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PART V.

PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA.

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

The Council met at Government House on Tuesday, the 19th March 1872.

PRESENT:

His Excellency the VICEROY and GOVERNOR GENERAL OF INDIA, K.T., *presiding.*
His Excellency the COMMANDER-IN-CHIEF, G.C.B., G.C.S.I.
The Honourable JOHN STRACHEY.
The Honourable Sir RICHARD TEMPLE, K.C.S.I.
The Honourable J. FITZJAMES STEPHEN, Q.C.
The Honourable B. H. ELLIS.
Major-General the Honourable H. W. NORMAN, C.B.
The Honourable J. F. D. INGLIS.
The Honourable W. ROBINSON, C.S.I.
The Honourable F. S. CHAPMAN.
The Honourable R. STEWART.
The Honourable J. R. BULLEN SMITH.
The Honourable F. R. COCKERELL.

INDIAN CHRISTIAN MARRIAGE BILL.

The Honourable Mr. COCKERELL presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to the solemnization in India of marriages of persons professing the Christian Religion.

PRIVY COUNCIL APPEALS BILL.

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

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

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

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

MORTGAGE PROCEDURE BILL.

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

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

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

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

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

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

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

The Honourable Mr. Bullen Smith said :—" My Lord, I readily admit that the Bill which my honourable friend has just introduced is an improvement upon the existing state of things, but I desire at once and thus publicly to express my hope that the Committee to whom the Bill is to be referred will not, without very full consideration and proof of necessity, retain the period which must elapse before a mortgagee can enter upon his security at one year—a time which seems to me excessive and unnecessary. When last speaking on this subject, I mentioned that existing Regulations as to mortgage procedure seemed to have been framed entirely in the interest and for the protection of the mortgagor, entirely oblivious of the rights of the mortgagee, and the protection to which he also is entitled. This was probably due to an idea that the lender of money was at same time and always a would-be possessor; that he did not lend as a mere investment or employment of his money, but that there was, behind, a determination, at all costs and by any means, to oust the mortgagor whom he had got into his power, and enter himself upon possession of the property. A similar feeling seems very much to run through the papers which have been circulated to the Council; but I consider it to be entirely erroneous, and believe there are numbers of mortgagees whose sole object in foreclosing is to get back their money without a thought of themselves retaining the property. I freely admit that all due precautions must be taken in the transfer of real property in a country like this, where its possession is held so sacred and valuable; but I really cannot see why, in the case where a man has entered into a formal covenant to repay certain monies on a certain day, he should, in the event of his not fulfiling that covenant, be allowed a whole year's grace, during which time his creditor may have to sit with folded arms and see his security depreciating before his eyes. I trust this matter of the length of time to be allowed will receive the utmost consideration at the hands of the Committee.

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

PANJA'B MUNICIPALITIES ACT AMENDMENT BILL.

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

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

Legislation to this extent was unquestionably necessary, but under all the circumstances of the case—circumstances which were entered into at some length on a former occasion, and on which he need not dwell now—it was deemed inexpedient to submit to the Council at this time a less restricted measure.

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

The Honourble Mr. Stephen wished to make some observations upon this matter. He had signed the Report of the Select Committee, and had so far given his assent to the passing of the Bill in its present form; but he had done so with some hesitation, and had a right to remark upon the circumstances of the case. He need not repeat what he had said when this

subject was last under discussion, but he wished to point out, in confirmation of what he had before stated as to limiting the operation of the Act to one year, that a telegram had been received from the Punjáb Government remonstrating very strongly against the Act being revived for so short a period, and urging very earnestly that the Act should be prolonged for a period of five years. The Local Government referred to the extreme inconvenience of rendering uncertain the operation of the various public works which had been undertaken by the municipalities; and they also stated, in reference to the remarks that had been made, that there had just been published, in the *Punjáb Gazettee*, a full statement of the income and expenditure of every municipality in operation. The principles which governed their taxation had in every single insiance been approved by the Government of India, and they therefore felt that the remarks made on the manner in which the municipality in the Punjáb had been administered were unjust. MR. STEPHEN had been induced to give his vote in favour of the present Bill on this ground, and on this ground only, that, when the Council reassembled at Simla, it would have the advantage of the assistance of the local authorities, and the presence of the Lieutenant-Governor of the Panjáb, who would take his seat as an *ex-officio* Member of the Council. It would therefore be in His Honour's power to lay before the Council any amended measure on the subject which he might think right. Had it not been for that consideration, which had been suggested by his honourable colleague, Mr. Ellis, at the last meeting, MR. STEPHEN would have felt unable to agree to the Bill in its present form. But under the circumstances he had stated, he did not think it would do any serious harm.

The Motion was put and agreed to.

The Honourable MR. COCKERELL then moved that the Bill as amended be passed.

The Motion was put and agreed to.

PATTERNS AND DESIGNS BILL.

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

The Motion was put and agreed to.

HIGH COURT JURISDICTION (SIND) BILL.

The Honourable Mr. CHAPMAN presented the Report of the Select Committee on the Bill to remove doubts as to the jurisdiction of the High Court over the Province of Sind.

NATIVE MARRIAGE BILL.

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

The Honourable Mr. INGLIS then moved the following amendments:—

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

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

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

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

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

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

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

"It (the Bill) appears to me to differ little from Sir Henry Sumner Maine's Bill so universally condemned and withdrawn. There are hundreds of young men who may not wish to become Bráhmos, but who would still be eager to avail themselves of the license afforded by this Marriage Bill to contract marriages according to their own individual fancies. Nothing will be easier than for one of them to appear before a Registrar whom he does not know, who does not know him, and who will hardly have any position as an official, subscribe before him the formula required by the Act, and get the hand of the girl of his choice. This done, there will be nothing to prevent such a person (except when he has married an outcast) from going back to his parents, or his being received as a penitent sinner, to live thenceforward, to all appearance, as an orthodox Hindú. If the Bill, on becoming law in its present shape, is calculated to have this effect (and I firmly believe it will have that effect), would it not, I ask, change very deeply the Native law upon *marriage*? Would it not destroy the integrity of that sacred institution, and introduce into it the European conception of marriage? Would it not be tantamount to saying to the Hindús, 'You are at liberty to play fast and loose with your law and religion; you shall, if you please, be at one and the same time a Hindú and not a Hindú? Would it not, at all events, offer to the young men of the country a premium to break off from their families and set aside those wholesome restraints imposed by their social usages, simply for the sake of contracting marriages on which they were bent?"

After pointing out some objections in detail he said—

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

and after some further remarks he concluded by saying—

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

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

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

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

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

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

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

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

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

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

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

"4. Lastly, the orthodox Hindús in this Presidency consider that the Bill in its present form aims a blow at Hindúism. It has been asserted that the Bill is intended for the exclusive benefit of the Bráhmos, and in the discussion of measures affecting them, the orthodox Hindús have no concern; this is a mistake. They have certainly no right to dictate whether and how the Progressive Bráhmos shall marry; but I submit that they have an unquestionable right to protest against facilities being unintentionally afforded for their children and grand children, whose religious opinions are liable to fluctuate and are not settled, being led to adopt the Bráhmo form of marriage, and thereby reduced to the position of outcasts and incapacitated for returning to Hindúism if they should since deem it necessary. It was mainly on this ground, I believe, that the Bill introduced by the Honourable H. S. Maine was opposed by the Hindú community in general, and, so far as this objection is concerned, the present Bill is certainly no improvement on the former. The orthodox Hindús do not desire to see the Bráhmos persecuted and laid under any disability in regard to their marriages; but what they do desire is, that they should not be made to forfeit the opportunity, which they now possess, of reclaiming back to Hindúism their children whose religious convictions fluctuate, at least for a time, after the completion of their English education. Under the present Bill, any young man fresh from school, with no religious convictions founded on any intelligent and critical inquiry, and disposed to be an Adi Bráhmo to-day, a Progressive Bráhmo to-morrow, and a Hindú the day after, may, at a moment of infatuation, contract a marriage under this Bill, and find it beyond his power, very much to the sorrow of his parents, to return to Hindúism when his faith in the new form of religion, hastily adopted by him, is shaken. This state of things should be rendered impossible if the policy of neutrality were to be strictly adhered to."

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

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

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

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

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

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

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

After him, Khája Muhammad Esuf said—

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

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

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

Then Lála Badri Parshád said—

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

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

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

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

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

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

"That your memorialists place full confidence in the good intentions and impartiality of their liberal Government, and hope that it will never interfere with their national customs and religious feelings. That your memorialists, therefore, do not urge that the enforcement of this Act is intended to interfere with their religion, but they most humbly beg to say, that a religious and social interference which the Government

by no means intends must of necessity follow its enforcement. That the objections therefore, which your memorialists have to the Bill, are merely based on the ground that it will necessarily cause a great and intolerable and unprecedented change in their social and religious condition.

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

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

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

On the impolicy of passing a Bill which they were assured on such good authority would have this effect, he would say nothing; but he would ask—where was the necessity for such a measure? This Bill originated in an application made to Government by certain members of the Bráhma Samája, asking for a civil form of marriage. This he was quite ready to vote for; but why not confine the Bill to this? why do more than they were asked to do? why, in order to give the relief asked for by these members of the Bráhma Samája, run counter to the earnest prayers and entreaties of the majority of the Natives of this country, who assured them that the Bill as now drawn would, if it became law, affect very injuriously their social and religious customs?

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

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

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

The Honourable Mr. Cockerell said that it was barely two months since the further consideration of this Bill had been postponed, in order to give time to the mass of our Native fellow-subjects to become acquainted in some measure with its provisions, and to consider how the proposed legislation would affect the most important interests connected with their

social life. He had seldom, within his experience in this Council, seen such a variety of opinions on any question before it collected in so short a time; he took that to be the strongest evidence of the extreme interest that was felt in the matter, and he thought that the papers received, and especially those which had been read out by his honourable friend, Mr. Inglis, indicated the very strong and wide-spread feeling of dissatisfaction and discontent which this measure had excited in the minds of the people. Evidence of this came to the Council through the most intelligent persons—persons well affected to our rule, and who were not likely to misrepresent the feelings of their countrymen for any interested object. The Bill before the Council had but little that was open to objection in appearance. It seemed to be a very reasonable measure. If the intentions with which its provisions had been framed could with certainty be carried out, it would at least be a very harmless measure. In the first place, the Bill was intended to apply only to those who did not profess any of the specified religions; those who had absolutely given up, or stood aloof from, the known religions of the country. But although it might be a doubtful point whether a Hindú who had renounced his religion could return to Hindúism—and he believed that the late Rájá Rádhákánt Deb, the leader of the orthodox Hindús in this part of country, made some strenuous endeavours to establish a rule by which a Hindú who had apostatized could return to his religion—with regard to Muhammadans, there was no doubt on this question; the propagators and promoters of the Muhammadan faith had always given the utmost facilities to converts to Muhammadanism and to those who had apostatized from that religion to return to the faith of their ancestors, and it was perfectly certain that anybody who came and made a profession, solely for the purpose of being married under this Bill, of not belonging to any specified religion, might, if he had previously been a Muhammadan, return immediately to Muhammadansim. Then, again, the Bill, by the first and second clauses of section two, taken together with the amendments which the honourable and learned member in charge of the Bill proposed to put forward by-and-by, seemed to afford the utmost protection against rash and incautious marriages. Indeed, it seemed that the Bill could only have the effect of providing facilities for marriage in a very limited number of cases; for it was laid down that each party must at the time be unmarried; that each party must have completed a certain age: and that, if they were of less age than twenty-one years, the consent of the parents must be obtained; and it might, he thought, be fairly assumed that there were very few Hindús or Muhammadans who, being over the age of twenty-one, remained unmarried. But when it was considered how the thing was likely to work, it was seen that there was no security against the parties who wished to marry understating their age. Nothing was so difficult as to determine the precise ages of Natives of this country, and a marriage obtained through a misrepresentation as to age would stand. It was very true that, under section 17 of the Bill, the marriage of anybody who contravened the conditions of the law as to age, amongst other things, might be dissolved. But he could not see how the case was to come before a Court. Under the Indian Divorce Act, one of the parties to the marriage must sue, and he thought it very improbable that any Court would give a decree to a person seeking dissolution of a marriage which he had contracted fraudulently; in short, to allow him to escape from the marriage, and to profit—assuming that he wished to be freed from the marriage—by his own fraud. He (Mr. Cockerell) argued therefore that this proposed legislation, harmless and unobjectionable as it was in appearance, measured by the intentions with which it was framed, was extremely likely to lead to such practical results as justified the grave apprehension with which it had been regarded in so many quarters; and, for his part, Mr. Cockerell thought it an unwise measure to press this particular form of relief of a comparatively small number of persons, against the very strong and general dissatisfaction manifested by people of all creeds and every degree in the social scale from so many parts of this empire.

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

The Honourable Mr. Stewart said:—"My Lord, I feeldeeply the importance of the subject now before the Council.

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

"It is clear, I think, that every person has a right to expect that he shall be enabled to make a good and valid marriage; a marriage in respect to the validity of which there shall exist no shadow of reasonable doubt. According to the law as it at present stands, and as interpreted by those best qualified to interpret it, it seems at least doubtful whether certain persons and classes of persons can at present contract such marriages; and, this being so, it is, I think, the duty of this Council to intervene, and by such legislation as may be required, to provide an undoubted form of marriage for those for whom such is not already provided.

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

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

"It is a source of extreme regret to me that, in a matter of this kind, I should differ from some of my honourable friends, who, by reason of longer residence in the country and more intimate acquaintance with its people than I can lay claim to, possess a decided advantage over myself; but, holding the views I do, I must support the Bill."

"The Honourable Mr. Bullen Smith said:—"My Lord, It is with considerable diffidence that I venture to offer any opinion upon the Bill now before the Council, but the subject is one of such importance that I hardly like to give a mere silent vote in favour of the amendment just proposed by the honourable member opposite. When this Bill was last brought forward, I voted for its postponement on the broad ground that it was altogether wrong to pass a measure of this kind, treating of the most intimate relations of life, before the Gazette containing it had almost had time to reach the distant corners of the Empire. The delay was much objected to by some honourable members, but I consider that the number of Native opinions since received conclusively show that postponement was both reasonable and called for; and that, in proposing it, my honourable friend, Mr. Inglis, saved the Council from legislating with undue haste upon this matter. Since that time I have thought much as to what course I should take this day, the result being that I am led to oppose the passing of the Bill in its present form, on the ground that it is not necessary, and very inexpedient, to

pass a general measure of this kind at the present time. In support of this view of non-expediency, I will trouble the Council with very few words, as I have no special experience which would add weight to what is contained in the various papers we have received, and to what has been, and will be, urged by honourable members opposite. I would, however, quote to the Council a remark made by a gentleman of marked ability, who lately co-operated with your Lordship in the legislature of the Southern Presidency. I allude to Mr. Norton, whose experience of India is long, and his interest in the people great. In reply to one of the farewell addresses made to him when quitting Madras, Mr. Norton said that he considered one of our chief dangers ahead was precipitancy—a remark which struck me much at the time, and the force of which it seems impossible not to admit. We are legislating fast and much; we are taxing heavily and searchingly; we are introducing new institutions and new systems, and are in many ways troubling the people, no doubt with their intended good in view. The result is, however, that those who ought to know best tell us that there is abroad a feeling of disquietude and unrest; a feeling of bewilderment at what is doing, and anxiety as to what is to come next. Assuming this to be true, it is surely a state of things to be deprecated; a position in which unnecessary legislation becomes more than ever inexpedient, and yet my honourable friends opposite give it as their opinion, founded upon their long experience in different parts of the country, that this Bill is eminently calculated to increase the feeling to which I have alluded. To justify me in going counter to their opinions in a matter of this kind, I would require a much stronger case of necessity for making this measure general than has been presented; and therefore, while entirely agreeing with the abstract principle on which the Bill is drawn, I shall support the amendment. On the ground of expediency, I should, for the present, confine relief to those who ask for it."

The Honourable Mr. CHAPMAN said:—"MY LORD, I intended to support this amendment.

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

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

"To return to the history of the Bill. It was first introduced by Sir Henry Maine in 1868, and was entitled a 'Bill to legalize marriages between certain Natives of India not professing the Christian Religion.' It was, in fact, a Civil Marriage Bill for all sects and denominations other than Christians. Nothing could theoretically be more perfect; it was based on the most beautiful principles of complete religious freedom and toleration, and on paper it looked quite perfect. It commended itself to the approval of the Government of the day, and I dare say, during the course of this debate, we shall be told that we may safely pass the present and more restricted Bill, when the original and wider one met with the approval of an experienced Statesman like Lord Lawrence. I can only reply that this fact

shows how much more cautious we ought to be when we find a man like Lord Lawrence was unconsciously induced to acquiesce in what I suppose every one will now admit to have been a dangerous and erroneous course of action. No sooner was Sir Henry Maine's Bill submitted to the impartial judgment of the outside public than it met with almost universal condemnation. It was then seen that it was really of a very aggressive character, and that it would enable men to play fast and loose—to retain all the social and other advantages of the religious communities to which they belonged, while disregarding the obligations imposed upon them by those religions. The orthodox sections of the community naturally objected to the license that would thus be given.

" Matters were in this state when my honourable friend, Mr. Stephen, took command of the Legislative Department, and he proceeded to adopt the recommendations of the several authorities who had been consulted, and framed a Bill for the relief of the Bráhmos. It was entitled a ' Bill to legalize marriages between members of the Bráhma Sámája.'

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

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

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

" I will now proceed to notice the Bill under consideration. We shall be doubtless told, in the first place, that we who object have been the authors of whatever dissatisfaction has been evoked, and that the vast bodies of the people need be under no apprehension whatever, as it does not apply to Hindus, Muhammadans, or others who profess the principal recognized religions of this country. My Lord, we, who are sitting round this table, are thoroughly satisfied that the Bill is in itself as innocuous as any measure of the kind can be, and thoroughly sound in principle. But I need not remind honourable members that our civilization and education have hardly made any impression at all upon the masses, and that the millions are very much in the same state of ignorance, credulity, and superstition as they were fifty years ago. We solemnly pass laws, of the policy and provisions of which they know nothing and care less. I say, then, that it is hopeless to expect they will ever know of the care that has been taken to render this Bill harmless. All they will be told, and told, too, perhaps, by designing and disaffected people, is that the Government has passed a general marriage law by which any one can marry any one he chooses. I do maintain that there is a very broad distinction between a law affecting one defined sect, and a general law for all who may choose to forswear the religion of their forefathers; and that, if you confine the application of the Bill to Bráhmos, the mass of the people, who have never heard of a Bráhmo, will attach as little importance to it as they would to a Bill to legalize the marriage of Hottentots. Mr. Justice Newton, late of the Bombay High Court, when reporting on the first Bill, said the aversion to it seemed to him ' to arise chiefly from an undefined apprehension of troubles in connection with caste and family associations.' My Lord, it is precisely because I believe a

general Bill of this kind will give rise to these undefined, perhaps groundless—but not the less dangerous because undefined and groundless—apprehensions that I object to it.

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

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

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

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

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

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

The Honourable Mr. Robinson said: "My Lord, after much anxious thought I am constrained to support the amendment proposed by my honourable colleague from the North-Western Provinces.

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

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

"I would observe, *in limine*, that I think we are much indebted to the honourable and learned member in charge of the Bill for bringing this matter to a broad issue and taking a dis-

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

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

"In coming to the discussion of a purely social and religious question like that before us, I feel that one is swayed by very conflicting feelings. On the one hand, the most experienced among us must, I think, feel conscious how ignorant he is of the religious and domestic feelings and home-life of the country—must feel how feeble is his sympathy with what we are apt (very erroneously, I think) to view as popular weakness and intolerance, and how little he is fitted to form a kindly and considerate judgment on matters which to our minds seem easy of solution, but which may still implicate the very heartstrings of Native social and family life. On the other hand, how strong a hold on us have those abstract principles and theories of English life, which the honourable and learned member propounds from time to time with such force and eloquence; predispositions which are perhaps strengthened by the knowledge of what has taken place in European countries under somewhat analogous circumstances. Some of us, no doubt, think that they foresee a pending necessity of sooner or later passing a Civil Marriage Law for all India, without reference to race, creed or social distinction. And we are apt to think, if this be so, why not have such a law now, or something like it? Yet the conclusion may be thoroughly out of place, very untimely, and unjust. I think that is the position of the matter now before us.

