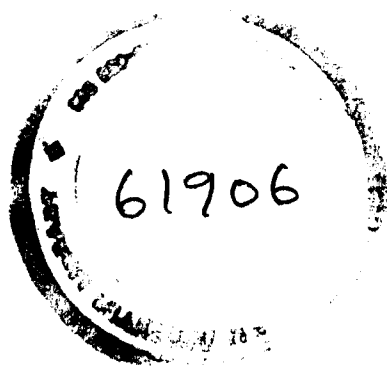




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ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS

FOR THE YEARS 1890 AND 1891.



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OF THE

Council of the Governor of Fort St. George



ASSEMBLED FOR THE PURPOSE OF

MAKING LAWS AND REGULATIONS

FOR THE YEARS

1890 AND 1891,

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Abstract of the Proceedings of the Council of the Governor of Fort St. George, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 and 25 Victoria, Cap. 67.

The Council met at the Council Chamber in Fort St. George on Tuesday, the 21st January 1890.

PRESENT:

HIS EXCELLENCY THE RIGHT HON'BLE THE GOVERNOR OF MADRAS—*Presiding.*
 The Hon'ble MR. STOKES, C.S.I.
 The Hon'ble MR. GARSTIN, C.S.I.
 The Hon'ble MR. GROSE.
 The Hon'ble V. BHASHYAM AIYANGAR, Rai Bahadur.
 The Hon'ble the ADVOCATE-GENERAL.
 The Hon'ble MR. HUMAYUN JAH BAHADUR, C.I.E.
 The Hon'ble MR. BOYSON.
 The Hon'ble C. SANKARAN NAYAR.

ACTS ASSENTED TO BY THE GOVERNOR-GENERAL.

His Excellency the PRESIDENT announced the assent of His Excellency the Governor-General to the following Acts:—

No. III of 1889.—An Act to provide for the prevention and control of Nuisances outside the Town of Madras.

No. IV of 1889.—An Act to consolidate and amend the law relating to the Salt Revenue in the Presidency of Fort St. George.

THE CITY OF MADRAS TOBACCO DUTIES BILL.

The Hon'ble MR. STOKES said:—

YOUR EXCELLENCY,—“I present the Report of the Select Committee on the Bill to make provision to levy duties on Tobacco brought into the City of Madras. It has already been circulated to honorable members, and I need not make any lengthy remarks upon it. No change involving principle has been made in the Bill, but the details have been made clearer. We have preserved the principle that the proceeds of the tax shall be appropriable in the first instance, as are the existing assets of the water-works fund, to the purposes of those works—a point which to the Government of India seemed open to question. The creation of subordinate funds of the kind is, no doubt, objectionable on general grounds, but the fund already exists under the present Act, and as the demands of the water-works improvements will probably absorb the full proceeds of the tax proposed, the question is not of such importance as it would be if the fund were to be newly started. Further, the new taxation is put on for the special purpose, and should not, if it turns out more productive than is expected, be imposed at higher rates than the special purpose requires. In this matter we are, I may state, fortified by the opinion of the President of the Municipal Commission. In making strict provision for refunds, we have followed the suggestion and wishes of the Govern-

ment of India, which rest on experience of similar duties imposed in other parts of India. The provisions of the new section 9 which has been added to the Bill are, of course, intended for the protection of the municipal finances against unfounded demands for refund. The power of search proposed to be taken in section 6 is obviously required.

"I now move that the Report and the Bill be taken into consideration."

The Hon'ble C. SANKARAN NAYAR seconded the motion, which was put to the Council and carried.

No amendments in the Bill being proposed, the Hon'ble MR. STOKES moved that the Bill be passed into law. The motion, having been seconded by the Hon'ble C. SANKARAN NAYAR, was put and carried, and the Bill was passed by the Council.

A BILL TO AMEND THE MADRAS RENT RECOVERY ACT, 1865, AND THE MADRAS LOCAL BOARDS ACT, 1884.

The Hon'ble MR. GARSTIN, in introducing a Bill to amend the Madras Rent Recovery Act, 1865, and the Madras Local Boards Act, 1884, said :—

"The Bill which I have the honor to introduce to the notice of the Council is one which has been on the legislative anvil for about sixteen years. Its object is to make legal the levy of a Local Fund cess on the water-rate paid by the ryots in zemindari areas who during that period have been exempt from such payment. The exemption being considered inexpedient and unnecessary, this Bill is introduced to enable the existing state of affairs to be remedied. Its contents are so fully set forth in the annexed Statement of Objects and Reasons that I need merely refer the Council thereto. I propose that the Bill be referred to a Select Committee consisting of—

The Hon'ble MR. GROSE,
The Hon'ble V. BHASHYAM AIYANGAR, Rai Bahadur,
The Hon'ble the ADVOCATE-GENERAL,
The Hon'ble C. SANKARAN NAYAR,
and The MOVER."

The Hon'ble MR. GROSE having seconded the motion, it was put to the Council and carried.

THE CANALS AND PUBLIC FERRIES BILL.

The Hon'ble MR. STOKES said :—

YOUR EXCELLENCY,—“I beg to introduce the Bill to make better provision for the management of Canals and Public Ferries, which has been published in accordance with the regulations of this Council. The Statement of Objects and Reasons sufficiently sets forth the inconvenience of the present law on the subject, which cannot, as there shown, be applied to the principal lines of artificial navigation in the Presidency, viz., those in the Godáviri and Kistna districts. These are now managed and revenue realized by executive officers without any legislative sanction, but the powers which can be so used are found insufficient and the growth of navigation on the systems is such that the need for supplementing them has become urgent in view to the comfort and safety of passengers and the provision of adequate convenience for the traffic. The present law is also unnecessarily restrictive in regard to the application of the revenue from canals and ferries, and the Bill now submitted to the Council will enable these funds to be used in ordinary for general local purposes, under the manage-

THE CANALS AND PUBLIC FERRIES BILL.

ment of the District Boards. In these circumstances the present Bill has been drafted and I beg to move that it be referred to a Select Committee consisting of—

The Hon'ble MR. GARSTIN, C.S.I.,
The Hon'ble MR. GROSE,
The Hon'ble MR. BHASHYAM AIYANGAR, Rai Bahadur,
The Hon'ble the ADVOCATE-GENERAL,
and MYSELF."

The motion, having been seconded by the Hon'ble MR. GROSE, was put to the Council and carried.

The Council then adjourned *sine die*.

(By order.)

FORT ST. GEORGE,
21st January 1890.

A. G. CARDEW,
Under Secy. to Govt., Legislative Dept.



*Abstract of the Proceedings of the Council of the Governor of Fort St. George,
assembled for the purpose of making Laws and Regulations under the
provisions of the Act of Parliament, 24 and 25 Victoria, Cap. 67.*

The Council met at the Council Chamber in Fort St. George on Monday, the
24th March 1890.

P R E S E N T :

His Excellency the Right Hon'ble the GOVERNOR OF MADRAS—*Presiding*.
The Hon'ble MR. STOKES, C.S.I.
The Hon'ble MR. GARSTIN, C.S.I.
The Hon'ble MR. GROSE.
The Hon'ble the ADVOCATE-GENERAL.
The Hon'ble MR. BOYSON.
The Hon'ble V. BHASHYAM AYYANGAR, RAI BAHADUR.
The Hon'ble C. SANKARAN NAYAR.
The Hon'ble the RAJAH OF VENCATAGIRI, K.C.I.E.
The Hon'ble MIR HUMAYUN JAH BAHADUR, C.I.E.

NEW MEMBERS.

The undermentioned gentlemen took their seats on re-appointment as Additional
Members of Council:—

The Hon'ble the RAJAH OF VENCATAGIRI, K.C.I.E.
The Hon'ble MIR HUMAYUN JAH BAHADUR, C.I.E.

ACT ASSENTED TO BY THE GOVERNOR-GENERAL.

His Excellency the PRESIDENT announced the assent of His Excellency the
Governor-General to Act I of 1890:—*An Act to make provision for the levy of duties on
Tobacco brought into the City of Madras.*

BILL TO AMEND THE MADRAS LOCAL BOARDS ACT, 1884, AND
THE MADRAS RENT RECOVERY ACT, 1865.

The Hon'ble MR. GARSTIN presented the Report of the Select Committee on the
Bill to amend the Madras Local Boards Act, 1884, and the Madras Rent Recovery
Act, 1865, and said:—

“When introducing this Bill, I referred very briefly to the necessity for its
introduction, as the Statement of Objects and Reasons set forth tersely all that needed
to be said on that point. I had expected that the Select Committee would have found
the two sections of the draft Bill sufficient, with perhaps one or two small alterations,
for the end in view, but this proved not to be the case, for on going carefully over the
sections of the Local Boards Act of 1884, which lay down the procedure for calcula-
ting, assessing and levying the tax on the annual rent-value of land, from section 64

to section 76, we found there was room for amendment of the wording of several of them. Under that Act, a local tax is leviable from four classes of landholders—namely, (1) from Government ryots, (2) from inamdars, (3) from landholders holding on any other tenure and from their tenants, and (4) from any of the above classes who do not pay their revenue or rent in money but in kind—but this tax is only leviable, as the law at present stands, from the first two of the above four classes both in respect of their land and of any water-rate which may be payable for its irrigation. The Committee's attention was therefore first directed to placing the last two classes (of whom that of landholders on any other tenure than ryotwari or inam and their tenants is the most important) on the same footing as the others, and this has been done by section 1 of the Bill. It was then deemed expedient by the Committee that, as the Local Funds Act of 1871 had been long repealed, the proviso at the end of section 64 of the Local Boards Act of 1884, which was quite obsolete should be omitted, and in its place the Committee substituted another by which it is declared that when a landholder pays water-rate to Government on behalf of his tenant and is permitted by the Collector to raise his tenant's rent in order to recoup himself this payment, he shall not, in addition to having to pay the local tax under Act V of 1884 on the water-rate, be called on to pay the tax on the enhanced rent also, as this would be equivalent to making him pay the tax twice over. This is the most important addition to the Bill.

"The amendment to section 65 proposed by the Committee is also noticeable. That section at present makes a landholder responsible for sending in to the Collector an accurate return showing the annual rent-value of the lands occupied, not only by himself but by his tenants, and as the proposed alteration of clause iii, section 64, by making water-rate assessable, constitutes it rent-value, it was necessary to guard the landholder from liability for the tenant's action in cases where he might pay his water-rate direct to Government, and thus leave the landholder in ignorance of that action and of the amount so paid. The words proposed to be added to the section exempt the landholder from liability to specify the annual rent-value of his tenant's land so far as it is represented by water-rate paid direct to Government by the tenant himself. This arrangement seems only fair.

"The amendments to sections 72, 73, 75 and 76 are merely consequential and are explained in the report.

"The omission of certain words in clause IV, section 11, of Act VIII of 1865, proposed in the 7th section of the Bill, is necessary to make the meaning of that section clear, which it is not at the present moment.

"I therefore propose that the Bill be now taken into consideration."

The motion, having been seconded by the Hon'ble C. SANKARAN NAYAR, was put to the Council and carried.

The Hon'ble Mr. Garstin, in moving the amendment of which he had already given notice, said:—

"There is only one amendment which I have to propose, and that is to insert in section 7 the words 'as amended by Act II of 1871' after the words 'Act VIII of 1865.'

"The object of this amendment is to draw attention to the existence of Act II of 1871 and its effect on the clause and section in question in cases where there may be no copy of the latest edition of the Madras Acts available, in which the effect of the later Act is embodied in the earlier one."

The amendment, having been seconded by the Hon'ble Mr. GROSE, was put to the Council and carried.

The Hon'ble Mr. GARSTIN then applied to His Excellency the President to suspend the operation of Rule XXXIII of the Rules for the Conduct of Business of the Council, to enable him to move that the Bill as amended be passed at once into law. His Excellency the President declared the Rule in question suspended.

The Hon'ble Mr. GARSTIN then moved that the Bill as amended be passed into law.

The Hon'ble V. BHASHYAM AIYANGAR seconded the motion, which was put and carried, and the Bill was passed by the Council.

THE CANALS AND PUBLIC FERRIES BILL.

The Hon'ble Mr. STOKES said:—

"YOUR EXCELLENCY,—I present the Report of the Select Committee on the Bill to make better provision for the establishment of Canals and Public Ferries in the Presidency of Madras and for the management thereof and move that the Bill as amended by the Committee be taken into consideration. The Committee has made no changes in the Bill of any great importance; the alterations introduced are mainly verbal, and, as they are fully explained in the report, I need not now expatiate on them. I therefore move that the Bill as amended by the Select Committee be considered and passed into law."

The Hon'ble the ADVOCATE-GENERAL seconded the motion, which was put and carried, and the Bill passed by the Council.

THE REVISED GENERAL CLAUSES BILL.

The Hon'ble V. BHASHYAM AIYANGAR moved for leave to introduce a Bill to improve and enlarge the provisions of the Madras General Clauses Act, 1867. He said:—

"YOUR EXCELLENCY,—I beg leave to bring in a Bill, the object of which is to improve and enlarge the provisions of the Madras General Clauses Act, 1867, and further to shorten the language to be used in future Acts of the Governor of Fort St. George in Council and to make certain further provisions relating thereto. The main provision in the existing Madras General Clauses Act I of 1867 is that, in all Acts of the Governor of Fort St. George in Council, passed subsequent to the said Act No. I of 1867, any word or expression occurring in such Acts, which has been defined in Chapter II of the Indian Penal Code or Chapter I of the Criminal Procedure Code shall be taken to have the meaning assigned to it in those Chapters unless it be otherwise provided in any such Act in which the word or expression occurs. The definition of the words and expressions in Chapter II of the Indian Penal Code remain the same now as they were when Madras Act I of 1867 was passed with the exception of the word *offence*, the meaning of which has since 1867 been enlarged by three Acts amending the Indian Penal Code in the years 1870, 1882 and 1886.

