

PROCEEDINGS

OF THE

Council of the Governor of Fort St. George

ASSEMBLED

FOR THE PURPOSE OF MAKING LAWS AND REGULATIONS

FOR THE YEAR

WITH INDEX.

VOL. XXIV.

Published by the Authority of the Council.

MADRAS :

PRINTED BY THE SUPERINTENDENT, GOVERNMENT PRESS.

1897.

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TO THE

PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR OF FORT ST. GEORGE

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS

FOR 1896.

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Proceedings of a Meeting of the Council of the Governor of Fort St. George assembled for the purpose of making Laws and Regulations under the provisions of the Acts of Parliament, 24 and 25 Victoria, Cap. 67, and 55 and 56 Victoria, Cap. 14.

The Council met at the Council Chamber in Fort St. George at 11 A.M. on Wednesday the 26th day of February 1896.

PRESENT:

His Excellency the Right Hon'ble the GOVERNOR OF MADRAS, G.C.I.E.—*Presiding*.
The Hon'ble Mr. H. W. BLISS, C.I.E.
The Hon'ble Mr. J. GROSE, M.A., C.I.E.
The Hon'ble Mr. J. STURROCK.
The Hon'ble Mr. D. DUNCAN, M.A., D.Sc.
The Hon'ble Mr. J. F. PRICE, C.S.I.
The Hon'ble V. BHASHYAM AIYANGAR, C.I.E., Diwan Bahadur.
The Hon'ble Mr. G. L. CHAMBERS.
The Hon'ble P. RANGAYYA NAYUDU.
The Hon'ble the Rev. W. MILLER, M.A., LL.D., C.I.E.
The Hon'ble C. SANKARAN NAYAR, B.A., B.L.
The Hon'ble N. SUBBA RAO PANTULU, B.A., B.L.
The Hon'ble C. JAMBULINGAM MUDALIYAR, B.A., M.L., Rao Bahadur.
The Hon'ble K. KALYANASUNDARAM AIYAR.
The Hon'ble C. VIJAYARAGHAVACHARIAR, B.A.
The Hon'ble S. SRINIVASA RAGHAVAIYANGAR, B.A., C.I.E., Diwan Bahadur.
The Hon'ble Mr. C. S. CROLE.
The Hon'ble VELLORE MUHAMMAD SHERIFF KHAN BAHADUR.
The Hon'ble Mr. E. GIBSON.
The Hon'ble the ADVOCATE-GENERAL.
The Hon'ble Colonel D. McN. CAMPBELL, R.E.

ADDITIONAL MEMBERS.

The SECRETARY.—I have the honour to announce that the following gentlemen take their seats as additional Members of Council:—

The Hon'ble Mr. A. T. Arundel, Second Member of the Board of Revenue, the Hon'ble Mr. E. Gibson, Secretary to Government, Revenue Department, the Hon'ble Colonel Duncan McNeil Campbell, R.E., Joint Secretary to Government, Public Works Department, the Hon'ble Mr. J. H. Spring Branson, Advocate-General, the Hon'ble Vellore Muhammad Sheriff Khan Bahadur, and the Hon'ble Mr. Henry Percival Hodgson.

QUESTIONS.

The Hon'ble N. SUBBA RAO PANTULU:—
282 [1] Will Government be pleased to state whether it is a fact that in many cases members of the Indian Civil Service, especially Assistant, Head Assistant and Sub-

Collectors, are transferred, at short intervals, from one station to another and sometimes from a district where one language is spoken to a district where the spoken language is totally different?

Whether, with a view to enable junior members of the Civil Service to acquire an intimate knowledge of particular localities and districts, Government will be pleased to consider the advisability of making the pay of the various grades of these officers personal, so that they may, without hindrance to their promotion, be allowed to remain at particular stations for at least three years?

The Hon'ble Mr. BLISS :—

[I.] Officers who are Assistant Collectors only are rarely moved from one district to another and then only for special reasons. When, however, such officers are appointed to act as Head Assistants they are invariably gazetted Assistants in the districts in which they receive their acting promotion in order to prevent their being again moved should they revert to Assistantships. Transfers of Head Assistants and Sub-Collectors are no doubt frequent and it is a fact that such officers are sometimes sent to districts, the language spoken in which is unknown to them, but this state of things is unavoidable and is not confined to appointments held by the Indian Civil Service.

The matter referred to in the latter part of the Hon'ble Member's question has formed the subject of considerable discussion in the past. The Government will reconsider it.

The Hon'ble N. SUBBA RAO PANTULU :—

[II.] Will Government be pleased to state how many members of the Indian Civil Service have, in each of the last ten years, availed themselves of the inducements offered by Government to pass the High Proficiency or Honors examination in oriental languages?

The Hon'ble Mr. BLISS :—

[II.] The following are the figures :—

	Appeared. Passed.									
1886	..	..	..	..	..	..	..	4	2	
1887	..	..	..	..	..	..	..	1	..	
1888	..	..	..	..	..	..	..	2	1	
1889	..	..	..	..	..	..	..	..	..	
1890	..	..	..	..	..	..	..	2	1	
1891	..	..	..	..	..	..	..	2	2	
1892	..	..	..	..	..	..	..	2	2	
1893	..	..	..	..	..	..	..	3	..	
1894	..	..	..	..	..	..	..	3	2	
1895	..	..	..	..	..	..	..	..	..	
Total	..	..	..	..	..	..	..	16	10	

The Hon'ble N. SUBBA RAO PANTULU :—

[III.] With reference to the fact that in the Upper Subordinate Service of the Public Works Department there is a large number of temporary officers, nearly one-half of the permanent establishment, discharging the same responsible duties as the permanent officers in the department, but having no claim for promotion or

pension, will Government be pleased to consider the desirability of substituting, to some extent at least, permanent officials for these temporary men in the same way as your Excellency's Government was pleased to do in the case of officials employed on the restoration of tanks?

The Hon'ble Colonel McNEIL CAMPBELL :—

[III.] There are 90 temporary Upper Subordinates as against 179 permanent Upper Subordinates. The temporary men are promoted on the temporary establishment under the same rules as apply to permanent men, but they have no claim to pension. They are not usually employed in as responsible charges as permanent men. The temporary establishment is intended to supplement the permanent staff to meet the demand for extra supervision which may arise from time to time, as well as to insure that the Public Works establishments are capable of contraction as well as expansion as the expenditure on works diminishes or increases. The arrangement is in force in accordance with the policy laid down by the Government of India, and the Government sees no reason to recommend any change.

The Hon'ble N. SUBBA RAO PANTULU :—

[IV.] Will Government be pleased to state whether it is its policy with regard to the settlement of land revenue that the officer fixing the assessment should also be the authority to hear appeals against his own assessment, and, if not, will Government be pleased to direct that the officer hearing appeals should be different from the officer fixing the assessment?

The Hon'ble Mr. GROSE :—

[IV.] In paragraph 62 of chapter IV of the Settlement Manual it is stated that the Settling officer is the authority to dispose of complaints regarding the terms of the rough pattas which are distributed after the completion of the preliminary stages of the settlement. Such complaints are styled "appeals" in section II of chapter V, but they are merely appeals against the provisional rates contained in the rough pattas, and the assessment is not fixed until after they have been considered by the Settling officer. Under paragraph 62-A of chapter IV an appeal against that officer's decision lies to the Commissioner of Revenue Settlement.

The Hon'ble N. SUBBA RAO PANTULU :—

[V.] Whether, according to the present policy regulating revisions of assessment, there is any limit to the enhancement of revenue on individual holdings, and, if so, what is the limit?

The Hon'ble Mr. GROSE :—

[V.] The limit is that laid down by the rule that the Government demand shall not exceed the money value of half the net produce as calculated in accordance with the instructions contained in the Settlement Manual.

The Hon'ble N. SUBBA RAO PANTULU :—

[VI.] Whether, according to the policy of Government, any improvement effected in the character of the soils by the use of water supplied by Government or by a private individual according to the rates fixed by them should be treated like other

QUESTIONS.

improvements made by the ryot, and therefore not subject to taxation or should be held liable to taxation, and if the latter, will Government be pleased to state the reasons for the same?

The Hon'ble Mr. GROSE :—

[VI] The charge levied for the use of Government water—whether in the form of water-rate or a consolidated wet assessment—is fixed without making allowance for the possibility that the use of such water may ultimately produce a permanent improvement in the character of the soil; the Government cannot admit that such an improvement is made by, or at the expense of, the ryot or that it is exempt from liability to taxation.

The Hon'ble N. SUBBA RAO PANTULU :—

[VII] Whether it is a fact that paddy crops are not harvested until after the date fixed for the first instalment of Government kist and in some places until after the date fixed for the second instalment even?

Will Government be pleased to consider the advisability of altering the dates, so that no instalment may fall due before the crops are harvested?

The Hon'ble Mr. GROSE :—

[VIII] The question is so wide and vague that no categorical answer can be given which would be correct for every part of the Presidency. Moreover, it is not clear whether the Honourable Member refers to any special kinds of paddy crops or to all paddy crops.

In regard to many, if not most, districts, it may be affirmed that the first kist is not due until after the harvest of the chief paddy crop. For instance, in Malabar and South Canara, the first crop is reaped in September and October, while the first kist falls due in December in Malabar and in March in South Canara. In the Gódvári and Kistna deltas, the first and principal paddy crop is harvested in December and the first kist falls due in January. In Madura and Tinnevely and the greater part of Nellore there is no kist till February. In nearly all districts, the early paddy crop is reaped before the first kist falls due.

In some of the dry districts the paddy crop is of comparatively small importance, and almost everywhere the ryots who hold wet lands have also dry lands, the crops on which are generally harvested long before the first kist falls due. It has long been recognized as undesirable that there should be two sets of kists, and the existing kistbandi is arranged not only with reference to the "wet" harvest, but with to the "dry" reference and "wet" harvests considered together.

The question of further revising the *kistbandi* is under the consideration of Government.

The Hon'ble N. SUBBA RAO PANTULU :—

289 [VIII] Is it a fact that there is no date fixed for the payment of Government demand for the second crop raised by a ryot, and that consequently the demand is in some cases enforced as soon as the cultivation is begun and before the crop is harvested, and will Government be pleased to fix the date for the payment of kist for the second crop?

The Hon'ble Mr. GROSE :—

289 [VIII] The Government is at present unable to answer the question fully; inquiries will be made.

QUESTIONS.

The Hon'ble N. SUBBA RAO PANTULU :—

Qⁿ 290 [IX] With reference to the fact that the consumption of country spirits in the excise tracts of Ganjam and Vizagapatam in 1893-94 shows an increase of 53,610 gallons over 81,586 gallons, the consumption in 1892-93, while the rest of the Presidency put together shows a decrease in consumption of 33,340 gallons, will Government be pleased to state what measures have been adopted to check the extraordinary increase in the consumption of liquors in the above-mentioned districts and with what results?

The Hon'ble Mr. BLISS.

Ans 290 [IX] In the towns of the Ganjam district a minimum selling price of 9 pies per dram of 30° under-proof was fixed in 1893-94, and though the consumption in that year showed an increase, in the subsequent year the consumption showed a decrease of 9,230 gallons, London Proof, as compared with 1893-94.

In the Vizagapatam district the Government has, on the recommendation of the Board of Revenue, directed that a minimum selling price of 1 anna 2 pies per dram of 30° under-proof should be fixed for the towns from 1st April next.

It may be added that although licit consumption has increased in these districts it is not believed that the total consumption has increased, save so far as may be accounted for by the influx of labour and the better wages paid in consequence of the construction of the East Coast Railway and the Rushikulya Project.

The Hon'ble N. SUBBA RAO PANTULU :—

Qⁿ 291 [X] Whether the "proposed" rules published in the *Fort St. George Gazette* of January 1895 with regard to the distribution of water in the Gódvári and Kistna deltas have been brought into force? If not, what is the cause of the delay, and when does Government propose to bring the rules into force?

The Hon'ble Colonel CAMPBELL :—

Ans 291 [X] The rules for the distribution of water in the Gódvári delta were circulated for adoption in January last year and those in the Kistna delta were brought into force at the commencement of last irrigation season in June 1895.

The Hon'ble N. SUBBA RAO PANTULU :—

Qⁿ 292 [XI] (a) With reference to the investigation which Government was pleased to order in connection with the lake Colair, will Government be pleased to order enquiry on the following points also :—

- (1) Whether there was formerly another outlet besides Upputeru, called Kavatikodu, draining the waters of the lake, and whether it has been blocked up by the construction, in 1885 and 1886, of irrigation channels across its course?
- (2) Whether, before a large number of drains from the Kistna and Gódvári districts were let into the lake and its outlet Upputeru, that is, before 1883, the lake used to become dry during summer so as to allow transport of grain by carts to Ellore?

(b) Will Government be pleased to call for a report on the sanitary condition of the lake Colair?

The Hon'ble Colonel McNEIL CAMPBELL :—

Ans 292 [XI] The Government is not in a position to answer the question at once; the necessary information has been called for.

The Hon'ble N. SUBBA RAO PANTULU :—

Qn 293 [XII] Whether the Government is aware that in connection with the primary examination—

- (1) the majority of examinees are below the age of twelve and are often taken from their homes to a distance of between ten and twenty miles and sometimes to a distance of more than thirty miles even;
- (2) young school pupils are examined along with grown-up persons whose object is to qualify themselves as teachers or for employment in the public service;
- (3) the examination entails a loss to Government of nearly Rs. 20,000 a year;
- (4) the present compulsory character of the said examination is against the recommendations of the Indian Education Commission—
 - (a) that the upper primary and lower primary examinations (the present primary examination taking the place of the old upper primary examination) be not made compulsory in any province;
 - (b) that all primary schools receiving aid be invariably inspected *in situ*.

Will Government be pleased to investigate the matter and issue orders that the said examination should cease to be the test for passing grants under the Grant-in-aid Code?

The Hon'ble Mr. GROSE :—

Ans 293 [XII] (1) From the returns for the last five years it appears that slightly over 50 per cent. of the examinees were twelve years of age or under. It is probably the case that some of them were taken from their homes to a considerable distance, but the Government has no specific information on the point.

(2) Yes. The examination is *viva voce* and not competitive.

(3) The examination has entailed a loss to Government of over Rs. 20,000 during each of the past three years and steps have recently been taken to reduce the expense of it.