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

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

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

"I refuse to place this matter in any way whatever alongside of the legislation—having general application—of 1850. Justice required that a man should not be robbed of his property because he exercised his natural right to freedom of conscience, and general legislation was called for. Every woman has a natural right to be a wife and mother, and therefore general legislation for the permissive re-marriage of widows is sound. But the one before us is quite another and special matter.

"I am willing to concede that every couple has a claim to be married in the absence of even time-honoured national rites to which they have a conscientious dislike, fanciful or otherwise; and therefore I think that the petitioners before the legislature have a personal or sectarian right to the relief they seek. But the time has not yet come when India really requires an Act to enable every one to be his own Church, wherein to set up his own h ymeneal altar—regardless alike of national feeling and social order. And I think that general legislation, embodying in the main this principle, is likely as yet to create far more disorder in a country like this, than any good it can do in comforting the doubts of a few individual sects which can easily be legislated for as need arises. I also think that the legislature will err very seriously if they allow the prayer of a somewhat shifty and immature body of sectaries to influence at this time the general legislation of the country; it will err very seriously if it be drawn into the temptation to thrust upon the wide nationalities of India a general and untimely measure, which is neither needed nor asked for at the present time.

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

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

"The discussions have, I think, fulfilled very useful purposes. They have thrown much light on the subject of Native domestic usage and feeling in respect to their home and social life, and how the British Government may most wisely and acceptably treat these matters. They have served to illustrate the generous toleration which pervades the higher class of the Native mind in respect to the relief which ought, under special circumstances, to be given when any real need for it has been made out—a toleration which is naturally coupled with a properly prudent, homely conservatism in respect to social and family life in general, which we cannot but respect and cordially sympathise with. Among the Native Papers will be found some which evince a statesmanlike grasp of the whole subject, and of the duty of this legislature in relation to such matters in India.

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

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

think, absolutely refuse to incur the risk of running counter to so much good, safe, and earnest advice.

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

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

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

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

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

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

"I withhold my support from the Bill as now drawn, because I see reason to fear that legislation on such a matter will gradually and prematurely, though unintentionally, tend to restrain and weaken the abundant liberty which the law and usages of this country now afford, and to raise doubts where none now exist in respect to customary marriages. If this be a possible consequence of legistation in this matter, such an enactment will do infinite harm. On this point I would refer to the opinion (amongst others) of the learned Advocate General

of Madras on Sir Henry Maine's Bill. I need scarcely remind your Lordship that Mr. Norton is a Statesman of large and varied Indian experience and sympathy.

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

"I withhold my support from the Bill, because, while admitting that there does exist an unsettled and immature movement amongst some limited sects of Native society, I am satisfied that that movement is as yet by no means popular, wide-felt or acceptable to the country at large; and I do not think that the legislature can wisely legislate in advance of a well-developed need and assured disposition for change—legislate, too, in a manner which the state of the public mind in general, and towards these sects in particular, in no way justifies. For a statement of intelligent Native feeling on this point, I refer with assurance to the letter of the late able Minister of His Highness the Rájá of Travancore, Sir Madhava Rao, K. C. S. I., on Sir Henry Maine's Bill, and to the views of other Native gentlemen which will be found in profusion in the collection under my hand. I think the legislature should await a real and general expression of a desire for change in a matter of this kind. There is certainly none before the Council.

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

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

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

"I cannot support the Bill as drawn, because I think that it tends to convert that narrow religious difference about rites and ceremonies which has arisen between a fragmentary sect (residing about the seats of learning and English influence) on the one side, and the conservative masses of our vast population on the other, into a possible cause of general public difficulty and complication, or of needless and baseless misunderstanding and misrepresentation in respect to our public policy. It makes a State question of a mere religious difference.

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

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

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

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

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

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

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

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

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

"I must repeat that there is something very depressing about deliberating on a matter like this in a legislature from which Natives are not excluded by law, without that all-sufficient means of feeling the pulse of Native opinion and of judging of what is right and suitable for the country. I am satisfied, from the experience I have already had in this Council, that we can neither safely nor wisely legislate on such a matter in a condition of persistent isolation and separation from those who are most interested in the measures which are enacted here.

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

Major General the Honourable H. W. Norman confessed that he had not been much moved by the arguments adduced by his honourable friends against this Bill, nor did he share in their apprehensions, and he still thought the Bill a just and good Bill. The remonstrances which had lately been received appeared to him to have been to a great extent evoked by what had taken place in this Council, rather than a spontaneous genuine product

of feeling on the part of any large numbers of our Native fellow-subjects. The Bill appeared to him to be framed in a spirit of entire toleration, and as it was calculated to remove a real grievance from a large and increasing class, he would oppose the amendment, which would restrict the operation of the Bill to only a portion of that class.

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

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

[The Honourable Mr. Chapman remarked that the Bill had not been translated into the vernacular languages].

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

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

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

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

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

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

[The Honourable Mr. INGLIS observed that the memorial was signed by over 500 persons].

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

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

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

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

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

Another Native gentleman remarked—

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

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

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

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

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

Another Native gentleman strongly recommended that—

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

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

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

But his honourable friend, Mr. Inglis, had to-day quoted various passages from Native opinions which were adverse to the Bill. He (Sir Richard Temple) would just cull a few flowers from the garden of his honourable friend's quotations. One objection was that the Bill would greatly accelerate the desertion of Hindús from their religion; but in reality the Bill did not accelerate it. It had no such effect. The truth was, that if the Bill was not passed, there would be left a sort of oppression on all persons who desired to change from one religion to another. The objectors really meant that the law, by enforcing civil disabilities, should prevent people from changing their religion. And that was neither just nor reasonable. Another remonstrance spoke of the Government identifying itself with the people who fostered this sectarian Bráhmo movement. He would ask in what way did the Government identify itself with this movement by saying that the promoters of it should not be subjected to civil disabilities? The Government dealt out the same justice to both Hindús and Muhammadans. Did it therefore identify itself with the Hindús or Muhammadans? Another objection was that we should wait till this sectarian movement was firmly established. Well, that appeared to have been already done. He would ask whether the Bráhma Samája, whatever that might mean—at all events the different sects which were included under the name of Bráhmos—were not already firmly established, and did not number many communities scattered all over the country, having a social organization of their own, supported with great ability, and with that sort of knowledge which arose from education and a deeply-rooted opinion. He said that, if this test of establishment was needed, the sect *was* firmly established. Another objection spoke of the Bill as aiding and abetting Hindús in deserting the customs of their forefathers; but surely it was not expected that Government would prevent people by the force of law from deserting the customs of their forefathers! Another objection spoke of the facilities that would be afforded by the passing of this Bill to unthinking young men for contracting imprudent or undesirable marriages. But even without this Bill there was little or nothing to prevent their contracting such marriages, if so minded. The law could never undertake such prevention. But the fact was that there were, by law, at present, unjust and artifical impediments to honourable marriages, and these we were bound to remove. Some of the objections alluded to the members of the Bráhmo sect as having become atheists. The term "atheists" was a very unjust one to apply to the members of the sect under consideration. They were men who, whatever their form of creed might be, nevertheless had a great deal of religious principle, which, according to their consciences, their lights, and their principles, they followed. As a sect they might on the whole be more correctly described as well-conducted and God-fearing, and their leaders were persons of pure and lofty character. What they might be, they were not atheists. Another objection spoke of the doubts which were entertained, as to the validity of Bráhmo marriages without this Bill, as unfounded.

That was just a specimen of the absurd objections which had been made to this Bill. Why should it be said that the doubts which were entertained were unfounded? It appeared to him that the doubts which were entertained were notoriously well-founded. It was well known that the doubts had arisen in consequence of the highest legal adviser of the Government having given it as his opinion that there were such doubts. Then, after speaking of religious opinions being liable to fluctuate, and about young men hastily adopting new doctrines, one of the objectors said that this relinquishment of religion would be impossible if a policy of neutrality were followed by the Government. That objection meant that this Bill was not a law of neutrality; that it favoured some sects at the expense of others. Now, if there was one policy more than another that the Government pursued in this Bill as in all other laws, it was absolute neutrality in matters of religion. The truth was, that those who reproached the Government with want of neutrality wanted to perpetuate by law a decided partiality in favour of their own views. That was a position which the British Government of the 19th century would not consent to defend. Then, a great many of the objections were worded in this way, that the Bill would interfere with the existing religions of the country. In what way could the Bill interfere with the existing religions of the country, when it expressly referred to those who did not profess any of those religions? The objectors in effect said that, if there was to be any interference at all, they wanted interference in behalf of the old religions of the country. Another class of objection taken to this Bill was that it was in direct opposition to the Muhammadan law. True, but then the Bill referred to those who were *not* Muhammadans! What could that objection possibly mean, except this, that the doctrines of the Muhammadan law were to prevail amongst sects which did not adopt Muhammadanism? That might be a sound doctrine for the followers of Islam, but could not be accepted by the British Government.

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

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

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

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

Another Native gentleman said—

> "There is at least as much probability of the rising generation becoming Bráhmos of some kind or another, as there is of their becoming Christians, for whose marriage special Acts have been passed.
>
> "As section 19 of this Bill provides that nothing in it shall affect the validity of any marriage not solemnized under its provisions, there can be no objection to the passing of it. It is simply intended to remove the uncertainty in the case of those who wish to avail themselves of it, without, at the same time, making it binding on others."

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

> "I am of opinion that, although it is desirable that the passing of this Act should be postponed another year or two, owing to the paucity of the new sect for whom this Act is intended, yet, as it is thought that the non-passing of this Act would materially

affect the interests of these people in various ways, I, for my part, would only be too glad to see this Act come into operation ere long; and I fully believe that the passing of this Act would be productive of many good results."

[The Honourable Mr. INGLIS said that the opinion just quoted was the opinion of the Reverend M. Ratnam, a Christian Minister].

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

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

He would not pursue the subject further at present; he had no doubt that his honourable and learned colleague in charge of the Bill would present the opinions collected in these papers in a far better and more systematic manner than he could on the spur of the moment. indeed, it scarcely needed argument to vindicate this simple and equitable Bill, which did nothing more than legalize honourable, monogamous marriages, contracted in good faith by persons not professing the Christian Religion nor belonging to the Hindú nor Muhammadan creeds. But what he would urge on the Council was, that the only objections worthy of the name had been those stated as individual opinions; and he affirmed that there was no sort of evidence of Native opinion or sentiment being in any large degree against the Bill. He believed that the vast, or a large, majority of our Indian fellow-subjects regarded the Bill with more or less of indifference, and that those who understood its provisions, or interested themselves in studying it, would have a sufficient sense of justice to appreciate the policy of the British Government, which in presence of the law regarded all religious sects and all classes alike. He maintained that while, on the one hand, it was of the first importance that this Council should watch for the signs of popular feeling, should be wise in foreseeing storms in the social horizon; yet on the other hand, they should be discriminating and judicious in distinguishing between agitation which was real, and agitation which was imaginary.

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

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

[The Honourable Mr. CHAPMAN explained that what he said was that the measure was introduced with precipitancy.]

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

" My honourable friends have more local knowledge on this subject than I can claim, but I feel complete confidence in the propriety of the course for which I shall give my vote, and all the arguments used have failed to make me doubt it. Shortly stated, the argument of my honourable friends, as I understand it, is this :—' We do not contest the justice or the good intentions of this Bill ; but we say that, to pass it in its present form would be politically dangerous, because it is sure to be misunderstood ; because it affords a handle for misrepresentation ; because, being a general Bill, it goes beyond the present necessity, which is merely to provide a form of marriage for the Progressive Bráhmos ; and because it really will, to a certain extent, interfere with the domestic affairs of the people, by enabling their sons to make imprudent marriages from which they will afterwards be unable to withraw.' In support of this argument, my honourable friends referred to various papers which have been sent in to the Council since the first debate on the Bill, in which various Native gentlemen express great alarm on the subject, and request that the Bill may not be passed. The argument, in short, is—' Do not pass the Bill, because Native public feeling has been excited against it.'

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

" No doubt, my Lord, it is a grave thing to legislate in opposition to the wishes and feelings of any section of the Native community ; but it is also a grave, a very grave, thing for the Government of India deliberately to abstain from doing that which it has declared to be

just and right. I do not say that under no circumstances whatever could such a course be justified; but I do say that very strong and peculiar reasons would be required for its justification.

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

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

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

"I hold in my hand a printed copy of the various papers which have been received upon this subject. Some of them come from the North-West Provinces, in answer to letters from my honourable friend, Mr. Inglis, and others from the Madras Presidency, in answer to inquiries made by my honourable friend, Mr. Robinson. A considerable number of the persons consulted are favourable to the Bill. Others are opposed to it on grounds which would condemn the most characteristic part of our English policy and legislation. Others oppose it, not only in complete ignorance of its principles, but although they themselves propose in its place measures of a much wider nature. Others oppose it merely on the ground that it will be misunderstood.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"The next gentleman, Lála Lachmi Narain, Honorary Magistrate of Bareilly, says that the masses will think, though he does not himself share the opinion, that the enactment of this Bill is to be a means of converting them to Christianity. Of course, it is impossible to say what misrepresentation may be made on the subject, or to argue with people who are not open to argument. If we are never to do anything which is capable of being misrepresented, we cannot govern the country at all; but how any reasonable man can suppose that this Bill can be used for the purpose of converting people to Christianity passes my understanding altogether. A man who takes the benefit of it must begin by declaring that he is not a Christian.

"In the main, however, and without going through all that is said upon the subject, I think that the arguments against the Bill are two. They were much pressed by my honourable friend, Mr. Inglis, and are re-echoed by his Native correspondents. The first is the argument that the Bill will lead to clandestine and improper marriages. The second is the argument that the limitation of the Bill to persons who are not Hindús, Muhammadans, &c., will be trifling, and will be evaded by persons anxious to take advantage of its provisions to get married. My answer to both of these arguments is, that experience has shown them to be ill-founded, and thus I prove it:—The Christian Marriage Act V. of 1865, is open to precisely the same objections, and has never been found in practice to involve the consequences which it is said will follow this Bill. Indeed, the fact that we have provided a form of marriage for Christians shows conclusively that we ought to provide an undenominational form of marriage for those who do not profess any one of the more popular religions, unless

we are prepared to admit that want of religious belief ought to put men under a disability to marry. Let me now invite your Lordship's attention to the provisions of Act V. of 1865, and compare the facilities which it gives for clandestine marriages, or marriages by Hindús or Muhammadans who wish to evade the dictates of their religions, with anything which can be apprehended under this Bill. By Part V. of the Act in question, any two Native Christians of upwards sixteen and thirteen years of age, respectively, may contract marriage by simply repeating in the presence of two credible witnesses certain words, and a Registrar appointed by Government is obliged to give a certificate of marriage to persons who have gone through that form, which cartificate is conclusive proof of the performance of the marriage. No notice; no consent of parents or guardians; no declaration even, on the part of the persons so married, that they are Christians, is essential to the validity of such a marriage. Does not this Act, of which no one complains, open a door to clandestine marriages ten times wider than any opened by the Bill now before the Council? Do not all the arguments urged by my honourable friend, Mr. Inglis, to show that the limitation of this Act to persons who are neither Hindús nor Muhammadans, and to show the futility of the declaration required of the parties, apply with ten-fold force to the fifth part of the Christian Marriage Act? If I were in my honourable friend's place, and were arguing against that Act, with what vigour and force I should be able to point out the hardships which such an Act would impose upon Muhammadans and Hindús. I should, of course, bring up the dancing girl and the son of the man of property and family, and I should then ask triumphantly what security there is against such a marriage under the Act in question? I should say—the Act is indeed limited to Native Christians; but what is a Native Christian, and how is the fact of the Christianity of the parties to be known? On what single doctrine, except perhaps the unity of God, can Christians be said to agree? and the unity of God is the cardinal doctrine of Muhammadanism. It has often been alleged, and it is by no means easy to disprove the allegation, that there is no great theological difference between a Muhammadan who honours Christ as a great prophet, and the Unitarian who regards Christ as a good man, and Mahomet as one of the greatest preachers of the most important of all truths. At all events, the fact that, at a given date, a man was a Native Christian in some sense or other, and that he had made use of the expression—'In the name of our Lord Jesus Christ I take thee as my wife'—would oppose no greater obstacle to his subsequently becoming a perfectly orthodox Muhammadan or Hindú, than the fact that he had side before a Registrar—'I am neither a Muhammadan nor a Hindú.' Moreover, how is the fact that a man is a Native Christian to be proved? The Registrar has no judicial powers, and if he had, how could he use them? Christianity is a vague word, no doubt, but whatever it means, it means something inward and spiritual, which no one can see. It means some state of mind; belief in some sort of religious doctrine. If two people come before a Registrar appointed under the Act, and say 'we are Native Christians; we are not within the prohibited degrees' (which by the way, the Act does not define); 'neither of us is married, and we here repeat in your presence the prescribed words,' the Registrar must give a certificate. He has no right to say 'are you baptized?' first, because he has no right to ask questions, and next, because many Christians are not baptized. He has no right to say, 'do you belong to any congregation?' for, whatever else Christianity may be, it is wider than any denomination. He cannot ask what their creed is; for a hundred creeds pass under the Christian name. He cannot even say to the boy of seventeen and the girl of fourteen, 'do your parents consent?' for such consent is not necessary as the law stands now, though that blot will, I trust, be removed by the consolidated Bill now before the Council. He can only witness the ceremony and give the certificate, which is conclusive proof of the marriage. When it is given, the marriage is valid, and, as I believe, indissoluble; and yet it is open to the parties, as they leave the Registrar's presence, to change their religion. They may say the next moment, 'we are Christians no more'—the man may say 'I am a Muhammadan;' the woman 'I am a Hindú.' 'We have contracted our marriage, and we are now convinced that the religious opinions which we then held were erroneous, and resume those in which we were brought up.' That is the law as it stands, and those who maintain it think that this Bill will be attended with the most serious consequences, because it opens a door to license and enables people to marry as non-Hindús, when, in point of fact, they are Hindús. I never saw a better illustration of straining at gnats and swallowing camels.

"I wish upon this point to guard against misconception. I do not for a moment mean to assert that the Christian Marriage Act is abused, or that persons who are not Christians do, in fact, marry under its provisions. I only wish to show that it is far more liable to such an abuse than the Act now under consideration; and I use the fact that the one does no harm as an argument to show how groundless are the fears entertained about the other. If,

in fact, people are not willing to go through the form of Christian marriage, and to call themselves for that purpose Native Christians, why should we fear that, for the same object, they will repudiate the Hindú or Muhammadan religion?

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

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

"Our answer to those who object that such declarations as these are useless is, as it appears to me, the same in all cases. 'It is no business of ours to protect your religion as you wish it to be protected. We cannot force people to eat beef or pork before we treat them as not being Hindús or Muhammadans. We recognize a man's right to change his religion (which you deny), and we take his word for the fact that he has changed it, which, from our point of view, we have a perfect right to do. It is very natural for you to regard change of religion as an awful evil, and to declare that you will not believe it has occurred till you have some peculiar kind of proof of it; but we do not regard it in that light, and cannot require that sort of evidence of it. If you want to protect your religions against the gradual progress of thought, do it yourselves. You have a perfect right to do so. Make the public renunciation of your creed a religious offence, for which a man may be put out of caste, and then you may be sure no one will make the declaration which you say is useless. It lies in your own power to make it stringent. But with what face can you come before us and say—'Our religion sits so loose upon us; we care so little about it; we are so ready to renounce it publicly for a mere whim, and we think so little of such a public renunciation when it is made, that you really ought not to attach any weight to our doing so'? How can we be expected to protect a religion which has so little force to protect itself?