"The Code of Criminal Procedure which was in force at the time of the passing of Madras Act I of 1867 was Act XXV of 1861, which in Chapter I contained definitions of about twenty words and expressions, some of which are also defined in Chapter II of the Indian Penal Code substantially conveying the same sense. The Criminal Proce-

Code of 1861 was superseded by X of 1872, as amended by XI of 1874, which Acts were passed subsequent to the General Clauses Act I of 1868 of the Governor-General of India in Council. In Chapter II of the Code of Criminal Procedure of 1872, about fourteen words and expressions which were defined in the Criminal Procedure Code of 1861 were dropped and about 14 words and expressions newly introduced and defined and the definitions of about three words were changed. The Criminal Procedure Code of 1872 was superseded by the existing Criminal Procedure Code of 1882, in Chapter II of which 5 words and expressions which were defined in the Code of 1872 were dropped, and about 13 words and expressions were newly introduced and defined and the definitions of about two words changed. The word 'offence' is defined in the Code of 1882 as any act or omission made punishable by any law in force for the time being. The same word 'offence' as defined in the amended section 40 in Chapter II of Indian Penal Code has a much narrower signification, though wider than its original definition in the Indian Penal Code. The framer of Madras Act I of 1867 could hardly have foreseen that by subsequent changes in the Indian Penal Code and Code of Criminal Procedure the word 'offence' would have a much wider signification in the latter than in the former Act. Whether the Act I of 1867 is to be construed as incorporating for ever the then existing definitions only or also subsequent definitions contained in the said Codes, and whether that Act is to be interpreted from time to time with reference to the amendments introduced in the definition clauses of the two Codes may not be easy of solution. However this may be, it would hardly be denied that a General Clauses Act should, in the main, be self-contained and not necessitate references to the definitions chapter in such a Code as the Code of Criminal Procedure, which, dealing as it does with procedure, is liable to frequent changes. The General Clauses Act I of 1868, which was passed by the Governor-General of India in Council subsequent to the Madras General Clauses Act I of 1867, is self-contained, and the definitions given therein of several words and expressions and some of its other provisions may with advantage be adopted in the proposed Revised Madras General Clauses Act. A supplemental General Clauses Act I of 1887 was also passed by the Governor-General in Council which defines certain words and expressions not defined in Act I of 1868 and contains certain provisions as to the making of rules and issuing of orders between the date of passing of an Act and the date of its coming into operation, and as to the publication of a draft of the proposed rules for the information of persons likely to be affected thereby. Some of the definitions and provisions contained in this Act and certain provisions suggested by the recent Interpretation Act, 1889, 52 and 53 Vic., chap. 63, will also be adopted in the proposed Bill. The Madras General Clauses Act I of 1867 will not be repealed, but it will be enacted that that Act will not apply to the proposed Revised General Clauses Act or any Act that may be passed by the Governor of Fort St. George in Council subsequent thereto."

The motion, having been seconded by the Hon'ble Mr. STOKES, was put to the Council and carried.

THE MALABAR MARRIAGE BILL.

The Hon'ble C. SANKARAN NAYAR moved for leave to introduce a Bill to provide a form of marriage for Hindus following the Marumakkatayam Law. He said:—

"YOUR EXCELLENCY,—I move for leave to introduce a Bill to legalise marriages contracted by Hindus following what is generally known as Marumakkatayam Law.

Though Hindus by religion, their 'marriages' are performed without any religious rites as practised among other classes of Hindus. The High Court declared in 1869 that 'the relation is in truth not marriage, but a state of concubinage into which the woman enters of her own choice and is at liberty to change when and as often as she pleases.' From a purely legal point of view the High Court may be right, but for the actual state of facts, we may usefully refer to a speech delivered by Sir James (then Mr.) Stephen in 1872 in the Viceroy's Legislative Council at Calcutta. He said: 'Among the Nairs, there is, Mr. Robinson tells me, legally speaking, no such thing as marriage at all I am also told by Mr. Robinson, who has great personal knowledge of the subject, that in spite of this custom, marriage is practically as common and as binding among the Nairs as in many other races. The connections which they form usually last for life and are marked by a great degree of mutual fidelity; many of them, I am told, feel that this way of life is degraded and bad. They wish for the institution of marriage.' In 1882, an attempt was made by some individuals under the kindred system of Aliyasantana Law to prove that the law was not correctly stated in 1869, but it was held that 'the customary cohabitation of the sexes under Aliyasantana law appears to us to do no more than create a casual relation, which the woman may terminate at her pleasure, subject perhaps to certain conventional restraints among the more respectable classes, such as money payment and control of relations, &c., which may be prescribed as a check upon capricious conduct.' No civil rights flow from this sexual relation, and children have no claim on any property left by their father. It goes after his death to his sister's son or to the joint family of which he is a member, a Malabar joint family being composed of a mother and her children and the descendants of such of them as are females. This peculiar custom is by some inquirers referred to a state of society in which marriage, with its notion of permanence and exclusiveness, was unknown. 'On the principle that you cannot tell who is a child's father, the rule of inheritance is that a sister's son inherits,' says Sir J. Stephen. Whether this is the correct principle or not, it is unnecessary to discuss. It is enough to state that the High Court seem to have adopted that view when they say:—'That the Aliyasantana law did not recognise such cohabitation as marriage appears to be shown by the circumstance that it founds upon it no rights of property or inheritance.'

"If this stage of society ever existed it has certainly passed away, and we find that in 1872, the Nairs wished for the institution of marriage. There is now a general desire for a form of marriage the law will recognise.

"I have attempted and trust I have shown that by law we are prevented from marrying, or what comes to the same thing, the law refuses to recognise the validity of our marriage, and this is a disability which must be removed. As Sir Henry (then Mr.) Maine said in 1868: 'It was not the policy of the Queen's Government in India to refuse the power of marriage to any of Her Majesty's subjects,' and there is no reason why the Nairs and other followers of Marumakkatayam law should be forced to adhere to a usage which is unnatural, not only according to Western notions, but according to the tenets of the religion which they follow. To refuse to recognise the validity of their marriage and the rights of property that flow from such marriage, or to refuse to provide a form of marriage which they may follow, is interference with the natural course of events. I have the authority of Mr. Mayne for the statement that but for English law and English courts new customs would have been adopted and followed, that the laws of marriage and inheritance would have been different from what they are now. He is 'certain that the Malabar Tarwads would long since have broken up into families each headed by a male, if our courts had allowed them to do so.'

*Abstract of the Proceedings of the Council of the Governor of Fort St. George,
assembled for the purpose of making Laws and Regulations under the
provisions of the Act of Parliament, 24 and 25 Victoria, Cap. 67.*

The Council met at the Council Chamber in Fort St. George on Tuesday, the
24th day of February 1891.

P R E S E N T :

His Excellency the Right Hon'ble the GOVERNOR OF MADRAS, G.C.I.E.—
Presiding.

His Excellency the COMMANDER-IN-CHIEF, K.C.B.

The Hon'ble Mr. STOKES, C.S.I.

The Hon'ble Mr. GARSTIN, C.S.I.

The Hon'ble the ADVOCATE-GENERAL.

The Hon'ble Mr. PRICE.

The Hon'ble Mr. GROSE.

The Hon'ble C. SANKARAN NAYAR.

The Hon'ble the RAJAH OF VENKATAGIRI, K.C.I.E.

The Hon'ble V. BHASHYAM AIYANGAR, Rai Bahadur.

The Hon'ble Mr. BOYSON.

The Hon'ble Mr. HAMNETT, C.I.E.

NEW MEMBER.

The Hon'ble Mr. HAMNETT, C.I.E., took his seat as an additional Member of
Council.

RE-APPOINTMENTS.

The undermentioned gentlemen took their seats on re-appointment as additional
Members of Council :—

OFFICIAL.

The Hon'ble Mr. J. F. PRICE, Chief Secretary to Government.

„ „ Mr. J. GROSE, Acting 1st Member, Board of Revenue

NON-OFFICIAL.

The Hon'ble V. BHASHYAM AIYANGAR, Rai Bahadur.

„ „ Mr. J. A. BOYSON.

"The effect of the law is such that our wives are concubines and our children bastards in a court of law, and the necessity therefore for a Bill to legalise marriages and to provide for the issue of such marriage seems apparent.

"The Bill is only permissive, and it affects only those who are willing to avail themselves of the form of Civil marriage as therein provided. Those who object to follow the provisions of the Bill are left alone and the law of succession to ancestral property is in no way interfered with. It enables a follower of Marumakkattayam law to perform a legal marriage under certain conditions, most of them adopted from the Brahmo Samaj Marriage Act. The conditions are that marriages should be solemnised in the presence of the Marriage Registrar; that neither party must have a husband or wife living; that the husband should be over the age of eighteen, and the wife over the age of fourteen; that if either party had not completed the age of 21 years, the consent of the guardian is necessary; and that they should not be related to each other in respect of consanguinity or affinity in certain degrees as prescribed by section 2, clause 4 of Act III of 1872.

"Bigamy is made an offence by prescribing penalties for contracting a second marriage during the continuance of the first marriage. With respect to the dissolution of marriages, I have preferred, after communication with various gentlemen interested, to follow the more liberal provisions of the Parsi Marriage Act, sections (27 to 36) rather than the strict provisions of the Divorce Act, and finally the civil rights acquired by the husband, wife, and children are enumerated as follows:—

"The wife and children are to pass from the guardianship of the Karnavan to the guardianship of the husband. They acquire a right to maintenance from the husband without losing their rights as members of the Tarwad, and if either husband or wife die intestate in respect of any separate or self-acquired property, the property is to devolve on the survivor and children. Testamentary power also is conferred on husband and wife.

"I may add that this subject has been before the public for discussion at least since 1882. In his report in 1882, Mr. Logan pointed out that 'In the days when the Nair male population were all soldiers and the marital tie was not much regarded, this did not matter much, but things are changed now that a Nair usually marries one wife, lives apart with her in their own home, and rears her children as his own also. His natural affections come into play and there is a very strong and most laudable desire for some legal mode of conveying to his own children and their own mother his self-acquired property,' and he suggests that all adults should have the power of disposing of their self-acquired property by Will, and if he dies intestate, a man's children should get one-third of his property.

"This report was considered by a committee appointed by G.O., dated 29th January 1884, No. 53, who recommended the enactment of a marriage and succession law on the lines already indicated. Raja Sir Madava Rao, Messrs. Logan, Wigram, Karunakara Menon and myself were members. After a very careful consideration of the whole question, we reported 'there is consensus of opinion among the majority of those interested that the time has come when a permissive form of marriage should be provided for Hindus following the Marumakkattayam law of succession. They want to be able to contract a marriage which the law will respect, and this we think the legislature may enable them to do without interfering with their peculiar law of succession to their ancestral property, which they do not desire.

"To provide for the wife and issue of such marriages, we propose a limited change in the law of succession to separate and self-acquired property, and the change

is one which will, we believe, commend itself to the majority of the people. Our proposal is that, should the husband or wife die intestate as to any separate or self-acquired property, that property should devolve on the survivor and the children in equal shares, but that they should in their lifetime have power to dispose of such property by Will.'

"The draft Bill submitted by this committee was referred to the High Court for their opinion, and all the Judges were in favor of the Bill. Mr. Justice Muthusami Iyer said:—

"This Bill has my entire support. It only gives effect to what ought to be done to satisfy the requirements of progress. The question which alone demands consideration in connection with the Bill is whether the time has arrived for its introduction into Malabar. From what I have heard and from what I know of the spread of education, I believe that the Bill is necessary to supply a want which has been felt for some years among the educated and the respectable classes in the district.

"The Bill is only permissive and confines the rights of marriage to self-acquired property. I do not think that even those who are in favor of the existing state of law in regard to the sexual relations could have any reason to complain.'

"Under section 43 of the Indian Councils Act it is not lawful to the Governor in Council except with the sanction of the Governor-General previously communicated to him to make regulations or take into consideration any law or regulation affecting the religion or religious rites or usages of any class of Her Majesty's subjects in India. It may be suggested that on the subject of marriage, the Hindu law and religion are one and the same thing and that therefore this Bill cannot be taken into consideration without the sanction of the Governor-General in Council, but a marriage under the Marumakkattayam Law has nothing whatever to do with Hindu religion or religious usage and it appears to me therefore that section 43 has no application; but in order to remove all doubts, I would respectfully suggest that, after leave is granted to me, the Governor-General in Council may be asked to give his consent."

The motion, having been seconded by the Hon'ble V. BASNYAM AIYANGAR, was put to the Council and carried.

The Council then adjourned *sine die*.

(By order.)

FORT ST. GEORGE,
24th March 1890.

A. G. CARDEW,
Under Secy. to Govt., Legislative Dept.

2 THE CITY OF MADRAS MUNICIPAL ACT AMENDMENT BILL.

ACTS ASSENTED TO BY THE GOVERNOR-GENERAL.

His Excellency the PRESIDENT announced the assent of His Excellency the Governor-General to the following Acts:—

No. II of 1890.—The Canals and Ferries Act, 1890.

No. III of 1890.—An Act to amend the Madras Local Boards Act, 1884, and the Madras Rent Recovery Act, 1865.