(4) (a) The Hon'ble Member seems to have based this portion of his question entirely on a perusal of section 224 (wrongly numbered 124) or section 676 (2) of the Report of the Educational Commission. He appears to have overlooked the arguments on which the recommendation in these paragraphs was based, and an examination of these will show that the recommendation quoted by him merely insists that a universal and particular standard for the Primary examination which was favoured by the Government of India should not be forced on any province. The examination is only

compulsory for results-grants and certificates of qualification for the Public service, and not for promotion to the secondary stage.

- (4) (b) All primary schools are inspected *in situ* and they are all examined *in situ* with respect to the four standards of lower primary education. The Commission only recommended that the examination should be conducted *in situ* AS FAR AS POSSIBLE.

The Hon'ble N. SUBBA RAO PANTULU :—

Qn 294 [XIII] Is it a fact that the present practice of fixing the assignment to schools worked under the result-grant system with reference to their net cost and with no reference whatever to their probable or actual earnings results in great injustice to individual managers, ill-attended and ill-worked schools getting under this system nearly the whole of their earnings, while well-attended and well-taught schools get only a small fraction of their earnings?

Will Government be pleased to order such modification of the present assignment system of paying result grants as would secure a fair distribution of the allotments among individual schools?

The Hon'ble Mr. GROSE :—

Ans 294 [XIII] The merits of the system are now under the consideration of Government.

Mr. The Hon'ble N. SUBBA RAO PANTULU :—

Qn 295 [XIV] Will Government be pleased to obtain and place on the table statements relating to result grants to schools from public funds for 1894-95—

one showing for each district—

- (1) the number of schools which earned grants in excess of the assignments fixed for them;
- (2) their total net cost;
- (3) the total of assignments to them;
- (4) their actual earnings (not payments);
- (5) the total loss to managers;

and another showing—

- (1) the number of schools which earned less than the assignments fixed for them;
- (2) their total net cost;
- (3) the total of assignments to them;
- (4) their total earnings;
- (5) the total lapses.

The Hon'ble Mr. GROSE :—

Ans 295 [XIV] The information sought is not at present available: if, however, after considering the reply given to the previous question, the Hon'ble Member still wishes for it, it will be called for and placed on the table.

Mr. The Hon'ble P. RANGAYYA NAYUDU :—

Qn 296 [XV] Whether the attention of Government has been drawn to complaints in the Press—especially in the *Madras Mail*—to the extremely bad condition of the roads in the Tinnevely district, or is the Government otherwise aware of it?

QUESTIONS.

The Hon'ble Mr. BLISS :—

Ans 296 [XV] The attention of Government has not been drawn to the complaints referred to by the Hon'ble Member, but the Government is otherwise aware of the bad condition of the roads in the Tinnevely district and this has been made the subject of remark.

Mr. The Hon'ble P. RANGAYYA NAYUDU :—

Qu 297 [XVI] Whether, during the Collectorship of Mr. Forbes there, the Local Fund Engineer was compelled to resign his office?

Ans 298 [XVII] Whether, after so sending in his resignation, he withdrew the same?

The Hon'ble Mr. BLISS :—

Ans 297+298 [XVI and XVII] The Government has received no report on the subject.

Mr. The Hon'ble P. RANGAYYA NAYUDU :—

Qu 299 [XVIII] Whether the present Collector of Tinnevely held a protracted and an elaborate enquiry into the conduct of one Reynolds, an overseer of the district, in connection with various serious irregularities in the taluk of Srivaikuntam, and whether the same has ended in the removal of Reynolds from service?

The Hon'ble Mr. BLISS :—

Ans 299 [XVIII] The Government has received no report on the subject. The salary of the overseer being under Rs. 100 per mensem, no report was necessary.

Mr. The Hon'ble P. RANGAYYA NAYUDU :—

Qu 300 [XIX] Whether the Government is aware that in that enquiry evidence has been forthcoming against the Engineer also which necessitates action being taken against him also? Whether even District Board Members are yet unaware of the details of the evidence?

The Hon'ble Mr. BLISS :—

Ans 300 [XIX] The Government has no information on the subject.

Mr. The Hon'ble P. RANGAYYA NAYUDU :—

Qu 301 [XX] Is the Government aware of the recent high floods in Tambraparni, in Tinnevely district, and the consequent damage to landed properties? If so, in what ways does the Government intend to assist the land-owners in relieving them from the loss they sustained?

Qu 302 [XXI] Will the Government be pleased to say if the sand can be removed from the lands in question by means of machinery? If it can be, is the Government prepared to undergo a moiety of the expense?

Qu 303 [XXII] Will the Government be pleased to allow full remission of tax on lands covered with sand until such lands shall have been rendered fit for cultivation again?

Qu 304 [XXIII] Will the Government be pleased to devise means whereby such calamities can be averted in future?

The Hon'ble Mr. GROSE :—

Ans 301-304 [XX to XXIII] The Government is aware of the recent high floods in the Tambraparni, and a full report has been promised by the Collector of Tinnevely who has been instructed to expedite it. Until this report has been received the Government cannot answer the other questions asked by the Hon'ble Member.

QUESTIONS.

The Hon'ble P. RANGAYYA NAYUDU :—

Qu 305 [XXIV] Will the Government be pleased to state whether it intends to withdraw from the direct management of the Kumbakonam College and to entrust the same to a private body; and if so, whether any steps have been taken by it towards the formation or selection of such a body; whether it is aware that the Director of Public Instruction has addressed a number of associations and individuals on the subject; and whether it will be pleased to state its opinion in respect of this correspondence of the Director?

The Hon'ble Mr. GROSE :—

Ans 305 [XXIV] Government has at present no intentions such as those referred to. It has, since the receipt of the Hon'ble Member's question, ascertained from the Director of Public Instruction that he has written semi-officially to five gentlemen asking their opinions as to the feasibility of the transfer of the Kumbakonam College to private management. The Government considers his doing this quite unobjectionable.

Mr. The Hon'ble C. JAMBULINGAM MUDALIYAR :—

Qu 306 [XXV] With reference to the answer to question No. XVIII asked by me at the Council meeting held on the 18th December 1895, have the Government noticed that Act XIX of 1889 of the Government of India (the Central Provinces Village Sanitation Act) lays down that all the members of a panchayat except the Mukkaddom (headman) shall be elected by the villagers under rules framed by Government, and that similar provisions exist in Act III of 1885 of the Bengal Council (Bengal Local Self-Government Act)?

The Hon'ble Mr. BLISS :—

Ans 306 [XXV] The attention of Government has been drawn to the Acts mentioned by the question now put by the Hon'ble Member.

Mr. The Hon'ble C. JAMBULINGAM MUDALIYAR :—

Qu 307 [XXVI] Adverting to the answer to question No. XX (c) asked at the meeting of the Council held on the 18th December 1895, will the Government be pleased to place on the table the correspondence, if any, between this Government and the Government of India, which ended in the approval by the latter Government of the continuance in this Presidency of the Madras Forest policy of 1890 in preference to the policy explained in paragraph 15 of Government of India Resolution, No. 22 F., dated 19th October 1894, about reservation of minor forest, fuel and fodder preserves, pasture lands and grazing areas, generally and in the vicinity of cultivated tracts?

The Hon'ble Mr. GROSE :—

Ans 307 [XXVI] The correspondence in question will be laid on the table.

Mr. The Hon'ble C. JAMBULINGAM MUDALIYAR :—

Qu 308 [XXVII] Will the Government be pleased to state if it is in its contemplation to withdraw in the near future from the management of the Kumbakonam College; and, if so, will any arrangements that may be proposed for its future maintenance be placed before the public prior to passing final orders, for representations being made, if necessary, about the advisability and adequacy of such arrangements?

The Hon'ble Mr. GROSE :—

Ans 308 [XXVII.] The Hon'ble Member will be referred to the reply to the question on the same subject put by the Hon'ble Rangayya Nayudu.

ACTS ASSENTED TO BY HIS EXCELLENCY THE GOVERNOR-GENERAL.

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

Madras Act I of 1896 (An Act to limit the local extent of the Madras Rent Recovery Act VIII of 1865).

Madras Act II of 1896 (An Act to amend the Madras General Clauses Act I of 1891).

ACTS ASSENTED TO BY HIS EXCELLENCY THE GOVERNOR.

The SECRETARY reported that the Bill to make better provision for the registration of proprietors of land subject to the payment of revenue direct to Government in Malabar and the Wynaad, which was passed by the Council on the 18th December 1895, received the assent of His Excellency the Governor on the 22nd January 1896.

PETITIONS, &c.

The SECRETARY reported that the following papers have been communicated to the Legislative Council and laid them on the table :—

G.O., No. 138, Legislative, dated 21st December 1895.

"	"	139	"	"	"
"	"	140	"	"	"

The SECRETARY further reported the receipt of (1) a telegram from the president of a meeting held at Tiruvengad praying for the postponement of the Malabar Marriage Bill and stating that a memorial follows, and (2) a petition from M.R.Ry. C. Karunkara Menon and others, dated 20th February 1896, protesting against the Malabar Marriage Bill as finally adopted by the Select Committee and praying that the consideration of the Bill may be deferred till those concerned have time to express their views thereon. He further went on to say : "Three printed petitions relating to the Malabar Marriage Bill have been received and copies of them have just been laid on the table, numbered as Papers 10, 11 and 12. Thirteen more petitions identical in form with Paper No. 10, seven with Paper No. 11 and seventeen with Paper No. 12 have been received. In addition to the printed papers one telegram and one written petition were received yesterday, and this morning the following telegram has been received from Mr. K. C. Manavedan Raja :—

" 'Misapprehension regarding Marriage Bill Amendments cause wide dissatisfaction. Respectfully suggest postponement until people affected are heard.'

"The written petition runs as follows :—

" 'We, the undersigned followers of the Marumakkatayam Law of Inheritance, beg to approach your Excellency in Council with our humble but emphatic protest against clause (a) of section 3 and clause (a) of section 15 of the Malabar Marriage

BILL TO AMEND THE RELIGIOUS ENDOWMENTS ACT XX OF 1863. 11

Bill as finally adopted by the Select Committee. These clauses expressly exclude from the scope of the Bill certain classes of recognized social marriages, and important classes of the Marumakkatayam people are thus denied the possibility of legal marriage for ever and their marriages, which society recognizes as proper and valid, are virtually branded as concubinage. This change is opposed to the feelings and interests of all concerned. We therefore most earnestly beg that these clauses may be deleted from the Bill.'

This is signed by P. Kunhanni Menou and 21 others."

BILL TO AMEND THE RELIGIOUS ENDOWMENTS ACT XX OF 1863.

The Hon'ble K. KALYANASUNDARAM AIYAR in moving for leave to introduce a Bill to amend the Religious Endowments Act XX of 1863 so far as this Presidency is concerned said :—

"Under Rule 31 of the Rules for the Conduct of Business in this Council, I beg leave to introduce a Bill to amend the Religious Endowments Act XX of 1863, so far as the Hindu religious endowments in this Presidency are concerned. It is needless to prove that Act XX of 1863 has, so far as this Presidency is concerned, failed to secure the purposes for which it was passed. That has for a long time been the conviction of the people of this Province, and the fact has been unhesitatingly accepted by the Local Government. During the last 25 years several efforts have been made to improve the working of the Act, but till now they have all proved futile. Successive Governments of this Presidency have earnestly attempted to effect a satisfactory settlement, but we are now where we were in 1863. The reason of this is obvious. All the efforts made till now have been directed towards securing a thorough reconstruction of Act XX of 1863, and they have nearly always been met with the objection that the measures proposed in substitution of that Act have contravened the principles underlying it. The Bill I beg leave to introduce will, I hope, be not liable to the above objection. In its last order on the subject the Government observed as follows :—'Having regard to the preceding considerations, and particularly to the fact that the Governor-General in Council is unable to agree to the repeal of Act XX of 1863, or to the adoption of any scheme having the appearance of the direct interference on the part of the Executive with religious endowments which was that condemned by that Act, His Excellency in Council regrets that he is unable to accord his sanction to the legislation proposed by the Madras Government. The only legislation which the Government of India could approve would be in the direction of making Act XX of 1863 more effective by remedying admitted defects in it.' It is my belief that the Bill I propose to introduce will, so far as it goes, entirely accord with the views of the Government of India. There is only one point, I believe, on which I have to satisfy this Council. It may be said that the subject matter of this Bill is under the consideration of a committee, and that we may well wait for its report. My answer to this is simple. From the year 1876 one committee or another has been sitting on this subject, and nothing has yet come out of their deliberations. Each of them has tried to produce a comprehensive measure containing a remedy for all the defects in the existing Act, and on an average about five years have been occupied in the disposal of the report of one committee, by the Local and Imperial Governments. The committee now sitting will rightly conceive it to be its duty to frame a Bill on the same lines as those of its predecessors containing provisions for removing all the defects in the existing Act. The whole of the Bill will have to be fully considered by the

Local Government and the Government of India, and it may be a long time before sanction could be obtained for the introduction of such a comprehensive measure. These objections will not apply to the Bill proposed by me. It is a small measure dealing only with some of the more prominent defects of the existing enactment. It does not aim at completeness. Certain defects in the existing Act have been long crying for a remedy. This Bill will attempt to remove some of these. I intend that it should avoid all matters of a controversial nature. I shall, of course, most readily welcome a more comprehensive measure, but as it may be long in coming, I desire that some of the abuses, which are unanimously admitted to exist, should at once be removed. In my opinion the more important defects in the existing Act are the following:—(1) The life-long membership of committee members; (2) the absence of a provision to enforce the revision of lists of voters; (3) the powerlessness of committees to deal effectually with negligent and disobedient trustees; (4) the absence of an express provision enabling committees to collect money for their maintenance; and (5) the absence of a provision for the scrutiny and publication of the accounts of the committee and the temples under them. These are all the subjects I propose to deal with in the Bill to be introduced by me. If this Hon'ble Council grant me leave to introduce the Bill I shall, when introducing it, go more fully into its provisions. On the present occasion I do not consider it necessary to say more. The Government presided over by your Lordship has expressed strong and pronounced views on the mismanagement of the Hindu Religious Institutions of this Presidency, and I hope that your Lordship will support my prayer on behalf of the public of this Presidency for the introduction of a measure which will be distinctly a step in advance towards carrying out those views. I beg on these grounds to move that leave may be given me to introduce a Bill to amend Act XX of 1863, so far as this Presidency is concerned.