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

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

"'All the objections which could have been urged against the original Bill, as it stood when circulated in 1869, have been removed, and the Officiating Chief Commissioner does not think that the mass of the people will feel aggrieved or injured, or affected in any way, if the Bill becomes law. So far as any objection has been made to the tendency of the Bill by Native gentlemen who have been consulted, the objection raised is, that persons abandoning the Hindú faith are still allowed to inherit under the Hindú law, and cannot be made to suffer for their change of faith. But this is not a provision of the present Bill, and the objection made is, not to the present Bill, but to Act XXI. of 1850. The paper accompanying this letter contains the opinion of Mr. Balwant Ráo, a pleader resident at Nágpúr, and a man of great intelligence. He urges against the Bill all that can be urged against it by the most orthodox Hindú, and his opinion is therefore communicated; but it must be remembered that Mr. Balwant Ráo does not represent any large class or section of the people. Other Native gentlemen of equal intelligence and ability take no exception to the nature of the relief which it is proposed to grant to the individuals to whom the Bill will apply, while the people at large have no opinion in a matter of which they know nothing, and which in no way affects them.'

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

"'I was very much interested in the debate on the Bráhmo Marriage Bill. I think the objection that a man will use the law to contract a new marriage on which he is bent, is quite groundless. One of the conditions under which a marriage may be contracted is, that the parties must be unmarried. Another is, that they must be of a certain age. Putting these two conditions together, there is no chance whatever of the law being abused. And, indeed, if the conditions of it are examined, it is a law which is stricter by far than the existing Hindú or Muhammadan marriage laws. There would be no reason whatever for a young man infatuated by a passion for some dancing-girl to abjure his religion in order to marry her; by Muhammadan law, he could marry her easily enough. These people are always Muhammadans. And if the young man were a Hindú, he need only become a Muhammadan, as many have done, in order to marry the woman; but he could not marry her under the new law, because he is certain to be already married. This condition is a most effective one in a polygamous country; and no law which stops polygamy can be considered as enlarging the license of marriage. * * * * * * * * * * The single condition that "each party must, at the time of the marriage, be unmarried," cuts away the whole of the objections. I think the Bill a very good one, and am surprised at the objections raised to it. Just see what it does * * * . It imposes the strictness of the Christian marriage law on a people who are extraordinarily polygamous. What chance is there that a man who does not conscientiously dissent from the established religions will profess dissent in order to bring himself under a stricter marriage law than that of his own religion? I think it utterly absurd. * * * * *

It is a question upon which the opinions of Natives of the old religions are not particularly valuable. How can you expect them to help in making a law which must appear to them in every way undesirable, as it removes the disabilities of those whom they consider apostates?' * * * * * * * * *

"These letters, Mr. Inglis' own correspondents, and the Madras papers to which I have referred, appear to me to make the case absolutely plain. It is, that this Bill is regarded as objectionable by what I may call the orthodox Hindús and Muhammadans, because it carries a very short step further the principle of the *Lex Loci* Act, the Hindú Widows' Re-marriage Act, the Christian Marriage Act, the abolition of Satti, and, I may add, the admission of Christian Missionaries into India. Of course, it is open to any one to take this view, and that orthodox Hindús should take it is no matter of surprise to me. I said on a former occasion that we must be prepared for such objections, and that I saw no use in a delay which could have no other effect than that of producing an expression of them. Such an expression has accordingly been produced, and it is for the Council to consider whether or not they will give way to it.

"Much has been said as to the prudence and policy of doing so. I confess I feel that, after what passed here six weeks ago, and with reference to the general policy of the Acts which I have mentioned, it would be an act of feebleness in the Government to give way to the expression of a feeling of which they were aware when the Bill was introduced; and as something has been said about prudence, I must remind those who warn us upon the imprudence of disregarding Native feeling on such a matter as this, that there is quite as much danger in having no distinct principles of your own, or in avowing, in the most solemn and unequivocal manner, that you are afraid to act upon them, as there is in overruling, quietly but firmly, the opinions of a section of Native society upon a matter on which their principles and ours are diametrically opposed to each other. It appears to me that it is absolutely impossible, and out of the question, for us to think of governing this Empire on any other principles than those of religious liberty and religious equality. It is just as impossible to reconcile those doctrines with Hindú or Muhammadan orthodoxy, as to reconcile them with a certain form of Roman Catholicism. The result is that, if the two clash, one must give way, and the plain issue raised on the present occasion is, which is to give way? Is the Government of India to say, publicly and emphatically—'We own that, in our judgment, it would be just and right to pass this Bill in its present form; but we dare not do it, and we will not do it, because we are afraid of offending Hindú and Muhammadan orthodoxy. We will give it up, and introduce instead of it another Bill, which, though in principle equally offensive to them, will perhaps not offend them quite so much in practice, and may possibly be less liable to misrepresentation.' That, stripped of all disguise, is the course which my honourable friend recommends to the Government of India in the name of prudence. I own it is a form of prudence which by no means commends itself to my mind. I do not believe that any Government in the world ever stood in a position in which a firm and quiet determination to do justice and to justify its own conduct on intelligible grounds was so essentially necessary to its dignity and to its very safety as it is to ours. Many of the most eminent Indian statesmen said of the mutiny of 1857—'This would never have happened if you had not, in various ways, allowed your troops to suppose you were afraid of them, and if you had not apologised for principles which you held, but did not dare to avow.' A timid rider is not safer in his seat than a bold one.

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

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

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

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

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

"*Thirdly*, he must provide for the case of a marriage between a Bráhmo and a person who is not a Bráhmo. If he permits such marriages, every objection made to this Bill applies to them. If he forbids them, he puts a restriction on marriage utterly alien to the whole spirit of English law, and to justice, equity and good conscience.

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

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

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

> "'The Bill defines only negatively the persons who are to be allowed to take advantage of its provisions. The effect of this would cause a great gap in the Hindú community. Now, the Bill takes cognizance of those who are not Hindús. The term 'Hindú' does not here mean nationality, but community. Hence, it is evident that those who are guilty of practices by which a Hindú would lose his caste or be excommunicated, fall under the head of non-Hindús. If a Hindú makes a voyage across the sea, or takes food (rice, bread, &c.) at the houses of the low classes or *Mlechás*, he is declared by the Sástras to be an outcast. Thus, it follows that many might take shelter under the proposed Act. Native Civilians, Barristers and Doctors would never think of rejoining the Hindú community by troublesome and humiliating expiations, but gladly avail themselves of the provisions of this Act. What is more strange, even the Bráhmos of the Adhi-Samája, or the First Church, if so disposed, might declare themselves non-Hindús, as they are notoriously guilty of many ultra-Hindú observances. The vagueness of the term 'not Hindú' would thus cause these and many other unforeseen evils, and thereby thin the ranks of the Hindú community. Hence, it becomes absolutely necessary that the small fraction for whose benefit the Bill is exclusively intended should be clearly defined by the term 'Progressive Bráhmos,' or otherwise called Kesobites, or any othr name which might be found more appropriate.'

"It is obvious from this, that the orthodox Hindús wish to subject 'Native Civilians, Barristers and Doctors' who have really abandoned their creed to 'troublesome and humiliating expiations,' in order to force them into outward conformity with Hindúism. I wish that they should be free to profess their real opinions and suffer no disability for so doing, and this is the precise point in issue between us. My honourable friend, Mr. Chapman, treated

this lightly and as a small matter. There could be no hardship, he said, in saying to a young sceptic 'you must follow the customs of your forefathers unless you see your way to professing Christianity.' I say there would be, in such a case, the greatest and most cruel injustice. I say that such a course would be a disgrace to the English name and nation, and to every man who takes part in the government of this Empire. Take a case—A Native accepts the hand which our Government holds out to him; he studies in an English College; he crosses the sea in an English steamer; he wins a place in the Civil Service by an examination in England, and when he returns here with no belief in Shíva and Kálí, or in the doctrines about Bráhmans and cows, English law says to him—'you must either pretend to be a Christian or a disciple of the sect of the Progressive Bráhmos, or you must forego all lawful marriage, unless, indeed, you like to drink cow's urine and have your tongue bored with a hot iron, to expiate your guilt in crossing the sea in a steamer and sitting at dinner by English people.' This, as Mr. Inglis' correspondent says, would be troublesome and humiliating, no doubt, for the Native Civilian; but is it not far more *humiliating for English* law and English legislation? 'Where,' I can fancy such a man asking (*when his tongue* was cured), where are the days of Act XXI. of 1850, which was passed in the face of petitions signed by more than 60,000 persons, and which, as I fondly and foolishly supposed, had secured to me the right of religious liberty in the name of that English law which I am now to administer to others.' What would be his feelings towards a Government which subjected him to cruel and foul humiliations for learning the lessons which it had so anxiously and assiduously taught, and which insisted that he should either stain the most sacred act of his life by the lying profession of a creed which he does not believe, or else purchase, by public shame and disgusting humiliations, the right to celebrate it by recognizing as true that which his English education has taught him to regard as a degrading superstition? For my part, I would dare the displeasure of orthodox Hindú in the North-Western Provinces, rather than have to submit to such taunts as that. It would make me blush *hoc dici potuisse et non potuisse refelli.* The master objection made against this Bill, of which the rest are but shadows, and which unites in opposition to it men who mutually denounce each other's creeds, and men who seem to despise those who care enough about religion to be unwilling to call that sacred which they hold to be a lie, is that it will favour unbelief. The objectors to it say that young men who have abandoned the Hindú and Muhammadan religions in their heart will be enabled by it provisions to abandon those creeds formally and definitively. I do not wonder that Hindús or Muhammadans should say this, but I do wonder that Englishmen should say so, and in particular do I wonder that it should be said by those who promote Missionary schools and other forms of European education. What is the great agent by which unbelief in Native religions is produced in this country? Can any one doubt that it is European education in all its forms? Whether Missionary schools will ultimately lead to Christianity or not, is a question on which I need say nothing; but that English education in all its forms leads straight away from all forms of Native orthodoxy, is a proposition which I have never yet heard disputed. How can we sow the seed and refuse to recognize the crop? How can we encourage men to learn that which we know with positive certainty will utterly destroy their religion, except in so for as mere nominal conformity to it is concerned, and yet put them under the heaviest of all disabilities for learning the lessons we teach, unless they will consent to add hypocrisy to unbelief. When we shut up our schools and universities; when we put Missionaries under a ban; when we repeal the *Lex Loci* Act and the Hindú Widows' Re-marriage Act and the Christian Marriage Acts, and look indulgently at Satti and wink at infanticide we may possibly get credit for sincerity in objecting to the spread of unbelief as to the Native religions. Till then, I think, people will say that what we really fear is, not the spread of unbelief, but the hostility of believers."

His Excellency THE COMMANDER-IN-CHIEF said, that he should not have ventured to say a word with regard to the merits of this Bill, as it would be extreme presumption in him to do so after the manner in which it had been defended by his honourable and learned colleague (Mr. Stephen). But HIS EXCELLENCY thought it would not be proper that a person holding the important position which he held with the Government of India should refrain entirely from giving his reasons for supporting the Bill. It would not be proper to give a silent vote, which might be supposed merely a formal concurrence with the Government with which he was connected. It was the policy of this Government to view with equal justice every religion, every form of belief, which the boundaries of India embraced. It had been his duty as Commander-in-Chief of the Army in India to view with impartiality every form of belief which was found in the British ranks, and which the British flag covered. He believed that there was no one who could have pursued a long military career in India but must have been at times associated most closely with members of every creed which was found in the country

and, he might say, who had not grasped in friendship the hands of the members of the several creeds, Muhammadan, Hindú, Sikh, or Mahrátha. With each of these His Excellency had been intimately allied, and from each of them he had received the deepest obligations, and he hoped that he had not been altogether wanting in returning those obligations. He might, therefore, safely say, that nothing would induce him to vote for a Bill which did injustice to any one of these forms of religion. But he was sure that nothing which had been urged against the Bill had shown that it would inflict the slightest shadow of injustice. He had seen the most contradictory objections made to the Bill. He had seen one that it would tempt youths to the most improvident marriages. But, on the other side, he had seen it objected that the youths could not escape from the penalties of these improvident marriages. He should be extremely sorry to see the class of people who had been described by his honourable colleague (Mr. Stephen) deprived of that protection and liberty which he sought to give them. He would therefore support the Bill, and oppose the amendment proposed by the honourable Mr. Inglis.

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

"In the remarks which I have now to offer I shall assume two things as granted ; *first*, that the Bill, as now presented to this Council, embodies true principles of justice and religious equality, and that it is theoretically right, This has been admitted on all hands. *Secondly*, that there is an actual existing necessity for legislation. This has been conceded by every speaker, except my honourable friend, Mr. Chapman, who has denied the necessity, or recognized it in a qualified manner.

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

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

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

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

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

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

"The fact that the Bill as now drawn is not limited to existing necessities, but that it contemplates and embraces the contingencies of a remote future, is, in my mind, an argument in favour of the measure, not against it. It seems far more consistent with the principles of our legislation and government to admit religious equality as a general right, than to grant it as a favour in particular cases. The contention of the opponents of the measure is, that as one sect after another separates itself from the ancient religious communities of the country, each band of fugitives should be specially admitted to the prerogative of lawful marriage. I deem it more conformable to the maxims and principles of our

administration that the rule of religious equality should be broadly and boldly laid down, and that all should be freely and spontaneously admitted to claim and enjoy its benefits. Nor can I think it desirable that questions of a delicate and irritating character should be frequently raised by reiterated legislation. By adopting the provisions of the present Bill, we put a stop to agitation. By sanctiong the proposed amendments, we should revive and exasperate agitation for an indefinite period.

"The capital argument urged against the present measure is the apprehension that it will be susceptible of misinterpretation; that it will create a feeling of alarm in the minds of the old Musalmán and Hindú communities, and be regarded as a covert attack upon their religious and national customs and institutions. . I confess that I do not see anything in the nature of the alleged provocation which is likely to maintain durable suspicions and resentments. Things have, no doubt, been done, or things might be done, to create and entertain discontent in the minds of our Native fellow-subjects; the Government might prescribe acts, or tolerate disabilities and abuses, which would create disaffection; but, to have this effect, there must be something in the action of Government of a practical character, affecting the senses, the interests, or the sentiments of men. The prescription of a new head-dress, the use of a new cartridge, the exaction of a new tax, may produce disaffection, however mistaken and unfounded. The exclusion of the lower castes from Government schools, or from Government employment, or from the use of roads, or from the enjoyment of equal rights of habitation, might afford legitimate causes for dissatisfaction and impatience while they lasted. But I question whether the concession of a speculative privilege, which attacks and effects no visible interest, which operates silently and unseen, would ever be a ground for perpetuating popular discontent, unless the people are taught by ourselves to be offended; unless the irritation, artificially excited, is artificially sustained. Nor do I see that any dissatisfaction or suspicion that might temporarily exist would be of a general and dangerous character. In what class, I ask, would this alleged discontent exist? Not in the educated and respectable, though restricted, class who have enjoyed the full benefits of European culture, and who have broken with the customs and institutions of their forefathers—for it is for the protection of these that the present measure is contrived: not among the numerous and valuable order of Natives, who have appropriated to themselves the advantages of highest English education in the highest degree, but who, from real conviction, or from a sentiment of national piety and pride, have remained attached to the beliefs and habits of the past—for this class, from which our most valuable public servants are drawn, are thoroughly convinced of the earnest desire which the English Government cherish to occupy an impartial position, indulgent and benevolent to all: not among the dark and dense masses of the lower castes, industrial or agricultural—for to these, this Bill and all similar measures will remain for ages, or at least for years, absolutely unknown. The impressions which have been so much spoken of might, I admit, have more sway with a certain middle-class of Natives, who are partly educated; who are disposed to criticise and appreciate the policy of Government without being fully cognizant of its real views; who are strongly attached to the old standards of faith and social life, and are suspicious of innovation from authority—in fact, who are half-enlightened. I admit, with my honourable friend, Mr. Robinson, that there is a class among whom a Bill of this character may be regarded as an aggression on the part of Government, or, if not as a direct aggression, as a measure under cover of which the institutions of religion and caste may be gradually sapped and weakened. But, even here, I think that, if the question is allowed to subside into silence, little durable effect will be produced. The operation of the Bill will be rarely felt or seen. It will cease to attract attention. It will die out in the popular memory and be forgotten. Nor must we forget that, as education becomes more diffused, the suspicions and resentments to which I have alluded will have less and less force. What gives offence now will give no offence a few years hence.

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

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

"It only remains for me to repeat that I feel bound to oppose the amendments suggested by the honourable Mr. Inglis, and that I give my cordial support to the original measure.

So the amendment was negatived.

The honourable Mr. STEPHEN then moved the following amendments:—

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

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

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

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

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

"That section 19 be omitted;

"And that the numbers of the subsequent sections be altered accordingly."

The Motion was put and agreed to.

The Honourable Mr. STEPHEN, also, with the permission of His Excellency the President, moved the following amendments:—

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

"(1). Neither partly must, at the time of the marriage, have a husband or wife living."

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

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

The Motion was put and agreed to.

The Honourable Mr. STEPHEN then moved that the Bill as amended, together with the amendments now agreed to, be passed.

The question being put,

The Council divided—

Ayes.	Noes.
His Excellency the President.	Honourable Mr. Inglis.
His Excellency the Commander-in-Chief.	Honourable Mr. Robinson.
Honourable Mr. Strachey.	Honourable Mr. Chapman.
Honourable Sir R. Temple.	Honourable Mr. Bullen Smith.
Honourable Mr. Stephen.	Honourable Mr. Cockerell.
Honourable Mr. Ellis.	
Major General the Honourable H. W. Norman.	
Honourable Mr. Stewart.	

So the Motion was carried.

The following Select Committee was named:—

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

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

H. S. CUNNINGHAM,

Officiating Secretary to the Council of the Governor General for making Laws and Regulations.

CALCUTTA,
The 19th March 1872.

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

The Council met at Government House on Tuesday, the 26th March 1872.

PRESENT:

His Excellency the VICEROY and GOVERNOR GENERAL of INDIA, K.T., *presiding.*
His Honour the LIEUTENANT-GOVERNOR of BENGAL.
The Honourable JOHN STRACHEY.
The Honourable Sir RICHARD TEMPLE, K.C.S.I.
The Honourable J. FITZJAMES STEPHEN, Q.C.
The Honourable B. H. ELLIS.
Major General the Honourable H. W. NORMAN, C.B.
The Honourable J. F. D. INGLIS.
The Honourable W. ROBINSON, C.S.I.
The Honourable F. S. CHAPMAN.
The Honourable R. STEWART.
The Honourable J. R. BULLEN SMITH.

OATHS AND DECLARATIONS ACT AMENDMENT BILL.

The Honourable MR. STEPHEN moved that the final Report of the Select Committee on the Bill to amend Act No. V. of 1840 (concerning the Oaths and Declarations of Hindoos and Mahomedans) be taken into consideration. He said that it would be in the recollection of His Lordship and the Council that this Bill had undergone considerable discussion, and that, on the occasion when it was last before the Council, it was referred back to a Select Committee, on the motion of His Honour the Lieutenant-Governor, in order that it might be reconsidered. A great deal of discussion had taken place upon it in Committee, and although the final result arrived at had been substantially to maintain the view originally taken, the form of the Bill had been somewhat changed. The Committee had given up the idea originally entertained of codifying the law on this subject by reducing it to a single enactment, and thought it better, on a full consideration of the whole subject, that the Bill should merely amend the existing law in two particulars, and should leave it in other respects as it was at present. If the Bill had been rendered a code complete in itself, it could hardly have failed to attract unnecessary attention to the distinction which at present existed between the oaths of Christians and the oaths of Muhammadans and Hindús, which might have been invidious, and would in all probability have excited needless discussion. It was certainly unfortunate that the law on this subject should have to be gathered from a variety of authorities; but that, upon the whole, seemed a less evil than the one which formed the other branch of the alternative. Under these circumstances, the Committee proposed that they should simply add two sections to the existing law. The first of these sections prescribed that, when anybody objected to take an oath or make a solemn affirmation, he might make a simple affirmation instead: that option would probably scarcely ever be exercised. The necessity for this provision was obvious. It was in accordance with the course which had been taken for many years past in England, ever since the Quakers and Moravians and others first objected to take oaths. In this country, however, and at the present moment, there was a special necessity for such an enactment, for this reason. The Evidence Act which was passed the other day repealed, amongst other other enactments, Act II. of 1855, and section 15 of that Act was the only provision by which a person could be excused upon religious grounds from taking an oath. That section, he might add, was couched in language which appeared to him not very happily chosen, and was one which, he thought, it would not be proper to re-enact in the words in which it now stood. The section was this:

> "Any person who, by reason of immature age or want of religious belief, or who by reason of defect of religious belief, ought not * * * * to be admitted to give evidence on oath or solemn affirmation, shall be admitted to give evidence on a simple affirmation."