THE CITY OF MADRAS MUNICIPAL ACT AMENDMENT BILL.

The Hon'ble Mr. GROSE, in presenting the Report of the Select Committee on the Bill to amend Acts I and VII of 1884, said:—

“YOUR EXCELLENCY,—I present the Report of the Select Committee on the Bill to amend the City of Madras Municipal Acts I and VII of 1884. In doing so I must point out that the Committee have had not only to consider a Bill already drawn up, but to frame a new Bill. The Bill referred to the Committee was a little Bill of 4 sections which contemplated alterations in 4 sections of Act I of 1884, but a number of papers have been referred to the Committee or placed before it from time to time, and their consultations have resulted in a Bill which contains 69 sections, which, as regards Act I of 1884, contemplates alterations in 70 sections, and as regards Act VII of 1884 contemplates the repeal of 6 sections. The Bill submitted with the report is to all intents and purposes a new Bill dealing with the constitution of the Municipality, the election and procedure of the Commissioners and their Standing Committee, the purposes on which Municipal funds may be expended, the salary and power of the President and his Chief Assistants and many conservancy matters, besides the subjects dealt with in the original Bill.

“I have given notice of a motion for the Bill to be taken into consideration. Under Rule 29, however, it cannot be taken into consideration until a week after the report has been furnished to the members, and a week has not elapsed since it was furnished to two of them at all events. Of course, Your Excellency might, for sufficient reasons, suspend this rule. If it were possible for the Bill to be passed at this meeting of the Council, it might be argued that such reasons exist, but I do not think this is possible. The necessity of submitting this Bill, which, as I have said, is a new Bill, to the Secretary of State before it is passed into Law, will prevent its being placed in the Statute Book for some time to come. Moreover, it seems to me desirable in the case of a Bill of this kind that ample time should be allowed for it to be considered by the public and examined by experts.”

The further consideration of the Bill was deferred.

MADRAS GENERAL CLAUSES BILL.

The Hon'ble V. BHASHYAM AIYANGAR, in introducing a Bill for further shortening the language used in Acts of the Governor of Fort St. George in Council and for other purposes, said:—

“At a meeting of the Council held on Monday, the 24th of March 1890, leave was given to me to introduce a Bill to improve and enlarge the provisions of the Madras General Clauses Act of 1867, and I now introduce it for consideration by the Council. The measure proposed, though very useful, is purely technical, and I have little to add to what I have already stated when I moved for leave to introduce the Bill. I have

THE MADRAS GENERAL CLAUSES BILL.

3

adopted among other suggestions a suggestion made to change the title of the proposed Act from ‘The Revised Madras General Clauses Act’ to ‘The Madras General Clauses Act, 1891.’ The Bill is divided into 3 chapters. Chapter I contains definitions of 40 words or expressions mostly adopted from Acts of the Indian Legislature and the recent ‘English Interpretation Act of 1889;’ and Chapter II contains, in ten sections, general provisions applicable to all future Acts in so far as a contrary intention does not appear therein. Both these chapters are declared applicable only to future Acts. Chapter III contains in 11 sections general provisions as in Chapter II, but, being such as may with advantage be applied to past Acts also, are declared applicable to all Acts in so far as a contrary intention does not appear therein. Unlike the existing General Clauses Act, the proposed Act is self-contained and is decidedly more comprehensive. Several provisions adopted from the Indian General Clauses Acts Nos. I of 1868 and I of 1887 and the recent English Interpretation Act of 1889 have been incorporated into the Bill. The Bill, if passed into law, will save a good deal of time which is now spent both by the Member in charge of a Bill and the Select Committee to whom it may be referred in settling the preliminary and general sections of every Act to be passed by this Council. The object of the various sections of the Bill is explained in the Statement of Objects and Reasons.

“I now beg to move that the Bill, with the Statement of Objects and Reasons, be published in the official Gazette; and that the Bill be now referred to a Select Committee consisting of—

The Hon'ble Mr. H. E. STOKES, C.S.I.,
The Hon'ble Mr. J. GROSE,
The Hon'ble the ADVOCATE-GENERAL,
The Hon'ble C. SANKARAN NAYAR, and
The MOVER,

with instruction to report within a fortnight.”

The Hon'ble Mr. STOKES having seconded the motion, it was put to the Council and carried.

HINDU GAINS OF LEARNING BILL.

The Hon'ble V. BHASHYAM AIYANGAR moved for leave to introduce a Bill to declare gains of learning by a Hindu to be his separate property, and said:—

“The measure which I beg leave to introduce into Council is one in which the Hindu community, especially the educated section thereof, is deeply interested. It relates to an important but obscure topic of Hindu Law, *viz.*, Vidyadhanam (Learning-money) or ‘Gains of Science’ as it is usually referred to in decisions and English treatises on Hindu Law.

“The question, how far earnings made by an undivided member of a Hindu family by means of his learning form his self-acquisition in which the other members are not entitled to claim shares, engaged the attention of various Smriti-writers and exercised the wits and ingenuity of most of their commentators. The subject has also been considered by the Indian High Courts and the Judicial Committee of the Privy Council.

“To convince the Council of the necessity for legislation on the subject, I need only present before Your Excellency the materials on which the existing law rests. I shall first refer to the principal Smritis, then to the chief commentaries and lastly to the case-law.



“The principal Smritis bearing upon the topic of Vidyadhanam (Gains of Learning) are the following:—

MANU.

“ ‘*Property (acquired) by learning belongs solely to him to whom (it was given), likewise the gift of a friend, a present received on marriage or with the honey-mixture.*’ ” (a).

"What one (brother) may acquire by his labor without using the patrimony, that acquisition, (made solely) by his own effort, he shall not share unless by his own will (with his brothers.)" (b).

NARADA.

“ ‘ Property gained by valour, or belonging to a wife and the gains of science are three kinds of wealth not subject to partition ; and so is a favor conferred by the father (except from partition). ’ ” (e)

“(d) When one brother maintains the family of another brother, who is engaged in studying science, he shall receive a share of the wealth gained by that study, though he be ignorant (himself).”

“(c) A learned man is not bound to give a share of his own (acquired) wealth against his will to an unlearned co-heir unless it have been gained by him using the paternal estate.” (c)

BRHASPATI.

“ In property belonging to the grandfather which had been taken away and has been (afterwards) recovered by the father through his own ability, as well as in property acquired by sacred knowledge, valour in arms, &c, the father's ownership has been declared.”

“He may make a gift out of that property, or even consume it at his will. But in his default, his sons are pronounced to be equal sharers.” (f)

“ ‘ If among reunited coparceners any one should acquire property through learning, labour or other (independent effort of his own) a double share must be given to him; the rest shall take equal shares.’ ”(h)

“Whatever has been given by the paternal grandfather, the father, or the mother, (all that) shall not be taken from him (who possesses it); (he may keep) likewise property acquired by valour and the wealth of his wife.” (i)

GAUTAMA,

“Unlearned (co-parceners) shall divide ^(j) the share of the learned (co-parcener) which he has acquired by his own efforts, he may (at his pleasure) withhold from his unlearned co-parceners.”

"Unlearned (co-parceners) shall divide (their acquisition) equally.' "(k)

VASISITHA.

“ And if one of the (brothers) has gained something by his own (effort), he shall receive a double share.”⁽¹⁾

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| (a) | Sacred Books of the East, Vol., XXV, chapter ix, para. 206. | |
| (b) | " | |
| (c) | " | " XXXIII, chapter xiii, para. 6. |
| (d) | " | " |
| (e) | " | " |
| (f) | Sacred Books of the East, Vol. XXXIII, chapter xxv, para. 12. | " 10. |
| (g) | " | " |
| (h) | " | " |
| (i) | " | " |
| (j) | " | " |
| (k) | " | " |
| (l) | " | " |

CATYAYANA.

“ What has been acquired by learning after instructions received from a stranger and a maintenance provided by one of a different family is called wealth gained by learning.

“2. What is gained by proving superior learning after a prize has been offered by *some third person*, must be considered as the acquisition of a scholar and ought not in general to be divided among co-heirs :

“ 3. So what has been received as a gift from a pupil, as a gratuity for the performance of a sacrifice, as a fee for answering a question in casuistry, or for ascertaining a doubtful point of law; or what has been gained as a reward for displaying knowledge, or for victory in a learned contest, or for reading the Veda with transcendent ability.

“4. Such wealth have the sages declared to be the acquisition of science and not subject to distribution; and the law is the same in regard to *liberal or elegant arts* and to increase of price from superior skill in them.

“ 5. A prize which has been offered for the display of superior learning, and a gift received from a votary for whom a sacrifice was formerly performed, or a present from a pupil formerly instructed, sages have declared to be the acquisition of science : What is otherwise acquired is the joint property of the co-heirs :

“6. Even what is won by surpassing another in learning, after a stake has been deposited, Brihaspati pronounces the acquisition of knowledge and impartible.

“7. What is obtained by the boast of learning, what is received from a pupil, or for the performance of a sacrifice, Bhṛigu calls the acquisition of science.” (*m*)

“ Yet Vrihaspati has ordained that wealth shall be partible if it was gained by learned brothers who were instructed in the family by their father, or by their paternal grandfather or uncles; and it is the same if the wealth was acquired by valour, *with assistance from the family estate.*” (n)

" 'Wealth acquired by a learned heir shall never be divided among his ignorant co-heirs; but he shall share it with such of the parceners as are equal or superior to himself in learning.' " (o)

VYASA.

“ ‘ *Wealth acquired by learning or gained by labour, or received from affectionate kindred belongs, when partition is made, to him who acquired it, and shall not be claimed by the co-heirs.* ’ ” (p)

co-heirs. (f)
 “What is given by a paternal grandfather or by a father as a token of affection belongs to him who receives it; neither that, nor what is given by a mother, shall be claimed by co-heirs.” (g)

“What a man gains by his own strength, without reliance on the patrimony, he shall not give up to the co-heirs, nor what he acquires by learning.”

“ ‘The brethren participate in that wealth which one of them gains by valour or the like using any common property, either a weapon or a vehicle. To him two shares should be given: but the rest should share alike.’ ”(r)

YAJNAVALKYA.

“ ‘Whatever else is self-acquired, apart from and without detriment to the parental estate, as a friendly or a nuptial present, does not belong to the co-heirs.’ ” (s)

“ Similarly he who recovers hereditary property once taken away, may not give (to or share it with) his co-heir; as also *what has been gained by learning.* ” (t)

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| (m) | Colebrooke's <i>Digest of Hindu Law</i> , Vol. II, Fourth Edition, page 444, para. 347. |
| (n) | " " " " " " " 448 " 349. |
| (o) | " " " " " " " 449 " 350. |
| (p) | " " " " " " " 444 " 346. |
| (q) | " " " " " " " pages 450 & 451, para. 354 |
| (r) | Vyasa cited in the <i>Daya Bhaga</i> , chapter vi, section I, para. 14. |
| (s) | Mandlik's <i>Hindu Law</i> , page 214, para. 118. |
| (t) | " " " " " " " 215 " 118. |
| | CF. 2 Colebrooke's <i>Digest of Hindu Law</i> , page 450, para. 352. |

“With the exception principally of the texts of Katyayana, the Smritis, though not all so lucid and clear as one might wish, would, but for authoritative commentaries involving the matter in considerable doubt and obscurity, fairly warrant the following propositions:—

(a) That acquisitions made by means of learning form the exclusive property of the acquirer, though such learning was imparted to him by a member of the family or with the aid of the family funds or while he was receiving maintenance from the family.

(b) That there is nothing to indicate that the learning referred to is special or scientific or that the word was used otherwise than in its ordinary and comprehensive sense as applicable to all kinds of learning and to different degrees of proficiency therein.

(c) That no distinction is made between ordinary and extraordinary gains of learning.

(d) That property acquired by a single member by means of learning and with the aid of family funds will be divisible among all the co-parceners, the acquirer being perhaps entitled to a double share.

(e) That the use of patrimony by a member of an undivided Hindu family in relation to the acquisition of property, which use would render such acquisitions the joint property of the family, must be the proximate cause of such acquisition and not merely a remote cause thereof as would be the use of patrimony in imparting the learning which was the immediate cause of the acquisition.

(f) That the precepts as to allowing shares to learned but not to ignorant co-heirs seem to apply to self-acquisitions in general and not in particular to acquisitions by means of learning, such precepts, however, if more than directory, being too vague to be judicially enforced.

(g) That acquisitions made by means of valour, art, etc., are governed by the same rules.

“The Bill which is proposed to be introduced is framed substantially on these lines.

“As regards the Text of Katyayana, defining Vidyadhanam or learning-money, it must be admitted that it propounds a contrary doctrine. According to him, not only must the teacher be a stranger, but the pupil's daily sustenance must come from a source other than the family funds, so long as he is engaged in the pursuit of knowledge, in order that future profits made by him by means of such knowledge might become his exclusive property. The other Text of Katyayana giving examples of ‘learning-money’ would seem further to indicate that it is only the special or extraordinary gains, and not the ordinary gains of learning acquired as aforesaid, that will belong solely to the acquirer.

“Turning now to commentators, the Mitakshara, Smritichandrika, Viramitrodaya, and Madhavyam first demand attention, as they are of special authority in this Presidency.