The Hon'ble N. SUBBA RAO PANTULU.—I rise to second the motion.

His Excellency the PRESIDENT.—The question is that leave be given.

The motion was put and carried.

A BILL TO REPEAL MADRAS ACT III OF 1882 AND SECTION 49 OF ACT XXIV OF 1859.

The Hon'ble Mr. BLISS.—My Lord, I have the honour to rise to move for leave to introduce the Bill which has already been published in the *Fort St. George Gazette*. The Bill is of a very simple character, but I first propose to move that the rules for the conduct of business in the Legislative Council be suspended before I introduce it. The reason why I ask for the suspension of the rules is that the Bill having been published on the 11th instant, fifteen clear days have not elapsed since its publication, as required by the rules. Of course, if, on that ground, any Hon'ble Member should desire that the consideration of this Bill should be deferred, I shall have no objection. The Bill, however, is a very simple one, and is merely intended to remove from the Statute book certain enactments which have become unnecessary for reasons stated in the statement of Objects and Reasons. I think if Hon'ble Members are disposed to agree with me, the rules may very well be suspended. The reasons for bringing forward this short Bill are stated in the statement of Objects and Reasons which are already at the disposal of the Hon'ble Members and to which I have nothing further to add. Therefore I move that the rules be suspended and leave to introduce the Bill be given.

The Hon'ble Mr. PRICE seconded this motion.

MALABAR MARRIAGE BILL.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—My Lord, I am sorry I cannot support the motion. My objections are twofold. I do not believe that we have power to repeal section 49. My Lord, am I in order in saying that it is not desirable to introduce the Bill in its present form in opposing this motion?

His Excellency the PRESIDENT.—You are in order in opposing the motion.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—Can I say at this stage that the Bill in its present form is not suitable?

The Hon'ble Mr. BLISS here intervened.—My Lord, in that case I have no objection to the postponement of the consideration of this Bill to the next meeting of the Council.

The Hon'ble Mr. BLISS' motion was accordingly withdrawn.

MALABAR MARRIAGE BILL.

The Hon'ble C. SANKARAN NAYAR.—I rise to propose that a certain portion of Rule 47 be suspended under these circumstances: the report of the Select Committee with its translations was published in the supplemental Gazette of the 4th instant and the rules require that 21 days must elapse after its publication; 21 days have elapsed so far as the public are concerned, and there is no difficulty in that matter, the usual notice having been given to the public; the rule also says that the Bill and the papers shall be posted to the Madras address of each of the members at least 15 clear days before the date upon which they are taken into consideration. It so happens that these were posted only on the 12th and therefore not quite 15 days have elapsed since the date the papers were posted to Hon'ble Members. There is really no prejudice, because all these papers were published on the 4th instant and should have reached the non-official members on the 6th—I mean the Gazette supplement should have reached the non-official members at least on the 6th and really there is no reason for complaint. Under these circumstances, I would request the Council to suspend so much of the rule as requires the 15 days' clear notice to be given.

The Hon'ble C. JAMBULINGAM MUDALIYAR seconded the motion.

The motion was put and carried.

The Hon'ble C. SANKARAN NAYAR.—My Lord, I now rise to present the report of the Select Committee and to move that the Bill as amended be taken into consideration. Certain alterations have been made in the Bill in the Select Committee; many of them are verbal. But there are one or two important alterations which have evoked some criticism. The first one relates to the provision in section 3 by which what are called in the memorials before us, Brahman marriages, that is marriages between Brahmans and Sudras are prohibited. The second important alteration refers to sections 23 and 24—which involve the same principle—whereby the portion of the property that devolves upon the wife and children is to be divided amongst them in equal shares. These are the two important alterations in the Bill, to which objections have been taken. My Lord, as to the first alteration, the reasons have already been given in the report of the committee, but I shall also briefly refer to them. It is unnecessary, perhaps at this stage, to go into the question whether it is necessary or advisable to provide a form of marriage for those who follow the Marumakkatayam Law. So far as that question is concerned, there is apparently no dispute, because no amendment has been raised which refers to that question, and none of the memorials that have come before us refer to that question. We are apparently agreed that so far as Marumakkatayam

people are concerned, that is, those that have no marriage law, that some steps ought to be taken in order to legalize marriages between two persons following that law. A further question is raised and it is this: Certain other classes of sexual connections also are formed where one of the parties is a follower of the Marumakkatayam Law and the other party to the marriage follows a different system of law under which the children take the property of the father. The question was raised when I introduced the Bill whether such marriages ought to be registered and whether their legality ought to be recognized or not. Now, my Lord, if the members of Council and your Lordship consider the grounds for legalizing marriages between two persons both of whom follow the Marumakkatayam Law of Inheritance and the grounds on which it is based, it would seem there is some distinction between that class of marriages and the other classes of marriages. Where both parties follow, for instance, the Marumakkatayam Law of Inheritance, the grounds on which legislation was proposed, and the grounds on which legislation was sanctioned by the Government of India and the Government of Madras, were that they really live a married life, enter into union with the intention of living as husband and wife, and considering themselves as husband and wife and leading a married life perform what are considered the obligations of married life. That is to say, the so-called husband maintains his wife and children, he provides for his wife and children after his death either by making a gift of the whole of his property or a certain share of his property during his lifetime. These were mainly the grounds on which legislation was sanctioned. When such is the state of facts, it was only natural that when a court of law refuses to recognize such connections as legal and when the people and the parties themselves do recognize them as such, it was only natural, that the legislature should step in and enable the courts to recognize such marriages as valid. Now, my Lord, when we come to consider the cases where one of the two parties is not a follower of the Marumakkatayam Law but follows a different system of law, then the question becomes a little more complicated and other grounds have to be considered. First of all for the purpose of illustration, I shall take the case where a follower of the Marumakkatayam Law performs the sambandham—I use the word sambandham to denote the customary marriage that prevails in the country—with a follower of another system of law which I call Makkatayam Law to distinguish it from the Marumakkatayam system. In such a class of cases, where such connections are formed and where either of the parties to the sambandham is a Brahman, the question was raised, when I introduced the Bill, by the Hon'ble Bhashyam Aiyangar that such marriages should not be recognized. Now, my Lord, your Lordship will see that the question we have therefore to consider is whether they fulfil all those conditions which induce us to recognize marriages in the case of those both of whom follow the Marumakkatayam Law of Inheritance. First of all I shall state this: In the case of Malabar Brahmans the practice is for the eldest member of the family alone to marry in their own caste, but so far as others are concerned they form sexual connections with the females of the lower castes; and the reason of that is that they do not want to marry. I mean to say they do not want to form connections which would entail on them the obligations of married life. Therefore when they enter into sexual connections with the females of the lower castes, the very circumstance, the very origin of the practice itself repels the presumption that they really intend it as a marriage which ought to be upheld in a court of law. Seeing that they do not want to marry for the reason that if they marry they will have to provide for their wife and children and that they form these connections with the females of the lower caste in order to avoid the obligations of married life, the natural presumption under these circumstances would be that they do not want to form what is outside Malabar called marriage, but they want to

form a sexual relation which is really not marriage. Therefore that first element in the consideration of the question which forms the main consideration—namely that, as in the case of the Marumakkatayam people, they enter into union with the idea of living as husband and wife and that the male person really considers himself as the husband—is wanting in this class of unions where one of the parties is a Brahman, because he enters into the union with the idea that he should live a married life, but at the same time should avoid the obligations of a married life. Now, my Lord, that is one consideration. As to the other consideration it was this: The question we had to consider was whether their subsequent life bore out the idea that it was really a married life in the sense in which some of us understand it. It is to this that some of these memorialists refer when they say that if you do not recognize their marriages as valid then in the case of kovilagams, that is the houses that represent the old rulers of the country, the result would be that they will not be able to register those as marriages. Now, my Lord, with reference to that, in order to see the sort of life they lead and to ascertain for ourselves whether it is a married life or whether the so-called sambandham can be recognized as a marriage, I would refer the Council and your Lordship to what Sir T. Muttusami Aiyar said in page 53 of the report. My Lord, I may tell the Hon'ble Members at once that, so far as the majority of the commission were concerned, they put these connections between Nambudris and Nayars in a form which precludes the idea that they had ever regarded them as marriages. I do not refer to the report itself, because I was a signatory to that report; but I refer to the memorandum of the late Sir T. Muttusami Aiyar, because he also bears out the statements I have made and probably more weight might be attached to his words. In page 53 he says, "Turning for a moment to the marriage customs obtaining in kovilagams, I find that none of the six forms of marriage is observed or has its counterpart there." That is Nayar and other castes have certain forms of marriage which have got their own peculiar names. For instance, in North Malabar the sambandham that is formed is called *Podamuri*; in other cases also they have certain forms of marriage. What is attempted is, to legalize those connections which are regarded as social marriages in the country. What Sir T. Muttusami Aiyar here points out is that, in the case of kovilagams and others who form sambandhams with the Nambudris, they have really none of the six forms of marriage. He says:—

"A ceremony, however, called *veli* in some kovilagams and *kalyanam* in others, is celebrated with great pomp and at considerable expense. Ordinarily, it is performed before the maiden attains her maturity and the kovil Tambiran ties a piece of gold round her neck in the kovilagams in North Malabar, and a member of the family of the Raja of Cranganore does the same in the kovilagam of His Highness the Zamorin. The ceremony has, however, no significance as creating a binding marriage tie. If the kovil Tambiran or other person tying the neck ornament according to the usage of the kovilagam is willing to become the husband of the maiden when she attains maturity, she consorts with him. If not, she consorts with a Nambudri Brahman without any further formality or ceremony, and after a time she is free to put him away at her pleasure and take another Nambudri Brahman in his place with the consent of her karanavan and protector, the senior Raja of the kovilagam for the time being. I do not find that relation between the ceremony and subsequent sexual usage which exists between marriage and married life."

That is the state of things, so far as the evidence is concerned. Of course Sir T. Muttusami Aiyar does not mention it there, the fact is that in all these kovilagams and in all such cases the female lives in her own kovilagam, she does not live

with her husband; she is maintained by the members of her family. Those that are curious to know it will see it in the evidence that in all those cases of kovilagams and chieftains of families not only do the females not go to the husband but it is they who maintain their husband or rather the kovilagams.

So the Hon'ble Members will see that all these elements and all these considerations that have induced us, the Government of India and the Government of Madras to support the prayer for legislation seem to be wanting in connection with these marriages between Nambudris and these ladies of kovilagams and the other Nayar chieftains. That, my Lord, creates a wide distinction, and we have therefore to face the question whether, when the law of one of the parties forbids that union, we ought to recognize it. We have considered at present that, under these circumstances, it is not advisable to recognize such marriages and such unions, for the reason that the grounds on which legislation was supported in the case of others did not support the demand for legislation with reference to these connections between Nayars and Nambudris. Your Lordship and the Hon'ble Members will see that in all these memorials that have come before the Council, so far as one of the parties is concerned, that is, Brahmans, they seem to be averse to any legislation in the matter. Memorials from Malabar Brahmans are against legislation, while the memorials from Nayars, so far as they have come to us, are in support of legislation. That is only natural, because it is the Brahmans who regard these connections not in the light of marriages but as falling far below the ideal of marriage and therefore they are opposed to it. Under these circumstances we considered—and I think we considered it rightly—that it was not advisable to legislate so far as to legalize those unions. One party to it, that is the Brahman class, is consistently opposed to it and the other party, no doubt, may generally be in favour of it. In a permissive measure of this sort what I considered was, and my colleagues of the Select Committee agreed with me, that it was desirable to proceed only so far as there was no opposition to legislation. There was really a good deal of opposition to legislation in regard to one class and therefore we have stopped here for the present. If, at any future time, the Nambudri Brahmans and the Malabar Brahmans, who form the other section, feel really interested in procuring the registration of their marriages, also if they, for instance, beseech your Excellency's Government to allow legislation in order to legalize those marriages, then there is nothing in this Bill to prevent an amendment so as to recognize those marriages also. What I really consider is, that, for the present, it is enough if we stop with legalizing marriages between Marumakkatayam people; and when the other question is raised by those who are interested in it, by a considerable section of Brahmans, though they be the minority, it would be time enough to consider, and it is not now desirable to provoke unnecessary opposition. The first thing is to have such a marriage law as will be popular with the people; and if we have a marriage law—under which sexual unions may be registered—which is objected to by a considerable section of the people, it would be a drawback so far as the Bill is concerned and would render it unpopular. The only complaint is that we have not now gone far enough but it is enough if we take one or two steps. It is not desirable at once to proceed to a length that is certain to provoke opposition. For these reasons my Lord it is desirable for the present to leave the Brahman marriages alone—that is those marriages where the law which is binding on one of the parties prohibits his union with the other. It is to the matter that I have referred, viz., the Brahman marriages, that my Hon'ble friend Jambulingam Mudaliyar has addressed himself, and when he moves his amendment he will no doubt give reasons for his amendment. There is another class of marriages