He did not think that it was right to pass a law which in effect said, to a Quaker for instance, that, by reason of his defect of religious belief, or want of religious belief, he ought not to be permitted to take an oath, but should only be heard on affirmation. What prevented a Quaker from taking an oath was, not the want or defect-of religious belief, but an excess of religious belief. The section was indeed so worded as to imply a sort of condemnation of those whom it professed to relieve.

The next section was one which Mr. Stephen considered very important. It was this:—

> "No omission to take any oath or to make any solemn or simple affirmation; no substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution or irregularity took place."

He should best illustrate the importance of this by describing the state of the law as now existing, and then pointing out its practical results. The law at present on the subject was strangely complicated. In the first place certain old Regulations provided that Muhammadans and Hindús were to be sworn respectively on the Korán or on the Ganges water. In the next place, Act V. of 1840 declared that no Muhammadan or Hindú was to be sworn on the Korán or the Ganges water, but that, instead of being so sworn, he might make a solemn affirmation. Then, the Codes of Civil and Criminal Procedure provided that witnesses were to be sworn or to make affirmation according to the law for the time being in force relating to oaths and affirmations. There was not a word in the law of the country, so far as he knew, about oaths being taken by any other persons except Hindús and Muhammadans. In point of fact, oaths were taken by Christians only; and if the existing law was put into the shape of an express provision, it would stand thus:—"All Christians shall be sworn unless they object to the taking of an oath; no Hindú or Muhammadan shall be sworn at all." The Committee did not like to put that into express words. That was the reason why the Bill had been drawn as it now stood. That state of things led to this curious result. If a man, being a Christian, made a solemn affirmation, his evidence was given irregularly, and might be upset altogether. If, on the other hand, a Muhammadan took an oath, his evidence was in the same position. Now, as there was no sign by which you could know a Hindú or Muhammadan from a Christian, the consequences might be that, in the first instance, you might administer the wrong form and thereby invalidate the witness's testimony. On the other, after using the right form, the witness might invalidate his own evidence by coming forward and saying "I am a Christian, or a Muhammadan; I ought to have taken an oath, or made a declaration," as the case might be. From the intricacies of the law in this respect, the greatest possible confusion mght arise. Mr. Stephen might mention that, at the time this Bill was under consideration, there was a likelihood of the occurrence of one of the greatest scandals and miscarriages of justice which it was possible to conceive. When Lord Mayo was assassinated in the Andaman Islands, an inquiry into the case was held by the Magistrate. The assassin was committed for trial; he was duly tried by the Sessions Court, and having been convicted was sentenced to the punishment which he deserved. The proceedings were sent up for confirmation to the High Court, and when they arrived at Calcutta it appeared that the Sessions Judge had recorded that the witnesses were examined upon solemn affirmation. In point of fact the witnesses, who were English gentlemen of high position and rank, had been sworn. But as it was recorded that they had made affirmation, serious difficulty was felt in confirming the sentence of the Sessions Judge; and if it had not been possible to produce proof that, although it was stated in the record that the evidence had been given upon solemn affirmation, the witnesses had in fact been duly sworn, one of the greatest crimes which ever disgraced this country might have passed unpunished, for this reason and no other, that five English gentlemen had asserted 'in the presence of Almighty God' that they saw this and that, instead of kissing the Bible and saying "So help me God." The possibility of such a scandal taking place showed how necessary it was that the law should be amended as proposed.

The result of the proposed amendment would be this: it would not in any degree touch the existing religious sanction, or interfere with the administration of oaths or solemn affirmations. They would still be imposed just as at present, and any advantage which might at present be derived from them would continue to be derived from them; but if, by any accident, a mistake was made, such as was almost certain to happen in a country like this, the effect of the amendment would be to prevent the evidence from

being invalidated. That was the way in which the Committee proposed to deal with the case; and although, as he had said, it would certainly be more satisfactory if the whole law on the subject could have been reduced to a single enactment, the course which, after much discussion and consideration, had been taken, would be found to have secured every practical advantage and to have prevented a discussion which had much better not be raised.

His Honour THE LIEUTENANT GOVERNOR approved of this Bill so far as it went. He might say, in general terms, that he was bound to accept it, having been consulted in the matter. He had no doubt that the Bill as now proposed would be a very considerable improvement, and especially that the fourth clause was a very great and necessary improvement. He was glad that persons who had objections to use the name of Almighty God, whether in an oath or a solemn affirmation, would be relieved from their difficulty by the provision of section 3. At the same time he might say that he should have been better pleased if the Bill had gone somewhat further; individually, he was extremely unwilling to abandon altogether the reliance on the value of an oath as calculated to elicit the truth in judicial proceedings in this country. The law, as it would remain under this enactment, although very much improved, would stand thus, that, in future, oaths would be administered to Christians only, unless they had any objection to take an oath. As he had said, he was bound to approve of the Bill as now amended, and he felt he had no right to press an addition of which he had given no notice. At the same time he might say that he had been very much occupied during the last few days, and that his impression was that he had not seen the Bill in its present shape till this morning. He had drawn a section which he should like, if possible, to add to the Bill. He was in the hands of His Lordship; if he was allowed to read that section, he would do so. If His Lordship would permit, and the Council were disposed to discuss that section, he should be very glad. If not, he had no wish to oppose the passing of the Bill.

His Excellency THE PRESIDENT having intimated his consent to the reading of the proposed section,

His Honour THE LIEUTENANT-GOVERNOR continued—The section he proposed, and which might be inserted after section 3 of the Bill, was as follows:—

> "In any judicial proceeding, if any party thereto shall offer to swear, or shall demand that any other party thereto may be sworn, in any form which is common among, or which is held binding by, persons of the race or persuasion to which the person to be sworn belongs, and such form of oath is not repugnant to justice and decency, and does not affect any third person, the Court may, if it think fit, tender such oath to the person whose oath is offered or demanded: Provided that no person who has not voluntarily offered so to swear shall be compelled to swear. But if any person shall decline to take any oath so tendered, the fact of his so declining shall be recorded, and such record shall form part of the proceedings."

The section he had just read was intended to declare that oaths should in future be not compulsory, but voluntary; that it should be in the power of any person to say "I am ready to swear according to the form of my race and creed to the truth of what I state," or "I demand that the witness shall be asked, are you or are you not prepared to swear according to the forms of your race?" His Honour proposed that the oath should not be compulsory, but that an entry should be made in the record of the fact that a person had accepted an oath, or had declined to take it. In case the witness had declined to take an oath, it would be perfectly open to the Court to put upon that refusal such a construction as it might see fit. The refusal to take an oath might be made by a man who had a conscientious objection to take an oath, or it might be put forward by a man who had no such objection, and yet was unwilling to take an oath. Such a provision would tend to the interests of justice and get rid of the anomaly that the only persons permitted to take an oath were Christians. The Council would observe that the proposal was that oaths should be administered only in such cases as the Court might think fit, and he proposed that the decision of the Court should be absolute. He also proposed that it should be a condition that the form of the oath should not be repugnant to justice and decency, and that it should not affect third persons. The effect of such a provision would be, that oaths of an indecent kind or in an improper form would not be allowed, and an oath on the head of a child or third party would not be permitted. But it would be permissive in a Court to accept oaths which were in a decent and proper form. If a Hindú was willing to swear by a cow's tail, and a decent and respectable cow was avail-

able at hand, he should be permitted to take such an oath, and the value of his testimony would be increased by the weight that form of oath would give to it.

His Excellency THE PRESIDENT thought the amendment proposed was one of considerable importance, and that notice had better be given of it. He was not aware whether it would involve any serious inconvenience if the consideration of the Bill were postponed.

The Honourable Mr. STEPHEN said that this Bill had been up very often, and the topic had been discussed again and again in Council and in Committee, and he did not see that any advantage would be gained by an adjournment. He thought that the Council was as capable of going into the subject now as at any other time, and he should much prefer that the matter should be disposed of now.

His Excellency THE PRESIDENT thought that the amendment before the Council was of a serious character, and if His Honour the Lieutenant Governor desired to press the amendment, HIS EXCELLENCY thought that notice should be given, so that the members might avail themselves of the opportunity to consider the proposed amendment. For his own part, HIS EXCELLENCY had never considered this subject before.

The Honourable Mr. STEPHEN suggested that the proper course would be for His Honour the Lieutenant Governor to move the adjournment of the debate.

His Honour THE LIEUTENANT GOVERNOR said that he was quite ready to make that motion, and he would do so in a formal way. As he had said before, he had no desire to press the subject if the Council were not disposed to take it into consideration. He would move that the debate be adjourned for one week.

The Motion was put and agreed to.

PANJAB LAWS BILL.

The Honourable Mr STEPHEN also moved that the final Report of the Select Committee on the Bill for declaring what laws are in force in the Panjáb be taken into consideration. He said this Bill related to a matter of very great intricacy, and which it was necessary to explain fully. The Bill was intended to have been passed at Simla, in the Panjáb, in the month of October last. It had been very fully discussed at the time, but it was adjourned, in order that full consideration might be given to the opinions of persons acquainted with the subject. Those opinions had been received and discussed, and he was sorry that his honourable friend, Mr. Cockerell, who had devoted considerable attention to the subject, was not present to take a part in the proceedings on the present occasion. Mr. STEPHEN must warn the Council that it would be practically almost impossible to discuss the details of this measure on the present occasion, unless honourable members had already given great attention to the subject, inasmuch as it was of a very technical character. In order to lay the whole matter before the Council, he must go back to the time of the annexation of the Ponjáb. At that time, it was considered by the then Government of India that, on the conquest or annexation of any new Province, it was competent to the Governor General in Council to make laws for such new dominions, not in this Council according to the forms prescribed by the Charter Acts which gave the Governor General in Council power to legislate, but in an executive way, and on the ground that the Governor General in Council represented the Queen, who individually had the right of making laws for what were called, in English law, Crown Colonies. That was different from the earlier view on the subject, for, when Benares, and what were afterwards called the North-Western Provinces, were conquered, the laws for the administration of those territories were made by express enactment; the Regulations and Laws previously in force in Bengal, Bihár, and Orissa having been extended to them with some variations. That course was not considered expedient when the Panjáb was annexed, no doubt because the Regulations at that time had become exceedingly intricate and complicated. The course taken was to carry on the administration by means of executive orders, which took the Regulations of the other Presidencies as a general guide. The result showed that the course taken was wise. It was however found at once by those eminent men who administered the Panjáb at that period, that it was impossible to carry on the administration without some definite rules; and the consequence was that a great variety of rules, to which Mr. STEPHEN need not refer particularly, were made by the Board of Administration, and by Lord Lawrence when he was Lieutenant-Governor of the Panjáb, and were used by him and those who were associated with him in the government of the Province. Amongst those rules, there was one set collected together in a book called the *Principles of Law*. That

Book was prepared by his honourable colleague, Sir Richard Temple, when he was serving in the Panjáb, and now passed by the name of the *Punjáb Civil Code*. The degree of legal force which attached to those rules was very doubtful; and questions had been raised as to their legality, in consequence of which, when the Indian Councils' Act was passed section 25 was introduced, confirming all these rules indiscriminately. That section had been since taken as a legal declaration that, if the Government now wished to legislate, they must do so by means of a legal enactment and not by executive orders. Its effect was to give the character of law to a large body of rules which were never intended to be law, which were never collected together as a body of laws, which were never published in any complete form, and which were never even ascertained until last summer, when in compliance with a circular of the Government of India, requesting that a collection of all such rules should be made, the Panjáb Government sent up a book compiled by Mr. Barkley as a collection of the rules on the subject. If any one would read those rules as Mr. STEPHEN had done, he would discover the state of complication and confusion which existed. It was indeed impossible to carry confusion much farther. However, when they were carefully compared and collated, they turned out to be very much less difficult than they looked. It would be found that the Bill before the Council, and the Bill passed at Simla relating to the land-revenue, were really the nett result of the book to which he had alluded and of the *Panjáb Civil Code*. Therefore, if the Council accepted this Bill, the law of the Panjáb would be quite as definite as the law of any Province in India, not to say more so. That was the general nature of this Bill. He was extremely sorry that so many honourable members should have had no opportunity of testing the accuracy of what he said. Every point in the Bill was gone through carefully in the Panjáb, the whole of the Regulations had been carefully considered, and the two Bills in question were framed.

He wished to call the attention of the Council to the fact that the vague state of the law which it was proposed to remedy had involved very great practical inconveniences, and might do so again at any future time. In illustration of this, he would refer to three distinct instances of the inconveniences that had arisen.

In the first place, His Lordship and the Council would recollect the occurrence in this Council of one of the warmest discussions that had ever taken place, namely, the discussion on the Panjáb Tenancy Act. That discussion arose entirely from the uncertainty which existed on the question what Regulations had been introduced into the Panjáb and what Regulations had not been introduced. The leading Regulation in the settlement law was the Bengal Regulation VII. of 1822. Whether that Regulation was or was not introduced into the Panjáb by certain letters written to the Board of Administration, was one of those indeterminate questions upon which any two persons might form different opinions. The view taken by his honourable friend, Sir Richard Temple, and Lord Lawrence, on the one side, was entirely different from the view taken by a distinguished settlement officer, Mr. Prinsep, on the other; and the Chief Court of the Panjáb took the same view as Mr. Prinsep. The Chief Court held that the Regulation was law in the Panjáb and upheld Mr. Prinsep's proceedings. The effect was to produce very great discussion. The view of Lord Lawrence and Sir Richard Temple was that Regulation VII. of 1822 was never introduced into the Panjáb at all; but that it was held up to the settlement officers as a guide in their proceedings for the settlement of the Province. Mr. STEPHEN need not follow out in detail the practical consequences of those two conflicting views. But acting upon his view of the case Mr. Prinsep practically reversed an immense number of decisions which had been given by the early Settlement Courts. Mr. STEPHEN thought that the very fact of a controversy of that kind arising between two leading authorities in the Panjáb, was sufficient to show clearly the extreme importance of putting into a definite shape the laws which were in force in the Province.

The second illustration which he would give was also one of very great importance. Certain rules had been passed, by which the obligation of attending roll-calls was imposed upon those who were known as the habitual criminal tribes of the Panjáb. The policy of those rules might have been good, or it might have been bad; but as a fact they had been acted upon for a considerable time. After a certain time, the Chief Court of the Panjáb declared that those rules had not the force of law, and that they did not form part of the rules which were confirmed by the Indian Councils' Act. The effect of that ruling was to set a number of wandering criminal tribes free from all control, and to put a number of officers in the Panjáb into the position of having done a series of illegal acts when

they supposed that they were discharging their duties. There, again, was another instance of the extreme practical inconvenience of the uncertainty as to what was and what was not law in the Panjáb.

Mr. STEPHEN would give a third instance which would perhaps set the matter in a still more glaring light. The book called the *Panjáb Civil Code* contained certain insolvency rules, the effect of which was somewhat to vary the procedure followed upon that subject in other parts of India. Under the Code of Civil Procedure, a sort of race took place between the creditors of a debtor: the man who first got judgment had it satisfied in full, and the balance of the debtor's property was divided amongst the other creditors. That was not at any time, and was not now, the law in the Panjáb. But under the Panjáb law, when a debtor was insolvent, his property was divided rateably amongst the creditors. Mr. STEPHEN would not discuss the question whether the Panjáb law was right or wrong. He offered no opinion upon that subject; but he pointed out this strange state of things that, after the sale of a very extensive property had taken place, one of the Judges of the Chief Court held that these rules had not the force of law, and that the whole proceedings were null and void; and another Judge, in another case, had held, with equal earnestness, that they had the force of law.

If Mr. STEPHEN were at liberty to read to the Council the different opinions which had been delivered as to the character of the *Panjáb Civil Code* he could show, not only that there had been the most conflicting and contrary views as to whether that Code was or was not law, but that those who held that it was law had gone so far as to say that the Code was a Code of different degrees of inspiration. As many as six or seven degrees of inspiration had been ascribed to the different parts of the Code and as to the relation in which they stood to the rest. By one authority it was laid down that, if the *Panjáb Civil Code* was inconsistent with Muhammadan law, it overruled Muhammadan law; according to another authority, if it differed from Muhammadan or Hindú law, it might be regarded as evidence of a custom which overruled those laws; and according to another Judge, if the Code differed from Muhammadan law, Muhammadan law overruled it In point of fact, this Code, which was drawn up by Sir Richard Temple with the best of motives and with great ability as a text-book for persons who had no guide to administer the law, was said to be a sort of semi-inspired volume with different degrees of infallibility attaching to its different parts.

That was the state of things which existed in the Panjáb at this moment, and which it was the object of this Bill to remove. The Bill had been considerably modified from the shape in which it first appeared. The Committee on the Bill considered that the most rational theory as to the *Panjáb Civil Code* was that it was law; that in so far as it professed to declare the Hindú or Muhammadan law, it must be taken to be subject to those laws; and that in so far as it differed from them it must be taken to alter them. The Committee accordingly extracted from the *Panjáb Civil Code* those passages in which it differed from the ordinary Hindú and Muhammadan law, enacted them specifically as law, and declared that subject to those alterations, Hindú and Muhammadan law were in force in the Panjáb. The Bill so drawn was referred for the opinions of the Judges of the Chief Court of the Panjáb. There was a good deal of correspondence on the subject, but the final result of that reference was as follows: The Judges said that they had not been in the habit of recognizing as law the deviations from Hindú and Muhammadan law which occurred in the *Panjáb Civil Code*, and in fact that they regarded the *Panjáb Civil Code* rather as declaratory of that form of Native law which prevailed in the Panjáb than as being itself law, except in regard to the two subjects of pre-emption and insolvency. That, he thought, was the result of their statements. The Committee accordingly struck out of the Bill the variations upon Native law taken from the *Panjáb Civil Code*, retaining only its provisions as to pre-emption and insolvency. Those now formed part of the Bill, and those he should ask the Council to pass as they stood. Then, the question arose, what version of Hindú and Muhammadan law should be administered? The Bill provided that the Hindú and Muhammadan law as modified by the custom of each place should be administered: if the custom and the law were the same, as at Delhi, the Hindú and Muhammadan law would be administered; if in other parts of the country the law was modified by custom, the particular customs prevailing there would be administered.

That brought Mr. STEPHEN to make an observation on the amendment which was proposed by His Honour the Lieutenant-Governor.

Mr. STEPHEN thought that the intention of the Bill to give the utmost prominence to custom was plain, but His Honour was not of that opinion; accordingly His Honour had drawn up an amendment in consultation with Mr. STEPHEN, which he would propose and which Mr. STEPHEN considered satisfactory. The amendment was as follows:—

"That, in section 5, line 6, all the words after the words 'religious usage or institution' be omitted, and the following be substituted:—

"the rule of decision shall be—

"(1) any custom of any body or class of persons, which is not contrary to justice, equity and good conscience, and has not been declared to be void by any competent authority.

"(2) the Muhammadan law, in cases where the parties are Muhammadans, and the Hindú law, in cases where the parties are Hindús, except in so far as such law has been altered or abolished by legislative enactment, or is opposed to the provisions of this Act, or has been modified by any such custom as is referred to in the preceding clause of this section."