“The author of the Mitakshara in commenting upon verses 118 and 119 of Yagnavalkya above quoted considers the clause ‘without detriment to the paternal estate’ occurring in verse 118 as qualifying the four kinds of gains declared impartible in the said two verses. Such a construction by itself will have no greater effect than to entitle the co-heirs to shares in property acquired, not simply by means of learning, but also with the aid of joint family property—a position which is

indisputable. The author of the Mitakshara, however, goes much farther in his commentary. He discusses the subject in Chapter I, Section 1, paras. 1 to 11. In para. 6 he maintains that what is earned by science acquired at the expense of ancestral wealth must be shared ‘with the whole of the brethren and with the father;’ and in para. 8 he relies in support of his conclusion upon Katyayana's definition of Vidyadhanam or learning-money and on Narada's text above quoted relative to one brother maintaining the family of another brother studying science. It will thus be seen that he does not regard acquisitions which are made by means of learning which was imparted at the family expense as acquisitions made by learning without detriment to the paternal estate, though the immediate cause of such acquisition is learning and not the use of patrimony. The author of the Viramitrodaya simply alludes to the subject in Chapter VII and is substantially in accord with the author of the Mitakshara. Madhava in his commentary on the Parasara Smriti reviews most of the texts above quoted. He does not state his conclusions explicitly, but there can be little doubt that he follows Katyayana and understands the other Smritis conformably to the text of Katyayana. He also alludes to the various kinds of Vidyadhanam or learning-money enumerated by Katyayana.

“The author of the Smritichandrika discusses this topic of Hindu Law at considerable length in Chapter II of his work. He also dwells minutely upon the various kinds of learning-money described by Katyayana. His conclusions are briefly summarised as follows:—

“‘I. The gains of science are indivisible if the learning had been acquired from a stranger while receiving maintenance from persons not being members of the undivided family.’

“‘II. If one parcener, be he ever so ignorant, shall maintain the family of a brother studying science, he shall share the wealth which that brother may gain by his learning.’

“‘III. Likewise the gains of science shall be divisible if the acquirer had been instructed in his own undivided family by his father, uncle or the like.’

“‘IV. In a partition of the gains of science that are divisible as described in the foregoing two paragraphs, the acquirer shall be entitled to a double share.’

“‘V. In the gains of science that are indivisible as defined in para. 1 of this summary, the acquirer, if willing, may give a share to his learned co-heir, but to an ignorant co-heir he is not at liberty to give a share though he may be disposed to do so.’

“‘VI. The gains of valour acquired with the use of common property are divisible, but not those that are acquired without the use of it.’

“‘VII. In the gains of valour that are divisible as above described, the acquirer will take two shares.’”(v)

“It may be noted that according to all these commentators who are of special authority in Southern India, the incident of partibility or impartibility does not depend upon the nature or kind of learning: whether the learning be elementary or advanced, general or scientific, the acquisitions made thereby are alike partible, if the learning had been imparted at the expense of the family or by a member of the family. The authors of the Mitakshara and Viramitrodaya do not seem to recognize any distinction between ordinary and extraordinary gains of learning. The other two commentators prominently allude to illustrations of Vidyadhanam or learning money, given by Katyayana, which evidently refer to special or extraordinary gains and not to ordinary gains of learning.

(v) Smriti Chandrika Summary by the Translator, T. Kristnaswamy Iyer, paras. I to VII, pages 98 and 99.

"The leading commentators of the other schools of Hindu Law have also discussed this question; but it will be sufficient to refer to them briefly. The Vivadaachintamani, which is of great authority in the Mithila school, treats alike earnings made by one proficient in letters and those made by skill in the military, mechanical or other art. According to the Vyavahara Mayukha the incident of impartibility will exist only if the acquisition of learning and of the wealth therefrom have been independent of the paternal wealth.

"In the Daya Bhaga of Jimutavahana, the subject is discussed at greater length than in any other treatise. He distinguishes between the use of paternal estate for ordinary maintenance and the like and the use of it for the express purpose of gain. According to him, it is no reason for partibility that the acquirer has received his sustenance from the common funds, while he was earning property, his reasoning being that if it were otherwise, no separate acquisition could possibly be made which would not involve the use of joint funds: for every member must have been fed and clothed from the common funds during the years of his infancy, that is, until he arrives at an age when he can earn for himself. The preservation of life therefore is attended with some consumption of joint property, and as no earning is possible unless life has been preserved, all acquisitions depend indirectly upon assistance received from joint property. It might, therefore, have been supposed that separate acquisition absolutely independent of any help from the general family estate would be a non-existent entity. It is only the consumption of family funds, which has for its express purpose the acquisition of wealth, that will take away the exclusive character of the wealth acquired. According to Jimutavahana, therefore, who is of paramount authority in the Bengal school, learning-money would not be partible simply by reason of the acquirer having been maintained at the expense of family funds while he was acquiring learning, and his reasoning would fairly warrant the conclusion that gains made by means of ordinary education which is imparted not for the express purpose of gain, though at the expense of family funds, is impartible; but that earnings made by means of learning so imparted for the express purpose of gain will be partible among all the co-heirs. It may be observed that he is almost the only commentator who does not quote Katyayana's definition of 'learning-money,' though he quotes Katyayana in enumerating the various species of acquisition by means of learning.

"The case-law on the subject will now be referred to.

"The case which, until recently, has been regarded as the leading case on the point is that of Chalakonda Alasani *vs.* Chalakonda Rathnachalam (x) decided in 1864 relating to the acquisition made by a dancing girl by means of skill and special education imparted at the mother's expense. In this case the texts and commentaries were elaborately reviewed and discussed by two of the most distinguished Judges of the Madras High Court, namely, Mr. Justice Collett (then District Judge of Vizagapatam) and Mr. Justice Holloway; and they arrived at opposite conclusions, the former holding that acquisitions made by means of learning form the individual and separate property of the acquirer, though such learning was imparted to him at the family expense and acquired while receiving a family maintenance; and the latter (in concurrence with Phillips J.) holding on appeal that the gains, at all events the ordinary gains of learning and science which have been taught at the expense of family funds or by any member of the family, were divisible among all the members of the family.

(x) 11 Madras High Court Reports, page 56.

Mr. Collett in support of his conclusion relied principally upon the texts of Manu and Yajñavalkya above quoted, and, holding that the illiberal views taken by several of the Hindu commentators, and particularly by the author of the Mitakshara, were not warranted by the Texts of Hindu Law, observed as follows (at page 62):—

"If therefore I seem to question sometimes the reasonableness of the glosses of a commentator it is because I conceive that this Court is bound to search out and ascertain for itself from among the sources of Hindu Law, the principles of the law; and when commentators are not in accordance with ancient texts or differ as they often do among themselves, it needs must be that this Court should decide according to the weight of authority, the support of analogy and the reasonableness and equity of the rule; and again at pp. 69 and 70, 'and in so doing I am sure that I am laying down an equitable rule and I believe also the rule most convenient with the weight of authority. There is no doubt some conflict of opinion: but I think that the true position is that the mere fact of a Hindu receiving a professional education at the expense of his family, as for instance from his father, does not render all his subsequent professional earnings liable to be divided with his brothers. I believe that on a due consideration of the authorities the rule of law is not really different in respect to property acquired by learning, to what it is in respect to property acquired by agriculture or by trade. The test is the substantial use of joint property during and for the purpose of the acquisition; if there is none such, then the acquisition does not become joint property.' Justice Holloway in support of his contrary conclusion relied principally upon the Mitakshara, chapter I, section 4, paragraph 6, and on the definition by Katyayana of Vidyadhanam or learning-money which would be the separate and indivisible property of the acquirer, and observed as follows at page 77: 'We are constrained to say that we feel bound by authority to hold that the gains, at all events the ordinary gains of learning and science which have been taught at the expense of the family funds, are not impartible. To render them so, the science or learning must have been imparted by persons not members of the learner's family.'

"The above decision was followed in general terms by Sir Richard Couch, Chief Justice of Bombay, in Bai Manchha *vs.* Narotamdas Kashidas (y) decided in 1869, which related to the acquisitions made by a Vakil. In this case, however, it was not necessary to decide the point, as it appeared that the Vakil united the business of money-lender with that of Vakil, and that there was joint family property of which he had the use. The Chief Justice fully concurring with Justice Holloway observed as follows at page 6: 'We concur in this judgment and we cannot give any weight to what is said upon it in a recently published Text book. (z) * * * We have to ascertain what the Law is and not what it ought to be: and having ascertained it we must apply it. Nor having regard to the usage of Native society, do we think it is bad law. There may be hard cases and the remedy for such is in the hands of the parties themselves—*viz.*, to divide.' The remedy here suggested is not practically so simple as it might sound in theory. A member of an undivided family which may consist of father and sons, of brothers, of cousins one or more degrees removed, of uncles and nephews or of all these, cannot become divided from the rest of the family by any unilateral act of his or by a declaration or assertion on his part of his having become divided. He can become a separated member only by the consensus of all the members of the undivided family, including minors, who ought to be duly represented, or by instituting a suit for partition and obtaining a decree therein. The very fact that an earning member wishes to become divided will be distasteful to the other members of the family, especially to those who, without making any earnings themselves, expect to share in the earnings of such member. And they will naturally thwart the attempt of such member to become divided, by offering a passive resistance more effectual than active resistance in evading and postponing indefinitely the desired partition. Under

(y) 6 Bombay High Court Reports, A. C. J. 1 & 6.
(z) Grady on Hindu Law, page 405.

these circumstances the institution of a suit for partition becomes inevitable, if such member resolves to carry out his intention. The mere institution of such a suit, however, will not change his status and he will continue an undivided member until he succeeds in obtaining a decree.* A partition suit in a Hindu family is the most ruinous and demoralising litigation in which a family can be involved, and it is also about the most tedious and protracted litigation in an Indian Court, to say nothing of the time occupied before commencing such a suit in obtaining the requisite materials and information for the preparation of the voluminous schedule of family properties which has to be annexed to the plaint.

"In a later Madras case, *Duruvasala Gunghadharudu vs. Duruvasala Narasamma*, (a) decided by Holloway and Kindersley, J. J., in the year 1872, the earnings of a vakil were held to be divisible, on the ground that they were the result of education imparted at the family expense, although it was found that he had received from his father nothing more than an ordinary general education. Holloway J. referring to the dancing girl's case in 11 Madras High Court Reports, page 56, said as follows:—'I fully adhere to the judgment of the High Court for which I am responsible and especially to the statement that the ordinary gains of science by one who has received a family maintenance are certainly partible.' He further observed that within the meaning of the authorities the vakil's business is no matter of science at all. Justice Kindersley also observed that 'the deceased vakil received from his father nothing more than a general education. It does not appear that he was distinguished by his professional learning, and it would be difficult to presume that a vakil would be probably possessed of much learning or skill, and that the fair presumption would be that such attainments as the vakil possessed had been acquired with the assistance of the family means. Whether the remark that the vakil's business is no matter of science at all and that vakils cannot be presumed to be possessed of much learning or skill will be generally endorsed or not, the observation is significant in so far as it implies that acquisitions made by means of learning imparted at the family expense are divisible, though such learning was neither special nor scientific, but only general and elementary.

"In a Bengal case for partition, *Dhunook Dharee Lall vs. Gunput Lall* (b), decided in 1868, where the plea of self-acquisition was set up and the defendant had been maintained at the family expense, but it was proved that his acquisitions were made without use of any funds belonging to the joint family, Mitter Justice said as follows:—'His (plaintiff's) case in the Court below was that the defendant received his education from the joint estate, and that he is consequently entitled to participate in every property that has been acquired by the defendant by the aid of such education. But this contention is nowhere sanctioned by the Hindu Law and I see nothing in justice to recommend it.'

"The question was argued in 1877 before the Judicial Committee of the Privy Council in an important appeal from Madras, *Pauliem Valoo Chetty vs. Pauliem Soorya Chetty*. But upon the findings of fact in the case it became unnecessary in their Lordships' opinion to decide the point. The suit was brought to set aside a will on the ground that, under the Mitakshara law, property acquired by a Hindu by successful trading and by the exercise of industry and intelligence became joint in contemplation of law between him and his son, if the nucleus with which he commenced trading was derived from his father or if he had been educated out of the

* *Sakharam v. Hari Krishna I. L. R. 6 Bom. 113*, cited in § 454 Mayne's Hindu Law (4th Edn.)
(a) VII Madras High Court Reports, pages 47 and 51.
(b) XI Bengal Law Reports, page 201, note; same case. X Sutherland's Weekly Reporter, page 122.

joint funds of the family. It was held on the evidence that such nucleus had not been derived from his father and that he had not been educated out of any joint fund, but out of the separate estate of the father. Adverting to this latter finding their Lordships remarked:—'There was therefore at that time no joint estate in the proper sense of the word, and the foundation of fact then fails upon which the legal inference was to have been based;' but they gave expression to the leaning of their opinion on the question in the following terms: 'This being their Lordships' view, it does not become necessary to consider whether the somewhat startling proposition of law put forward by the appellant—which, stated in plain terms, amounts to this, that if a member of a joint Hindu family receives any education whatever from the joint funds, he becomes for ever-after incapable of acquiring by his own skill and industry any separate property—is or is not maintainable. Very strong and clear authority would be required to support such a proposition. For the reasons that they have given, it does not appear to them necessary to review the Text Books or the authorities which have been cited on this subject. It may be enough to say that, according to their Lordships' view, no Texts which have been cited go to the full extent of the proposition which has been contended for. It appears to them, further, that the case reported in the 10th volume of Sutherland's Weekly Reporter, in which a judgment was given by Mr. Justice Jackson and Mr. Justice Mitter, both very high authorities, lays down the law bearing upon this subject by no means so broadly as it is laid down in two cases which have been quoted as decided in Madras; the first being to the effect that a woman adopting a dancing girl, and supplying her with some means of carrying on her profession, was entitled to share in her gains; and the second to the effect that the gains of a vakil who has received no special education for his profession are to be shared in by the joint family of which he was a member; decisions which have been to a certain extent also acted upon in Bombay.