which we have recognized and to which my friend Mr. Kalyanasundaram Aiyar has taken objection. My Lord, there are certain classes of people who do not follow the Marumakkatayam law. For the purpose of illustration I will take the Tiyyans some of whom follow Marumakkatayam law and some do not. Between them also sexual connections exist. They stand on exactly the same footing; and they fulfil all the conditions of those sexual marriages which the Government do consider ought to be recognized as legal. That is to say, those sambandhams are formed with publicity; they live a married life and attempt to provide for their wives and children. They go even much further, because one of the parties being Makkatayam individual, very often when the woman marries a Makkatayam man, she leaves her own home and has no tarwad to depend upon. Therefore it is more necessary in their case that all doubts should be set at rest; their matrimonial relations should be recognized and there should be some rights given to the wife and children as against the husband. All the reasons that exist in the Marumakkatayam families exist in their case also with this additional reason that there is nothing in the law to prohibit either party—we expressly state it—from entering into such union, though it shall not be recognized in the case of a Brahman, Kshatriya, Vaisya or Sudra who follows the Hindu law of inheritance or has a personal law of marriage which prohibits a marriage with a lady of the lower caste. A Brahman for instance may not be able to marry a lady of the lower caste and if he does such a marriage may not be valid. Such unions we do not recognize by this Bill; but if there is a union which is not prohibited by such law—that is the case with some other classes—clearly there is no reason why it should be prohibited now. There is not only no reason to prohibit it but it is the interest of public policy to recognize such unions. We are not legislating to put an end to those connections which are socially recognized as honourable and respectable. Therefore if we pass the amendment which stands in the name of the Hon'ble Kalyanasundaram Aiyar, the result would be that we shall be putting an end to certain connections which do not apply to Nayars but apply to other classes and which in their society are recognized as honourable. The Committee have considered the question fully and have come to the conclusion that those marriages should be considered valid; and we have so worded clause (a) of section 3 as to make such marriages valid; whereas in the other class of cases where there is a prohibition under the law they will not be valid. I trust therefore that Mr. Kalyanasundaram Aiyar will not press his amendment because it would really press harshly on those connections which are now considered really respectable. There is no reason whatever why such connections ought not to be considered valid. The next question is that of succession to property. The objection that has been taken in section 23 to succession of property is this: when I originally introduced the Bill the provision was made that wife and children of the husband should take the property jointly and enjoy it as if they formed a tarwad by themselves and as if they formed a Marumakkatayam family by themselves. That was the original provision, but the present provision is that they may enjoy the property as if they were in law tenants in common with the right of partition, each individual taking his or her share of the property. When the matter was investigated by the Commission, four of the members came to the conclusion that the Bill as it stands is right—namely the property is to be enjoyed by them separately each having his or her own share. But Sir T. Muttusami Aiyar took the other view. When the Select Committee came to consider that provision and how it has to be worked out, we found it practically impossible to give effect to it. We drafted the section in a number of ways that suggested themselves to us—there were on the Select Committee the Advo-

cate-General, Mr. Bhashyam Iyengar, myself and other lawyers—in order to carry out the recommendation that the property of the father should descend to the wife and children to be enjoyed jointly by them. One of the great difficulties in the way is that if we say that all of them are to enjoy the property jointly, then any children of the mother after the husband's death by connection other than marriage, say even by concubinage, would become entitled to the property, because they become a branch of the tarwad; that is to say, a man's property would be enjoyed not only by his own wife and children but also by other children who may be born to his widow by others not by any respectable connection or any marriage. We could not get over the difficulty. It was intolerable that a man's property should be enjoyed by any other children born to his widow especially when these children may not have been the issue of marriage. That was one great difficulty that struck us. The only way in which we could work it out was by leaving out the mother and making the children themselves form the tarwad. That is to say, we might say for instance that the children of the father may take the property as if they form the tarwad. But then this sort of estate is unknown to the Marumakkatayam system, namely that of separating the mother and children into two distinct tarwads. Marumakkatayam law knows only the descent from the females but does not recognize the tarwads of which the father is the head. So that we should have to constitute an entirely new estate which is repugnant to the principles of our system. For these reasons—when we found it absolutely impossible to draft the section in order to carry out the intention of keeping the property indivisible and joint—we have altered that section by which property may now be held separately. After all, that, I submit, is not so very important as to justify all this discussion that has been raised with reference to it. The moment we admit that it is desirable for a father to give a testamentary power of disposition—that is to give away the property to the children and others—Your Lordship will see that we break upon the tarwad system, in so far as a man's self-acquisition is concerned. We have already recognized the necessity of leaving it absolutely to the discretion of the father to give away the property to whomsoever he likes without allowing it to lapse to the tarwad. As to the idea of allowing the property to lapse to the tarwad, Sir T. Muttusami Aiyar says that the popular conscience and law are against it. He says distinctly that the popular idea is that the property of every individual should go to his nearer heirs rather than to the members of the tarwad. I would refer those that would like to see it to paragraph 50, page 53, of his report. That is not considered a satisfactory law by the people concerned. Therefore I would point out that the suggestion that the self-acquired property of any individual should descend according to the tarwad system and should be kept a part of the tarwad is a provision which does not find much favour. These are the main alterations that we have made in the Bill, in the Select Committee. There is another alteration which we also made, that is, the alteration in section 24 by which we had left the entire property of the females to descend to her children, as we thought that was the general consciousness of the people. My Hon'ble friend, Mr. Bhashyam Aiyangar, has however brought an amendment to restore the original provisions of the Bill, so far as the children are concerned, by giving them only half the property. These, my Lord, are the main amendments that we have introduced; to some of these, objections have been taken by means of amendments of which notice has been given. In regard to the amendment of the Hon'ble Jambulingam Mudaliyar, it is impossible for me to anticipate the grounds on which that amendment is proposed; with the exception of that, I have replied to the other amendments and stated the reasons which

induced us to make these alterations and I trust that such alterations will meet with acceptance at the hands of the Council. For these reasons my Lord I beg to move “that the Bill be taken into consideration.”

The Hon'ble P. RANGAYYA NAYUDU seconded the motion.

The motion was put and carried.

His Excellency the PRESIDENT.—We will take the amendments in the order of sections.

SECTION 1.

The section runs as follows:—

1. This Act may be called “the Malabar Marriage Act, 1896,” and it shall be applicable to all Hindus in the Presidency of Madras following the Marumakkatayam or the Aliyasantana Law of Inheritance.

The Hon'ble V. BHASHYAM AIYANGAR.—I beg to move that the word “domiciled” be inserted between the words “Hindus” and “in.” I move this amendment in order that there may be no ambiguity in the section. It is stated “it shall be applicable to all Hindus in the Presidency of Madras.” I simply propose the insertion of the word “domiciled,” which word I find in the Indian Majority Act, which prescribes the period of eighteen years for all subjects domiciled in British territory. It is evidently not intended to bring under the scope of this Bill the followers of the Marumakkatayam law, who are domiciled in Native States but temporarily reside in this Presidency. I believe the insertion of this word “domiciled” will not be objected to.

The Hon'ble N. SUBBA RAO PANTULU seconded the amendment.

The Hon'ble C. SANKARAN NAYAR.—I accept it.

The Hon'ble Mr. CROLE.—My Lord, it seems to me that this is somewhat of a refinement. I cannot understand my Hon'ble friend's objection to the present wording of the section. How can a man who is a Hindu and who is in the Presidency of Madras, not be considered domiciled? What is the object of putting the word “domiciled” before “Hindu,” when he lives in the Presidency of Madras. If he is in the Presidency of Madras, he has got all the powers that are proposed to be conferred by this legislation.

The Hon'ble Mr. BLISS.—I beg to point out to the Council that if the amendment which is now under consideration be carried, one of the results may be that a man living on the borders of the British territory, say in Cochin, and desirous of marrying, under this Act, a woman living in a neighbouring village of the Malabar district, cannot contract that marriage. It seems to me that the amendment is out of place.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—It seems to me that we cannot give a law to a man who is living in Cochin although he is living in the borders of the British territory.

The Hon'ble Mr. BLISS.—As a matter of fact a man who comes into the British territory becomes subject thereby to British law. It is not a question of giving a law to a foreigner. If he comes into British territory and gets married, what will be the case? He is not domiciled because he intends to go back to Cochin.

The Hon'ble the ADVOCATE-GENERAL.—The object of the Hon'ble V. Bhashyam Aiyangar in using the word “domiciled” is to meet such cases. The only question is whether it is necessary to put in the word “domiciled.”

The Hon'ble V. BHASHYAM AIYANGAR.—This amendment is proposed just to meet the point raised by the Hon'ble Mr. Bliss. I think this law is intended to provide a form of marriage for British subjects living in this Presidency. Of course the time may come when Native States will also consider the expediency of extending this law to their subjects. But I do not want to go into questions of international law for the purpose of discussing this question before the Council. My very object is that it should not be in the power of a subject of Cochin or Travancore who is a domiciled subject of Cochin or Travancore just to step into the British territory and there contract a marriage under this Bill. Whether the Native States of Cochin and Travancore are bound to recognize it or not is a different matter, involving as it does questions of international law. I do not want to discuss the question as to how far general principles of international law are applicable to Native States.

The Hon'ble the Rev. Dr. MILLER.—May I ask, my Lord, whether it does make any difference whether that word is in or out. It certainly appears to me that it is just the same in both ways. This law is applicable to all Hindus in the Presidency; that means all Hindus habitually living in the Presidency.

His Excellency the PRESIDENT.—What has the Hon'ble Member in charge of the Bill got to say?

The Hon'ble C. SANKARAN NAYAR.—There is no necessity for inserting the word "domiciled." I am disposed to leave the section as it is. As Dr. Miller has said, it is all the same whether it is in or out.

The Hon'ble V. BHASHYAM AIYANGAR.—If you insert the word "habitually," then it may practically answer the purpose.

The Hon'ble S. SRINIVASA RAGHAVAIYANGAR.—I believe there are two classes of persons to be considered,—one class consists of subjects of Native States on the Malabar Coast who temporarily reside for purposes of their own, within British territory, and the other of persons who follow the Marumakkatayam law and are subjects of Her Majesty. The point which the Hon'ble V. Bhashyam Aiyangar has raised has for its object the obtaining of a definite decision on the question, whether this legislation should apply to both these classes of persons whether they are British subjects or subjects of Native States. I think if the law were applied to Native States, probably a consultation with the Governments of those States would be necessary. If the amendment of the Hon'ble V. Bhashyam Aiyangar is accepted, it will remove the necessity for any such reference to them. On that ground I support the amendment.

His Excellency the PRESIDENT.—I personally think that the amendment is rather necessary. It is necessary to avoid the complications that may arise. Taking the case cited by the Hon'ble Mr. Bliss where a resident of Cochin goes into the British territory and marries a lady say in Malabar, he brings her up to Madras for the honey-moon and introduces her to everybody as his wife. But when he goes back to Cochin she cannot be looked upon as his wife nor would the provisions of the Bill apply to him in Cochin. Therefore it seems to me that the complications that might arise in these cases will be put altogether aside, if the word proposed by the Hon'ble V. Bhashyam Aiyangar is inserted. That is my own personal view of the matter.

The Hon'ble Mr. CHAMBERS.—Would a resident in Cochin be domiciled in any circumstances in India?

His Excellency the PRESIDENT.—It is not India, but the Presidency of Madras. Cochin is not in the Madras Presidency.

The amendment was put and carried by a majority, 12 voting for and 6 against it.

The Hon'ble C. SANKARAN NAYAR.—I propose that section 1 as amended be passed.

The Hon'ble N. SUBBA RAO PANTULU seconded the motion.

The motion was put and carried.

SECTION 2.

The section runs as follows:—

2. In this Act unless there is something repugnant in the subject or context:

'Sambandham' means the formation of an alliance between a male and a female by reason of which alliance they, in accordance with the custom of the community to which both or either of them belong cohabit or intend to cohabit as husband and wife. 'Children' means sons and daughters of a male or female whose Sambandham has been registered as a marriage under this Act, whether born before or after such registration. But it shall not include step-sons or step-daughters and in the case of any one whose personal law permits adoption, it shall include adopted sons and daughters.

'Marriage' with its grammatical variations and cognate expressions means, except in section 3, clause (a), a sambandham registered under the provisions of this Act.

'Tarwad' means and includes all the members of a joint family with community of property governed by the Marumakkatayam or the Aliyasantana Law of Inheritance.

The Hon'ble V. BHASHYAM AIYANGAR.—I beg to propose the omission of the words "the formation of" after the word "means," as it is unnecessary to have them. This is merely a verbal amendment.

The Hon'ble C. SANKARAN NAYAR seconded the amendment.

The amendment was put and carried.

The Hon'ble V. BHASHYAM AIYANGAR.—I propose the insertion of the word "person" between the words "male" and "and" and between the words "female" and "by." Instead of "male" and "female," I say "male person" and "female person."

The Hon'ble P. RANGAYYA NAYUDU seconded the amendment.

The Hon'ble C. SANKARAN NAYAR.—I see no objection to it, but the question is whether it is necessary.

The Hon'ble V. BHASHYAM AIYANGAR.—I adopt it from an English Act.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—It may be confounded with some other animal.

The Hon'ble V. BHASHYAM AIYANGAR.—Another amendment of which I gave notice in regard to this section is the omission of the word "whose" and substitution of the following: "person, such sons and daughters being the offsprings of a." But since coming into this room, a shorter amendment has been suggested to me which is substantially the same as that found in the Agenda paper. That is: omit the words "a male or female," and in lieu thereof, insert the word "parents." Then the definition will run thus: "'Children' means sons and daughters of parents whose

sambandham has been registered as a marriage under the Act." The necessity for this amendment is that as the definition now stands it might also include sons and daughters of a male or female, though they are not sons and daughters of a sambandham which has been registered under the Act. It might include the sons and daughters of a male or female who has contracted a marriage under this Act and also his or her sons and daughters by a sambandham not registered under this Act. As our object is to include only the offspring of a marriage under this Act, this amendment is proposed.

The Hon'ble C. SANKARAN NAYAR seconded the amendment.

The two amendments were put and carried.

The Hon'ble V. BHASHYAM AIYANGAR.—I withdraw my amendment, to omit the words "has been" after "sambandham."

The Hon'ble Mr. BLISS.—May I ask the Hon'ble Member in charge of the Bill what the word "it" means in the sentence "but it shall not include, &c." I think we ought to have an amendment to make it all right.

The Hon'ble C. SANKARAN NAYAR.—"It" means "children." If the Advocate-General thinks it necessary, we may have an amendment.

The Hon'ble the ADVOCATE-GENERAL.—It is better to substitute the word "children."

The Hon'ble C. SANKARAN NAYAR.—I propose to omit the word "it" and substitute the word "children."

The Hon'ble the ADVOCATE-GENERAL.—I would strike out the full stop after the word "registration," substitute a semicolon, and omit the word "it." Another verbal amendment seems to be necessary—namely put a full stop after step-daughters, and omit the word "and," commencing what follows as a new sentence and altering the subsequent "it" into "children."

The Hon'ble C. SANKARAN NAYAR seconded the amendment.

The amendment was put and carried.

Section 2 as amended was put and carried.

SECTION 3.

This section runs as follows:—

3. A marriage between Hindus both or either of whom follow the Marumak-katayam or the Aliyasantana Law of Inheritance may be registered under this Act as hereinafter provided subject to the following conditions:—

(a) Neither party must be subject to a personal law of marriage according to which he or she, as the case may be, cannot validly contract a marriage with the other party.