The *Panjáb Civil Code* gave custom the effect of law, and it was one of the principal objects of Lord Lawrence that it should do so. Mr. STEPHEN thought that the effect of the amendment would be to put that beyond all doubt or question whatever, and, if so, the position of things would be this: The *Panjáb Civil Code* would maintain the position which his honourable friend, Sir Richard Temple, intended it should have, as being an authorized hand-book. It would be available as evidence as to the custom in any particular case; but there would never again be a question as to whether that Code was law or only an exposition or commentary on it. He hoped the Council would consider this explanation satisfactory.

The rest of the Bill he should pass over very shortly. There were provisions relating to the Court of Wards, and there were sections taken from the Bengal Regulations and the practice of the Panjáb Courts. It was intended at first to put these into the Act relating to land-revenue; but it was considered more appropriate that they should find a place in this Bill. With regard to criminal judicature, the Committee proposed to extend the Penal Code to offences committed before its passing, with the exception of political offences. Before that time, there existed a sort of small Penal Code called *Rules for the Administration of Criminal Justice*, which was drawn up by Mr. Aitchison. Cases which would fall under it would now seldom arise, and if they did, there was little difference between the rules and the Penal Code. With regard to the rules referred to at the end of the Bill, he might observe that they were the rules which had already received the force of law under section 25 of the Indian Councils' Act. The Committee proposed to lay down, in a general form, the objects for which the Local Governments might make rules, and until such rules were put in force, the existing rules would be law.

That exhausted the subject of the Bill. Then came the schedules. The first schedule specified the enactments which were to be in force in the Panjáb, and the second, the enactments which were not to be in force. The letters to the Board of Administration and other documents contained in the book to which he alluded had been considered to introduce the Regulations, or what was called the spirit of the Regulations, into the Panjáb As the Council was aware, the greater part of the Bengal Regulations had been abolished. Upon a careful consideration of the subject, it appeared that the only Regulations which need be specified as being in force in the Panjáb were nine, which were put down in the schedule. The Committee proposed to repeal all the rest of the Regulations and local rules contained in the Statute-book, the substance of which had been put into this Bill.

That was the nature of this most intricate transaction. He felt that he was very much in the hands of the Council as to its acceptance. He would repeat that it had been carefully considered in Committee. It would have been desirable, if possible, to have passed this Bill at Simla, where the Council would have had the assistance of His Honour the Lieutenant-Governor of the Panjáb and of Mr. Egerton, the Financial Commissioner. Those gentlemen had given great attention to the subject; their approval had been given to the whole Bill, except as to one point on which Mr. Egerton differed in opinion: as regarded His Honour the Lieutenant-Governor, it was his earnest wish that the Bill should be passed into law. Mr. STEPHEN was sorry if honourable members had not had the opportunity of going fully into the matter; but he hoped that they would be satisfied with the explanations which he had been able to give.

The Honourable Mr. CHAPMAN had no intention of opposing the passing of this Bill, but he thought it right the Council should know that the opinion of the authorities in the Panjáb was not unanimous in favour of the Bill. He gathered from the papers that Mr. Boulnois, one of the Judges of the Chief Court of the Panjáb, was not altogether in favour of the measure; and also that Mr. Forsyth, who was a gentleman of very great experience, did not approve of the Bill. Mr. Forsyth said, in respect to the proposed abolition of the Panjáb Code—

> "I regret this exceedingly, for it will entail on the people endless litigation, and on our Judges fearful labour. It is well known how intricate any point of Muhammadan or Hindú law is, owing to the different schools of their lawyers requiring the Judge who has to administer the law to consult many authorities and often to call for interpretations from pandits and maulavis. Now, the merit of the *Panjáb Civil Code* was that, to a very considerable extent, this work of minute inquiry was rendered unnecessary."

Mr. Egerton, the Financial Commissioner of the Panjáb, in a letter dated so recently as January 1872, objected to all the provisions about betrothal and marriage having been left out. Mr. CHAPMAN saw also that several authorities in the Panjáb objected to the provisions of the Bill by which all females were to be brought under the guardianship of the Court of Wards.

With regard to the provisions relating to pre-emption, Mr. CHAPMAN thought that the rules laid down were admirable, and he should like to see more general effect given to them; he was of the same opinion as to the provisions relating to bankruptcy.

The Motion was put and agreed to.

His Honour THE LIEUTENANT-GOVERNOR moved the following amendment:—

> That, in section 5, line 6, all the words after the words 'religious usage or institution' be omitted, and the following be substituted:—
>
> "the rule of decision shall be—
>
> "(1) any custom of any body or class of persons which is not contrary to justice, equity and good conscience, and has not been declared to be void by any competent authority,
>
> "(2) the Muhammadan law, in cases where the parties are Muhammadans, and the Hindú law, in cases where the parties are Hindús, except in so far as such law has been altered or abolished by legislative enactment, or is opposed to the provisions of this Act, or has been modified by any such custom as is referred to in the preceding clause of this section."

He agreed with his honourable friend, Mr. Stephen, that the effect of the Indian Councils' Act, as it was usually interpreted, had certainly been to render it necessary that some declaration of the law in force in the non-Regulation Provinces should be made. His HONOUR'S own view—a view upon which he had acted for many years, and which he ventured to maintain was the correct view—was that, in acquiring new territory, we succeeded to the law of our predecessors, that was to say, to despotic power, and that we were entitled to exercise it until we were tied up by positive law, and in so far as we were not so tied up. He did not see anything in the Indian Councils' Act inconsistent with that view. He thought it unfortunate that the Indian Councils' Act had been otherwise construed, and that construction had taken so firm a hold that it was difficult to shake it. First, that Act had been construed to give the force of law to a vast number of letters and orders and documents which were never intended to be laws or regulations, and, the rules previously made by the executive power having been rendered valid by the Indian Councils' Act, it was inferred that the power to pass such rules ceased in the future; it came to be supposed that an officer could not hold up his little finger without having a law which would authorize him to do that. In one sense, therefore, there were too many laws, whilst at the same time there was this doubt as to being able to do anything without a law. His HONOUR did think that something should be done in the matter. When the Council, on a former occasion, were discussing a similar matter, he began by saying that he did not accept the view which his honourable and learned friend, Mr. Stephen, had more than once propounded with regard to the duties of Members of this Council. His HONOUR thought that Members were bound to do something more than to echo their honourable colleagues' views; that they were bound to exercise an intelligent opinion with regard to the Bills placed before the Council. He would not, therefore, excuse himself for venturing to exercise his judgment with regard to this Bill. He had served

in the Panjáb during many years of his official career. He had succeeded to the Sikhs in charge of the territories in the province of the Sutlej before the annexation of the Panjáb. He had served in that country for many years, and he had continued to keep in view the course of administration in the Panjáb ever since. For the people of the Panjáb he had a great regard; they were a people in many respects of a very superior character, and he had had a second home amongst them. He had therefore a special interest in this Bill. After a quarter of a century of British administration the state of things was, he thought, such as to disappoint persons who were concerned in the administration of the province in the early days when he had served there; the plan of administration then pursued had not only been modified, but he might say, entirely reversed. The Panjáb had come to be as law-ridden, as much ridden over by lawyers, he feared, as any part of British India. He had often expressed in this Council, perhaps it might have been thought in a somewhat jocular way, his abhorrence for the reign of lawyers; but in doing so, he did not in any respect mean to give that opinion in the way of a joke, but in the most serious and sad manner. He did consider that the predominance of lawyers all over the country was a very serious and growing evil, and he wished to declare his opinion that if ever the country became too hot to hold us it would be the lawyers that had done it. The Senior Judge of the Panjáb, an English lawyer who had in comparatively recent years gone to that province, was, he was told, strongly of opinion that the Courts were becoming a burden and a disaster to the people of the Panjáb. That being so, His Honour had looked to this Bill in order to see whether its effect would be to give new force to this law-ridden, lawyer-ridden form of administration. He thought the Council should consider this Bill very carefully, and he had himself been struck by the circumstance which had been noticed by his honourable friend Mr. Chapman, namely, that there were a good many differences of opinion in respect of this Bill. He had also had the feeling that what was called the *Panjáb Civil Code*, which his honourable friend, Sir Richard Temple, had so large a hand in preparing, was a successful and creditable attempt at simple codification in our early days; and although His Honour had not himself had much practical experience in administering that Code, he believed it was a simple exposition of the first principles of law, and he had been somewhat unwilling to see it set aside and put an end to. But having done his duty in going into this matter as narrowly as the press of business upon him would permit, he would say this, that when he sent for the *Panjáb Civil Code*, there was brought to him, not the small book which he knew as the *Panjáb Civil Code* as it existed in early days, but a volume of immense thickness, and he found that the Code had been overlaid by an enormous amount of commentaries, and it was almost impossible to extract from it the portions of which the *Punjab Civil Code* originally consisted. That went very far to reconcile him to the speedy passing of this Bill, and he was much influenced in so reconciling himself by the opinion of His Honour the Lieutenant-Governor of the Punjáb, for whom he had the greatest respect, and who was stated to be very anxious that the Bill should be passed.

His Honour, having great respect for the honourable member in charge of the Bill, and the members of the Select Committee, including his honourable friend, Sir Richard Temple, who was also the sponsor for the *Panjáb Civil Code*, would not oppose, but would rather assist in, the passing of a Bill of this kind, provided it was passed in such a shape as would not make it dangerous to the peace of the country and facilitate the influx of a perfect horde of lawyers.

In examining the provisions of the Bill, he found that it was more an abolishing, than an enacting, Bill: it abolished a great deal, and re-enacted comparatively little. He also hoped and anticipated that almost all the existing law-books in the Panjáb might be swept away. That being so, he would try to make the best of the Bill. He could not say that he had no doubts as to the result; but it was his duty under the circumstances to make the Bill as good as possible; if the Council would accept the amendment of which he had given notice, it was his impression that a great part of the objections to the Bill would be removed. The provisions of the Bill which attracted his attention, and with regard to which he had the gravest doubts, were those to which the honourable member in charge of the Bill had alluded at some length, namely, the provisions of section 5 as to the laws by which certain questions should be decided: it enacted, in regard to a large number of subjects, that the Muhammadan law in cases where the parties were Muhammadans, and the Hindú law in cases where the parties were Hindús, should form the rule of decision, except where the law had been altered or abolished by legislative enactment, or was opposed to the provisions of the Act. He was quite willing to admit that certain simple rules, excerpted from the Hindú and Muhammadan

law, had to a certain extent had force in the Panjáb; but it appeared to him that a section of this kind would import into the Panjáb, not the simple law of the Province, but the whole of the complications of the written Hindú and Muhammadan laws, and the whole of the voluminous case-law comprehended in the decisions of the Courts all over the country, and more especially in the decisions of the High Court at Calcutta. That, he regarded with the gravest apprehension. He should so regard it, not only because it would open a wide door for lawyers, but because it was not the law of the Panjáb; not one out of ten, perhaps not one out of a hundred, persons in the Panjáb was governed by the strict provisions of the Hindú and Muhammadan law. The only object of His Honour's amendment was to provide, in simple words, in such a way that the officers of the Panjáb in administering the law might not mistake, that custom came first, and that Hindú and Muhammadan law only came when custom failed. That was the principle he had ventured to express in the words of the amendment, which provided that—

"the rule of decision shall be—

"*First*—Any custom of any body or class of persons which is not contrary to justice, equity, and good conscience, and has not been declared to be void by any competent authority."

As drawn, the Bill did provide, in a later section, that under certain circumstances regard might be had to custom; but as the arrangement now stood, it was proposed that the Hindú and Muhammadan law should come first. Moreover, by custom the Bill as originally drawn seemed to refer to *local* customs, but the customs were customs peculiar to persons rather than to places. Having then put custom first, in such a shape that those who administered the law would see that custom was marked first, and that it should be considered first, then came the second clause of the amended section:

"*Second*—The Muhammadan law, in cases where the parties are Muhammadans, and the Hindú law, in cases where the parties are Hindús, except in so far as such law has been altered or abolished by legislative enactment, or is opposed to the provisions of this Act, or has been modified by any such custom as is referred to in the preceding clause of this section."

So far as the Muhammadans were concerned, His Honour believed that such a provision would meet the case. He believed that comparatively few of the Panjáb Muhammadans were governed by pure Muhammadan law. It had always seemed to him that the Muhammadan law was a law, not for a settled place, but for a wandering people, possessed of flocks of sheep and herds of cattle which were divided amongst their descendants by rule of arithmetic. Therefore, in dividing property and in other matters, where the parties were Muhammadans, it would be provided that the customs of the parties should first be ascertained, and, in the absence of any custom the Muhammadan law should prevail; and as there could not be much doubt whether the person whose case was concerned was or was not a Muhammadan, His Honour thought that sufficient provision for such cases would be made by the ammendment. But when they went farther, he had doubts whether the words of his amendment would meet the case of those who where not Muhammadans. The doubts which he entertained were centred in the one word "Hindú." What or who was a "Hindú"? That was a question upon which there was great doubt, and especially so in the Panjáb, for there really were very few true Hindús there. He thought that the Sikh pure was not a Hindú. He had adopted another religion, and was under a rule altogther different. But the great mass of the people in the Panjáb were Játs, and he questioned whether these Játs were Hindús; and that was a question which it was impossible for any man to answer. His Honour would explain what the difficulty was. It had been asserted, and the assertion had by some been mistáken for an axiom, that the Hindú religion was not proselytizing; that a Hindú would remain a Hindú to the end of the chapter, and that no one else could become a Hindú. That, he ventured to say, was altogether a mistake. Any one who had studied the history of India in some of the aboriginal tribes, might see the process of Hindúizing going on from day to day. It might be seen in the territories under His Honour's own administration, and in some other territories, in the Central Provinces for instance, where he was before, and where there were many tribes in a state of Hindúization. He himself believed that the Rájpúts were adopted Hindús, and the Kols and other aborigines were turning themselves into Rájpúts with a view to an adoption into the Hindú hierarchy, and at this moment the process of Hindúization was going on amongst the Manipúris. That process went on through the system of caste, which was assumed to divide Hindúism from all other religions. Any

tribe who paid tribute to a Bráhman, who in fact made their adoption into Hindúism profitable to a Bráhman, were accepted as a new caste into the Hindú hierarchy.

That was the case to a limited extent in regard to the Játs. They were a people who had, to a moderate extent, come within the influence of Hindúism. Therefore, in regard to the manners and customs of those people, it could not properly be said that their customs modified the Hindú law, but rather, on the contrary, that the Hindú law modified their customs. The Bráhmanical law of the Hindú was new to them. In parts of the country they had partially adopted the Hindú law by engrafting it upon their custom ; on the other hand, in some instances they had not accepted that law, but held by older and more wide-spread Aryan laws. That being so, His Honour's doubt was whether his section would fully and entirely solve the difficulty ; it would still remain to be ascertained whether the party to the suit was or was not a Hindú. His Honour might have liked to add a few words, but he felt himself entirely in the hands of the honourable member in charge of the Bill, as to the sufficiency of the amendment which he had proposed.

The Honourable Mr. Stephen thought that the amendment would entirely meet the case. It might perhaps be doubtful whether a person was subject to the latter part of the amendment, or to the custom only; but he must be subject to one or to the other. If a case were before the Court, it must be dealt with either according to some custom to which the parties were subject, or according to the Hindú or Mahammadan law, or according to the Hindú or Mahammadan law modified by custom ; one or other of these ways must meet the case.

His Honour the Lieutenant Governor only wished to add five words to the second clause of his amendment. They were the words "hitherto governed by Hindú law" after the word "Hindús."

The Honourable Mr. Stephen very much preferred the amendment at it stood: he thought that it covered every possible case that could arise. He must remind His Honour the Lieutenant-Governor that the introduction of the words he proposed would give the amendment a very different meaning from what it had as it stood.

His Honour the Lieutenant-Governor would accept the assurance of the Honourable Member that his amendment as it stood would meet the object he had in view. Having the interests of the people of the Panjáb sincerely at heart, he was anxious to guard them from a law which did not belong to them, and from the lawyers who might devour them. If the Council accepted the amendment, he hoped it would go far towards the object. He had endeavoured to make the section as good as he could.

The Honourable Sir Richard Temple said that on this question he desired to say a few words, and those words should be chiefly in corroboration of what had fallen from his honourable and learned friend Mr. Stephen. He could assure honourable members, especially those on the left, that the account that had been given of the state of ambiguity regarding the law was quite correct. The fact was that, within a few years after the annexation of the Panjáb, he (Sir Richard Temple) was employed in the drawing up of what was now called the *Panjáb Civil Code*; as something had been said regarding the degrees of inspiration of that Code, he desired to explain that whatever he did in the matter was done under the general guidance and direction of Lord Lawrence and Sir Robert Montgomery, late Lieutenant-Governors of the Panjáb ; if the term 'inspiration' had been used in its ordinary and secular sense, those were the sources whence the inspiration was derived. No doubt the Panjáb authorities did intend that that Code should be made law : they might have been wrong or they might have been right ; but such was the intention. They believed it was better that that Code, with all its imperfections, should be made law, than that the Panjáb should be subject to the known ambiguities of the Hindú and Muhammadan law and of the Regulation law ; and they had an idea that the Regulation law was liable to be perverted by interested persons, to the detriment of the simple folk of newly-acquired Provinces. The Panjáb authorities were not allowed to carry out that intention. The Government of India of that period, no doubt by legal advice, seemed to hesitate to give their sanction. Sir Richard Temple could confirm the statement that the intention of the Panjáb authorities was not carried out ; but they were allowed to prescribe the Code as a Manual. It was so prescribed by the Judicial Commissioner of the Panjáb, who was, in his own person, Chief Court and Minister of Justice, backed by the entire force of the Executive Government, and Sir Richard

TEMPLE thought that the Council would quite understand that what was so prescribed had in a manner come to be regarded as law. Now, as an excellent mode of enforcing the observance of the Code, in the examinations which young Civil Officers had to pass, it was usual to put questions taken from this Code; young officers were thus taught to study the Code, and of course, having studied it, when they came upon the Bench, they administered it as law. This excellent state of things was disturbed from the time when the Chief Court was established. There was no longer a Judicial Commissioner alone; there was substituted a Court of three Judges, one of whom would be taken from the Bar, and other Judges selected from Provinces outside the Punjáb, with Advocates, both European and Native, to practice before the Court; and although the Chief Court did all it could to support the Executive in establishing the legal force of the Code, the Council would see that, in this state of things, it was open to any Judge, or person interested, to dispute the validity of this body of law, and when the question was raised, it was impossible to show that the Code was law. So notwithstanding the very laudable exertions made by the Court to maintain the authority of the Code, questions were raised which caused great inconvenience. Thus, SIR RICHARD TEMPLE could fully corroborate all that his honourable friend had said as to the necessity of putting an end to this state of things.

Well, then, about the Hindú and Muhammudan laws, concerning which His Honour the Lieutenant-Governor had spoken very warmly, SIR RICHARD TEMPLE would explain that the Panjáb authorities in those days were fully aware of the ambiguity of those laws, of which the original character had become obscured by what was called Judge-made law. Therefore, they ascertained and embodied in the Code what were understood to be the leading principles of those laws. For that purpose, they consulted all the leading law-books, and set forth the principles in consultation with the best Pandits and Maulavis in the Panjáb; and experience had shown that the principles collated in that way were suited to the circumstances of the province, and had been generally adopted. The present Bill deliberately omitted these principles; that is to say, did not include them. No doubt that was the weak part of the Bill, and he was afraid that that weakness could not be remedied. Instead of these simple principles which had been so long observed, instead of that abstract of Hindú and Muhammadan law, there must now be substituted a reference to the body of those laws as discoverable by the Court from the various existing authorities. But he was afraid that that could not be helped. If the Code as it stood was not accepted by the Court as law, what was to be done? One way was for the Council to give the impress of its authority to the principles laid down in the Code. Though he maintained the perfect correctness of the principles laid down in the Code, yet he thought the Council could not, on its own responsibility, be asked to pass all these sections on the assurance that the Code was absolutely and certainly correct. That being so, there was nothing for it but to draft the Bill as it had been drafted, especially with the amendment proposed by His Honour the Lieutenant-Governor. The draft then omitted the sections of the Code which recounted the main points of the Hindú and Muhammadan law, and referred parties to those laws as ordinarily ascertainable, save so far as such law might have become demonstrably modified by custom. He (SIR RICHARD TEMPLE) could only hope that, when questions of Hindú or Muhammadan law arose, litigants in the Panjáb Law Courts would refer to the well-established principles of that Code, and recognize them as binding. Moreover, after the passing of this Bill, there would be nothing to prevent the Executive Government, or the Chief Court in its capacity of minister of justice, prescribing the Code as a Manual for young officers. If that was done, he hoped that the advantages now derived from the Code would continue.

