.

The persons who are at present placed under our ministerial charge, and whose religious interests we represent, were, generally speaking, till lately, members of the Church of Scotland, as established by law, and enjoyed the privilege of having marriages celebrated among them by ministers of their own persuasion, agreeably to the Act 58 Geo. III., c. 84, entitled, "An Act to remove doubts as to the validity of certain Marriages had and solemnized within the British Territories in India," and in it is ordained, that marriages solemnized in India before the 31st of December by ministers of the Church of Scotland shall be of the same force as if solemnized by clergymen of the Church of England; and that after that period marriages between persons of the Church of Scotland, by ministers of that communion, and appointed by the East India Company, shall be valid, "provided always, that from and after the said thirty-first day of December, no such marriage as before said shall be had and solemnized till both or one of such persons, as the case may be, shall have signed a declaration in writing, in duplicate, stating that they, or he, or she, as the case may be, are, or is, members or member of, or holding communion with the Church of Scotland by law established."

Marriages of British-born subjects, members of the Free Church, by its ministers.

On the occurrence, however, of the disruption of the Church of Scotland in May, 1843, they were constrained by motives of conscience to dissolve their connexion with that establishment. In the position in which they now consequently stand, the provisions of the aforesaid Act are not applicable to their case, for they cannot make the declaration which it demands. They must either have their marriages celebrated by the ministers and according to the forms of the Church of England, which may be alien to their feelings and religious practices or celebrated by their own ministers with all those doubts about their validity which, in the case of Presbyterians, it was the object of the aforesaid Act to remove.

Anxiety as to the validity of their marriages, both as regards British-born subjects and converts.

Several marriages of British-born subjects have been actually celebrated in this place and neighbourhood by Presbyterian ministers not connected with the Established Church of Scotland, and great anxiety being felt about their validity, a declaratory Act is needed to remove the doubts which are entertained respecting them. A repugnance to the forms of the Church of England, in the matter of marriage, is not uncommon among Presbyterians; and relief, we humbly conceive, should be extended to all classes of them, agreeably to the tolerant principles of the British Constitution.

The speedy interference of your Majesty's Government in this case, we humbly conceive, is particularly required by the number of the adherents of the Free Church of Scotland, natives of the British Isles here resident, who it is believed constitute a majority of the Presbyterians of the place, and by the accessions to their body which, from time to time, are taking place by conversions from the heathen. It is required also by the disabilities of other bodies of

Christians in India, whose case, also similar to our own, we recommend to the favourable consideration of Your Majesty's Government. On these grounds we, Your Majesty's subjects aforesaid, most humbly and earnestly implore your Majesty's Government to originate a Bill in Parliament, or to call upon the Government of India to pass a local law, to remove the legal doubts and inconveniences to which we have now directed Your Majesty's attention, and, as in duty bound, we shall ever pray.

No. 32.

Signed in our name and your appointment,

Bombay, March 15, 1848.

JOHN WILSON, D.D., Moderator.

No. 33.

No. 33.

To the Queen's Most Gracious Majesty.

MAY IT PLEASE YOUR MAJESTY,

We, Your Majesty's subjects, adherents of the Free Church of Scotland in Poona, beg leave to approach the throne with feelings of profound attachment to Your Majesty and the other members of your Royal House, to represent to Your Majesty the peculiar disadvantages under which the branch of the Church of Christ to which we belong labours with regard to the celebration of marriage among its members, and to implore Your Majesty's Government to extend to us that relief of which we stand urgently in need.

Petition, from the Free Church Congregation at Poona, claiming, in effect, the benefit of 58 Geo. III., c. 84. See p. 10.