(b) The relation of the parties must not be such in respect of consanguinity or affinity that a sambandham between them is prohibited by any custom or usage applicable to the community to which they or either of them belongs.

(c) Neither party must at the date of the notice under section 5 have a husband or wife living whose sambandham with her or him has been registered under this Act and which marriage is not null and void under section 15.

(d) The parties must not belong to different communities between the members of which, according to the custom or usage applicable to either community, cohabitation is prohibited.

(e) The sambandham must have been formed in accordance with the customary ceremonies, if any, prevailing in the community to which both or either of them belongs.

(f) A party to a sambandham who is a minor must have obtained the consent of his or her legal guardian to the registration of the sambandham as a marriage.

The Hon'ble V. BHASHYAM AIYANGAR.—I beg with the permission of His Excellency the President to suggest a verbal amendment which is not on the paper, namely, to substitute the word "sambandham" for "marriage." The reason for this is that marriage is defined as a sambandham which has been registered and therefore to say that a marriage shall be registered means that a registered sambandham shall be registered.

The Hon'ble the ADVOCATE-GENERAL seconded the amendment.

The amendment was put and carried.

The Hon'ble K. KALYANASUNDARAM AIYAR.—I beg leave to withdraw the amendment that stands in my name for the omission of the words "or either" in the beginning of the section, after the declaration made by the Hon'ble Sankaran Nayar.

The Hon'ble Mr. CROLE.—My Lord I would suggest for the sake of convenience that the Hon'ble Jambulingam Mudaliyar's amendment to clause 1 (a) of section 15 be taken up when section 3 is discussed. Your Lordship will find that it is absolutely the same provision that Mr. Jambulingam Mudaliyar objects to in section 15, which finds a place in section 3 as clause (a). He has not objected to clause (a) in section 3, but I object to it. It will save time which would otherwise be taken up by a double discussion, if his amendment is taken along with this section.

His Excellency the PRESIDENT.—Then the Council rules will have to be suspended.

The Hon'ble Mr. CROLE.—Yes. I move that rule 49 be suspended, which says that the amendments shall be considered in the order of the sections to which they relate.

The Hon'ble C. JAMBULINGAM MUDALIYAR seconded the motion.

The Hon'ble V. BHASHYAM AIYANGAR.—I oppose the motion on the ground that all that the Hon'ble Jambulingam Mudaliyar objects to is the introduction of clause (a) of section 3 into section 15. As he puts it in his minute of dissent, Mr. Jambulingam Mudaliyar concedes that clause (a) should be one of the conditions subject to which only a marriage should be allowed under this Act. All that he proposes is that if, notwithstanding the ground of invalidity of marriage, registration has as a fact taken place, then the marriage ought not to be null and void under section 15. Section 3 enumerates all the conditions, compliance with which is necessary for the registration of a sambandham as a valid marriage. Section 15 divides these conditions into essential and non-essential. Some of them are regarded as mere irregularities which will not be considered as invalidating a registered sambandham, and if notwithstanding the existence of the irregularities a sambandham is registered, that irregular sambandham is not invalid as marriage. Other grounds of invalidity are considered in section 15 as essential, which go to the very root of marriage; and therefore even if such a sambandham as contravenes clause (a) should be registered, it should nevertheless be null and void. That is the question Mr. Jambulingam Mudaliyar raises, and that will be well discussed when we come to section 15, which divides the conditions into two classes, namely, essential and non-essential; and therefore I do not see why we should now go to the consideration of section 15.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—I wish to give an explanation. I entirely agree with Mr. Bhashyam Aiyangar and all my views are expressed in the minute of dissent. The only reason why I seconded the Hon'ble Mr. Crole's motion is to save the double discussion. It is only in order to save time I was in favour of my amendment being taken up now; otherwise I am entirely at one with the Hon'ble Bhashyam Aiyangar as to the manner in which he has put my amendment.

The Hon'ble C. SANKARAN NAYAR.—I also oppose the motion for the suspension of rules. There is a wide difference between the question raised by the Hon'ble Mr. Crole and that by the Hon'ble C. Jambulingam Mudaliyar. Mr. Jambulingam Mudaliyar is willing to leave it as one of the conditions of marriage, but Mr. Crole is disposed to go much further and not even regard it as a condition of marriage. That is a wide difference of principle, and it is better to keep the two questions distinct. To afford an opportunity to Mr. Jambulingam Mudaliyar to discuss his own question, it is advisable to consider it when we reach section 15. It is not advisable to raise this question now in order to affect the passing of section 3 with which Mr. Jambulingam Mudaliyar has no quarrel.

The motion to suspend Rule 49 was then put and lost, the Hon'ble Mr. Crole being the only member voting for it.

The Hon'ble Mr. CROLE.—I should like to know if your Lordship intends to put the whole section before the Council or clause by clause, because I intend to object to clause (a).

His Excellency the PRESIDENT.—Is yours a verbal amendment?

The Hon'ble Mr. CROLE.—No, my Lord. It is a negative proposition. If your Lordship puts the proposal to pass (a), then I intend asking the Council to negative it. It is impossible to embody it as an amendment.

His Excellency the PRESIDENT.—If the Hon'ble Member will bring forward his remarks when we put the section clause by clause, he will be heard. At present we will take the amendments in the order in which they appear. We now take the amendment to clause (c).

The Hon'ble V. BHASHYAM AIYANGAR.—I propose that the following words be added at the end of clause (c) "or with whom he or she has been otherwise legally married." The object of this amendment is to ensure that no person who has already a wife living shall be in a position to register a marriage under this Act. This is put by way of precaution, so as to prevent the possibility of a marriage registered under this Act being really a polygamous marriage. No doubt we have taken care to prevent that so far as marriages under this Act are concerned. In the case of the Tiyyan as put by the Hon'ble Sankaran Nayar, it is by no means yet certain whether he has or has not a personal law of marriage. In the case of Tiyyans, who follow the Makkatayam law as distinct from Marumakkatayam law, it is not quite decided whether that section of Tiyyans in regard to whom the law of inheritance is according to Makkatayam system, has or has not an institution of marriage. But if they have an institution of marriage, and if according to that institution they marry a wife and that wife is living, it is intended that they shall not be in a position to contract a marriage under this Act. As the Hon'ble Sankaran Nayar has clearly explained the object of this Act is to bring within its scope Tiyyans because they form one class and are of the same caste, though some of them follow the Makkatayam system, that is the law of inheritance according to the descending line from sons to fathers.

Therefore if a Makkatayam person has a personal law of marriage and has married a wife—by a marriage which is valid according to his personal law—he cannot be allowed under this legislature to contract a second marriage while his first wife is living.

The Hon'ble S. SRINIVASA RAGHAVAIYANGAR.—In supporting the amendment I wish to make a suggestion to the Hon'ble Member as to whether the words "he or she" should not be "she or he."

The suggestion was accepted by the mover.

The Hon'ble Mr. BLISS.—There is another point I want to raise in regard to the amendment. It says "he or she has been otherwise legally married." I do not think that would do. The point is that the previous legal marriage must be subsisting; and therefore "has been" must be "is." I think that is a point worth considering.

The Hon'ble V. BHASHYAM AIYANGAR.—That is not necessary as it is mentioned in the clause "husband or wife living."

The Hon'ble Mr. BLISS.—There may have been a legal divorce.

The Hon'ble V. BHASHYAM AIYANGAR.—Then he would not be a husband. However I do not object to the substitution of "is" for "has been."

The Hon'ble Mr. BLISS.—Before I sit down there is another question I have to ask. In the last part of clause (c) of the section, we find "which marriage is not null and void under section 15;" but the Hon'ble Bhashyam Aiyangar in substituting the word "sambandham" for "marriage" in the beginning of the section, explained that the words "registered sambandham" carried with them the idea of marriage. That indicates whether the word "marriage" in clause (c) should not be registry.

The Hon'ble V. BHASHYAM AIYANGAR.—It is the registry that makes the marriage.

The Hon'ble Mr. BLISS.—The sambandham becomes a marriage by reason of registration.

The Hon'ble V. BHASHYAM AIYANGAR.—It is the marriage that becomes null and void.

The Hon'ble Mr. BLISS.—The Hon'ble Member has already explained that we do not want to use the word "marriage," because the use of the word "registered," with "sambandham," includes the idea of marriage. I thought that an excellent argument, and accepted it. If that is the case, you ought to use in clause (c) "registry" instead of "marriage," in which case it would be "which registry is not null and void." When you go to section 15, you ought to say "a registry shall be null and void" and not a "marriage."

The Hon'ble V. BHASHYAM AIYANGAR.—The definition of the word marriage is sambandham registered, and therefore I say marriage is null and void. I do not want to separate the two. Marriage is sambandham registered.

The Hon'ble S. SRINIVASA RAGHAVAIYANGAR.—It does not become marriage if it is null and void.

The Hon'ble V. BHASHYAM AIYANGAR.—Therefore, I say that there can be no impediment to a marriage if the sambandham which is registered is not really a marriage. If it is a marriage that is null and void, then that will be no impediment to his contracting another marriage, although the pretended wife may be alive.

The Hon'ble S. SRINIVASA RAGHAVAIYANGAR.—Is this phrase correct: "which marriage is null and void"? Can you call it "a marriage"?

The Hon'ble V. BHASHYAM AIYANGAR.—Why not? It is.

The Hon'ble C. SANKARAN NAYAR.—A marriage null and void is equally a marriage.

The Hon'ble S. SRINIVASA RAGHAVAIYANGAR.—A legally registered sambandham is marriage.

The Hon'ble the ADVOCATE-GENERAL.—It appears to me that the word "marriage" is right, because sambandham registered is marriage, but marriage may be illegal—two distinct things. Section 15 declares in what cases marriages are illegal. If a marriage is illegal, registration is null and void.

The Hon'ble S. SRINIVASA RAGHAVAIYANGAR.—Then marriage does not mean valid marriage.

His Excellency the PRESIDENT.—The amendment before the Council is to add the following words "or with whom she or he is otherwise legally married," at the end of clause (c).

The amendment was put and carried.

The Hon'ble V. BHASHYAM AIYANGAR.—I now beg to propose the following amendment:—"After clause (e) insert the following as clause (f): 'The male person should be of the age of eighteen years or upwards and the female person of the age of fourteen or upwards at the date of the notice under section 5.' Change clause (f) into clause (g)."

This is not a mere verbal amendment; it introduces another condition for the registration of a sambandham, though under section 15, it will not be an essential condition which would make marriage null and void. The notice prescribed under section 5 is the notice of intention of both or either of the parties to register a sambandham. The object of the amendment is not to prohibit a sambandham between persons below the age of eighteen and fourteen, respectively, in accordance with the present usage, but what I submit is that when the legislature for the first time introduces in a community an institution of marriage which is to have civil consequences, there is no reason why the legislature should not prescribe a limit of age, such as I propose, namely, fourteen in the case of females and eighteen in the case of males. There will be really no hardship caused by this provision to any class of people in Malabar. If they choose to contract a sambandham as they do at present when they are infants, there is nothing in the amendment to prevent it. But when they seek to convert that into a marriage by getting it registered, I think it is only right that the legislature should prescribe the limit of age. It will have an indirect educative effect on the people for they may not contract a sambandham as early as they do now when they know that that sambandham cannot be consummated into a marriage by registration, until they attain the respective ages of fourteen and eighteen. In other words, while we leave them at liberty to contract a sexual union as they do at present, we introduce this provision for the purpose of recognizing it as marriage only when they are fourteen and eighteen years of age, respectively. The indirect beneficial effect will be that when this institution of marriage becomes popular in Malabar, the males and females will voluntarily postpone the contracting of sambandhams until they are advanced in years; therefore I propose this amendment.

The Hon'ble Mr. CROLE.—My Lord, I second the amendment most cordially. I need not say more at present in the way of reasons than this that it will tend to the

permanency of union in Malabar and will in some ways neutralize the loose divorce provisions of this Bill.

The Hon'ble C. SANKARAN NAYAR.—My Lord, though I am in full sympathy with the spirit of this amendment, yet there is one difficulty which I feel compelled to point out to the Council. No doubt its educative influence will be very great; if this Bill is passed with this provision, it is likely that people, when they find that they cannot register their customary marriages before the man is eighteen and the girl is fourteen, may, in course of time, cease to contract such marriages before that period. But, for the present, we have to face another difficulty. It is not at all unusual for girls before they are fourteen to form the customary social marriages, and it is impossible to prevent them. It cannot be prevented by any legislation, and it is not attempted to be done. The result of this amendment would be that if such sambandhams were formed, either before the boy is eighteen or the girl is fourteen, you would prevent the registration, though the cohabitation and actual consummation might have taken place already. You would prevent registration until the boys attain eighteen and the girls fourteen. That is the difficulty which stares me in the face. The executive Government has considered the question and it came to the conclusion that it was unnecessary to fix a limit of age, in its proceedings of September 1892, where it said that the Government is of opinion that the law should not lay down any limit of age at which the customary marriages ought to be contracted. I am in full sympathy with any movement which has the effect of raising the limit of age. But if you adopt the amendment of Mr. Bhashyam Aiyangar, the result at present would be that we might stop registration for certain customary marriages which are really entered into before the parties arrive at the ages specified. The only question therefore is whether it is worth while to insert a provision of this sort when we have that difficulty. Practically the same object is attained, at any rate, in my view, by another amendment which the Select Committee has introduced in section 18 of the Bill. According to section 18, a husband has the guardianship of the wife only when she has arrived at the fourteenth year, even though the marriage may have been registered before that year. I do not believe that the Hon'ble Member's amendment would advance the case much further, though no doubt it lays down a very desirable principle. Considering the difficulty I have pointed out I doubt very much, my Lord, whether it is advisable to pass this amendment.

The Hon'ble V. BHASHYAM AIYANGAR.—I may be permitted to say one word of explanation. According to the definition of children, children born even before registration will be legitimate; it includes children born after sambandham and before registration.

The Hon'ble N. SUBBA RAO PANTULU.—I do not see any difficulty in what was stated by the Hon'ble C. Sankaran Nayar. The object of the amendment is to advance the age of marriage and to enable the parties to understand clearly the nature of the alliance which they wish to enter into and voluntarily have it registered before the Registrar. I do not see any difficulty against this provision; on the other hand I think it will be of immense benefit to the community at large. I therefore support the amendment.