There were only one or two other points on which he would ask permission to say a few words. It had been objected and pressed by his honourable friend, Mr. Chapman, that some well-informed officers regretted the omission from the Bill of the portions of the Code relating to contracts of marriage during the infancy of the parties. SIR RICHARD TEMPLE would observe that that point was very carefully considered in Committee in his presence, and it was felt to be impossible to insert those particular sections in a legal enactment; the doing so would have raised endless questions as to whether the Government were justified in stamping with its authority, in any way, those provisions of Hindú and Muhammadan law which were opposed to the usages of civilized life, and which were calculated to impede the progress of society. That way of regarding these provisions might be wrong, but still that was the view which English legislators would ordinarily take, and such provisions had never yet been embodied in any enactment passed by the legislature of a civilized nation. The Committee felt that they could

not ask the Council to give legal authority to such customs. But still there the sections remained in the Code, which he hoped would continue to be considered as a Manual, and would still be attended to and observed by the Courts as being, at all events, a record of custom.

Another subject to which he would refer was that of pre-emption. He was glad to observe that his honourable friend, Mr. Chapman, had no objection to the sections regarding pre-emption; they were particularly desirable in the Panjáb on account of the numbers of village communities which existed there. Each one of these countless communities formed a complete brotherhood or cousinhood in itself. The records of their descent from one ancestor, and their genealogical trees, were carefully preserved.

One word in regard to the question of bankruptcy. Some officers whose authority was entitled to weight had objected to this portion of the Code being included in the Bill; still he was sanguine that, whatever view might be taken by individuals, those provisions would be found to be just and equitable. But two specific objections had been taken. One of these was that the rules were unsuited to very small cases, and to the very humble persons to whom they would mostly apply in the Panjáb; but it was improper to put such machinery into play in petty cases, and that persons who owed £5 or £10 might come under the operation of all those provisions. That objection, Sir Richard Temple thought, had been met by the limitation of Rs. 500 or £50 which had been provided. Another objection was that those rules as to insolvency made no provision as to the liability of the insolvent debtor's after-acquired property for the payment of his debts after his discharge. Sir Richard Temple did not believe that that objection was correctly founded, and he thought it could not have been urged by any one who had attentively considered the subject; for after providing for the administration of the insolvent's estate, the Bill empowered the Court to give the insolvent his discharge, but he was still expressly liable for any debt remaining unpaid. Sir Richard Temple believed that the provisions in question would be found to secure the interests of the creditor, on the one hand, and on the other, to protect the debtor from that sort of duress which might hamper him in his efforts to recover himself, and might fetter his industry in the future.

With these remarks he begged to give a strong vote for the Bill as it had been prepared by his honourable friend, Mr. Stephen, and to assure his colleagues that, from the experience he had had in the Panjáb, he thought it was the best arrangement that could have been come to under difficult circumstances.

The Honourable Mr. Stephen assumed that the amendment proposed by His Honour the Lieutenant-Governor was substantially accepted by the Council. He now wished to make a very few observations. The first subject to which he would refer was the Hindú and Muhammadan law. He thought that the section as it would stand with this amendment would meet every possible case that could arise; the person must be subject either to the Hindú or Muhammadan law, or to the Hindú or Muhammadan law modified by custom, or to some custom other than the Hindú or Muhammadan law; and Mr. Stephen could not imagine any case that did not come under one or other of those heads. That disposed of the objection to the Bill raised by Mr. Forsyth, and also in a great part by Mr. Boulnois, and it also disposed of the objections which had been stated by His Honour the Lieutenant Governor of Bengal. Mr. Stephen must say, with regard to this Bill, and with regard to many other matters connected with it, that it was really hardly fair to the law and to lawyers in general to speak of them in the way in which His Honour the Lieutenant Governor had spoken. He did not think that it was right that the highest public servant in all Bengal should express the opinions which His Honour had expressed. They all knew what the evils of a complicated and intricate state of the law were. Most of them knew or might imagine what the evils of arbitrary power were. There were two ways only of governing: a country must be governed either by law or by the arbitrary will of the person governing; and he did not think that arbitrary despotism had been shown by the history of India to be a very satisfactory state of things. If it was so good a thing as was supposed, he would ask how it was that the English were governing in India instead of the Native Powers, who were never shackled by law. If it was right to govern by law, then the only way to do so effectually was to simplify the law as much as possible; otherwise it would be necessary to say in every particular case what was meant to be done. The effect of such a course would be to get a numerous mass of cases, which His Honour had described as a blessed condition for the lawyers. When Mr. Stephen first saw the *Panjáb Civil Code*, it was contained in one small volume, but it had now swollen into a very thick book, in reading which he found it a hopeless business to ascertain whether he

was reading the Code or the commentaries upon it. The only mode of getting simple and good laws was by legislating in an express form. That was the course taken of late years by the Government of India. No doubt that was a difficult task, but it must, nevertheless, be undertaken for the good of the people. Look at the Evidence Act which had lately been passed. Was that an Act which lawyers in general liked to see? It diminished the law by volumes and volumes, and it would be found much the same with regard to his Bill and the *Panjáb Civil Code*.

As regards the effect of custom, there was one point omitted which he thought was quite conclusive. The Panjáb had been for twenty years under British rule, and land-settlements had been everywhere. Every custom throughout the country had been most scrupulously registered. The records of the different villages gave the customs of the country a degree of stability which they never had before. The thing had been reduced to a certainty, and all that the Bill would effect would be to remove an additional piece of intricacy by making that intelligible which was now quite unintelligible.

MR. STEPHEN need not follow his honourable friend Sir Richard Temple in his remarks. In his opinion that the existing rules as to betrothals could not be retained, MR. STEPHEN entirely agreed. The rules in question gave, amongst other things, absolute power to a father to dispose of his daughter in marriage. That was a provision which one might put into a circular, but which one could not ask the Legislature to enact as the solemn law of the land. With regard to many of those customs, he thought it was better to leave them to be dealt with according to justice, equity, and good conscience. It was impossible that the Council should pass an Act by which a man might contract for a marriage with a baby two months old, and that the Court should be bound to enforce the performance of such a contract. MR. STEPHEN could not think of putting such a proposition before the Council. He might mention one other matter; with regard to women being put under the guardianship of the Court of Wards, the Bill simply embodied the provision of the existing law. The Court of Wards had a discretion in the matter.

His Honour THE LIEUTENANT GOVERNOR would only exercise his right of reply in regard to the remarks that had passed regarding lawyers. He would say that nothing was further from his mind than to detract from the reputation of those eminent lawyers who administered the law in this country. His observations referred to those abhorred hordes of legal practitioners who made the promotion of litigation a trade all over the country.

He hoped that his honourable friend Sir Richard Temple's suggestion that the *Panjáb Civil Code* should still be retained as a Manual would be adopted. As the work was out of print, a new edition might be prepared and circulated to all officers for their guidance in the discharge of their duties. He was sure that a better guide could not be put into their hands.

The Motion was put and agreed to.

The Honourable Mr. STEPHEN then moved that the Bill as amended, together with the amendments now agreed to, be passed.

The Motion was put and agreed to.

HIGH COURT JURISDICTION (SIND) BILL.

The Honourable Mr. CHAPMAN moved that the Report of the Select Committee on the Bill to remove doubts as to the jurisdiction of the High Court over the Province of Sind be taken into consideration. He said that the Bill had been referred to the Bombay Government, which reported that it did all that was wanted.

The Motion was put and agreed to.

The Honourable Mr. CHAPMAN moved that the Bill be passed.

His Honour THE LIEUTENANT GOVERNOR had no intention of opposing the passing of this Bill. He wished, however, to explain that he did not vote for its passing with an intelligent mind and because he approved of it. No sufficient information had been given to him or to most Members of the Council to enable them to judge whether the effect of the Bill would be good or bad. He had already expressed his dissent from the doctrine laid down by his honourable and learned friend, Mr. Stephen, and his assent to the theory that the Members of this Council were not mere dummies. It struck His Honour that

his honourable friend, Mr. Chapman, took a different view of this matter, according as the Bill came from the Panjáb or from Bombay. He knew no honourable Member who was more ready to criticize Bills that came from the Panjáb, to complain of want of information, to pull them to pieces, and to criticize them in every way. But when a Bill came from Bombay, his honourable friend did not think it necessary to give the Council much information on the subject; he considered that, as the Bill was approved by the Government of Bombay, the Council had better pass it without more ado, and without any inquiry into the matter. At the last Session of the Council, a Bill from Bombay had been put before this Council in much the same way: it was a Bill to relieve certain gentlemen from paying their debts, and it was supported on the ground that the Government of Bombay had promised those gentlemen that they should be relieved. The Statement of Objects and Reasons appended to the Bill now before the Council consisted of a line and a half, and did not explain anything; and at the several stages through which the Bill had passed, his honourable friend had not condescended to explain anything, except that doubt had arisen whether the High Court of Bombay had jurisdiction over the Province of Sind, and that the Government of Bombay had resolved to remove that doubt by declaring that the Court had no such jurisdiction. It might reasonably be considered, and His Honour believed it had been considered, that there was doubt whether or not the High Court had such jurisdiction.

The Honourable Mr. CHAPMAN said that the High Court never had any jurisdiction in Sind.

His Honour THE LIEUTENANT GOVERNOR continued:—If there was no doubt of that kind, then, he would ask, where was the necessity for this Bill? When it was first placed before the Council in this bald form, he had ventured to say that he had considerable doubts whether the solution provided by this Bill was the right one. His doubts as to the desirability of keeping the Province of Sind from the jurisdiction of the High Court were occasioned by the circumstance that there were in Bengal two provinces situated very much like the Province of Sind; and although it had been found in the early days of administration, that despotic power answered very well, and the power exercised by the Commissioner under the control of Government answered very well, when matters were further advanced, and it was necessary to have a judicial authority independent of the executive, he thought it well that such authority should be vested in the best and the highest Court In two provinces of Bengal, Chota Nágpúr to the west, and Assam to the east, which were situated very much like Sind, the administration was under a Judicial Commissioner, who was subject to the control of the High Court. His Honour had not the least wish to remove those provinces from the jurisdiction of the High Court. He had no reason to believe that the Judicial Commissioners were of a standing and weight to make it desirable to exempt them from the control of the High Court as to the settlement of great judicial questions, which were better determined by the High Court than by the Judicial Commissioner without the control of the High Court. To His Honour's mind nothing was more unsatisfactory than to find a couple of murder cases sent up for consideration amongst a number of other matters in a box. He thought that the determination of such questions was better left to properly constituted judicial authorities. The High Court at Calcutta had been found to be a reasonable body, well suited for the discharge of the important duties entrusted to it; it might be that the experience of Bombay had been different; it might be that it was more difficult to deal with the Province of Sind than with the two similarly situated provinces in Bengal. If such was the case, His Honour thought that those difficulties should be stated. He himself, and most of the honourable members of the Council, were entirely in the dark as to the reasons which had induced his honourable friend to introduce this Bill.

The Honourable Mr. CHAPMAN could only repeat what he had already three times stated to the Council—namely, that this Bill had for its object the removal of a verbal doubt that had arisen as to whether the Province of Sind was or was not, in respect to the jurisdiction of the High Court, included in the Presidency of Bombay. There was no analogy whatever between the case of Sind and that of the Provinces in Bengal alluded to by His Honour. In the latter Provinces, the High Court of Calcutta had exercised jurisdiction; but in Sind the High Court of Bombay, or the old Sadr Court, had never exercised or made pretension to exercise, jurisdiction since the time of the conquest by Sir Charles Napier. He really had no further information to give his Honour, and could assure the Council that, as far as he knew, the Bill was of the simple and innocent character he had represented it to be.

The Honourable Mr. STEPHEN could hardly imagine how His Honour the Lieutenant Governor, who was himself a Barrister of great distinction, and had been a Judge of the High Court could have brought himself to make the observations which he had made regarding what he was pleased to term the "abhorred horde" of lawyers. It appeared to Mr. STEPHEN that His Honour, in his wish to exclude the Panjáb from strict judicial administration had himself raised exactly the same sort of point in regard to that province that had arisen in connection with the meaning of the term "Province" in the Charter of the High Court at Bombay.

The Motion was put and agreed to.

PATTERNS AND DESIGNS.

The Honourable MR. STEWART presented the Report of the Select Committee on the Bill for the protection of Patterns and Designs.

The Council adjourned to Tuesday, the 2nd April 1872.

H. S. CUNNINGHAM,

Officiating Secretary to the Council of the Governor General for making Laws and Regulations.

CALCUTTA,
The 26th March 1872.

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

The Council met at Government House on Tuesday, the 2nd April 1872.

PRESENT:

His Excellency the VICEROY and GOVERNOR GENERAL OF INDIA, K.T., *presiding.*
His Honour the LIEUTENANT GOVERNOR OF BENGAL.
The Honourable Sir RICHARD TEMPLE, K.C.S.I.
The Honourable J. FITZJAMES STEPHEN, Q.C.
The Honourable B. H. ELLIS.
Major-General the Honourable H. W. NORMAN, C.B.
The Honourable J. F. D. INGLIS.
The Honourable W. ROBINSON, C.S.I.
The Honourable F. S. CHAPMAN.
The Honourable R. STEWART.
The Honourable J. R. BULLEN SMITH.

OATHS AND DECLARATIONS ACT AMENDMENT BILL.

His HONOUR THE LIEUTENANT GOVERNOR, on the resumption of the adjourned debate on the Bill to amend Act No. V. of 1840 (concerning the Oaths and Declarations of Hindoos and Mahometans), moved the following amendment:—

That the following new section be inserted after section 3:—

"If any party to, or witness in, any judicial proceeding offers to give evidence on oath in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, tender such oath to him.

"If any party to any proceeding offers to be bound by any such oath as is mentioned in the first paragraph of this section, if such oath is taken by the other party to, or by any witness in, such proceeding, the Court may, if it thinks fit, ask such party or witness whether he will take the oath or not.

"If such party or witness accepts such oath, the Court may proceed to administer it, or if it is of such a nature that it may be more conveniently taken out of Court, the Court may issue a commission to any person to administer it, and authorise such person to take the evidence of the person to be sworn and return it to the Court.

"The evidence so given shall, as against the person who offered to be bound by it, be conclusive proof of the matter stated.

"If the party or witness refuses to take the oath, he shall not be compelled to take it, but the Court shall record, as part of the proceedings, the nature of the oath proposed, the facts that he was asked whether he would take it, and that he refused it, together with any reason which he may assign for his refusal."

HIS HONOUR had on several occasions in this Council expressed his views, as far as he had any definite views, on a subject of so delicate, and, he might say, difficult and complicated, a nature as that of oaths. On former occasions he had expressed how much he clung to oaths as a means of eliciting truth in a country like this, where the means of arriving at the truth were so very defective. If that were not so—if our Courts were so perfect that they needed no improvement; if our means for eliciting the truth were so complete that we could trust to the ordinary instruments and the ordinary means to detect falsehood; and if it were certain that a man who spoke falsely would be sent to jail—HIS HONOUR should not have asked the Council to deal with so very difficult and complicated a subject. He must confess that, after having been long connected with the administration of justice in this country, he had the greatest possible doubt that such was the state of things at present. Dealing, as they were, with a peculiar people, with whom the speaking of truth was not in any way the custom, he felt that the means which were available for getting at the truth were defective. He felt that a Judge in this country, when pronouncing judgment, very often did so with considera-

ble hesitation and doubt. The Judge thought that he might be right; he hoped that he might be right: the chances were that he was right; but he felt that there was a considerable residuum of chance that he might be wrong, and the fact must be accepted that he not unfrequently was wrong. That being so, His Honour was most unwilling to throw away any remnant of an old institution which might afford the means of eliciting the truth, and which was in accordance with Native habits, Native views, and Native institutions. These were the reasons which induced him to ask the Council to defer the passing of the Bill until the present occasion, and why he proposed the addition of a section which might, as it were, save the use of oaths in this country. The Council were aware that the Bill had gone through several phases; at one time it was proposed to license the use of oaths; at one time it was proposed to prohibit all oaths; and the proposal now before the Council was a sort of compromise between two extremes. On the last occasion, when he had the honour of addressing the Council on this subject, his proposal was, first, that it should be permitted to any person, who voluntarily presented himself, to take an oath in any form which the Court might consider advisable; and secondly, that a party to a suit should be permitted to call on the other party, or on any witness, to take an oath, and if the oath was a proper and reasonable one, and the challenge was accepted, that the person should be permitted to take the oath. His Honour stated to the Council on that occasion that he had had a very short time for the consideration of the matter since that view of the case had occurred to him, and since he had seen the Bill in the shape in which it now stood. On turning over the matter farther, and knowing, as he did, that several honourable members of the Committee and the Council had very great doubts as to the expediency of committing themselves to a variety of oaths, he had thought it well to restrict the permission as much as possible, and in the proposal he was now about to submit to the Council, his view had been to follow as much as possible the Native practice. He was not now about to ask the Council to permit any man who was a party to a suit conditional. His Honour's proposal was, first, that voluntary oaths should be permitted; and secondly, that any party to a proceeding should be permitted to ask any other man who might be a party to the suit, or a material witness, to take an oath in a form which would be binding, and that the Court might permit it on the condition that the party who demanded the taking of the oath should bind himself to abide by the result of that oath. That was a form of oath which was in consonance with Native practice and ideas. His Honour spoke under the correction of honourable members who were conversant with the administration of justice in various parts of the country; but he had himself had a wide experience of the habits and feelings of the Natives, and it appeared to him that nothing was more common than for one man to say to another—"If you take an oath in a certain form which I consider binding upon you, I will bind myself to abide by the result." That was the form of oath for the administration of which he wished to make provision in the Bill. The section which he proposed to add was of some length, and he hoped that it explained itself. The taking of oaths in this way was of limited use, and would stand as a kind of mark that the Council was not altogether prepared to abandon the use of oaths, and that the Council did accept the form of oath which was most consonant to Native feeling and practice; and he ventured to hope that the addition to the Bill which he proposed might be accepted by the Council.

The Honourable Mr. Stewart said:—"My Lord, I speak on this Bill with considerable diffidence and hesitation, for it is a Bill, I think, on which lawyers and others practically acquainted with the working of our Courts are in some respects in a much better position to form a general opinion than laymen like myself. Speaking as a layman, however, I desire to say that I think it advisable that all persons who object to oaths or solemn affirmations should be relieved from the necessity of being sworn or solemnly affirmed, while, at the same time, I am glad to have the assurance of many persons well qualified to judge, that the adoption of the course recommended by the Bill is not likely to prove dangerous in practice, for it is at no time a light thing to alter an existing law on such a subject as the present, and least of all is it a light thing to do so when, as in the present case, the alteration involves the removal of what many persons regard as one of the securities for the due administration of justice. With respect to the amendments proposed by His Honour the Lieutenant Governor, I have carefully considered them, and I do not see that any reasonable objection can be taken to them. My main reason for being willing to agree in the principle of the Bill is the knowledge that it will be in view of the Court, when objection has been taken to an oath or solemn affirmation, that such objection has been taken, and further that the fact will be in view of the Court, inasmuch as that it will be duly considered in estimating the value of the objector's testimony. In many cases it will doubtless be held, and very rightly, that the objection is of no weight whatever; but in others it may be held with equal justice that the objection should seriously, or at all events to some extent, impair the value of the testimony."