We, Your Majesty's subjects, as aforesaid, were, generally speaking, till lately, members of the Church of Scotland, as established by law, and enjoyed the privilege of having marriages celebrated among us by ministers of our own persuasion, agreeable to the Act 58 Geo. III., c. 84, entitled, "An Act to remove doubts as to the validity of certain Marriages had and solemnized within the British Territories in India," and in which it is ordained, that marriages solemnized in India before the 31st December by ministers of the Church of Scotland shall be of the same force as if solemnized by clergymen of the Church of England; and that after that period, marriages between persons of the Church of Scotland, by ministers of that communion, and appointed by the East India Company, shall be valid, "provided always, that from and after the said thirty-first day of December, no such marriage as aforesaid shall be had and solemnized, till both or one of such persons, as the case may be, shall have signed a declaration in writing, in duplicate, stating that they, or he or she, as the case may be, are or is members or member of, or holding communion with the Church of Scotland by law established." On the occurrence, however, of the disruption of the Church of Scotland in May, 1843, we were constrained, by motives of conscience, to dissolve our connexion with that establishment. In the position in which we now consequently stand, the provisions of the aforesaid Act are not applicable to our case, for we cannot make the declaration which it demands. We must either have our marriages celebrated by the ministers, and according to the forms of the Church of England, which is quite adverse to our feelings and religious practices, or celebrated by our own ministers, with all those doubts about their validity which, in the case of Presbyterians, it was the object of the aforesaid Act to remove.

Several marriages of British-born subjects, and of converts from the religions of the country, having been solemnized in this place and neighbourhood by Presbyterian ministers not connected with the Established Church of Scotland, and great anxiety being felt of their validity in a civil, though there can be no doubt in a moral point of view, a declaratory Act is needed to remove the doubts which are entertained respecting them. It is a fact, that persons here of all castes and religions, except ourselves, and other Protestant dissenters, have full power to marry according to their own forms, without subjecting themselves to the least inconvenience thereby.

Doubts as regards marriages of British-born subjects and of converts by members of the Free Presbytery.

Your Majesty's subjects aforesaid, natives of the British Isles, and of British India, resident in Poona, constituting, as they do, the only Presbyterian congregation at the place, and accessions to their body taking place from time to time by conversions from among the heathen, humbly conceive that the speedy interference of Your Majesty's Government in this case is particularly required; and we most humbly and earnestly implore Your Majesty's Government, agreeably to the tolerant principles of the British Constitution, to originate a Bill in Parliament, or to call upon the Government of India to pass a local law to remove the legal doubts and inconveniences to which we have now directed Your Majesty's attention.

And, as in duty bound, we shall ever pray, &c.

Signed by 52 memorialists.

No. 34.

No. 34.

To the Honourable the Court of Directors of the East India Company.

HONOURABLE SIRS,

November 6, 1847.

SINCE the date of our Despatches, as per margin, we have received the accompanying further memorials on the existing state of the law as it affects native Christians in respect to marriage, divorce, and inheritance; one signed by certain Christian missionaries in Calcutta, the other by missionaries of the Free Church of Scotland, resident at Nagpore. [See No. 28.]

April 24, 1847.
Sept. 7, 1847.

2. We solicit the favour of your Honourable Court endeavouring to ascertain whether there

No. 34.

Letter from the Legislative Council on the necessity for an Imperial or Local Act as to marriage.

be any probability of the question relating to marriages performed in the British possessions in India, by dissenting ministers and others not in holy orders, being submitted to Parliament at an early period, as in case of their being no prospect of Imperial Legislation the Government of India would feel it incumbent upon it to proceed to legislate on the subject without any further delay.

We have &c.,

(Signed)

T. H. MADDOCK.
T. MILLETT.T. CURRIE.
C. H. CAMERON.

No. 35.

Despatch from Directors of the East India Company, requesting the Governor-General in Council to state the mode least open to objection, of dealing with marriages in India, by Dissenting Ministers and others not in holy orders.

No. 35.

Our Governor-General of India in Council.

Legislative Department, August 2, 1848.

ON the important and very difficult questions relating to marriages solemnized in India by persons not in holy orders, which are brought forward in several letters noted above, we transmit for your information the copy of a letter from Mr. Lawford, the Company's solicitor, reporting that the subject is under reference to a Commission appointed by the Crown, in consequence of an Address from the House of Commons. Until the Commissioners shall have submitted their Report on that branch of their inquiries, Mr. Lawford is of opinion that it would be fruitless to attempt to apply to the Legislature.* We shall, however, take measures for pressing upon the attention of the Commissioners the extreme importance of obtaining a solution of the difficulties with which the subject is beset at as early a period as practicable. We are of opinion that it would be impracticable for the Indian Legislature to accomplish that desirable purpose; but seeing that, under the extreme urgency of the case, you have had it in contemplation to legislate concerning it, we request that, for the information and assistance of the Commission now sitting, or eventually of the Imperial Parliament, you will in a succinct form set forth the several difficulties both retrospective and prospective which have to be provided for, with the mode of dealing with them respectively, which may have occurred to you as least open to objection.