"It may hereafter possibly become necessary for this Board to consider whether or not the more limited and guarded expression of the law upon this subject of the Courts of Bengal is not more correct than what appears to be the doctrine of the Court of Madras.

"In the course of Counsel's argument, Sir Montague E. Smith, in reference to the Madras dancing girl's case of *Chalakonda Alasani vs. Chalakonda Ratnachalam* (c) remarked (page 111) that 'that was a case of special training; it does not follow that a case of general training like this would stand on the same footing.' This observation coupled with the apparent approval with which their Lordships referred to the dictum of Mitter Justice in the Bengal case (d) above referred to tends to point to a distinction between acquisitions made by means of general or elementary education, and acquisitions made by means of special or scientific education—a distinction which, as already pointed out, is fairly warranted by the reasoning of the Dayabhaga of Jimutavahana. It was not necessary for their Lordships to consider whether such a distinction, if any, is also recognised by the Mitakshara and other schools of Hindu Law.

"It may also be mentioned that, so far as the testator's son was concerned who sought to impugn the validity of the will on the ground that the property acquired by his father, the testator, was the joint property of the testator and of himself, it was immaterial, within the meaning of the texts and commentaries bearing on the topic of Vidyadhanam or gains of learning, whether the charges incurred in imparting learning to the testator were borne by the separate or self-acquired estate of his father, or by the

(c) 11 Madras High Court Reports, page 56.
(d) XI Bengal Law Reports, page 201, note.

ancestral or other estate of his father, which formed the joint estate of the father and his son, the testator. All the above cases were in 1882 reviewed by the High Court of Bombay in *Lakshman vs. Jannabhai* (e) in which the question was whether the property acquired by a subordinate judge who had received an elementary education at the family expense, but a knowledge of law and judicial practice without such aid, was impartible; and their Lordships Melville and Kestel J.J. observed as follows:—

“It certainly appears to us that the dictum of Mitter J. that the proposition which we are considering is nowhere sanctioned by Hindu Law, is not strictly accurate. The Texts which have been cited to us do, in our opinion, establish it as a rule of Hindu Law that the ordinary gains of science are divisible, when such science has been imparted at the family expense, and acquired while receiving a family maintenance, but that it is otherwise when the science has been imparted at the expense of persons who are not members of the student's family. But the question still remains whether the term ‘science’ as used in the texts, is, in modern days, to be construed as meaning a mere general education, and not rather a special training for a particular profession. The words which we have italicized in the judgment of the Judicial Committee in *Pauliem vs. Pauliem*, (f) as well as an observation of one of their Lordships in the course of the argument, that the Madras case of the dancing girl was a case of a special training and not necessarily applicable to a case of general training, may seem to indicate that, if the question comes again before their Lordships, it will be considered chiefly with regard to the nature and extent of the education imparted at the family expense. Mr. Mayne, in his valuable work on Hindu Law, discusses this question with his usual ability. ‘It is difficult,’ he says, ‘to see why a person who has made gains by science, after having been educated or maintained at the family expense, should be in a worse position than any other person who has been so educated or maintained, and who has afterwards made self-acquisitions. Jimuta Vahana lays it down that, while it is attempted to reduce a separate acquisition into common property on the ground that it was obtained with the aid of common property, it must be shown that the joint stock was used for the express purpose of gain. ‘It becomes not common merely because property may have been used for food or other necessities, since that is similar to the sucking of the mother's breast.’ This seems to be good sense. If a member of a joint Hindu family were sent to England, at the joint expense, to be educated for the Bar or the Civil Service, it seems fair enough that his extra gains should fall into the common stock, as a recompense for the extra outlay incurred. It might be assumed that when the outlay was incurred, the reimbursement was contemplated. But it is difficult when all start on exactly the same level, with nothing but the ordinary maintenance and education which is common to persons of that class of life.’ (g)

“We think that we shall be doing no violence to the Hindu Texts, but shall be only adapting them to the condition of modern Hindu society, if we hold that when they speak of the gains of science which has been imparted at the family expense, they intend the special branch of science which is the immediate source of the gains, and not the elementary education which is the necessary stepping stone to the acquisition of all science. Adopting this principle and applying it to the present case, we find, as we have said, that there is no reason to suppose that Dayaram acquired at Dharwar and Belgaum anything more than a rudimentary education. We see no reason to doubt that the knowledge of law and judicial practice which qualified

(e) Indian Law Reports 6 Bombay 225.

(f) Law Reports 4 Indian Appeals, pages 109 & 117.

(g) Mayne's Treatise on Hindu Law and Usage (fourth edition), Section 259.

him for the post of a Judge was acquired by him in a lawyer's office in Bombay and in the Sudder Adalat. Assuming that the burden of proving that this knowledge was acquired without any aid from the family estate lies upon the Respondent (though the observations of the Privy Council in *Luximon Rao Sudasew vs. Mullao Rao Bajee* (h) tend to the opposite conclusion), we find sufficient in the evidence and especially in the earlier letters written by Dayaram from Bombay to shew that Dayaram was not receiving pecuniary aid from his father, but on the contrary was supplying his father with such money as he could spare. This case shows, as remarked by the learned authors of West and Buhler's Digest of Hindu Law, ‘that acquired property does not rank as joint where there is not really an obligation of the acquirer to the family going beyond mere ordinary sustenance and rudimentary education.’

“This principle was reaffirmed and given effect to in the very recent case of *Krishnaji Mahadev Mahajan vs. Moro Mahadev Mahajan* reported in I.L.R. Bom. January part for 1891, p. 32, in which the earnings made by a ‘Karkun’ or accountant were held to be indivisible by reason that the education which was imparted to him at the expense of the family funds was only rudimentary. Subsequent to the decision of the Privy Council in the case of *Pauliem vs. Pauliem* (i), another case of a dancing girl *Boologam vs. Swornam* came on appeal before the High Court at Madras from its original side (j) before their Lordships Innes and Kernan J.J. in 1881; and it was held in that case that property acquired with income derived from prostitution by a Hindu dancing girl who had received the ordinary education in music and dancing is not partible, it having been found that her earnings, so far as the evidence disclosed, were acquired without detriment to the family estate and without any scientific acquirements which had been imparted by the aid of family funds. Adverting to the leading case of *Challakonda Alasani vs. Chalakonda Retnachalam*, their Lordships stated that they did not feel bound to follow the extreme doctrine laid down by the High Court in that case, having regard to the expression of opinion by the Judicial Committee in the case of *Pauliem vs. Pauliem*.

“These are the principal reported decisions on the vexed question of Vidyadhanam or Gains of Learning under the Hindu Law, and it will be impossible to deduce therefrom rules that would be safe guides to the Hindu community in modern days or that would admit of practical application to concrete cases. No doubt the authority of the decision of the Madras High Court in II Mad. H. C. R. followed in VII Mad. H. C. R. has been much shaken by the dictum of the Privy Council in *Pauliem vs. Pauliem* and the later decision of the Madras High Court in *Boologam vs. Swornam* and those of the Bombay High Court in *Mayaram vs. Jannabay* and *Krishnaji Mahajan vs. Moro Mahajan*. But in *Pauliem vs. Pauliem* there is only a general observation of the Privy Council by way of *obiter dictum*, and the dictum of Mitter J. cited by the Judicial Committee is, as pointed out by the Bombay High Court in I. L. R. 6 Bom., p. 225, not strictly accurate. In that case the High Court of Bombay professed to adapt the Hindu Law texts to the condition of modern Hindu society by holding that ‘when texts speak of the gains of science which has been imparted at the family expense, they intend the special branch of science which is the immediate source of the gains and not the elementary education which is the necessary stepping-stone to the acquisition of all science.’

(h) V Weekly Reporter P.C. 67.

(i) Law Reports 4 Indian Appeals, pages 109 and 117.

(j) I. L. R. 4, Madras, page 330.

" Assuming that the principle thus indicated will ultimately prevail in the final Court of Appeal, it does not seem to be one which could be applied in the majority of concrete cases. It will not be possible in the present state of education in India to distinguish in many cases between general, ordinary or rudimentary education, and special, scientific or technical education. As an illustration, I may refer to the difficulty felt in the interpretation of the word 'science' occurring in the phrase 'for the promotion of education, literature, science or the fine arts' in Sub-section 3, Section 11, Chapter 51, 48 and 49 Viet., in the very recent case of 'The Commissioners of Inland Revenue v. James Forrest' * before the House of Lords, particularly to the Judgment of Lord Halsbury. Further, what may have been regarded some twenty years ago as special, scientific or extraordinary education will probably now be regarded as nothing more than ordinary and general education.

" A rule based on such a distinction in the nature and character of education, though it may appear plausible in theory, cannot be practically worked without a distressing degree of uncertainty. The great majority of the cases to which the rule will have to be applied will be those in which the earnings made by the various classes of legal practitioners ranging from Barrister-at-Law down to second-grade pleader, and by public servants of all grades in the numerous departments of public service, form the subject of litigation. It will be impossible to predicate in most cases what section of legal practitioners and public servants are to be regarded as making their earnings by means of scientific education and what section by means only of ordinary, general education. Some of the texts and decisions also point to a distinction between ordinary and extraordinary gains of learning — a distinction which is still more prolific of uncertainty in its application. Even the question of fact whether and to what extent learning was imparted to a member of a Hindu family with the aid of joint family funds is generally beset with difficulties and often involved in obscurity of time by reason of the enquiry having to relate to a period long anterior to the date of such enquiry. If more money be spent upon the education of one son than on that of others, in nine cases out of ten it is due to the circumstance that that son has been gifted by nature and endowed with greater intelligence and aptitude for learning than the others. Feelings of delicacy and other considerations postpone partition in many families, and the uneasy feelings as to whether the acquisitions which are being made by a member thereof by his industry, intelligence and learning will at the time of partition be regarded as his own separate and exclusive property or as merged in the joint family property, leads to mutual distrust, discord and misunderstanding among the members of the family. A rule which, by depriving a person and his heirs of the fruits of his learning, enables other members of such family each to claim as of right a share therein equal to that of the acquirer, and which on the death of the acquirer undivided intercepts the descent of such property to his personal heirs, cannot but act prejudicially to the interests, advancement and material prosperity of the community in which such a rule is, or is supposed to be, in operation. Such a rule would also operate to preclude the acquirer from devising the whole or any portion of such acquisitions † or making a gift thereof *inter vivos*, ‡ and would also disable his

* Law Reports, App. Cases Vol. XV, p. 334.

† Vitla Batten v. Yamenamma, VIII Mad. H. C. R. 6, cited in § 880 Mayne's Hindu Law (4th edition).

‡ Baba v. Thimma, I. L. R. VII, Madras 357, Ponnusami v. Thatha I. L. R. IX—Madras 273.

personal creditors from pursuing the same as his assets after his death unless perhaps he has left male issue.* Such a rule, moreover, has a tendency to force a member of a Hindu family to become divided when otherwise he may find it undesirable to do so, or to conceal acquisitions made by him or to invest them *benami*.

" It may be argued that in cases in which a particular member of the family has been educated specially by family funds and by reason thereof the joint family funds have been indented upon to an extent greater than in the case of other members, it is but fair and just that the others should come in for their quota of the earnings made by such special training. Assuming for the sake of argument the justice of such a contention, it falls to the ground by reason that the very law on which such a rule is supposed to be founded enables the person to whom such learning has been imparted out of family funds to become divided from his co-parceners the very day after he attains his majority, or as soon as he completes his education thereafter, and thus to appropriate exclusively to himself the subsequent fruits of his learning.

" The proposed measure aims at laying down a rule which would steer clear of all technical and often impracticable and sometimes fanciful distinctions, and at adapting the Hindu Law texts and commentaries to the condition of modern Hindu society and to the nature of the varied modern education, by means of which considerable acquisitions are made by educated Hindus in the learned professions and the numerous departments of the public service.

" The word 'education' will be used in the proposed Bill in its most comprehensive and enlarged sense. The measure will not apply to cases in which, by his act and conduct, the acquirer of the property (incorporates) his self-acquisition with joint family property and thus makes a gift of it to the family; nor will it apply to cases in which the proximate cause of acquisition is not only the skill and learning of the acquirer, but also the substantial use of joint family funds.

" The measure, it is believed, will commend itself to the Hindu community in general, and will, if passed, promote cordiality of feeling among members of modern Hindu families, prevent division of the members and of the joint family property when such division and partition may otherwise be undesirable and unnecessary, and remove one of the most distressing uncertainties of Hindu Law. It will be applicable as much to Hindus governed by Marumakkattayam or Aliyasantana system of law as to the Hindus governed by the ordinary Hindu Law."

The motion, having been seconded by the Hon'ble C. SANKARAN NAYAR, was put to the Council and carried.

The Hon'ble V. BHASHYAM AIYANGAR also moved that the Bill and Statement of Objects and Reasons be published in the Fort St. George and District Gazettes in English and in the Vernaculars.

The motion was put and agreed to.

HINDU SISTERS' AND SISTERS' SONS' INHERITANCE BILL.

The Hon'ble V. BHASHYAM AIYANGAR, who had previously given notice that he intended to apply for leave to introduce a Bill dealing with the inheritance of sisters

* Koppoo Konan v. Chinnayan, I Madras Law Reports 13, cited in § 306, Mayne's Hindu Law (4th edition).