The Honourable Mr. CHAPMAN said—"My Lord, I am not sanguine that the amendment proposed by His Honour the Lieutenant-Governor will be of much practical value, but I think it behoves us not to disregard any means, however feeble and uncertain, for getting at the truth.

"The crime of perjury is, I believe, fearfully rife in this country. Indeed, I believe it is daily committed in every Court of Justice throughout India with almost complete impunity. I do not share in the opinion expressed by His Honour that the people of India are naturally more untruthful than other races; but I do say that whatever proneness Asiatics may have to falsehood, has, if it has not been directly stimulated, at all events not in any way been checked, by the immunity we have practically conceded to lying in judicial proceedings.

"In my opinion the only effectual security against false evidence is to be found in the *fear of judicial punishment*; and yet we have, in a great measure, destroyed this security by the cumbrous machinery we have interposed against obtaining a conviction for perjury.

"Crimes of the character of perjury ought, I think, to be promptly and swiftly dealt with. And I do say that our labour in devising and enacting Codes of Evidence and Procedure is in a great measure thrown away, so long as we oblige our Judges and Courts to deal with rotten and unreliable material in the shape of testimony.

"My honourable and learned friend, Mr. Stephen, will shortly leave this country with the satisfaction of knowing that he has done much towards improving the administration of justice by his excellent Law of Evidence. I wish he would add to the obligation those engaged in judicial duties already owe him, by taking into consideration the best way of eradicating this terrible crime of false evidence. I know of no one so well qualified for the task. For some months past I have been intimately associated with my honourable friend in considering the revised Code of Criminal Procedure; and, whatever His Honour the Lieutenant-Governor may think of English lawyers, I can affirm that I have never known any one disposed to take broader and more common-sense views of all questions affecting the administration of criminal justice than Mr. Stephen. He has always appeared to me to display the most righteous horror of an unmeaning technicality; and I do not suppose the criminal classes possess a more uncompromising enemy. I can only express a hope that he will, before he leaves, wage war against that most pestilent class of criminals—the perjurers.

"It seems to me that what we want is a simple procedure, by which a witness might be made to feel, directly he entered a Court, that he ran a risk of meeting with condign punishment then and there if he ventured to lie. Now, owing to the roundabout procedure attendant on a prosecution for perjury, convictions are rarely obtained; and a witness steps into the box, and lies with the calmest effrontery, well knowing the Court is practically powerless to touch him.

"I am not entitled to speak with much authority in these matters; but I have always thought that, when a Court is satisfied, by the decision which it has solemnly and deliberately arrived at, that a witness has lied on a material point, it ought, without further ado, to be able to punish him. Take, for example, the Tichborne case. Why should not Castro or Orton, or whatever his real name may be, be at once punished for his infamous perjuries? The issue of the original trial has established his guilt beyond the possibility of a doubt, and I cannot see what good will be gained by retrying this '*cause célèbre*' in order to prove him guilty of perjury. Take, again, the common case of an *alibi* set up in a trial for murder. A Court convicts the accused and sends him to the gallows; and it is an absolute impossibility that the evidence as to the *alibi* could be consistent with the conclusion arrived at as to the guilt of the murderer. Why, I ask, if you are satisfied that he has wilfully and knowingly stated what was false, hesitate to punish the witness by a term of imprisonment, when you do not shrink from taking the other man's life on evidence which is as conclusive for the one purpose as the other?

"My Lord, I am well aware that there is great difficulty in dealing with this subject, which really strikes at the very root of our judicial administration. I know how averse respectable people are to coming forward and giving evidence at all in our Courts, especially in our Criminial Courts; and I know that this terror and this aversion would be increased tenfold if they were liable to receive summary punishment at the hands of a quick-tempered and hasty Judge. But still I do think some remedy might be found for the great delays and difficulties that now attend a prosecution for perjury. The power I have alluded to might be exercised only by the higher classes of Courts, say, by those of a Sessions and Subordinate Judge or Magistrate of the first class; and the amount of punishment to be inflicted in this summary manner might be carefully limited. In all cases the accused should be given the opportunity of showing cause why he should not be convicted.

"I venture to think a sharp, quick, and decisive punishment is the only effectual remedy to apply to the offence of perjury."

The Honourable Mr. ROBINSON said,—"My Lord, I must record my vote against the amendment proposed by His Honour the Lieutenant-Governor.

"The Bill, as it stands, is intelligible and complete. It deals specifically, and in a simple manner, with the matter of giving evidence in Court; and it accords any relief that may be necessary for parties who object to an oath, and requires no addition.

"I may not quite understand the exact scope of the amendment. But it seems to me that, if the object of the amendment is strictly limited to the subject of the Bill—namely, the sanction under which evidence is given—its effect will be to revive, by a side wind, the obsolete, useless, and inconvenient formulæ which have disappeared from our Courts since 1840, and will land us in worse difficulties than ever, namely, amongst arbitrary and inconvenient challenges, and altercations between parties and witnesses, fanciful 'think-fits' of perhaps wayward judicial officers, and unjust inferences drawn from a hesitation about taking an oath which the law means to comfort, if not to encourage. I think that nothing can be more mischievous than this. I object to the amendment also because I do not think that educated Hindús desire this retrogressive step, or would like to see these obsolete practices again paraded in Courts of Justice.

"If, on the other hand, the Lieutenant-Governor's amendment has really reference, as it appears to me, to the decision of the issue between parties to a contention, by allowing a challenge to swear to the truth or otherwise of the whole contention on either side, I think his proposal will import something quite foreign to the measure on hand, and will introduce into the statute-law a kind of procedure which should not be allowed in any way to take the place of, or do prejudice to, a regular judicial investigation. The object which His Honour has in view in this respect is sufficiently secured by the law as it stands, as was explained on a former occasion by the honourable and learned Member, and need not be imported into an Oaths Bill. I think that both the effects noticed by me are inseparable from what His Honour proposes, and I would reject the amendment."

The Honourable SIR RICHARD TEMPLE said that, although he was very unwilling to trouble the Council with any discussion at this moment upon judicial matters, yet as his honourable friend, Mr. Robinson, had thought fit to challenge the expediency of the amendment proposed by His Honour the Lieutenant-Governor, he deemed it his duty to give his testimony very strongly in favour of His Honour's amendment. His Honour had appealed to other Honourable Members who had had experience of the Native character in various Provinces of India. It was SIR RICHARD TEMPLE'S fortune in former days, before he became engaged in Finance, to have been in contact with the people of nearly two-thirds of British India, and he must say that his experience, so far as it went, was entirely in accord with that of His Honour the Lieutenant-Governor. Notwithstanding all the faults that might be found—sometimes hastily and uncharitably found—in regard to the morality of our Native fellow-subjects, he for one was strongly impressed with the belief that there was a good deal of morality remaining in the Native character, and that there was much more of the moral and religious sanction remaining in their minds than was ordinarily supposed: and if that were so, the propriety of administering such oaths as might be peculiarly consonant to their sentiments, and the importance of eliciting their moral sympathies on the side of justice and truth, were too obvious to require him to dilate upon them. He believed that, by a considerate system and by a judicious practice, for educing and encouraging that feeling amongst the Natives, something might yet be done towards the furtherance of justice and the repression of perjury; and he was confident that, if the moral and religious sanction provided in the amendment was discriminately and carefully applied, it would do good.

The Honourable Mr. STEPHEN had given his best attention to the amendment proposed by His Honour the Lieutenant-Governor. Notwithstanding what had fallen from His Honour and his honourable friend, Sir Richard Temple, Mr. STEPHEN had a very strong opinion that it would be a great pity to adopt the amendment. In the first place, he must recall His Lordship's observation to the position in which the matter stood. The amendment before the Council did not propose to retain existing law, but to revive, to a certain small extent, the practice which, after being tried for nearly fifty years, was deliberately given up in 1840, because of the objections which had been found to exist to it. It was an exceedingly difficult matter to say how the so-called religious sanction to testimony would operate even with the people of one's own country, a people whose feelings one understood. As soon as we began to interfere with a practice of which it was really impossible that even Magistrates should know anything, we exposed ourselves to the chance of doing a great deal of

harm for the sake of the possibility of doing very little good. How could any European enter into the state of mind of a man who attached some peculiar sanctity to a tiger's skin and a cow's tail? No European could tell what effect such an oath produced on a man, or what inference ought to be drawn from his refusing to take it. When he drew from such conduct any inference at all, he was entering upon unknown ground, and was very likely to make a mistake. He begged the Council to hesitate before they revived what really was an obsolete procedure. He would just point out one or two illustrations of the curious kinds of injury which they might be doing by committing themselves to the amendment. He was favoured by the Secretary, Mr. Bayley, with one illustration of this kind in his own experience. Mr. Bayley said—"I knew a case of a man who objected to take any oath at all. His debtors came to know this, and with one accord denied their debts, offering to admit them if he would swear they were due, which of course he would not."

There was every sort of curious twist in connection with the taking of these strange oaths. A man was sworn on a cow's tail. The theory about it was that he must speak the complete truth upon every matter; if he made any slip, intentionally or otherwise, it was all over with his future prospects. The result was that people objected greatly to being sworn on a cow's tail, but if they were, they felt that it was hopeless to attempt to speak the truth so fully as to escape from future punishment. They were therefore apt to act upon the principle—'as well be hung for a sheep as a lamb,' and to lie freely, as they must be damned at all events. When we were dealing with these curious unknown quantities and strange superstitions, with which we did not sympathize or agree, we did not know what we were about, and we were always liable to produce results of this kind. It did not seem to be consistent with the dignity of the Court, and with its sense of truth and reason and justice, to administer oaths of this kind, in which those who administered them did not profess to have the smallest degree of confidence, and in which they did not believe at all. It seemed to him an unworthy thing for an English Judge to be trying to get a little bit of advantage in a particular case by a resort to forms of oath of which he knew nothing. There were other objects in the administration of justice besides the immediate objects of getting at the truth. In many instances, the object of getting at the truth was sacrificed in order to obtain other ends of importance. He had not the least doubt that if torture were employed, a great deal of truth would be obtained in all cases; but the evil of employing it was greater than the evil of missing the information it would supply. So, with regard to these strange oaths, he thought that the countenance that was given to them, the appeal that was made to them, and the importance that was attached to them, were altogether wrong. Mr. Stephen thought that the principle that would be sacrificed by the acceptance of the proposal contained in the amendment was of far greater value than any mere chance truth that might be got. How could one possibly tell what the result might be? Look at the proposal. Two men came into Court, and one said to the other—"Will you swear on a tiger's skin?" The other said "I will not." How could the Judge know why he would not swear on the tiger's skin? Mr. Stephen knew people who talked a great deal about their acquaintance with Native habits and feelings; he could only say that their acquaintance with the Native character must be far greater than the acquaintance of any Englishman with the feelings and ideas of his own countrymen, if they could tell what reasons might operate to prevent a man from taking such an oath; he might, and probably would, be influenced by some curious ideas on the subject, about which the Judge might know nothing whatever. Again, the proposal was, that if the person asked to swear agreed to take the oath, it should be binding on the person who demanded the taking of the oath. Why should a Court of Justice be made a party to such a proceeding? Mr. Stephen had said again and again, that if the parties agreed to settle their dispute in that manner, there was nothing to prevent their doing so out of Court.

The amendment further provided that, if the oath to be administered was of such a nature that it might be more conveniently taken out of Court, the Court might issue a Commission to any person to administer it, and authorize such person to take the evidence and return it to the Court. That meant that a Commission should issue to the priest of the nearest temple to administer the oath and return the evidence given by the person to be sworn. Mr. Stephen did not know why every priest of a temple should be considered a competent person to take evidence. He would far rather adhere to the practice which had been followed for so many years. Of course they were anxious to get at the truth. They all knew that they were placed at a great disadvantage in getting at the truth. That was one of the things with which they had to contend in this country, and he would say that they should fight against that difficulty in a fair, natural and straightforward way, hoping that, by degrees, the good influence of the system of justice which the British Government had esta-

blished might improve the credibility of the testimony given in the Courts. He believed that the moral influence of a stable, well-ascertained, and distinct set of laws, administered without fear or favour by independent and thoroughly trained Judges, would produce a great change in the character of the people. He had no confidence whatever—he meant no slight to the supporters of the amendment—in any nostrum of this kind.

Some remarks had been made by his honourable friend, Mr. Chapman, about what Mr. STEPHEN had done to improve the administration of justice in this country. He felt very deeply the compliment that had been paid to him, and he wished he could consider that those remarks were thoroughly well founded. But, however that might be, he entirely agreed with his honourable friend in his view of the expediency of having a law for the more effectual and speedy punishment of perjury. It was out of the question now for Mr. STEPHEN to undertake such a work. He did not think there would be any difficulty in framing such an Act as Mr. Chapman had sketched, and he believed that it would be far more efficacious in eliciting the truth than the procedure now under consideration. He could see no difficulty at all in enacting that the Courts, down to a certain level—say not inferior to a subordinate Judge in civil cases, and not below a Magistrate of the first class in criminal cases—should have power, if they thought that any witness in any trial before them had perjured himself, to convict him there and then, and to punish him to some moderate extent, say with imprisonment for three months, and return the conviction to the superior Court. Considering the latitude of appeal in this country, Mr. STEPHEN believed that there was very little danger of injustice being done in that way. It must unquestionably happen, in a great number of cases, that the Judge who tried the case had exactly the same proof before him of the perjury as the Court which, under the ordinary procedure, would try the person when committed for perjury. His honourable friend Mr. Chapman had referred to the Tichborne case. There was an intricacy in the English law which fortunately did not exist in this country, and which embarrassed all proceedings regarding perjury. By English law, a man accused of perjury must be tried by a jury. In the Tichborne case the Judge was only in the nature of a committing Magistrate. In this country, however, trial by jury was quite an exception ; and as it was the Judge who had to decide questions of fact, he did not see why the Judge should not find that such and such a person had committed perjury. Mr. STEPHEN further thought that when a man told contradictory stories, that should be enough to justify a conviction for perjury, though it might not appear which of the two stories was false. He did not think there would be any considerable difficulty in preparing such a Bill, and it would have a very great effect in the suppression of false evidence. It was not severity of punishment alone that deterred people from committing crimes. The near prospect of punishment had much more to do with it. His belief was, that if every man who went into Court knew—and people would very soon learn to know it—that if he told a lie he would be taken out of Court straight to jail, it would do more to reduce the crime of perjury than anything else ; and he did not see any great difficulty in introducing a measure to that effect.

His Honour the LIEUTENANT-GOVERNOR was glad to have the support of two Honourable Members on his right (Messrs. Stewart and Chapman) ; and although, perhaps, his honourable friend Mr. Chapman's speech was not altogether in support of the amendment, and His HONOUR might say, with regard to it, "save me from my friends," still he was gratified at having his honourable friend's vote. He was specially gratified at having the support of his honourable friend Sir Richard Temple—particularly and specially gratified—because Sir Richard Temple's experience of India was very large. His HONOUR would venture to say that, between Sir Richard Temple and himself, they had experience of five-sixths of the people of India ; and it was gratifying to His HONOUR to know that Sir Richard Temple agreed in the opinion he held, that the amendment was consonant with the customs, habits and feelings of the people.

Now he came to the gentlemen who held different views. He had a very great respect for the opinion of his honourable friend, Mr. Robinson. He might say that Mr. Robinson's speech was somewhat difficult to answer, because His HONOUR did not see that his honourable friend had advanced any arguments against the amendment further than those which were advanced by the young lady for her dislike to Dr. Fell :

> "I do not not like thee, Dr. Fell,
> The reason why I cannot tell."

Mr. Robinson had not informed the Council why he disapproved of the amendment. His HONOUR had not been able to understand the objections that his friend had taken. In one respect he was decidedly in error, namely, in saying that the Bill, without the amendment,

provided for the object which His Honour had in view. The Bill certainly did not provide for anything of the kind; its effect without the amendment would be, that no one would be asked to take an oath except a Christian; other people going into Court might or might not make a solemn affirmation, which he supposed they all agreed in thinking was a farce. His amendment was a very real one, and introduced a considerable change in the existing procedure; because it provided that, under certain circumstances, and guarded by strong safeguards, the Court should have power to permit the taking of really effectual oaths, without having the power of compelling people to take them.

Well, then he came to the objections of his honourable friend, Mr. Stephen. He must say that he had been disappointed to find Mr. Stephen taking so strong a view adverse to that which His Honour held. It seemed to him that Mr. Stephen exaggerated the evils and under-estimated the good that were likely to result from the course proposed. His Honour was free to admit that nothing in this world was altogether free from evil, and that there must be evils attending the course proposed. But he must declare that, after great consideration, he was not at all convinced, but was still strongly of opinion that the advantages of the course proposed would very much preponderate over the disadvantages. The Hon'ble Member said that it would be a reverting to the procedure which was deliberately abandoned in 1840. His Honour altogether denied that proposition. The procedure which existed before the passing of Act V. of 1840 was a totally different one. Before that, certain fixed forms of oath were compulsory upon all witnesses. It was not permitted to the Court to select particular forms: certain forms were prescribed and were compulsory. He had now made a totally different proposition. He proposed that oaths should be voluntary, and that the parties, under the direction and discretion of the Court, should select the form of oath which was most binding on the conscience of the witness, and not repugnant to justice and decency: that was totally different from the procedure which was before in use, and he hoped the Council would consent to give this experiment a trial; he was confident that, at the worst, it could not do any great amount of harm. It seemed to him altogether impossible that any considerable amount of harm could arise if the Courts exercised a proper discretion in the matter. The Honourable Member said that it was playing with edged tools on the part of people who did not understand the Natives and their feelings. He did not like to speak of himself, although he had experience in the administration of justice in this country for the greater part of the last thirty years. He did make mistakes, but he did not consider himself and other Indian Officers so ignorant of the Natives as the Honourable Member would have the Council believe. His Honour believed that by far the greater number of Judges in this country were men of experience, who were intimately acquainted with the ways and habits and feelings of the Natives, and might with perfect safety be permitted to administer such oaths as were taken on a tiger's skin or a cow's tail. He did not think that there was anything offensive or repugnant in such oaths; he believed that they were in many cases very effectual. The Honorable Member had also expressed himself strongly on the subject of religious decorum. He said that it was both unbecoming and improper that any Judge should administer a form of oath in which he did not believe; but it appeared to His Honour that that argument struck at the root of the government and judiciary of this country. Acting judicially, we professed no religion. The oath to be administered was not that in which the Judge believed, but that which would be effectual in influencing the witness's conscience. Under the Bill, when Christians were to be sworn, the oath would be administered by Native Judges as well as by Christians. That being so, His Honour did not see anything in the amendment which would be in any degree repugnant to the consciences of Christian Judges. He believed that most of the Judges in this country carried consciences, but there was nothing repugnant to a good conscience in asking a man to swear upon a tiger's skin if it was believed that such an oath would be effectual in eliciting the truth. He believed that the Judges would be perfectly willing to administer such oaths.

Mr. Stephen had admitted that there were difficulties in the way of getting at the truth, but thought that it might in the end be got at by the aid of good laws and honest administration. It might be an unpleasant thing to say, but after having been concerned in the administration of justice for nearly thirty years, after having looked into the working of the Courts in their earlier stages and in their later stages, His Honour had to declare his very serious conviction that there was much more difficulty in getting at the the truth now, than in past days. It appeared to His Honour that things were in that respect going backward, and with every respect for the Honourable Member, who had done so much towards the improvement of the laws, he was not convinced that his honourable friend had it in his power to improve human nature to that degree, that with the aid of his laws he would incline people to speak the truth. He was not prepared to trust to English-made laws, but to try the effect of

such measures as were effectual with Natives. Then, it was said that the effect of the amendment would be to put some people in a false position because they might have conscientious objections to swear. In answer to that, His Honour would appeal to the words of the amendment itself; he believed the Council would find that such a result was guarded in every possible way. The Court had entire discretion to allow the oath or not, as it thought fit. The Judge might say—"I know this man is of a sect that dislikes to be sworn, and I will not even ask him to swear." The Court was supposed to be a reasonable Court. If the Court asked—"Will you take the oath?" it was provided that the answer should be recorded, together with any reason which the person who was asked to swear might assign for his refusal; the Court might be expected to take into due consideration the reason assigned by the party, and having done so, might be expected to judge whether the reason assigned was good or bad: and the record of the proceeding would remain in Court. If, on account of any failure in the inferior Court, due weight was not given to the reason assigned, it would be open to the parties concerned to appeal against the decision. His Honour would also remind the Council that the sects and classes who really had peculiar objections to the taking of oaths were comparatively limited; that there were large classes of Hindus and the whole of the Muhammadans who had no objections to the taking of oaths, and he saw no reason for supposing that the Courts, with the full discretion given to them, would do injustice to the small classes who really had conscientious objections. The possibility of the Courts doing injustice in a small number of cases should not be a reason against reviving an engine which would, in a great mass of cases, have considerable effect in doing justice and not injustice. The Court had a discretion, and it seemed to him that the procedure now proposed was in no respect in the same category as judicial torture, which was compulsory and gave no option to the person to be tortured.