The Hon'ble S. SRINIVASA RAGHAVAIYANGAR.—My Lord, I beg to say one word in support of this amendment. If I understand matters rightly, as there is no religious observance connected with marriage, sambandham must commence with the fact of man and woman living together. Under the Age of Consent Act, such living together

cannot take place before the girl is twelve years of age. The fixing of the age limit at fourteen for the registration of a sambandham requires only two additional years; seeing the character of sambandham, which is not a religious ceremony at all, but something which denotes the fact of husband and wife living together, I think it is only right and proper that the amendment should be accepted; and it ought not, so far as a man outside the Malayalam community can speak on a subject like this, to cause much inconvenience.

The Hon'ble Mr. STURROCK.—My Lord, I am reluctantly compelled to oppose the amendment. The matter was fully considered by the Select Committee and we came to the conclusion that we cannot safely go further than what is mentioned in section 18 about guardianship. It seems to me that an essential part of the object desired by the Act is that sambandhams and registration should, as far as possible, be simultaneous. We cannot stop an early sambandham except by raising the age of consent; and if we recognise as right that sambandham and registration are not to be simultaneous, it seems to me that we will be encouraging or permitting early unions which may be changed before the time when they can be legally registered.

The amendment was put to the Council and lost, eight voting for and nine against it.

His Excellency the PRESIDENT.—I will put the section clause by clause to the Council. Does clause (a) stand part of the Bill?

The Hon'ble Mr. CROLE.—My Lord, I rise to oppose by direct negative the insertion of clause (a) in section 3 of the Bill on this ground among others that it has been suddenly sprung upon the Council for reasons which I cannot regard as sufficient. They are to be found on page 2 of the report of the Select Committee which has been expanded by my Hon'ble friend Mr. Sankaran Nayar. The Hon'ble Member in charge of the Bill has said, to put it shortly—I think I have not misunderstood him—that sambandhams between Brahmans in Malabar are quite different from the sambandhams between a Nayar and a Nayar, for instance. I think that is the position he assumed; and in support of that position he quoted the late lamented Judge Sir T. Muttusami Aiyar. It is always dangerous to quote a judge or a lawyer by extracting a particular portion of his opinion, and divorcing it from the rest. He quoted 53, my Lord; and against 53 I quote 55. In order to save time I shall merely read those particular words which are necessary for my argument.

"On this view," says the learned Judge "a Brahman or a Kshatriya woman was prohibited from marrying a Kshatriya or a Vaisya, respectively, whilst a Brahman or Kshatriya was at liberty to marry a Kshatriya or Vaisya woman. The one connection was said to be in the inverse order and to lower the status of the woman and her child, and was forbidden. The other connection was considered to raise the status of the mother and the child and was described to be in the direct order, and it was therefore permitted." These doctrines are respectively called *anuloma* and *pratiloma*.

The Hon'ble C. SANKARAN NAYAR.—Read the next sentence.

The Hon'ble Mr. CROLE.—I am going to read it. "The first was probably designed to give the woman by a solemn ceremony a caste status so that its loss might operate as a punishment, and the second and the third were designed to restrict the original tribal polyandry to one with a man of superior caste or of the same division of caste, the violation of the rule being punished with loss of caste. As the Nambudri Brahmans belonged to the highest caste, the practice of women consorting with them

came to be regarded as the approved form of sexual usage, and it was generally resorted to by the aristocratic classes, who were better able to secure them as consorts for their women. The middle and lower classes regulated their practice in the same way and restricted the union of their women with persons of the same and superior divisions of caste."

I do not know how this sudden discovery of the difference between the sambandham of the Nambudri and the Nayar and that between the Nayars themselves came about. It is not I alone that made the mistake, but the Government of Madras in its Order, dated 26th September 1892, has committed the same mistake; and it was not until the report of the Select Committee was laid before the Council, that this supposed mistake was found out. The Government says:—

"It appears to Government that the case may be briefly stated as follows:—The classes governed by the Marumakkatayam Law form sexual connections which are, at the time of commencing them, intended to be permanent until the death of either of the parties and which in the great majority of cases are so; these connections are publicly formed and socially recognized and are accompanied by ceremonies of a characteristic kind which have nothing in them of a religious element but which otherwise are as much marriage ceremonies and entitled to the same respect as marriage ceremonies elsewhere; the connections have, however, no legal consequences, and, as they are terminable at the will of either party, they receive no legal recognition or protection. His Excellency in Council considers that marriages performed under the Marumakkatayam Law are entitled to legal recognition and protection and that the mere statement of the case as above is sufficient to show the propriety of legislating on the subject. The Courts have hitherto refused to recognize these social marriages in Malabar as legal marriages, and it will be observed, from paragraph 15 of his memorandum, that the President is of opinion that such recognition is not likely to be accorded in the future."

It is perfectly evident that we were all under the impression that the Brahman sambandham and the Nayar sambandham and the sambandham formed by any other class stood on the same basis. In pursuance of that dictum, and in order that there should be no misunderstanding on the matter I have extracted another paragraph from Sir T. Muttusami Aiyar's memorandum to the following effect:—"That marriage to be legalized must be between persons who are permitted to cohabit with each other by the custom obtaining for the time being in the caste to which they belong." This is quite unrestricted and has no limitations whatever. So much for the new assertion that Brahmans are outside the possibility of any legislation on this occasion under this Bill.

This is a matter, my Lord, which is one of extreme delicacy; and an assembly of this character is far from the right place to discuss questions of this nature. In any thing I may say I hope that no one will suppose that I am guilty of an intentional offensiveness when I complain of this attempted exclusion and exception in favour of the Brahmans of Malabar. If the Brahman of Malabar is excluded from the scope of this Bill in this way, no matter what may be his wish and the wish of his consort, these two can never enter into what is recognized by the law or by society as a legal marriage. All I have got to say is that every soul in Malabar will consider that this Legislature has put its seal on the old arrogant claim of the Brahmans of that coast that Nayar and other women are the property of the Nambudris. Now I do not suppose that there is any British legislature in existence which will dare to accept such

a responsibility or give sanction to such a view; and I protest against such a position in the interest of morality and good government. In what I am going to say on this subject I do not propose to discuss it as a lawyer, or in any way other than from a sociological point of view. I want to speak as a man of common sense to common sense men. Now, Malabar is one of the few tracts on the face of the globe the people of which are supposed to practise polyandry—that is to say before the earliest dawn of history we find the women in Malabar contracting sexual relations with more men than one. Worse than that, they were not men of the same family; they were strangers. I may say—I think I am right in saying—that in every other country on the face of the globe in which polyandry is practised the association is between the brothers of the same family, or relations. In Malabar, as far as history goes, it has not been so; a woman took to four, eight and sometimes even twelve strangers, and they made arrangements amongst themselves for consorting with her. This is what is known by students of these matters as the ruder form of polyandry. Now in any shape or form either polygamy or polyandry is a semi-barbarous institution. In the extremely savage state people as a rule were monogamists. After they left the savage state, owing to various circumstances such as wars and one thing and another, polygamy and polyandry came in. Both in regard to polyandry and polygamy, as civilization advanced, monogamy asserted itself. That has been exactly the case in Malabar. It is admitted in the report before us that polyandry in Malabar is dead. I ask what has taken its place? Some sort of irregular association is formed, terminable at the will of either party—it is supposed to last for life—and there is no provision to prevent the breaking up of the happiness which is supposed to ensue from the married state. An adulterer, as he would be called under other circumstances, may come in; he takes the place of the person who is consorting with the woman. In point of fact, in Malabar the feeling of jealousy has been so slight, that men did not find anything wrong or anything objectionable in making arrangements to consort with one woman, up to the limit of twelve. In process of time as changes took place and civilization advanced, relations became somewhat changed. That is to say, the educated classes have increased, civilization has been very much diffused among the people by the Madras Railway running into the very centre of the tract, and the consequence has been that it is the fashion now for a Malabar man and woman to live singly together, and they are proud of the change. But, as I say, there is no protection for them against the arrangement that I have referred to. If an adulterer comes in, he cannot be prosecuted, and there is no alternative but to let the happy home be shivered to pieces and children be left without the care of the mother. In order to redress this state of matters after mature discussion this Bill was launched before the Council.

But there is another series of connections to which I alluded in my opening remarks and which have been going on all this time—that is the relation between Brahmans, both Nambudris and Tamil Brahmans or Pattars, with the native women of the country. With regard to the Nambudri class, for reasons of their own, they arrange that none but the senior member of the family should marry, and thus the property remains entailed. The unfortunate women of the family remain in enforced celibacy as a rule, and the young men go out and form connection with wealthy and princely Nayar and other ladies. Every princely and noble house in the West Coast is propagated and continued by these alliances, and it would astonish no body more than the members of these houses or families, to be told that, when the Brahman is brought into the house, and is fed, clothed, and kept in funds, he is not treated in every respect as the husband of the princess or the lady. No doubt, owing to the peculiar state of customs in Malabar, there has been far too much of a temporary character in these

connections up till now. But as I say there is no greater temporariness in the Nambudri sambandham than there is in the Nayar sambandham. I made very particular efforts to get at the truth during a long tour in the interior of the country, and I was perfectly astounded to hear to-day that there was the difference alleged. Supposing there was a difference, what I say is that this Council has no business to recognize it, because not only would it stultify itself, but it would reduce to a very low point the state of public morality. It must be recollected that though it is asserted that the Nayar women of Malabar are, without exception, against any change in the present state of the law, there are certain signs that, if these women were allowed to be free agents, they would not agree to the arguments that have been preferred in favour of the course to which I am now objecting. I will cite for instance the case of a Nambudri—it has become too common now—who enters into union with a Nayar lady, and, having been kindly treated, supplied with funds, and treated in all respects as a husband, and finding after the birth of one or two children that her charms have become impaired, deserts her probably because a richer lady has bribed him to enter her family. This has been the case in more than one instance. The deserted spouse cannot resort to the civil court for redress, because she is not recognized there as a wife, but only as a concubine. She has to resort to the Magistrate like any waif and stray from the bazaar, and ask that her children may be treated as illegitimate children, and that the Nambudri should be called to pay for their maintenance. Such cases are in existence in Malabar. I cite that as proof to a certain extent of the very grave doubt as to the entire concurrence of the Nayar women in Malabar with any proposal such as is contained in clause (a) of section 3 and the corresponding clause in section 15.

In regard to the Bill itself the want of it as regards Nayars is admitted. No person who has friends, and intimate friends, as I have in the community, can help being positively sick at heart at the piteous tales recounted of the scorns and slights that are inflicted upon the members of that community although they have practically entered into wedlock, and remained in it for a long time. They claim consideration for the Malabar Marriage Bill on this ground among the others that it is absolutely necessary to enable them to consort with other Hindus on terms of equality. That case is easy, and is practicably disposed of, as I find in the amendments not a single dissentient voice. What I am now engaged upon is to try to convert and persuade this Council that if it is necessary in regard to the Nayar man and Nayar woman, it is as much necessary in regard to the Nambudri man and Nayar woman, or woman of any other caste. We should give the same permission to all castes that we give to the Nayar man and Nayar woman. Having done that, whatever fault there may then be is the look-out of the parties; and after this Council,—and the Legislature,—has done what it can to redress the most undesirable state of things, it is impossible to go very much further. I may, however, remark that, in 1860, Sir Henry Ward in Ceylon issued an ordinance prohibiting the practice of polyandry in that island, so that there is a precedent for going very much further than has been done in this Bill. That did not meet with the very least resistance from the outset. In Ceylon there are at the present moment certain semi-savage castes who have to obey that ordinance; and that it is the law of the land is undoubted. If this has occurred on the borders of Madras without an outcry what reason can there be for the fuss that is being made in regard to the introduction of a provision very much less stringent than that. I accept the Bill as it stands as an instalment of justice, but I would warn your Lordship, especially with reference to the subsequent provisions of the Bill, namely the provisions for divorce, that this Bill will never be out of the

Council until you go very nearly to the extent to which Mr. Sankaran Nayar originally proposed. The opposition to this Bill, as can be seen from some of the papers that are now on the table, is really not an opposition of any outraged prejudice. The opposition is by interested parties, Brahmans especially, who are actuated by fear that many years will not pass over our heads before these provisions will sweep away all remains of polyandry, immorality, and unchastity in Malabar. I have said, as a rule of sociology, that polyandry and polygamy are always tending to evolution into the monogamic form. I quote in support of that the words of Herbert Spencer. He says:—

“The monogamic form of the sexual relation is manifestly the ultimate form; and any changes to be anticipated must be in the direction of the completion and extension of it.”

So that the demand that has been made by the Nayars—and the same, I believe, will be the case if Brahmans and Nayar women are allowed to contract marriage—is merely the operation of an ordinary organic law of evolution. There is nothing surprising about it. It occurred to me the other day to examine the census returns of South Malabar to see if there was any excuse for the loose connections in that part of the country. But I find that, instead of there being more men than women, there are less men than women, so that there is no possible explanation for any tendency to polyandry in Malabar at the present moment. There is one other objection to making the Nambudri or the Brahman responsible for entering into sexual relations to be consummated by the registration of marriage with a Nayar woman, namely, that civil marriage is a heresy unknown to Hindustan. When I heard it urged in private for the first time I said nothing, but went home to look up Sir Henry Maine who I know must have discussed it. That very objection was alleged when the Brahmo Samaj Marriage Bill as it was called was before the Imperial Council in 1868. If I may intrude so far on the time of the Council as to read this passage, I think I shall be perfectly justified because it will clear up the objection as to the invalidity of civil marriage in any caste in Hindustan. He says:—

“The next objection—and no doubt this is a more genuine and sincere objection—is that civil marriage is quite modern in Europe and that India may not be sufficiently advanced to dispense with the necessity of the forms of religious marriage. The fallacy of the argument does not lie in the mis-statement of the fact, but in the application of it and in the assumption that it has any relevancy to the condition of India. It is true that civil marriage which was once an universal institution of the western world disappeared for several centuries and was only revived about a hundred years ago by the Emperor Joseph II. in the hereditary States of the House of Austria. Probably the last relics of the absolute obligation of religious marriage are at this moment disappearing in Spain. But the theory which imposed religious marriage in Europe has never had any counterpart in India. In European countries the legislator believed or professed to believe that some one religion was true, and could alone impart efficacy to the rites by which marriage was celebrated. That was his justification whatever it was worth. For the protection of that one religion, and in its interest, he compelled everybody to submit to its ceremonial. But there never has been anything like this in India under the British Government, and whatever was the theory of the Muhammadans, there was nothing like it in their practice. It is a famous saying of a well-known French Statesman that the ‘law should be atheistic.’ Well, if the expression be permissible, the law of marriage has in this country always been atheistic, in the sense that it has been perfectly indifferent between several religions of which no two could

be true. One may be true but not two. This peculiarity of Indian law results in the rule that a man may at pleasure desert the religion in which he was born and contract a civil marriage. A Hindu can become a Christian or a Muhammadan, or he may adopt the Fetichism of the Kols Santhals, and he can contract a lawful marriage, but if he stops short of that, as the law stands, marriage is denied to him. Take the case of a Hindu becoming a Muhammadan, a kind of conversion which goes on every day of our lives. A convert is compelled by the principles of his new religion to regard the faith of his ancestors as hateful and contemptible. But if he does not go so far as that, if he retains some tenderness for his old faith, and continues to regard it as not absolutely evil, he is debarred from all share in the fundamental institution of organized civil society. Such a state of the law is unexampled in Europe. Nothing in the western world has any relevancy towards it or bearing on it.”