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and sisters' sons in Hindu families, announced that he intended to defer the subject to a subsequent occasion.

The Council then adjourned *sine die*.

(By Order.)

FORT ST. GEORGE,
24th February 1891.

A. BUTTERWORTH,
Ag. Under Secy. to Govt., Legislative Dept.

Abstract of the Proceedings of the Council of the Governor of Fort St. George, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 and 25 Victoria, Cap. 67.

The Council met at the Council Chamber in Fort St. George on Thursday the 19th day of March 1891.

PRESENT:

His Excellency the Right Hon'ble the GOVERNOR OF MADRAS, G.C.I.E.—

Presiding.

The Hon'ble Mr. STOKES, C.S.I.

The Hon'ble Mr. GARSTIN, C.S.I.

The Hon'ble Mr. PRICE.

The Hon'ble the ADVOCATE-GENERAL.

The Hon'ble the RAJAH OF VENKATAGIRI, K.C.I.E.

The Hon'ble Mr. BOYSON.

ADDITIONAL MEMBER.

The Hon'ble Mr. SPRING-BRANSON, Advocate-General, took his seat on re-appointment as an Additional Member of Council.

MADRAS GENERAL CLAUSES BILL.

The Hon'ble Mr. STOKES said:—

"YOUR EXCELLENCY,—In the absence of the Hon'ble V. Bhashyam Aiyangar I present the Report of the Select Committee appointed to consider the General Clauses Bill and the Bill as amended by it. The Bill, though somewhat technical, is of a simple character, and as it has already been circulated among the Hon'ble Members and no amendments have been proposed in it since it left the hands of the Select Committee, it is unnecessary to deal with it now at length. The few amendments which the Select Committee has effected are mainly in the direction suggested by the Government of India and approved by the Secretary of State, and are, for the most part, unimportant. The principal new feature of the Bill is the introduction of a definition of the term 'District Collector.' I therefore move that the Bill as amended be now taken into consideration and passed into law."

The Hon'ble the Advocate-General seconded the motion, which was put and carried, and the Bill passed by the Council.

The Council then adjourned *sine die*.

(By order.)

FORT ST. GEORGE,
19th March 1891.

A. BUTTERWORTH,
Ag. Under Secy. to Govt., Legislative Dept.

MADRAS: PRINTED BY THE SUPERINTENDENT, GOVERNMENT PRESS.

MADRAS: PRINTED BY THE SUPERINTENDENT, GOVERNMENT PRESS.

Abstract of the Proceedings of the Council of the Governor of Fort St. George, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 and 25 Victoria, Cap. 67.

The Council met at the Council Chamber, Ootacamund, on Friday, the 17th day of July 1891.

PRESENT:

His Excellency the Right Hon'ble the GOVERNOR OF MADRAS—*Presiding*.
The Hon'ble Mr. STOKES, C.S.I.
The Hon'ble Mr. GARSTIN, C.S.I.
The Hon'ble Mr. PRICE.
The Hon'ble Mr. GROSE.
The Hon'ble Mr. HAMNETT, C.I.E.

ACT ASSENTED TO BY THE GOVERNOR-GENERAL.

His Excellency the PRESIDENT announced the assent of His Excellency the Governor-General to Madras Act I of 1891 (*The Madras General Clauses Act*).

THE MADRAS HARBOUR TRUST ACT AMENDMENT BILL.

The Hon'ble Mr. STOKES in introducing a Bill to amend Madras Act II of 1886 (*The Madras Harbour Trust Act*), said:—

“MY LORD,—I have to introduce a Bill to amend the Madras Harbour Trust Act of 1886, which has already been published under the Council Rules. It is a short and simple measure designed to set at rest certain doubts as to the validity of action taken by the Board with the sanction of Government under the present Act. The Board in 1887 and 1888 framed a bye-law under which they assumed the conduct of the portage of all import cargo and also a scale of rates to be charged for the work, conceiving that the existing Act authorized this procedure. The bye-law and the scale of rates were approved and published as under the Act by the Governor in Council. It has since been doubted whether the action taken by the Board and Government was authorized by the Act, and as it is obviously advisable that there should be no question in such a matter, it is now proposed to introduce into the Act words which shall distinctly empower the Board to do as they have done, and to validate their action by declaring that the Act shall be read as if it had always contained the words now inserted. This is the object of the Bill which I now introduce. It is desirable, of course, that its progress through the Council shall be expeditious, and I therefore move that it be referred in the usual course to a Select Committee with instructions to report within a week. I propose that the Hon'ble Mr. Price, the Hon'ble Mr. Grose, the Hon'ble Mr. Hamnett, and the Mover, shall form the Committee.”

The motion was put and carried, and the Council adjourned *sine die*.

(By order.)

OOTACAMUND,
17th July 1891.

A. BUTTERWORTH,
Ag. Under Secy. to Govt.

*Abstract of the Proceedings of the Council of the Governor of Port St. George,
assembled for the purpose of making Laws and Regulations under the
provisions of the Act of Parliament, 24 & 25 Victoria, Cap. 67.*

The Council met at the Council Chamber, Ootacamund, on Friday, the 7th day
of August 1891.

PRESENT:

His Excellency the Right Hon'ble the GOVERNOR OF MADRAS—*Presiding.*
The Hon'ble Mr. STOKES, C.S.I.
The Hon'ble Mr. GARSTIN, C.S.I.
The Hon'ble Mr. PRICE.
The Hon'ble Mr. HAMNETT, C.I.E.

THE MADRAS HARBOUR TRUST ACT AMENDMENT BILL.

The Hon'ble Mr. STOKES presented the Report of the Select Committee appointed
to consider the Bill to amend Madras Act II of 1886 (*The Madras Harbour Trust
Act*). In doing so the Hon'ble Member said:—

“MY LORD,—I beg leave to present the Report of the Select Committee ap-
pointed to consider the Bill to amend Madras Act II of 1886 (*The Madras Harbour
Trust Act*). To save a notification we have inserted a commencement clause in the
Bill, and we have made certain other minor changes the object of which is explained
in the Report. The Bill is practically the same as that referred to the Select Committee,
and I therefore move that it be taken into consideration and passed into law.”

The motion, which was seconded by the Hon'ble Mr. PRICE, was put to the
meeting and carried.

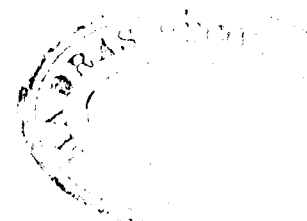
The Council then adjourned *sine die*.

(By order.)

OOTACAMUND,
7th August 1891.

A. BUTTERWORTH,
Ag. Under Secy. to Govt., Legislative Dept.





*Abstract of the Proceedings of the Council of the Governor of Fort St. George,
assembled for the purpose of making Laws and Regulations under the
provisions of the Act of Parliament, 24 and 25 Victoria, Cap. 67.*

The Council met at the Council Chamber in Fort St. George on Tuesday, the
15th December 1891.

PRESENT:

His Excellency the Right Hon'ble the GOVERNOR OF MADRAS, G.C.I.E.—
Presiding.

The Hon'ble Mr. STOKES, C.S.I.

The Hon'ble Mr. GARSTIN, C.S.I.

The Hon'ble Mr. PRICE.

The Hon'ble Mr. WEDDERBURN, Acting Advocate-General.

The Hon'ble Mr. GROSE.

The Hon'ble MIR HUMAYUN JAH BAHADUR, C.I.E.

The Hon'ble the RAJAH OF VENKATAGIRI, K.C.I.E.

The Hon'ble Mr. BOYSON.

The Hon'ble Mr. HAMNETT, C.I.E.

The Hon'ble C. SANKARAN NAYAR.

NEW MEMBER.

The Hon'ble Mr. H. G. WEDDERBURN, Acting Advocate-General, took his seat as
an Additional Member of Council.

PETITIONS TO THE COUNCIL.

The Under-Secretary read the following petitions:—

(a) From C. D. Gopālswāmi Chetti, Secretary, Vidiyanantha Sabha, Kottayūr,
Kumbhakōnam taluk, Tanjore district, dated 18th March 1891, declaring that the draft
Bill regarding the constitution of the Village Service Fund does not meet with the
approval of the public and praying that the draft Bill should not be considered by the
Legislative Council.

(b) From G. Kondappaiyar, Secretary, Mahajana Sabha, Milattūr, Tanjore
taluk and district, and several others, dated 9th April 1891, praying that the draft
Bill providing for the levy of a cess (merah fees) for the remuneration of village
officers, now before the Legislative Council, should not be passed into law.

(c) From A. P. Achhutha Menon, U. Sankaran Nayar and other inhabitants of
South Malabar, dated 13th December 1891, stating that they are opposed to the intro-
duction of any fresh taxes and praying that the Village Cess Bill be not proceeded
with.

It was ordered by the Council that these petitions do lie over for the time being.

2 CITY OF MADRAS MUNICIPAL ACT AMENDMENT BILL.

CITY OF MADRAS MUNICIPAL ACT AMENDMENT BILL.

The Hon'ble Mr. GROSE, in moving that the Bill to amend Madras Acts I and VII of 1884, as amended by the Select Committee, be taken into consideration, said:—

"MY LORD,—I have the honor to move that the Bill to amend Acts I and VII of 1884, as amended by the Select Committee, be taken into consideration. I think that all that need be said about the Bill was said long ago, and I doubt whether any object would be gained by delaying the consideration of the Bill in order to make any general observations now. Under Rule XXXI amendments are to be considered in the order of the sections to which they relate, and the first to be considered is the Hon'ble Mr. SANKARAN NAYAR's amendment on section 3."

Section 3.—The Hon'ble C. SANKARAN NAYAR then moved that the definition of "market" in section 3 of the Bill be omitted. The Honorable Member said:—

"According to the definition adopted, no place is a 'market' unless it is licensed. When the Select Committee altered the definition of 'market' they appear to have omitted to make the necessary alterations in sections 359 to 364 dealing with private markets. Those sections become unintelligible if we accept the new definition. Unless the owner applies for and obtains a license that place will not be a 'market' according to this new definition. The result is a market without a license becomes a contradiction in terms."

The Hon'ble Mr. GROSE replied:—

"I quite agree with the Hon'ble Mr. SANKARAN NAYAR that the definition of 'market' given in the Bill cannot be accepted. I cannot accept his amendment, however, because it restores the definition of the original Act which seems to me equally objectionable. This definition states that a 'market' is a place licensed as a market or declared to be so by the President with the concurrence of the Standing Committee. This last provision attracted the attention of the Select Committee, who found that there was no such declaration provided for in the Act. For my own part I doubt if any definition of the word 'market' is necessary. It is not defined in the Bombay Act. It certainly is defined in the Calcutta Act, but very simply, and only as a place where persons periodically assemble for the sale of meat, fish, vegetables or live-stock. I propose, with the sanction of his Lordship the President, to move that the definition be removed from the Bill and that in its stead a section shall be inserted repealing section 3 (ff) of the original Act."

The Hon'ble C. SANKARAN NAYAR observed that the Government had suggested an amendment of the definition and that the omission of the definition altogether would certainly not meet that suggestion. To this the Hon'ble Mr. GROSE replied that the Government had made no definite proposals as to the form the amendment should take; the definition should be omitted altogether.

The Hon'ble Mr. GARSTIN observed that all difficulty would be avoided by the omission from the definition in the Act of the lines following the words "human consumption," but the Hon'ble Mr. STOKES objected on the ground that the definition would then cover a shop.

The Hon'ble the Acting Advocate-General then proposed to substitute the definition of 'market' adopted in the Calcutta Municipality Act for that given in Madras Act I of 1884 and in reply to a remark of the Hon'ble Mr. GARSTIN to the effect that the present definition seems to refer exclusively to public markets pointed out that section 351 of the Act renders this view untenable.

CITY OF MADRAS MUNICIPAL ACT AMENDMENT BILL. 3

After some more discussion the Honorable the President put to the Council the Hon'ble Mr. GROSE's motion that the definition of "market" be omitted from the Act and the amending Bill. The motion was lost.

The Honorable the President then put the Hon'ble C. SANKARAN NAYAR's original motion that the definition of "market" be omitted from the Amending Bill to the Council.

The motion was carried.

Section 5.—The Hon'ble Mr. GROSE then moved that in clause (f) of section 7 of the Act, as amended by the Bill, the words "holding office" be substituted for the word "appointed." "This proposal," the Honorable Member said, "I make at the suggestion of the Government of India. Under the Act some of the Commissioners are elected and others nominated, but the President is the only one who is in express terms appointed. The provision applies to all the Commissioners who can be elected or nominated."

The proposed amendment was put and carried.

The Hon'ble C. SANKARAN NAYAR then, with the permission of the President, withdrew his proposal to amend clause (g) of section 7 of the Act as amended by the Bill by the insertion of the words "for an offence for which the police may arrest without warrant" after the words "sentenced by any Court to imprisonment."

The Hon'ble Mr. GROSE next moved that the words "being imprisonment not inflicted in default of payment of a fine" be inserted after the word "imprisonment" in clause (g) of section 7 of the Act as amended by the Bill. In moving this amendment the Honorable Member remarked:—

"I propose, at the instance of the Government of India, to expressly exempt from disqualifying imprisonment such imprisonment as is inflicted in default of payment of a fine, but I am afraid this is going too far, since a fine only may be inflicted as the punishment of such an offence as perjury. Calcutta limits the disqualification to rigorous imprisonment for an offence punishable with 6 months or upwards; Bombay limits it to imprisonment or simple imprisonment for 6 months or imprisonment; in a recent order the executive Government, in declaring imprisonment to be a disqualification, limit it to imprisonment for a non-bailable offence, but this includes persons imprisoned for perjury and forgery. Perhaps no limitation need be imposed, the discretion given to the Governor in Council to remove any disqualification being sufficient."