We have, &c.,

(Signed)

J. L. LUSHINGTON,
A. GALLOWAY,
&c. &c.

No. 36.

Draft Act, (1849) for the celebration of Marriage in India, by Ministers, and others, not in connexion with the Church of England, as by law established; being the Act proposed on behalf of the Dissenting Deputies. See p. 5, Q. 54-6.

No. 36.

AN ACT declaring the Validity of Marriages solemnized within Her Majesty's territories in the East Indies, by Ministers not in connexion with the Church of England as by Law established, and others, and providing for their future celebration and registration.

WHEREAS the ceremony of marriage has been solemnized within Her Majesty's territories in the East Indies, subject to the government of the East India Company, by ministers, not being chaplains in the service of the East India Company, or in connexion with the Church of England, but ordained according to the rules and forms of their respective Christian denominations, and by ordained ministers, being missionaries of different religious denominations, and connected with various missionary societies, and by civil and military officers in the respective services of Her Majesty and the East India Company, and also by others; and doubts have been raised as to the validity, for some purposes, of such marriages; and it being desirable that all such doubt should be removed, and that additional provisions should be made for the solemnization and registration of marriages in the said territories, now belonging, and hereafter to belong to Her Majesty in the East Indies, or subject to the Government of the East India Company, as is hereinafter mentioned. Be it therefore enacted and declared by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in the present Parliament assembled, and by authority of the same:

1st. That all marriages which shall have been solemnized previously to the day of 18 within Her Majesty's territories in the East Indies, subject to the Government of the East India Company, by ministers, not being chaplains in the service of the East India Company, or in connexion with the Church of England, ordained according to the rules and forms of their respective Christian denominations, and by ordained ministers, being missionaries of different missionary societies, and by civil and military officers in the respective services of Her Majesty and the East India Company, and by others, shall be held and taken, and are hereby declared to be held and taken to be good and valid in the law, to all intents and purposes whatsoever from the time of the solemnization thereof respectively.

* Mr. Lawford's letter, (July 18, 1848,) was addressed to David Hill, Esq., of the Judicial Department of the East India Company; and it adverted to the First Report (then recently presented) of the Commissioners appointed "to inquire into the State and Operation of the Law of Marriage, as relating to the prohibited degrees of affinity, and to marriages solemnized abroad, or in the British Colonies."

2nd. Be it enacted, That all ministers and missionaries, not being chaplains in the service of the East India Company, and all officers, civil and military, in the respective services of Her Majesty and the East India Company, and all others who shall have performed the ceremony of marriage within Her Majesty's territories in the East Indies, subject to the government of the East India Company, previous to the said day of 18 shall, within 12 months thereafter, transmit, or cause to be transmitted, to the Registrars-General hereinafter mentioned, all registers, books of registry, memoranda, notes, and particulars of such marriages in their possession, keeping, or power; and, that thereafter, such registers, books of registry, memoranda, notes, and particulars, shall be and form a record, and be good in the law for all purposes whatsoever incidental to this Act.

3rd. Be it enacted, That on the day of a General Registry Office of Marriages, for keeping the registers of marriages, shall be opened in the respective towns of Calcutta, Madras, Bombay, and Agra, and in the capital or chief town of every future presidency within Her Majesty's territories in the East Indies, which offices shall be offices of record, and that a "Registrar-General" shall be appointed to the said office of each presidency, to be appointed by the Governor for the time being of each presidency, as often as occasion shall require. And it is hereby declared that the Registrar-General shall be removable at the pleasure of the Governor of the presidency, and that each of the Registrars-General shall be allowed such amount of salary as the Governor of the presidency to which he shall belong shall deem proper, and that he shall be allowed to appoint as many assistants, clerks, and servants, upon suitable salaries and wages, as shall be necessary for the efficient performance of the duties of his office; which appointments of assistants, clerks, and servants, and the amount of their salaries, and wages, shall be subject to the approval of the respective Governors of the respective presidencies.