Now, my Lord, I would ask what comes of the objection to civil marriage? In regard to the civil consequences to the Nambudri by the retention of his liability under the permissive legislation now proposed, it is perfectly easy for him to start his family as a new Hindu family. This has been quite common in India, and has produced many of the sub-divisions of castes and families now in existence. In regard to the property it seems to be no valid ground of objection that it would impose the new wife and progeny on a family which is not inclined to receive her. Where there is a will there is a way.

I look upon the proposal as making an unjust distinction between Nayar women in Malabar, and as also tending distinctly to the degradation of marriage. I hold in my hand the newest work on the subject, that by Professor Westermarek of the University of Finland, which is in many ways a remarkable one, written by a foreigner in language perfectly exceptional in its idiomatic correctness. In conclusion, I propose to read the following passage from that work in regard to the subject of marriage:—

“In any case, there is abundant evidence that marriage has, upon the whole, become more durable in proportion as the human race has risen to higher degrees of civilization, and that a certain amount of civilization is an essential condition of the formation of life-long unions. It is evident that, at the early stage of development at which women first became valuable as labourers, a wife was united with her husband by a new bond more lasting than youth and beauty. The tie was strengthened by the bride-price of the marriage portion. And greater consideration for women, a higher development of the paternal feeling, better forethought for the children's welfare, and a more refined love-passion have gradually made it stronger, until it has become, in many cases, almost indissoluble. A husband in the most advanced societies is no longer permitted to repudiate his wife when he likes; a wife cannot, without more ado, divorce herself from her husband. Marriage has become a contract the keeping of which is superintended by the State, and which may be dissolved only under certain stipulated conditions.”

It is this obligation on the part of Government that I am particularly anxious to emphasize in my opposition to the amendment of the Select Committee. Professor Westermarek sums up the whole matter thus:—

“Marriage, generally speaking, has become more durable in proportion as the human race has advanced. Marriage has thus been subject to evolution in various ways, though the course of evolution has not been always the same. The dominant

tendency of this process at its later stages has been the extension of the wife's rights. A wife is no longer the husband's property, and according to modern ideas, marriage is, or should be, a contract on the footing of perfect equality between the sexes. The history of human marriage is a history of a relation in which women have been gradually triumphing over the passions, the prejudices, and the selfish interest of men."

I call upon the Council to do something to assist the women of Malabar to win a victory over the self-interested men in that region.

Now it has been said that the retention of these two clauses to which I have made allusion—that is, to make a distinction in favour of the Brahmans—would do no harm to the marriage which has to be legalized by the Bill as it would otherwise stand. I say that it is not so. It so happens that Malabar is the most priest-ridden district in the whole of the Madras Presidency; and it so happens that the Brahmans contract relations with the women of princely, noble, at any rate, richer classes, but take very good care to have nothing to do with the poorer classes. The consequence of an exception being made in favour of the Brahmans in this Bill would therefore be to tend to make marriage unfashionable and to degrade it from a social point of view. Moreover, I do not see why advantage should not be taken of the present opportunity to make the Brahman responsible for the spouse he chooses to take. Why should he not marry in his own caste? It is a notorious fact that at present the morality of Illoms—as Brahmans' houses and compounds are called—situated on the borders of mountains,—is very low indeed, and naturally so when the men are spread over the country living with foreign women. I say if you insist upon making the marriage of a Brahman with a Nayar permissible, if you indirectly incite the woman to demand that the Brahman shall enter into a registered sambandham, you will conduce to morality, because you will insensibly influence the Brahman to marry among his own people, and to obviate the very undesirable state of matters that exists at the present time. Such a provision, my Lord, would be, in my opinion, beneficent enough to signalize any Government or particular Administration or any Legislative Council; and I must protest in the name of decency, morality, and civilization, with all the force that any man may be capable of, against the attempt to mangle the original intention and scope of this Bill in the manner now proposed.

The Hon'ble Mr. STURROCK.—My Lord, as a member of the Select Committee, I should like to say a few words on the changes which have taken place in the Bill. Mr. Crole has opposed them in the interests of morality and good government, but I trust all of us are equally interested in the cause of morality and good government, and the only question now is how this may be best attained. I do not propose to follow Mr. Crole in his dissertation on the evolution of monogamous marriage, but I propose to confine myself to a few remarks as to how it is best to carry out the intention of the Bill. In order to decide on the propriety of rejecting or adopting the amendment before us, we must bear in mind that the avowed objects of the legislation on which we are now engaged is to afford legal recognition to unions which are, to all intents and purposes, real marriages, but which the Courts have declined to recognize as such, as the parties concerned are governed by a matriarchal law of inheritance which takes no cognizance of the institution of marriage. In submitting its proposals to the Government of India in September 1892, the Government of Madras stated that it was in favour of legislation as the only method of protecting the growth of an important and desirable social change and of counteracting the tendencies

of the Courts of Law to a too restricted conservatism. In illustration of the kind of union which this Council may fairly be called on to treat as a real marriage, I shall read the following extracts from pages 36 and 37 of the Report of the Commission:—“According to the Malabar witnesses the rule is that the union of a man and woman lasts for life. The wife lives with the husband. Divorces are almost unheard of or are extremely rare. Respectable people set their faces against polygamy. The father is *de facto* the guardian of his wife and children, and educates the latter. In the absence of testamentary power, men, when they have the means, invariably make provision for their wives and children by gifts *inter vivos*; and if they were to die before having made such provision, their tarwads would be forced by public opinion to make the widows and orphans an adequate allowance. Thus, according to all the evidence given before us, a marriage law in North Malabar and throughout the greater part of South Malabar would merely legalize what is already the prevailing custom.” In striking contrast to the above I shall now read from page 8 of the same Report an account of the unions which the adoption of the amendment would permit to be registered as marriages:—“To keep the family property impartible and to guard against an inconvenient increase of mouths to be fed, the ‘Earth gods’ (*i.e.*, Nambudris) set up a rule that only the eldest son should take a Nambudri wife, and that all the junior members should solace themselves by forming fugitive connections with Sudra girls. The issue of these fugitive unions following Marumakkatayam were no burden upon the Nambudri father, but had to be supported by the Karnavan (senior male), of the girl's ‘Tarwad.’ The defect in this ingenious arrangement is that it leaves out of sight the natural law from which ‘Earth gods’ are not exempt, and which so arranges the matter that there are as many Nambudri women as there are Nambudri men. The consequence is that while the Nambudri bachelors solace themselves with their Sudra lovers, the Nambudri spinsters, secluded and vigilantly guarded in the privacy of their houses, must live and die unmarried.” The union here described seems hardly one which it is desirable to dignify with the name of marriage, especially when it is also remembered that the woman cannot live in the man's house, and that after the man has touched either the woman, or his children by her, he must, owing to the great difference of caste, bathe, in order to remove pollution, before he can say his prayers or take his food. It will perhaps be urged that the Commission which penned this account, contemplated the registration of these unions being permissible under the Act, but the Act which they proposed was one which allowed no freedom of divorce, and it is apparent from the following extract from page 9 of the report that they were satisfied that the provisions of the Act would not be made use of by the Nambudris: “If the reform movement set on foot by educated Nayers should eventually have the effects of driving the Nambudri bachelor into wedlock with women of his own caste, this indirect consequence of a marriage law for Nayers is one which no right-thinking person can deplore. What (some persons ask) is to become, in such case, of the Naduraghi (chieftain) and other aristocratic families who have hitherto preferred Nambudri consorts for their females? It can only be suggested in reply that they should follow the example of many of their number and marry in their own caste.” As the Bill now under consideration permits free divorce, we cannot be so confident that unions of the kind would not be registered under it. Such registration would not in itself improve the character of the unions, and would merely accord legal recognition to connections wanting in all the essentials of a true marriage, while tending to perpetuate the demoralising custom under which three-fourths of the Nambudri women are condemned to life-long celibacy without being afforded any sphere of action outside the zenana.

The Hon'ble V. BHASHYAM AIYANGAR.—The Hon'ble Sankaran Nayar has presented the social aspect of the question before the Council, in a forcible and a more authoritative manner than I could, because I am an East-coast Brahman and I do not know so intimately the usages and customs which obtain in the western coast as my Hon'ble friend Mr. Sankaran Nayar does. But what I wish to place before this Council is the legal aspect of the case and the very serious civil consequences, complications and the serious disturbances to social life which will be caused by adopting the amendment proposed by the Hon'ble Mr. Crole. The question before this assembly is not whether the Brahmans ought to be excluded, but whether Brahmans ought to be brought under the scope of this Act. Though I speak of Brahmans, I wish it to be understood that the same remarks apply to Kshatriyas, Vaisyas and Sudras on the eastern coast, other than Marumakkatayam Sudras who have no institution of marriage. This Council should bear in mind that, if the amendment proposed by the Hon'ble Mr. Crole is carried, this Council will be instituting a form of civil marriage for all Hindus—Brahmans, Kshatriyas, Vaisyas and Sudras—not simply for a community of British subjects who have hitherto had no form of marriage either religious or civil. I am glad the Hon'ble Mr. Crole has put the case on a broad basis, so that the members of Council may not be under the impression that the operation of the Bill as proposed to be amended by the Hon'ble member when it becomes an Act will be confined only to a particular section of the Brahmans, namely, Nambudris. Mr. Crole has rightly put it that by the amendment which he proposes he will enable not simply Nambudris but Pattar Brahmans or East-coast Brahmans, or any Hindu domiciled in this Presidency, though he has a form of marriage which is a sacrament according to his own personal law, to contract a civil form of marriage under this Act, not with anybody he chooses, but with a Nayar woman only. That is to say, a Brahman under the Act as amended by the Hon'ble Mr. Crole is not to contract a civil form of marriage with any Sudra woman he likes or with a Kshatriya woman; it will enable him to contract a civil form of marriage with a Nayar lady only. The Hon'ble Mr. Crole has read out a passage from Sir Henry Maine's book, which I believe is a quotation from Sir Henry Maine's speech on the introduction of the Brahmo Marriage Bill No. 1. No doubt Sir Henry Maine did try to persuade the Council of the Governor-General to take his view of providing a civil form of marriage for Hindus in general; and that Bill was circulated to the various Local Governments, and the Local Governments invited the remarks of the leading Native gentlemen in this Presidency, and they were all opposed to any such measure; before the further progress of that Bill which originated from an endeavour made by the Brahmo Samaj people, Sir Henry Maine retired from the Council; his successor Sir James Fitz James Stephen combated that view most forcibly and most strongly, and supported himself by the opinions which were collected from all the provinces; and he persuaded the Council to restrict the scope of the Brahmo Samaj Marriage Bill only to persons *neither of whom were Hindus, &c.* There was a very able and an elaborate discussion on this point in the Viceregal Council and the view put forward by Sir James Fitz James Stephen prevailed, though there were some who dissented from that view and who were even opposed to the modified measure which he advocated. The majority being in favour of the view taken by Sir James Fitz James Stephen which was directly opposed to the view enunciated by Sir Henry Maine, the Brahmo Samaj Bill was eventually passed as Act No. III of 1872 to provide a form of marriage in certain cases, section 2 of which says that "marriages may be celebrated under this Act between persons neither of whom professes the Hindu, Christian, Jewish, Muhammadan, Parsee, Sikh, or Jain religion" upon certain conditions. Therefore, this

Council will see that the civil marriage which Sir Henry Maine wanted to pass on a broader basis was restricted to persons who had no form of marriage. It was restricted, as I said, to persons neither of whom was a Christian, a Jew, a Hindu, a Muhammadan, a Parsee or a Buddhist. A declaration was required under the Act. I am only referring to persons who were not Hindus, and to members of the progressive Brahmo Samaj as they were called that they were not Hindus. It is only after that declaration, not simply by the intended husband or wife, but by both, that the civil form of marriage might be availed of. Further, the declaration is a very serious one, not to say that it subjects the declarant to the penalty of the criminal law if that declaration is false. But the civil effect of that would be that he would be brought under the Indian Succession Act and would cease to be governed by the Hindu Succession Law. If he chooses to place himself under the Indian Succession Act, then that form of marriage might be availed of. I may also point out that, even in the Christian Marriage Act, section 88 provided that "nothing shall be deemed a valid marriage, should the personal law applicable to *either* party forbid him or her from entering into it." What is the consequence of the amendment proposed? The consequence is that, side by side with the religious forms of marriage which the Hindus—I mean other than Nayars—have, the legislature provides a civil form of marriage that has none of the characteristics of a sacrament; under the Hindu law, as every one knows, marriage is a sacrament. Of course, under this Bill the marriage is only a civil contract; and therefore I say that, if you enable persons who have a form of marriage which is based on religion and which is a sacrament, if you enable individual members of that community to avail themselves, at their option, of either the religious form of marriage which is their personal law, or the civil form of marriage provided by the Bill, then I say that you directly legislate so as to interfere with the religious usages of a community, within the meaning of clause (5) of section 43 of the Indian Councils Act.