The motion was put and carried.

The Hon'ble Mr. GROSE next moved to further amend clause (g) of section 7 of the Act as amended by the Bill, by the omission of the words "on appeal" after the word "annulled." He observed that his proposed amendment as it originally stood was to add the words "or revision" after the word "appeal," but the same object would be secured in the manner now proposed.

The amendment was put and carried.

With the permission of the Honorable the President (previous notice not having been given), the Hon'ble Mr. GROSE moved that to clause (h) of section 7 of the Act as amended by the Bill, be added the words "provided that such conviction has not been annulled."

The question was put and carried.

4 CITY OF MADRAS MUNICIPAL ACT AMENDMENT BILL.

Section 10.—The Hon'ble C. SANKARAN NAYAR then, with permission of the President, withdrew the motion to amend section 10 of the Bill standing in his name, viz., to insert the words "for an offence for which the Police may arrest without warrant" after the words "sentenced by any Court to imprisonment."

The Hon'ble Mr. GROSE next moved to amend section 10 of the Bill by the insertion of the words "being imprisonment not inflicted in default of payment of a fine" after the word "imprisonment." This amendment was proposed, the Honorable Member explained, at the suggestion of the Government of India and was open to the same remarks as the similar amendment made in section 5 of the Bill.

The proposed amendment was passed.

Section 15.—The Hon'ble C. SANKARAN NAYAR then, with the permission of the Honorable the President, withdrew his proposed amendment of section 15 of the Bill, viz., to substitute "twenty" for "twenty-five" after the words "not less than."

Section 16.—The Hon'ble Mr. GROSE next moved that section 16 of the Bill be amended by the insertion of the words "shall be paid out of the Municipal fund and" after the word "President." The Honorable Member observed that he doubted the necessity for the alteration, but the Government of India had suggested it and it could do no harm.

The amendment was passed.

The Hon'ble C. SANKARAN NAYAR then moved to amend section 16 of the Bill by omitting the words "such sum not being less than one thousand rupees nor more than" after the words "The salary of the President shall commence at"; by adding the words "and may rise to two thousand rupees *per mensem* as from time to time may be fixed by the Governor in Council" after the words "twelve hundred rupees *per mensem*," and by omitting the rest of the section beginning "as the Governor in Council" and ending "rupees *per mensem*."

In connection with this proposal the Honorable Member made the following remarks:—

"As to the pay of the President, the Commissioners and the Government agree that it should commence at a sum between Rs. 1,000 and Rs. 1,200 and should never exceed Rs. 1,500. The Select Committee consider that the maximum should be fixed at Rs. 2,000 and that he should receive fixed annual increments until he attains the maximum. It is to the principle of raising the pay by annual increments that I object. It is taking into consideration their financial position that the Municipality fixed the rates suggested by them. Circumstances may exist which would justify the grant of this maximum salary; but I am strongly of opinion that we should not depart from the rates suggested by the Municipality unless on account of an improvement in their financial position or on account of the special qualifications of the individual or any similar cause. I would therefore leave it to the Governor in Council to raise the pay. The only objection that suggests itself to me is that the proposal may tell upon the independence of the President, but seeing that section 35 of the Act gives power to the Governor in Council to remove the President at his discretion, I don't think the objection is of much weight. If section 35 is on any future occasion modified then it may be necessary to adopt the suggestion of the Select Committee."

The Hon'ble Mr. GROSE in opposing the proposed amendment made the following observations:—

"The Hon'ble Mr. SANKARAN NAYAR proposes that the President's salary shall begin at Rs. 1,200 instead of between Rs. 1,000 and Rs. 1,200, and may rise to

CITY OF MADRAS MUNICIPAL ACT AMENDMENT BILL. 5

Rs. 2,000 as the Governor in Council orders instead of by fixed annual increments of Rs. 100. The minimum salary was proposed by Government and approved by the Commissioners. I do not see why it should be altered. The Select Committee thoroughly considered the question whether the provision of the original Act, viz., that the President's salary should be fixed by the Governor in Council, ought to remain. It seemed to them probable that after the initial salary of a President had once been fixed, it would not be raised without a recommendation from the Commissioners and they thought the increments should be independent of any vote, otherwise the President might be tempted to try to be popular with the Commissioners rather than bring forward proposals which he believed would be right but knew would be unpopular. It may be argued that increments ought to be the reward of good service as well as long service, but I do not think the opinion of the Commissioners or even of Government at certain junctures would be decisive on this point. A salary with fixed increments is of course much more attractive than a salary with possible increments which may stop anywhere. The Hon'ble Mr. SANKARAN NAYAR thinks that the maximum salary is higher than it need be. This is a matter of opinion. After careful consideration I agree with the Select Committee in thinking that it is not too high."

The Hon'ble Mr. STOKES agreed with the Hon'ble C. SANKARAN NAYAR in objecting to the system of fixed increments which a man receives whether he does well or ill. The Hon'ble Mr. BOYSON observed that section 35 of the Act gives the Government power to remove a President at discretion and contended that this provision affords sufficient safeguard against incompetence and neglect on the part of a President. The Honorable the President concurred: he considered it derogatory to the President of the Municipality and damaging to his position to be compelled to sue to the Commissioners for an increase of salary at the end of each year. After some more discussion, the Hon'ble C. SANKARAN NAYAR's amendment was put to the vote and carried.

Section 17.—The Hon'ble C. SANKARAN NAYAR then moved to amend section 17 of the Bill by inserting the words "and the Health officer" after the words "provided that the salary of the Revenue officer;" by substituting the word "salary" for the word "salaries" in line 18; and by omitting the words "Health officer and" before the words "the Engineer shall not be."

The Honorable Member observed:—

"These amendments have reference to the pay of the Health officer. The Municipal Commissioners were of opinion that the pay of such officer should be not less than Rs. 350 and not more than Rs. 700. The Government seem to have agreed in that view. The Select Committee have, however, come to the conclusion that the proposed rate is insufficient and that the efficiency of the Health officer would be impaired by the adoption of that recommendation. They seem to be of opinion that it would be impossible to secure a good Health officer at that or even a slightly higher rate and they consider that such officer should receive a pay of not less than Rs. 500 and not more than Rs. 1,000, notwithstanding the fact that it is open to the Governor in Council to raise the pay to Rs. 700 in accordance with the original proposition. If we have only these two opinions before us, the opinion of the Municipal Commission on the one side and that of the Select Committee, who have assigned only the one reason I have already mentioned for their opinion, I think we ought to prefer to follow the suggestion of the Municipality. It is the pay of their servant that is to be settled. They know the work that is expected of him, they

know the supply, and, more important than all these, they know better than others the pay their finances would warrant them in offering.

"The Act authorized the appointment of a special Sanitary officer on special occasions, and, without the guarantee of a permanent appointment, the Municipality have been able to secure the services of competent men for Rs. 500. When the Select Committee accepted the suggestion of the Municipality in fixing the pay of the Revenue officer but raised the pay of the Health officer to Rs. 500 to Rs. 1,000, I presume they had in view the fact that for the former a qualified native gentleman would be available, while, for the latter, they may have to appoint a man who has received his training in an English University; but a graduate of this University held the appointment once and I have been informed that he has been performing his duties satisfactorily and I don't believe it can be fairly urged that such men are not available for pay ranging from Rs. 350 to Rs. 700. The present incumbent against whose fitness nothing can be urged receives only a pay of Rs. 500 without any promise of gradual increase, and, I believe, he was appointed when the matter now before the Council was under discussion and he has agreed to accept the rate fixed by the Municipality should the Act be modified as suggested by them. It appears clear, therefore, that competent men are available, and, as I have already observed, the financial position of the Municipality has to be considered. In the budget estimate for 1891-92, I find that so far as roads are concerned, funds do not permit any grant for any improvement. That further extension which is needed of water-supply is impossible for the same reason. We have before us a petition, signed by all the then most influential inhabitants of the Adyar, including the Chief Justice and two Judges of the High Court, pointing out the need for the improvement of parcherries and the necessity of checking their unauthorized growth and we find a complaint in the budget estimate for 1891-92 of want of funds for the improvement of parcherries. Surgeon-Major King insists in his paper on correct conservancy for preserving the purity of the soil sufficient for street conservancy. The latrines and urinals are quite inadequate and the number is being increased as funds allow. Only recently the Council had to impose a cess on tobacco and the unsatisfactory condition of the town due to the inability of the Municipality for want of funds to take the proper steps is such that His Excellency in Council is prepared to legislate for the imposition of a special scavenging cess. The Municipality have been appealing to Government for the remission of their contribution of Rs. 50,000 which according to the President is a halter round their necks. In these circumstances it seems to me to be most inadvisable to impose by legislation any burden on their finances against their wishes. The circumstances that I have referred to will show that, instead of a highly-paid officer of high professional attainments, the Municipality want a good number of low-paid toties and lascars with maistries and superintendents. No special professional skill would seem to be required, as I find from a letter of Dr. Cook that the President was able to do the duties of a Health officer on the recent outbreak of cholera in addition to his own and that the subordinate officers are so familiar with the routine adopted on such occasions that they can, if necessary, carry on the work with very little immediate supervision on the part of their superior officers."

The Hon'ble Mr. GROSE opposed the motion and said:—

"The Hon'ble Mr. SANKARAN NAYAR proposes that the salary of the Health officer should be between Rs. 350 and Rs. 700, instead of between Rs. 500 and Rs. 1,000. Recent events have been such as to show that a good Health officer is

necessary in Madras as well as toties, and I do not think such an officer could be got for less. No Government Surgeon, I believe, gets less than Rs. 450, the pay of an Assistant Surgeon attached to a Regiment. The present Health officer gets Rs. 500 and he would not have taken the place for less. I believe he will soon go unless he gets regular increments."

The Hon'ble C. SANKARAN NAYAR's proposed amendment was put to the Council and lost.

The Hon'ble Mr. BOYSON then moved that after the words "one thousand rupees *per mensem* each" in line 22 of section 17 of the Bill, the words "and that the salaries shall rise by annual increments of Rupees one hundred *per mensem* to the maximum" should be inserted. The Honorable Member observed that section 17 of the Bill, as it stands, gives power to the Government to fix within certain limits the salaries of the Revenue officer, the Health officer and the Engineer, and he proposed the salaries should instead rise by fixed increments. "This system of payment," the Honorable Member went on, "is more definite, and, being so, it attracts better men. The Bill, by rendering any advance dependent upon the Government, practically leaves the decision as to the rate of pay with the Commissioners. It is not right to place these officers in so false, nor the Commissioners in so invidious, a position. The duties of the Health officer, for instance, are sure to clash at times with the interests of the Commissioners; they have done so previously and they will do so again, and the independence which is essential for the proper performance of work cannot be expected under the system which the present Bill would continue. Economy at the sacrifice of efficiency is a mistake. The appointments in question are responsible, and good men cannot be got without good pay. I am aware that some others agree with the Hon'ble Sankaran Nayar and regard Rs. 350 *per mensem* with no definite prospects of promotion as sufficient for a Health officer. I cannot agree with them. The unhealthiness of this town is proof to the contrary. The whole question was carefully considered by the Select Committee and to the best of my belief the Committee intended to provide for the grant of increments to the officers now under consideration, though for some reason or other, no provision to that effect appears in the Bill. The second amendment which stands against my name depends upon the acceptance of the present proposal."

The Hon'ble Mr. GROSE concurred, observing that although the case had been adversely decided so far as regards the President, the reasons against the adoption of the incremental system did not apply so strongly to the three appointments in question while the arguments in favour of the system were much stronger.

The Hon'ble Mr. STOKES opposed on the ground that the principle of the incremental system is vicious and the increments themselves are unusually large in the case in point.

After some discussion the amendment was put to the Council and lost.

The Hon'ble Mr. GROSE then moved that the words "If the persons are officers of Government, the Municipality shall pay contribution for leave allowances and pension" be added at the end of the first paragraph of section 37 of the Act as amended by the Bill.

"The amendment was suggested by the Government of India and merely represents," the Hon'ble Member remarked, "the intention of the Bill."

The question was put and carried.

The Hon'ble Mr. Boyson and the Hon'ble C. SANKARAN NAYAR then applied for permission to withdraw the motions appearing in their names in regard to the amendment of section 17 of the Bill by the omission of the words "and that the Governor in Council" to "Rs. 1,000 per mensem."

Permission was granted and the motions were withdrawn.

Section 23.—The Hon'ble Mr. GROSE then moved that the word "leave" be omitted before the word "regulations" in section 23 of the Bill.

The amendment was passed.

The Hon'ble Mr. GROSE next moved that the words "contributions for leave allowances or pension" should be substituted for the words "pensionary contribution" in section 23 of the Bill.

The amendment was passed.

The Hon'ble Mr. GROSE next moved that the words "including therein any contribution for leave allowances or pension which may be paid on his behalf out of the Municipal Fund" be added at the end of the proviso to section 23 of the Bill.

"This amendment," the Hon'ble Member observed, "has been suggested by the Government of India, it represents the intention of the Select Committee and it will render our meaning clear."

The amendment was passed.