4th. Be it enacted, That each of the Registrars-General may grant, and he is hereby authorized and required to grant, "Faculties" to all such persons resident within his presidency, as he shall from time to time deem it proper and necessary, and expedient to grant them, whereby he shall authorize such persons to perform, celebrate, or solemnize the ceremony of marriage in Her Majesty's territories in the East Indies, during the continuance of such Faculty. And it is hereby declared, that every clergyman or minister, whether belonging to any of the established Churches, or to any other church, or to any religious sect or persuasion, by whatever name or description known, and of whatsoever nation or country, shall be entitled to a Faculty upon application to the Registrar-General therefore, and upon satisfying the Registrar-General of his being such a qualified clergyman or minister. And it is hereby also declared, that no specific form of application, or proof of the applicant being such a clergyman, or minister, shall be necessary. It being hereby further declared, that from the fact that a Faculty having been once granted to the person to whom it shall purport to be given, it shall be held to have been proved to the satisfaction of the Registrar-General, that the party to whom it shall purport to have been granted, did, previous to the granting of such faculty, satisfy the Registrar-General of his title to a Faculty. Provided always, that should any doubt remain on the mind of the Registrar-General as to the right of an applicant to a Faculty, then the Registrar-General shall, personally and verbally, take the oath, solemn affirmation, or declaration, of the applicant, or that of some other person on behalf of the applicant, to the truth of the application and title or right of the applicant to such Faculty. And the Registrar-General shall make and preserve a registry of all licentiates to whom Faculties shall be granted, according to the dates of granting the same, with the particulars of each licentiate, and an alphabetical index of the names of the licentiates. And it is hereby declared, that it shall be incumbent on the Registrar-General, to publish once in the Government Gazette of his presidency, a notice of the granting of each Faculty, immediately after the same shall be delivered to the licentiate, which notice shall contain the name and description of the licentiate, and the date of his Faculty.

5th. Be it enacted, That Faculties to be granted to licentiates under this Act, shall be in the form contained in Schedule A, hereunto annexed.

6th. Be it enacted, That it shall be lawful for all persons to whom a Faculty shall be granted, to celebrate, solemnize, or perform the ceremony of marriage, within the present and all future territories of Her Majesty in the East Indies, subject to the government of the East India Company, and such marriages shall be good and valid to all intents and purposes whatsoever.

7th. Be it enacted, That all marriages shall be celebrated or solemnized in the presence of at least two witnesses, but no particular form of ceremony shall be requisite. And it is hereby declared, that each licentiate may use such form of ceremony or solemnization of marriage as he may deem most suitable, according to the different circumstances or wishes of the contracting parties, or according to his own judgment; but that in some part of the ceremony, and in the presence of such witnesses, each of the contracting parties shall declare—"I do solemnly declare that I know not of any lawful impediment why I, A. B., should not be joined in matrimony to C. D.;" and each of the contracting parties shall say to the other, "I call upon these persons here present to witness, that I, A. B., do take you, C. D., to be my lawful wedded wife (or husband);" provided always that the contracting parties shall procure and deliver to the licentiate, before the solemnization of the marriage, a certificate from the magistrate, judge, or other public functionary, of the district in which one at least of the contracting parties shall be resident, that he has inquired and satisfied himself that no legal impediment exists to the said marriage. And it is hereby declared, that the magistrate shall satisfy himself, by the statement on oath, or solemn declaration of the male contracting party, and of the intended wife or some person on her behalf. And the certificate of the magistrate, judge, or other functionary, shall be in the form in Schedule B, hereunto annexed.

[6. 36.
—
Q. 54—56.]

8th. Be it enacted, That each licentiate shall, immediately after the solemnization of a marriage, register the same marriage in a "Marriage Register," and also in a "Duplicate Marriage Register," according to the form contained in the Schedule hereunto annexed, marked C; and every entry, and duplicate entry of marriages, shall be signed by the licentiate performing the ceremony, by the contracting parties, and by the two witnesses, in the order appearing in the said Schedule C. And it is hereby declared that the marriage contract shall not be deemed final, until such entry shall be completed as above mentioned; provided that in case both, or either of the contracting parties shall be unable to write, or sign their, his, or her names or name; then the parties or party so unable to sign or write, shall make their, his, or her mark, in the place, and in lieu of their, his, or her names or name; and the licentiate solemnizing the marriage shall write the names or name of the parties or party so signing by mark, near their, or his, or her mark, in the form in the said schedule mentioned. Provided always that nothing in this Act contained shall prevent or be construed to prevent two or more licentiates from using the same "Marriage Register" as occasion may require.