He would go back and say one or two words in respect to the expressions which had fallen from his honorable friend, Mr. Chapman, because he wished to put himself right with the Council and with the Natives of the country in a very important matter. Mr. Chapman said that His Honour's belief was that the Natives were above all men liars. His Honour wished most distinctly and completely to deny that that was his opinion. Although he had taken a logical view of the matter in saying that truth was not estimated by the majority of the Natives as a virtue, he was not one of those who held exaggerated ideas in regard to the untruthfulness of the Natives. He believed he was one of those who held the best opinion of the Natives. He believed that they had many virtues, and that many of them spoke the truth in an honourable way; but he did not think that truth was considered by them as an honorable virtue to the same extent that it was so considered by Englishmen. He had not heard, in the various discussions that had taken place on the subject, that any one had contradicted him on that point. His argument rather was, not that the Natives were above all men liars, but rather that lying was natural to mankind, and that truth was a peculiar virtue which was only developed in certain civilized countries. He thought that the Natives were on the same platform and parallel with most of the world in regard to the speaking of truth. He thought he was not doing any injustice to the people amongst whom he had spent his life in saying that truth, as truth, was not regarded as a virtue amongst them to the extent that it was regarded amongst some of the people of Western Europe.

Before His Honour left the remarks which had been made by his honourable friend Mr. Chapman, he would address himself to the suggestion which Mr. Chapman made, and which was supported by Mr. Stephen, regarding a summary law for the punishment of perjury, in which those Honourable Members seemed to repose their confidence. His Honour had had a good deal of experience in a great many parts of India; and it had also been his lot, amongst other occupations, to assist for a considerable period in the trial of cases in England, and he was then very much impressed by the opinion of some of the most eminent Judges of the day—men whose names were held in great respect to this day—on this particular point. It so happened that he sat as an officer of the Court of Queen's Bench at the time when the change in the law took place which enabled parties to appear as witnesses in their own suits. The result of that law was that many parties, especially women, gave their testimony in such a way as to induce the Judges to commit them for perjury. He believed that, in the first few weeks, parties to suits who gave their evidence were committed for perjury right and left. But a very large proportion of those who were committed were acquitted, and the Judges were obliged to confess that they had made mistakes, and that persons interested in a case were very likely to say things which were not true without having any deliberate intention to commit perjury. Well, then, if those eminent Judges found that they were liable to make mistakes, how much more were Indian Judges, who had no very great legal experience, and who had several avocations besides the administration of justice, liable to make similar mis-

takes. His Honour believed that nothing would be more unjust than to give every Magistrate and Judge the power to punish for perjury persons whose evidence they did not believe. If such a law were enacted, witnesses would come into Court with halters about their necks. He thought that even if it were provided that the officer before whom the supposed perjury was committed was to try the case afterwards, the case would not be quite so bad. But above all things, he deprecated the passing of a law which would enable every Judge summarily to punish a man whose testimony he did not believe. His Honour was sanguine that such a proposition as he had put forward would be infinitely preferable to the very harsh measure which was proposed by Mr. Chapman and supported by Mr. Stephen.

The Honourable Mr. Chapman said:—"My Lord, in explanation of what has fallen from His Honour, I only wish to say that I never contemplated giving a Judge power capriciously to punish a witness because he had given what he (the Judge) considered false evidence at any particular stage of the proceedings. I intended that this power should be exercised only when, after a decision had been arrived at, the Court was satisfied that the evidence given by the witness was diametrically opposed to such decision. In short, that if the decision was right, the witness must wilfully and knowingly have been wrong. It seems to me there is a great difference between the way in which I put the case, and that in which His Honour has represented it."

The question being put,

The Council divided—

Ayes.	Noes.
His Excellency the President.	Honourable Mr. Stephen.
His Honour the Lieutenant Governor.	Honourable Mr. Robinson.
Honourable Sir R. Temple.	
Honourable Mr. Ellis.	
Major General the Honourable H. W. Norman.	
Honourable Mr. Inglis.	
Honourable Mr. Chapman.	
Honourable Mr. Stewart.	
Honourable Mr. Bullen Smith.	

So the amendment was carried.

The Honourable Mr. Stephen than moved that the Bill as amended, together with the amendment now agreed to, be passed.

The Motion was put and agreed to.

BURMA COURTS BILL.

The Honourable Mr. Stephen also moved that the Report of the Select Committee on the Bill to regulate the Courts in British Burma be taken into consideration. He said that it was a difficult matter to give to the Council detailed information on this Bill, which had been carefully considered and settled in Committee. Its objects were to relieve the Chief Commissioner of British Burma from his judicial functions, and to make certain other changes in the judicial machinery of the province. The alterations were these: there was to be only one Recorder, to be called the Recorder of Rangoon, instead of two, as at present, and, under certain specified conditions, the Judicial Commissioner and Recorder of Rangoon were to sit together as a Special Court to dispose of cases. The Bill was eminently one of executive detail, and Mr. Stephen hardly thought any principles were involved to which any one could object. Since their establishment, the Recorders' Courts had undergone several changes. Act XXI. of 1863 provided for the establishment of three Recorders' Courts, one at Rangoon, one at Maulmain, and one at Akyab; but the Government at first proposed to appoint only one Recorder to act for all three places; subsequently two Recorders were appointed, one at Rangoon and one at Maulmain; but there never was a Recorder of Akyab. That arrangement was not found to work satisfactorily; questions arose of a somewhat unsatisfactory kind between the executive and the judicial authorities, to which, for obvious reasons, Mr. Stephen would not now refer; after much deliberation this Bill was introduced, and it had now been considered with very great care by the Select Committee.

The Honourable Mr. Chapman had signed the Report of the Select Committee on this Bill because he could not suggest anything better. He thought that the Special Court to be established under the Bill would be of a somewhat incongruous character; it was to be con-

stituted upon the principle that a trained English lawyer was to be yoked together with the Judicial Commissioner, and it was to be hoped that, between them, they would not upset the coach. He hoped, also, that in time either a High Court or a Chief Court would be established in British Burma to exercise supervision and control over all the Courts in the Province.

The Honourable Mr. ELLIS did not propose to detain the Council for any length of time by observations on this subject. For, as had been stated by the Honourable Member in charge of the Bill, there was really no every important principle in the Bill, which was composed of a mass of details that did not require any explanation of their principle. He agreed so far with his honourable friend, Mr. Chapman, as to admit that this Bill was hardly one to give a permanent constitution to the Courts in British Burma. But, as was often the case, there was a financial difficulty, and this prevented the establishment of a perfect Court. To constitute a perfect Court of appeal, it was absolutely necessary that there should be three Judges, instead of two Judges only; so that, in case of a difference of opinion, reference might be made to a third Judge. But there were not funds for a third Judge. His honourable friend, Mr. Chapman, had said there was a likelihood of difficulties arising in the working of the Bill; but Mr. ELLIS had every hope that the officers who would be appointed under the Bill would be disposed to work cordially in concert, and that no great difficulties would arise. Still it was probable that, a few years hence, some amendments might be found necessary in order to afford the province a more perfect judicial system. He believed that meanwhile this Bill, if worked as it might be worked, would provide a very fair judicial system, and certainly one much better than that which had hitherto existed.

The Honourable Mr. STEPHEN believed that occasion would very seldom arise for the sitting of the Special Court to be constituted under the Act. If there was a difference of opinion beween the Judges of the Special Court, a reference would be made to the High Court at Calcutta. There had been a great deal of discussion about the details of this Bill, and although there seemed to be much complication in its provisions, he thought that the Bill was really simpler than was supposed, and that his honourable friends regarded it as complicated because they had a lively recollection of the trouble they had to take about settling its details.

The Motion was put and agreed to.

The Honourable Mr. STEPHEN then moved that the Bill as amended be passed.

The Motion was put and agreed to.

EXTRADITION BILL.

The Honourable Mr. STEPHEN also presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to offences committed in Foreign States.

REGULATIONS AND ACTS LOCAL EXTENT BILL.

The Honourable Mr. STEPHEN also presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to the local extent of the General Regulations and Acts and to the local limits of the jurisdictions of the High Courts and the Chief Controlling Revenue Authorities.

In presenting this Report, he wished to say a word or two on the subject. The Bill was introduced a considerable time—as much as two years—ago. Its object was to consolidate into one Act of about ten sections 69 Acts and Regulations, which had been enacted for the purpose of exempting particular districts from the operation of the general laws and Regulations. The Bill formed a very important part in the general scheme for consolidating the Acts and Regulations, which was now nearly completed, and which this Bill and other Bills before the Council would complete. In its original shape the Bill was exceedingly intricate, and it had a number of schedules annexed to it, which required to be fully studied. Several communications had been received on the subject of this Bill, and in referring to them he felt bound to observe that some persons seemed rather to forget themselves as to the language which they employed in addressing the Government. He thought that the Government of India in the Legislative Department ought to be treated with respect, especially when it was engaged in about the driest, most difficult, and intricate business it was possible to conceive. Any one who knew the trouble of going through the legislation of sixty or seventy years to ascertain what portions were superfluous and what portions were not superfluous, would have evinced a little more indulgence than was shown in several of the communications that had been received. He admitted that the Bill was intricate, and the Legislative Department accepted the reproof that had been administered to it. He thought, however, that the Bill as now framed was perfectly simple, and when read with the aid of the

Select Committee's Report, would, he believed, be found perfectly clear, and would enable people to see at a glance what otherwise they would have to search through several thick volumes to ascertain. He spoke of this Bill more particularly, because it was one of the many extremely useful measures initiated and brought forward by his honourable friend, Mr. Cockerell. He devoted very great labour and industry to the task of putting these measures into a simple and convenient shape, and spared no amount of exertion in doing so. He was glad to have the opportunity of saying that he thought the public at large were greatly indebted to his honourable friend for the results of his careful and arduous devotion, during four years, to the scheme of consolidation. There might be mistakes, such as were perhaps unavoidable in a complicated work of this kind, but Mr. STEPHEN thought that, on the whole, the result of his honourable friend's exertions had been exceedingly satisfactory. The Report of the Select Committee would enable the Local Governments to see what had been done, and Mr. STEPHEN hoped that, after a reasonable time, when the opinions of the local authorities had been received, the Bill would be passed into law.

LAND REVENUE (N. W. P.) BILL.

The Honourable Mr. STEPHEN also introduced the Bill to consolidate and amend the law relating to land-revenue in the North-Western Provinces of Bengal. He said that this Bill also had been drawn by his honourable friend, Mr. Cockerell. It consolidated into one, as he hoped perspicuous, Act no less than thirty-seven Regulations and four Acts, in which the law on this subject was now contained. The whole matter was disposed of in 102 sections. This subject in its present form was so intricate, if he could judge from his own experience in the matter of the Panjáb Land Revenue Act, that no officer ever learnt his business from the law itself. All officers were compelled to learn it by practice, though its inherent difficulty was by no means great. The land-revenue system of the North-Western Provinces was founded on Regulation VII. of 1822. It had been amended and supplemented and re-amended, until it was necessary to go through thirty-seven Regulations and four Acts, scattered over the Statute-book, in order to ascertain what the law on the subject was. He had had occasion to speak of this intricacy more than once when introducing the Bill for regulating the land-revenue system of the Panjáb. He need not now repeat what he had then said; he would confine himself to one or two observations for the special consideration of the Government of the North-Western Provinces, and of His Honour the Lieutenant-Governor of Bengal. The Bill would extend to those parts of the Lower Provinces which were not subject to the Permanent Settlement. He had on a former occasion suggested for the consideration of His Honour, whether it would be best to pass this Bill for the North-Western Provinces only, or whether those parts of the Lower Provinces which were not subject to the Permanent Settlement should be included within its scope. That was a point upon which His Honour and his advisers would perhaps, while the Bill was under consideration, form an opinion which would no doubt be acted upon.

The Bill, as at present drawn, was simply a consolidation, with very few alterations, of the existing law. There were some points in which the system of land-revenue administration in the North-Western Provinces differed from that in the Panjáb. It appeared to Mr. STEPHEN that it would be well to consider whether certain matters inserted in the Panjáb Land Revenue Act should not be introduced into this Bill. Various provisions were introduced into the former on the strength of statements made by the Panjáb officers as to the way in which they conducted settlement proceedings and the view which they took of the law. It was impossible to read Regulation VII. of 1822 without seeing that various matters not contained in it were inserted in the Panjáb Act, and that it was desirable that they should be inserted. There were two points in particular to which Mr. STEPHEN wished to draw attention. One was that Regulation VII. of 1822 was completely silent as to the effect of the record of rights; it did not even state whether it was admissible in evidence, which, however, it would be under the Evidence Act. Another was that the Regulation, which was drawn up with a view to the settlement operations under Lord Hastings' Government in 1822, did not provide specifically for re-settlements; accordingly, there was nothing in the Regulation to show how far the record of rights of a preceding settlement was to be regarded as conclusive, or how far it might be revised on re-settlements. That matter was provided for, after a great deal of consideration and discussion, in the Panjáb Act, and he would suggest that it should be provided for in this Bill also. He alluded to the subject now, as the Bill, as it was drawn, merely reproduced the existing law.

Another matter of some moment required notice. There was no provision in the present Bill or in the Regulations which it would supersede as to the form which the record of rights

was to take. In the Panjáb Act a form was provided. Section 14 of that Act contained such a provision taken from the *Directions to Settlement Officers* drawn up by Mr. Thomason, and which had been universally acted upon. There were some other matters with which Mr. STEPHEN had no doubt his honourable friend, Mr. Inglis, was well acquainted, and upon which the Government of the North-Western Provinces was a better authority than Mr. STEPHEN could possibly be. He might specially notice what were called revenue cases and revenue appeals. As he understood the matter, a person might appeal from the decision of a settlement officer, through all the stages, up to the Board of Revenue; and a suit might then be instituted in the Civil Court, which might be carried in appeal from the decision of the Munsif to the Privy Council. He did not pretend to say how that matter should be dealt with. It was a question which the Government of the North-Western Provinces would no doubt consider, and one upon which they were better qualified to deliver an authoritative opinion than he could possibly be. On that point, also, there had been much discussion in connection with the Panjáb Act; and he thought some of its provisions on this point might be taken into consideration by the Government of the North-Western Provinces. Of course the great difference between the land-revenue system of the North-Western Provinces and the land-revenue system of the Panjáb was, that the Panjáb settlement officers almost uniformly had judicial powers. The consequence was that their decisions were in most cases judicial decisions, and bound the parties in the same manner as other judicial decisions. That was not the case in the North-Western Provinces. He thought that, if that distinction was kept in mind, there would be no difficulty in adapting the provisions of the Panjáb Act to the circumstances of the North-Western Provinces. He (Mr. STEPHEN) wished to observe in reference to this, that the Panjáb Act had been settled in consultation with experienced men who had served in both those provinces—His Honour the Lieutenant-Governor of the North-Western Provinces, Sir Richard Temple, and Mr. Egerton, the Financial Commissioner of the Panjáb.

When this Bill, the Local Extent Bill, and one or two others introduced by his honourable friend, Mr. Cockerell, were passed, there would remain in the Bengal Code, unrepealed, only about thirty Regulations, which, for one reason or other, it was undesirable to touch. The Government of India would then be able to comply with the direction contained in the Statute 37 Geo. III., c. 142 s. 8, that the Regulations "should be formed into a regular Code." Hitherto, the Government had unfortunately been able to do but little towards that object; but as, after the passing of the few Bills alluded to, the Regulations would be pretty well disposed of, the useless parts being repealed and the useful parts re-enacted in a simple form, that direction could be carried out by issuing an authorized edition of the surviving Regulations, which would be contained in a very thin volume indeed.

HIGH COURTS CRIMINAL PROCEDURE BILL.

The Honourable Mr. STEPHEN, in moving for leave to introduce a Bill to regulate the procedure of the High Courts in the exercise of their original criminal jurisdiction, said that in the Preliminary Report of the Select Committee on the Criminal Procedure Bill, presented some weeks ago, the Committee expressed their opinion that it was desirable that the criminal procedure of the High Courts should be regulated by the same law as that which applied to the other Criminal Courts of the country. In that opinion Mr. STEPHEN entirely agreed. He thought it was clearly desirable that the procedure of the High and other Courts should be as much as possible the same. The Committee did not, however, introduce into the Code of Criminal Procedure the requisite provisions on this subject, because it would be necessary to obtain the opinions of the Judges of the High Courts and other authorities before carrying out so important an amendment of the law. That would perhaps have led to considerable discussion and have indefinitely delayed the passing of the Code, on the revision and settlement of which great labour had been expended. The Committee accordingly recommended that the subject should be separately dealt with; and Mr. STEPHEN hoped, before the Council broke up its sittings here, to introduce a Bill which would put that matter on a sound foundation. The procedure of the High Courts was regulated according to their respective charters; and although, at the time when the High Courts were established, the English criminal procedure was probably superior to anything obtaining in the Courts in India, the pains since taken to improve the criminal procedure of the Mofussil Courts had resulted in a better system being introduced into the Mofussil than that which was in force in the Presidency towns. It appeared to him that, in the present Mofussil procedure, there was this advantage, that it began at the beginning and went straight through to the end. With regard to the English procedure, which prevailed in the High Court, it was quite impossible

to say where it began or what it was. To understand and become acquainted with the system it was necessary to study many English text-books; to learn the most elaborate rules about indictments—how they were shaped; whether a particular form applied to a particular case; whether particular Acts of Parliament relating to indictments applied to India—and when this study was completed, the labour bestowed upon it would most likely prove to be useless. There was an unnecessary air of mystery and solemnity about the procedure of the High Courts, which it was desirable to remove. He thought that they ought to proceed in the same manner as the other Courts, and differ from them, not in having a strange language and strange rules, but by having better Judges and better lawyers to practise before them. The opportunity should be taken to regulate what was called the Crown practice of the Courts, their practice, that is, in issuing prerogative writs, such as the writ of "*Habeas Corpus*," the writ of "*mandamus*," and the like. There was much needless intricacy about these writs. Only the other day there was an application for a writ of *mandamus* to issue against the Justices of the Peace for Calcutta. It was astonishing to see how many intricate and difficult questions were raised on that application. There was a question whether a Statute of the 9th of Anne would apply; then whether a Statute of William IV. would apply; and if that did not apply, whether the truth of the return could be denied; and if not, whether an action could be brought against a man who made a false return, and so on. In this way the Judge and Barristers wrangled together for a couple of days, to the great waste of public time and money, about matters of absolutely no importance at all. All that would be done away with by a very few words put into a simple and rational form.

His Honour the LIEUTENANT-GOVERNOR would only say that the Council were very well aware that the country was under great obligations to the honourable and learned Member, and that he would very greatly add to those obligations by leaving us, as a legacy, a Bill to carry out the great object which he had just explained to the Council. HIS HONOUR would express his entire concurrence in the observations which had been made by his honourable and learned friend.

The Motion was put and agreed to.

The Council adjourned to Saturday, the 6th April 1872.

H. S. CUNNINGHAM,

Officiating Secretary to the Council of the Governor General for making Laws and Regulations.

CALCUTTA,

The 2nd April 1872.

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