Section 48.—The Hon'ble C. SANKARAN NAYAR, with the leave of the Hon'ble the President, withdrew the motion to amend section 48 of the Bill appearing against his name, viz., to add the words "in any crowded locality" after the words "restore a building or well" in line 7.

Section 420 of the Act.—The Hon'ble Mr. STOKES next moved the amendment of section 420 of Act I of 1884. The Hon'ble Member said:—

"MY LORD,—The President of the Municipal Commission, Madras, brought to the notice of the Select Committee and of Government that in cases where parties are prosecuted for doing without license or sanction things wherefor such is required by the Act, the Magistrates, on conviction had, merely impose fines for the breach of the law which are far below the amount of fees payable for license or sanction; and that at present there is no way in which these fees can be recovered. The President suggested to the Select Committee a provision to the same effect as the amendment which I have put upon the paper; but the Committee declined to adopt it, holding, I understand, that it is the business of the Executive Government to make the Magistrates do their duty and impose fines adequate to prevent this kind of fraud upon the Municipal revenue. I submit, with all respect to the Committee, that the less the Executive Government attempts to influence the decisions or sentences of the Magistracy, the better; that the penalty for the breach of the law and the Municipal revenue are entirely different things; and that while the breach of a law of this character, due in possibly the majority of cases to mere ignorance, may be adequately punished by a small fine, it is for the Legislature and not for the Executive Government to protect the municipal revenue. My amendment therefore proposes that in every case of a conviction for acts which are not to be done without municipal permission, the Magistrate shall recover, in addition to the fine, the fee properly payable to the municipal revenues. This seems to me the simplest and readiest method of providing for the case. But inasmuch as there must be many cases in which the permission required would not and ought not to be granted, I also propose that the recovery of the

fee shall not entitle the person convicted to receive such permission. I now ask leave slightly to alter the wording of the amendment by the omission of the word 'license' before the word 'fee' in the last line but one, and by the insertion after the word 'license' in the last line, of the words 'permission, sanction, or registration.' The reason for this alteration is that the issue of a formal license is not required under all the sections quoted in section 420 which authorizes the imposition of a fee; sections 288 and 294 speak of the permission of the President, section 359 of the sanction of the Commissioners, and section 382 of registration; and in section 420 itself as proposed to be amended, the words 'license, permission, sanction, or registration' are used. So altered, I beg to move my amendment."

The Hon'ble Mr. GROSE, in seconding the motion, observed:—

"The Select Committee had this proposition before them, and, as the Hon'ble Mr. Stokes has said, they rejected it. This was not because they thought it undesirable in itself or because they held any theoretical view as to how far the Executive Government should interfere with Magistrates. It was because they found that the Act gave the Magistrates sufficient powers, and did not think it within their province to interfere in such a matter unless it was expressly referred to them. Government has now pronounced an opinion on this point, and I think it is a correct opinion, so I second the amendment."

The Hon'ble the PRESIDENT then put the question that the following section be added after section 68 of the Bill:—

"To section 420 the following paragraph shall be added:—

"Whenever any person shall be convicted of an offence under sections 289, 291, 295, 320, 333, 335, 339, 341, 343, 346, 347, 360 (clause 1), 361, 363, 382, 385, the Magistrate shall recover, in the manner prescribed in section 449, and in addition to any fine which may be imposed, the amount of the fee chargeable in the case under section 420. Such recovery shall not entitle the person convicted to a license, permission, sanction or registration under the Act."

The motion was carried.

The Hon'ble Mr. GROSE then said:—

"Now that the amendments have been considered, it would be in accordance with Rule XXXIII for the Bill before the Council to lie over till its next meeting, but I resolve to ask his Lordship the President to suspend the Standing Orders under Rule LI so far as to allow the Council to vote whether the Bill shall be passed into law or not at once. The Bill and the only amendment which is of much importance have been before the public since February. The other amendments are chiefly verbal, and it seems to me very desirable that this Bill, which was initiated so long ago as 1886, and the consideration of which has been unexpectedly postponed again and again, should be passed into law without any further delay."

The Hon'ble the PRESIDENT, agreeing that the reasons urged by the Hon'ble Mr. GROSE formed sufficient justification for such a course, thereupon suspended the Standing Orders.

The Hon'ble Mr. GROSE, then moved that the Bill, as amended, be taken into consideration and passed into law.

The Hon'ble Mr. STOKES seconded the motion, which was put and carried and the Bill passed by the Council.

THE MADRAS VILLAGE CESS BILL.

The Hon'ble MR. GARSTIN, in introducing a Bill for the levy of a cess for the remuneration of Village officers and for carrying out other purposes connected with the Village service, said :—

“MY LORD,—The Bill which I have the honor of introducing to the notice of the Council is an important one, as affecting the power and means of Government to remunerate that most worthy and hard-working class of officials, known as Village servants, who are scattered in groups throughout all the villages of the Presidency and are the agents by whose means the land revenue is actually collected and through whose instrumentality the village administration is carried on.

“When the Revenue Settlements of the different districts of the Presidency were first carried out at the beginning of the present century, the customary system of paying the village officers for their services, which generally prevailed in most districts, was that of giving them fees in kind which usually bore some ratio to the nett outturn of each field at harvest time. By degrees, however, this system fell into desuetude until it became so difficult to collect the fees that the Government in 1864 passed an Act, No. IV of 1864, by which they took power to themselves to levy a money cess not exceeding one anna in the rupee, in lieu of the fees, contributions and allowances theretofore customarily demandable, for remunerating the village officers in all districts or parts of districts to which the Act might be extended. It is this Act which the present Bill is designed to amend for the reasons set out at length in the Statement of Objects and Reasons attached to it. These may be briefly stated to be—

“(1) To remove any doubts which may exist as to the legality of imposing the cess in certain districts in which fees in money or kind have not been customarily and generally payable to the village officers, and to legalize any action which may have been taken in such districts in this direction.

“(2) To make the cess leviable in all districts alike and at the same rate within a certain maximum, viz., one anna in the rupee of the land assessment.

“(3) To constitute a General Village Service Fund for the whole Presidency, to which all the collections of the new cess, together with all the balances of the old, of all village officers may be paid as well as all other expenses incidental to improved village administration, such as the erection of village choultries to serve as offices for the Village Munsifs and Monegars.

“(4) To limit the imposition of the cess to the holders of land on ryotwari tenure and to the holders of minor inams included within the limits of Government villages.

“(5) Lastly to give the Governor in Council power to revise the orders of the Revenue Board under the Act.

“I therefore move that the Bill be referred to a Select Committee consisting of—

The Hon'ble Mr. Stokes.

The Hon'ble Mr. Grose.

The Hon'ble Mr. Sankaran Nayar.

The Hon'ble Mr. V. Bhashyam Ayengar and

The Mover.”

The Hon'ble MR. GARSTIN also moved that the three petitions on the subject of the Bill which were read by the Acting Under Secretary at the beginning of the meeting be referred to the Select Committee appointed to consider the Bill.

The Hon'ble C. SANKARAN NAYAR said :—

“MY LORD,—The object of the Act is practically to extend the provisions of Act IV of 1864 to the whole Presidency. That Act was intended, as we find from the Statement of Objects and Reasons, to abolish the fees to which certain village officers were supposed to be entitled by immemorial usage, and to substitute for them a rate on the land not exceeding $6\frac{1}{4}$ per cent. of the assessment. The Select Committee to whom the whole matter was referred for consideration reported that it will be applicable only to those districts where the remuneration of the village officers consists in part of fees. They stated that the cess under the Act will take the place of fees—the former being payable to the same parties as those to whom the latter ought to have been paid. The preamble and section 2 also leave no room for doubt that the Legislative Council then took the view that the Act was not to be extended to districts where it was not customary to pay such fees. That the Government in 1883 were of that opinion there is no doubt, as legislation proceeded on that view. Otherwise, Act I of 1883 for the Nilgiri district was unnecessary. But though, apparently, no doubt was entertained at any time, we find to our surprise that the Act has been extended to districts where no fees were ever paid except in a few villages, and it is to legalize this unauthorized imposition of the cess in such districts and to authorize the Government to impose it in the remaining districts that this Bill is introduced.”

The Hon'ble MR. GROSE here rose to a point of order, drawing attention to Rule XXIII of the Standing Orders and contending that the Hon'ble C. Sankaran Nayar's speech was out of order. The Hon'ble the PRESIDENT ruled to the contrary, however, and the Hon'ble C. SANKARAN NAYAR continued :—

“If I am right in taking this view of the scope of the Act, if the Act was intended only for some districts for special reasons applicable only to those districts, then it seems clear that this Bill is unnecessary. The sole justification for the levy of this cess was the usage according to which the village officers were paid by fees. The cess under the Act was only a substitute for such fees, and where there are no such fees payable, the grounds on which the Act of 1864 was passed do not justify the levy of any such cess. The existence of a special tax in some districts intended in substitution for certain fees which prevailed in those districts only, is no reason for the imposition of such tax in the other districts in the Presidency. The reason now suggested, if valid, would have justified in 1864 the passing of an Act applicable to the whole Presidency. On principle the Bill is not justifiable. The village officers in section 4 of the Bill are admittedly Government servants, pure and simple. It seems difficult to explain how their position is in any way different from that of any other Government official. The cost of the village establishment in these circumstances ought to be a charge on the Provincial Revenues; a special tax is not necessary any more than for any other Government establishment.

“At one time no doubt the village servants were remunerated by certain fees paid by the people, but that was when they were servants of the village community, and it appears to me that when these officials ceased to render any service to the village proprietary they should no longer have been called upon to continue such contribution. I am aware that it has been asserted that these fees paid to these officials were joint contributions of the State and the landholders, but considering that these fees were

similar in all respects to the fees paid, before the division of produce between the Government and the people, to the village temple establishment, priests, astrologers, artizans, with whom the Government have nothing whatever to do, that even the old "Menkavil" or Police fees were paid partly in consideration of the Kavalgars duty to make good to the loser the value of stolen property on certain occasions, it seems clear that fees thus paid represent only the value of the services they were bound to render to the village community.

"But assuming that I am wrong in my view and that according to custom both the State and the ryot should contribute towards the cost, even then any legislation was and is unnecessary.

"An enquiry as to the amount of fees paid in 1861 disclosed the fact that the Government paid the larger portion of such cost, and apparently there is nothing forthcoming to show that the ryot at any previous time paid a larger share.

"When the survey and settlement were undertaken in this Presidency, it was the intention of Government to bear the entire cost of the village establishment and the assessment was determined with reference to this intention; such assessment therefore clearly included the fee the ryot till then had to pay. But notwithstanding the fact that the assessment apparently continued to be fixed on such basis, the Government passed Act IV of 1864 imposing a cess in substitution of such fees. The ryot thus pays a far larger share than before, to the enormous benefit, no doubt, of the Imperial exchequer.

"Thus the only provision in the Bill to which I agree is the provision (section 3) to repeal Act IV of 1864, but there is clearly no reason why this village cess, not defensible even as imposed under the Act of 1864 should be extended to the other districts. Nor can I accept the other ground alleged for introducing the Bill. By the Bill an attempt is made to remove the restriction imposed by sections 2 and 5 of Act IV of 1864, which enact that the proceeds of the cess shall be expended 'in the village or group of villages or township in which such cess is raised,' and to constitute a Village Service Fund for the whole Presidency. When the consent of the Government of India was sought for the introduction of the Bill, which afterwards became, with modifications, Act IV of 1864, it was with hesitation that the then Viceroy gave his consent—a hesitation due to a natural reluctance to any general interference with the municipal institutions. His successor also intimated to the Madras Government that he entertained very strong opinions as to the impolicy of such a course of action. It was to remove the objection thus taken that the Select Committee modified the Bill so that, instead of the cess leviable under the Bill being thrown into a General Fund to be distributed at the discretion of the Government towards the remuneration of the village servants, the cess must be applied towards the remuneration of the servants employed in the duties of the village or group of villages or township only in which the cess is levied. If in 1864 any interference with municipal institutions was thought undesirable, it is too late now to allow municipal action to be infringed. The tendency of subsequent legislation, I take it, is in favour of allowing more freedom to local institutions where they already exist and to create them for local purposes where they do not exist.

"For these reasons I must vote against the introduction of this Bill."

At the conclusion of the Hon'ble C. Sankaran Nayar's speech the Hon'ble the Raja of VENKATAGIRI announced his intention of seconding the motion of the

Hon'ble the Introducer of the Bill to the effect that the Bill be referred to a Select Committee for report.

The question was accordingly put and carried.

The motion that the three petitions read by the Acting Under Secretary be referred to the Select Committee appointed to report on the Bill was also carried.

THE MADRAS REPEALING BILL.

The Hon'ble Mr. STOKES said :—

"MY LORD,—In the year 1842 an Act No. IV of that year was passed for the better regulation of boats and catamarans in the Madras roads and for the amendment of certain Harbour Regulations, and this was afterwards extended to other ports in the Presidency and otherwise amended by four subsequent Acts, IX of 1846, IV of 1869, II of 1873, and I of 1877. All the matters dealt with in these Acts, which are still essential, have been provided for in rules promulgated under Act X of 1889 of the Governor-General in Council, and consequently the older enactments have become obsolete. I beg to move for leave to bring in a Bill to remove them from the Statute book by formal repeal."

The motion was seconded by the Hon'ble Mr. PRICE, put and carried.

The Council then adjourned *sine die*.

(By order.)

FORT ST. GEORGE,
16th December 1891.

A. BUTTERWORTH,
Ag. Under Secy. to Govt., Legislative Dept.