9th. Be it enacted, That all licentiates shall, on or before the 1st day of February in each year, transmit or cause to be transmitted to the Registrar-General of the presidency to which he belongs, his "Marriage Register" for the preceding year, closed to the 31st day of December of such preceding year. Provided always, that nothing herein contained shall be construed to prevent licentiates from forwarding their Marriage Registers more frequently, or from the Registrar-General calling for the said Marriage Registers when required.

10th. Be it enacted, That the Registrar-General shall preserve all such Marriage Registers, and shall at all reasonable times allow searches to be made therein, and shall, when required, give a copy of any registry, certified under his hand as correct. And it is hereby declared, that such certified copy shall be good and legal proof of the marriage to which it shall refer, in all Courts of Her Majesty and the East India Company wheresoever situate. And the Registrar-General is hereby required annually to make a fair "Marriage Register Book" from the said several Marriage Registers so sent to him, arranging the several marriages in alphabetical order, and he shall also make an alphabetical index of such last-mentioned Marriage Register Book, so as to secure easy, quick, and accurate reference.

11th. Be it enacted, That the fees for searches of the records of the Registry Office, granting of faculties, certificates, certified copies of registers, and the like, shall not exceed the charges mentioned in the schedule hereunto annexed, marked with the letter D.

12th. Be it enacted, That all sums of money to be received by the Registrars-General, shall be paid into the treasury of their respective presidencies, for the use of the Government of the East India Company.

13th. Be it enacted, That if any person shall procure, or attempt to procure, a Faculty by false representation, false declaration, perjury, or other false means, knowing the same to be false, he shall be guilty of an offence, and shall be liable to be proceeded against for such offence at the instance of the Registrar-General, or of any other public or private prosecutor in any of Her Majesty's Courts, and, on conviction thereof, he shall be punishable by imprisonment for a period not exceeding two years, or liable to the payment of a fine not exceeding 3,000 rs., with imprisonment until paid, but which imprisonment shall not exceed two years.

14th. Be it enacted, That if any person not authorized to solemnize marriages under the provisions of this Act, shall profess to be a licentiate under this Act, and act as a licentiate in the solemnization of any marriage, he shall be guilty of an offence, and shall be liable to be prosecuted by the Registrar-General, or by any other public or private prosecutor in any of Her Majesty's Courts, and on conviction be punishable by imprisonment not exceeding the period of two years, or be liable to the payment of a fine not exceeding Company's rupees 5,000, with imprisonment until paid, but which imprisonment shall not exceed two years; but the validity of the marriage so solemnized, if such person be held and reputed and believed to be a licentiate, shall not be thereby affected; and the Registrar-General shall enter a registry of such marriages in a separate book, to be kept by him for that purpose, first satisfying himself of the particulars of such marriage, and of the contracting parties.

15th. Be it enacted, That nothing herein contained shall render valid any marriage, where both or either of the parties to the contract, are or is under any legal impediment or disability to the contraction of such marriage.

16th. Be it enacted, That should any licentiate under this Act neglect to keep a true and faithful Marriage Register of all marriages solemnized by him, or shall alter any entry, or make any false entry of the solemnization of any such marriages in his Marriage Register, with the intention of falsifying the entry of any marriage in his Marriage Register, he shall be guilty of an offence, and shall, on conviction, be liable to imprisonment for a period not exceeding one year, or to the payment of a fine not exceeding 2,000 rs., with imprisonment until paid, but which imprisonment shall not exceed one year; and it is hereby declared, that any such licentiate shall be liable to be prosecuted for such offence by the Registrar-General, or any public or private prosecutor in any of Her Majesty's Courts. And it is hereby declared, that the Registrar-General may, at any time after such conviction, recal and cancel the Faculty of such licentiate; and every recal and cancellation shall be forthwith notified in the Government Gazette of the presidency of the licentiate. And the Registrar-General may adopt such proceedings as in the 17th clause of this Act are mentioned, for the recovery of such licentiate's Faculty.

17th. Be it enacted, That any licentiate refusing, or neglecting to transmit, or causing to be transmitted, his Marriage Register to the Registrar-General made up, as hereinbefore is mentioned, for six calendar months after the 1st day of January, in each year, he shall be liable to payment of a fine of Company's rupees 200 for such neglect, and to the payment of

100 rupees for every calendar month thereafter, until he shall forward his Marriage Register to the Registrar-General, according to the terms of this Act: which said fine may be recovered from such licentiate by the Registrar-General at his own suit against any such licentiate in any of Her Majesty's Courts, together with the costs of such suit; provided always that should any licentiate refuse, or neglect for 12 calendar months to transmit, or cause to be transmitted, his Marriage Register, to the Registrar-General, then the Registrar-General may cancel and recall the Faculty granted to such defaulting licentiate; and such licentiate shall forthwith transmit, or cause to be transmitted, his Marriage Register made up to the day of withdrawal of his Faculty, and shall also return his Faculty to the Registrar-General. And it is hereby declared, that on refusal or delay being made by such licentiate to forward his Marriage Register and Faculty to the Registrar-General as last mentioned, the Registrar-General may, and he is hereby authorized and required to adopt such proceedings in any of Her Majesty's Courts against such licentiate, to compel him to deliver up to the Registrar-General his Marriage Registers and Faculty in the same manner and form as if such Marriage Registers and Faculty were the sole property of the Registrar-General. And it is hereby declared that no marriage solemnized by such licentiate after his Faculty shall be cancelled and recalled for the reasons herein mentioned, and notice thereof inserted in the Government Gazette aforesaid, shall be valid.

18th. Be it enacted, That all the said fines recovered and paid under and by virtue of this Act, shall be paid into the treasury of the East India Company, at the presidency to which the party paying the same shall belong, for the use of the said East India Company.

19th. Be it enacted, That nothing in these presents contained, shall be held to supersede or otherwise affect the existing laws for the solemnization of marriages in Her Majesty's territories in India under the Government of the East India Company.

SCHEDULE A.

FACULTY.

To a Clergyman or Minister.

Calcutta,

WHEREAS it having been certified to me, that A. F., formerly of _____, in _____, but now of _____, is a minister of the _____ denomination of Christians, to which body he belongs, I do hereby grant this Faculty unto him in performance of the power and authority given to me by Act _____, and authorize him, in all times hereafter, to solemnize marriages within Her Majesty's present and future territories in the East Indies, subject to the government of the East India Company, agreeably to the tenor of the said Act

Dated at _____ this _____ day of _____ 18 _____

A. B.,

*Registrar-General
of the _____
Presidency.*

To a Layman.

I do hereby grant this Faculty unto _____ of _____ in performance of the power and authority given to me by Act _____, and authorize him at all times hereafter, to solemnize marriages within Her Majesty's present and future territories in the East Indies, subject to the government of the East India Company, agreeably to the tenor of the said Act. Dated

at _____ this _____ day of _____ 18 _____

A. B.,

*Registrar-General
of the _____
Presidency.*

SCHEDULE B.

Certificate of Magistrate, &c.

I do hereby certify that I have inquired and satisfied myself that no legal impediment exists to the celebration of marriage between _____ of _____ and _____ of _____

Dated at _____ this _____ day of _____ 18 _____

C. D.,

Magistrate of _____

No. 36.

SCHEDULE C.

5, Q. 54—56. 184 . Marriages solemnized at in the Presidency of
in Her Majesty's territories in the East Indies, and now subject to the East India Company.

No.	When Married.	Name and Surname.	Age.	Condition.	Rank or Profession.	Residence at the time of Marriage.	Father's Name and Surname.	Rank or Profession of Father.
	1st June, 1848.	William Hastings.	Of full age	Bachelor.	Carpenter.	3, South-street	Peter Hastings.	Baker.
		Sophia Ann Mitchell.	Minor.	Spinster.	..	17, High-street.	Geoffy Mitchell	Carpenter.

Married at

by me, EDWARD DAVIES, *Licentiate*.

This Marriage was solemnized between us, { WILLIAM HASTINGS,
SOPHIA ANN MITCHELL, } In the presence of us, { JOHN SMITH.
WILLIAM BAKER.
THOMAS TAYLOR.
EDWARD BREWER.

This marriage was solemnized between us, { his
WILLIAM X HASTINGS
mark,
her
SOPHIA ANN X MITCHELL
mark, } In the presence of us, { JOHN SMITH.
WILLIAM BAKER.
THOMAS TAYLOR.
EDWARD BREWER.

The name of W. H. and S. A. M. were written by me, they having declared to me their inability to sign their names.

EDWARD DAVIES, *Licentiate*.

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LONDON :
WILLIAM CLOWES and Sons, Stationers,
Her Majesty's Stationery Office