This Government in representing the desirability of a marriage law for Malabar to the Government of India rightly stated in the letter of the Under Secretary to the Government of Fort St. George to the Secretary to the Government of India, dated 26th September 1892, "I am to point out that such a Bill would not affect the 'religion or religious rites and usages' of any class, but I am at the same time directed to ask whether the Government of India would have any objection to the withdrawal of the present Bill and the introduction of the proposed measure"; so that when the original Bill was forwarded to the Government of India, it was distinctly stated that the Bill would not affect the religion or the religious rites and usages of any class. No body can for one moment venture to assert that, if the amendment proposed by the Hon'ble Mr. Crole is adopted, you would not be interfering with the religious usages of a community. You affect a religious usage not simply by subtraction or addition but also by giving an option where no such option exists. We are also told that this Bill is only permissive as if marriage were obligatory and otherwise than permissive under any civilized system of law. Now in discussing a Bill which relates to marriage, an institution on which is founded the whole law of inheritance in every civilized nation, we are apt to make the mistake of supposing that there should be no objection whatever to any two persons who choose to contract an alliance or marriage, doing so. I submit this is ignoring the very fundamental principles of the law of marriage. A law of marriage is a public law; it is not like a contract which any two persons can enter into at their will and pleasure and rescind. Law imposes various restrictions on such alliances in the interests of morality

and of public law, and I submit that certainly, under Hindu law, you should not regard it as a mere matter of contract which persons who are *sui-juris* should be permitted to make according to their will and pleasure. Though under the English law it is a contract, still it stands on a peculiar footing; there are various restraints placed upon it. Nothing should have been easier than to have passed the Bill to legalize marriage with a deceased wife's sister if marriage were regarded simply as a contract or as one in which none but the couple had any concern or interest. The proposed measure to legalize such a marriage in England was of course only a permissive one and yet it has not yet been passed into law, though repeatedly pressed before Parliament. There is another very important consideration which is lost sight of in discussing a measure of this sort, and it is this: It is assumed that the only persons affected by marriage are the husband, the wife and the children. That is not so. It is argued, why should not a Nayar lady and a Nambudri Brahman, if they are agreed, contract an alliance and why should not law recognize it as a marriage. The answer to it is this: The moment you recognize a union between a Nambudri and a Nayar woman as a marriage, the offspring become necessarily legitimate children. Then the ordinary Hindu law secures to them all the rights of legitimate children or *aurasa* sons, and under the Hindu law sons become co-owners with their father on their birth; and though under the Hindu law a marriage between a Nambudri and a Sudra would be invalid and their offspring would only be illegitimate, yet, if the legislature were to declare such an alliance a marriage, then, as a mere matter of logical consequence, all the results flow which are attendant upon their status as legitimate children. I shall now refer only to sons. If they are the legitimate sons of a Nambudri, then they become of course the legitimate grandsons of the Nambudri husband's father who may not have been a party to this marriage; they become the nephews of the Nambudri husband's brother who was no party to this marriage, and these legitimate sons become entitled by the operation of the Hindu law to become joint members—I mean for civil purposes—of the family of their father and to claim inheritance, not simply from their father and mother, but they become entitled to inherit the property of all the relations of the father —agnate sapindas and cognate sapindas of the father, as if they were parties to this marriage. I submit it is a most fallacious argument to say that, if two persons wish to contract a marriage, the law should permit them to contract a valid marriage. This is one of the most fallacious propositions that can ever be asserted. By their becoming legitimate offspring, the persons who are affected thereby and who are concerned therein are not simply the parties to the marriage, but in fact a considerable section of the community extending under the Hindu law, to distant samanodakas, distant sapindas, distant agnates and distant cognates. Legislature cannot affect caste; but secure only the civil rights of legitimate offspring. Their caste will be the caste of the mother. But the matter does not rest here. By caste he will be a Nayar; he can contract a marriage under this Act with a Nayar lady only; he cannot contract a marriage with a Brahman lady. Therefore, the legitimate son of a marriage between a Nambudri Brahman, or for the matter of that any Brahman and a Nayar lady, will, by caste, be a Sudra; he can marry a Sudra lady only, and if that is a marriage, will, under this Bill he is enabled to contract a sambandham which may be registered as a marriage—if you once recognize that as a marriage—the offspring is legitimate and that offspring will be the legitimate grandson of the Nayar father's Nambudri father, and his descendants will also be cognates and agnates, entitled to civil rights of inheritance in the Brahman grandfather's family. Therefore, I ask this Council to bear in view the far-reaching consequences of enacting a law of this sort. If social reform in

this country progresses and if Brahmans and Sudras will dine together and touch one another without the Brahman going to bathe to get rid of the pollution, then it will be time enough for the legislature to provide for a civil form of marriage between Brahmans and Sudras. But what is now suggested is to place the cart before the horse. It is admitted that, even if we pass this Bill and if some ignorant innocent Nambudri or some go-ahead East-coast Brahman boy were to go and contract a sambandham and register it as a marriage, the offspring will, by caste, be a Sudra, and it is not expected that the Brahman father, especially if he were a Nambudri, would associate with the wife or children of the son or partake of the same meals or the meals touched by his son or wife. When such is the state of society, when social reform has not progressed and has not taken the Brahmans back one thousand years—when, it appears, in the days of Manu there was the anuloma form of marriage and Brahmans contracted a form of marriage with Sudras—then I say when such a custom as that springs up again, it will be time enough to consider whether such a union should be recognized as marriage or not. It has also been contended that sambandham between a Nayar woman and a Nambudri or Pattar Brahman has been regarded as a social marriage. I emphatically deny that. No doubt, a community, which has no institution of marriage and which therefore cannot distinguish between what we respectively call marriage connection and concubinage, can regard the sexual connection only as a social marriage. The Nayar community, which has no institution of marriage rightly enough and naturally enough, regards all sambandhams as social marriages; because, as I submit, the very idea of concubinage pre-supposes the existence of marriage connection, and therefore it is no wonder that the Nayar community should regard this connection as a social marriage: so that, with regard to them, there is no distinction between marriage and concubinage; but it is quite different when you go to a Nambudri or a Brahman. A Nambudri or a Brahman has an institution of marriage as old as the Brahmanical law, and he therefore realizes—and realizes very keenly—the distinction between concubinage and marriage; and, as the Commissioners in their report justly say, a Nambudri Brahman regards his cohabitation with a Nayar lady not as a marriage. That is perfectly natural. How can he regard that as a marriage when that is quite different from a sexual union which is sanctified as a marriage according to his ancient personal law. Of course, a Nayar will regard it as a social marriage, because there is no institution of marriage among Nayars. In regard to Nambudris, I just wish to make one observation, and it is this: It is not to be assumed that it is the personal law of a Nambudri, or that it is a custom having the force of law, that the eldest member of the family alone can marry. It is the general practice founded upon convenience. According to their personal law all the members of the family can marry under the Hindu law. I have reliable information before me as well as certain statistics to show there are numerous instances in which junior members of Nambudri illams, or families, marry Brahman women; and as far as I understand, the tendency latterly is for the junior members to marry in their own caste. No doubt they also consort with Nayar ladies. Therefore, I submit that morality and decency will be immensely promoted if this amendment is rejected; and the result will be that the Nayar females and ladies of kovilagams will marry in their own caste, and will not allow themselves to consort with a Nambudri Brahman, who does not treat her on a footing of equality and who could not even touch her without having to bathe to get rid of the pollution. Therefore, as the Commissioners in their report say,—an extract from which was read by the Hon'ble Mr. Sturrock,—the result of introducing an institution of marriage among Nayars will, in the long run, be that the Nayar females will not consider it a degrada-

tion to marry within their own caste, but that they will gradually marry within their own caste and will not lend themselves to Nambudri Brahmans. What will be the result then? The Nambudri junior members will also marry females of their own class, a large portion of whom at present lead a life of celibacy and die unmarried, because of this vicious system of Nambudri Brahmans—I mean junior members—consorting with Nayar ladies; but if you enable the Nambudri Brahman not only to consort with Nayar ladies, but also to get that union stamped as a marriage, then I submit that you are only increasing the evil that now exists of enforced celibacy upon a considerable portion of Nambudri females; and whatever may have been the condition of things in primitive days—though no doubt some consider that progress consists in going back to primitive days, when Manu said that a Brahman could marry a Kshatriya or a Sudra—the law is now firmly established—namely, the fundamental principle of Hindu law—that you are to marry inside your caste, but outside your family. Therefore, I submit that the Bill as amended by the Select Committee and placed before this Council will promote morality in both the classes; and the result of that will be that the Nayar aristocratic ladies will, though not at the very outset but in course of time, contract marriages with aristocratic Nayar males, and the junior members of Nambudri illams will contract marriages with Nambudri females. In answer to all this, it may be observed that we do not propose to give any right of inheritance or other civil rights to the offspring of a sambandham registered as a marriage between a Nambudri and a Nayar lady. You need not give it. Why should this legislature give it? The Hindu law gives it. If this legislature should legalize that marriage, the offspring would thereby become legitimate and then the Hindu law gives it to that legitimate son, whatever his caste may be. That is only in accordance with the principle enunciated in the Out-Castes Relief Act. Whatever his caste may be, he and his descendants will have all the civil rights of legitimate offsprings: but in the case of the Nayar community that is not so, because under the Nayar law, the law of inheritance is the marumakkatayam; and therefore even if the marriage is sanctioned and the offspring become legitimate, yet according to that system of inheritance there is no inheritance between the father and the son. Therefore the Bill has, in one of the later sections, expressly secured to them a certain degree of inheritance, because according to the personal law of the Nayar community, there is no heritable blood between the father and the son, and therefore you have not only to legalize a marriage but also give them the right of inheritance. In the case of a union between a Nayar lady and a Nambudri Brahman, if you only legalize that union, then you make the offspring legitimate, and whether you give the right of inheritance or not, the Hindu law applies. He will have all the rights of inheritance, he will be entitled to live in the house and no court can eject him because he is joint owner with his father and grandfather. Is this Council prepared for such a revolutionary measure which will throw an apple of discord among the Brahman communities? If such a law as this were passed, some go-ahead young men and some social reformers—who, not having the courage of their convictions to recede from the community of their birth and form themselves into a distinct community wish to enjoy all the advantages and privileges of that community transgressing at the same time the personal law of that community—would contract a marriage under this Bill on the west coast which would be attended, as I have already said, with serious consequences, and would impose their offspring as heirs upon persons who were no parties to the marriage, and who in fact may not have been in existence at the time of the marriage. That is to say, if a Brahman youth and a Nayar lady should contract a marriage, their offspring would be imposed as heirs, not upon themselves 'only', but upon all their agnate and

cognate relations. If it is stated that we shall by legislative provision deprive the offspring of any of the civil rights, then my answer is why should you call it a marriage, why should this legislature legalize the connection as marriage, while in the same breath it declares that the offspring is not to have civil rights? That is to say, for legal purposes the offspring is to remain on the same footing as illegitimate children who are entitled only to maintenance under the Criminal Procedure Code, but who have no rights of inheritance to property. I submit that such a marriage institution as that is simply absurd; it is an insult to the institution of marriage and an insult to the Queen's language and a prostitution of the word "marriage," if you say that A and B may contract a marriage and the offspring shall also be legitimate, but there is to be no heritable blood between the father and the children; not only that, but that the marriage can be dissolved at the will and pleasure of either party. This is a very strong argument that I urge before the Council. So far as the Nayar community is concerned which hitherto had no institution of marriage, if that community is not prepared to welcome the institution of marriage attended with the restraints imposed upon the institution of marriage by the Hindu law more particularly, and to a very great extent by the English law no doubt it may not be unreasonable that this Legislative Council should, as a first instalment of improvement, concede to that community an institution of marriage which is not so rigorous and which does not reach the ideal of Hindu law of marriage or the English law of marriage. What excuse or reason have you to provide such a loose form of marriage to a Brahman, Kshatriya or a Sudra (not being a Nayar) who has a much higher institution of marriage—an institution under which the marriage tie is indissoluble, though in my opinion for specified reasons only under that law, without divorce, a husband can remarry while the first wife is living? That is the form of marriage that the Brahman has. Does this legislature condemn it? Does this legislature consider that form of marriage rigorous? and that therefore Brahman youths and others should be enabled to contract a form of marriage which either he or his wife can get rid off at his or her will and pleasure. The Brahman has a refined form of marriage which is indissoluble. Under the English law, though the marriage tie is not indissoluble as in the ordinary Hindu law, yet a marriage can be dissolved only for specified reasons which should be established in a Court of Justice, and a marriage cannot be dissolved even if the husband and wife conjoin in dissolving it. Though, perhaps, the form of marriage provided by this Bill is the only feasible one which you could conceive for a community which hitherto had no institution of marriage at all, yet why should you go and provide this kind of institution of marriage to the Brahman, Kshatriya and Sudra? This is founded neither upon Hindu law nor English law; this is a form of marriage which can be got rid off at the sweet will and pleasure of either party. No doubt there are certain tribes of Maravars and Koravars and other tribes referred to in Mr. Nelson's District Manual of Madura, among whom the marriage ties are as loose as that provided for in this Bill and the marriage can be dissolved at the will and pleasure of either party. Is this the form of civil marriage that you want to impose as an optional and permissive form of marriage, upon Brahmans, Kshatriyas and Sudras who have got a form of marriage which is indissoluble?

The Council then adjourned for tiffin at 2-25 P.M. for half an hour and re-assembled at 2-55 P.M.

The Hon'ble Mr. BLISS.—I will take the Chair until the Governor comes.

Section 3.—As amended was then put to the vote and passed clause by clause.

SECTIONS 4, 5 AND 6.

were passed without any alteration.

SECTION 7.

This section runs as follows :—

7. (1) Every Registrar shall on receiving any such notice forthwith cause a copy thereof to be affixed to a Notice Board in some conspicuous place in his office; and shall then serve or cause to be served at the expense of the party giving such notice a copy thereof on the other party to the Sambandham, if both parties have not joined in giving such notice and on the guardians, if any, of the parties thereto, as also on the managing members of the tarwads to which they respectively belong.

(2) If at any time before registration is effected the party by whom notice was given under section 5 signifies in writing to the Registrar that he withdraws such notice the Registrar shall, thereupon, at the expense of the party withdrawing the same communicate the fact of withdrawal to the persons mentioned in sub-section (1).

The Hon'ble V. BHASHYAM AIYANGAR.—I move that at the end of sub-section (1) of this section the words "or families" be inserted between the words "tarwads" and "to." Tarwad is defined in the Bill so as to refer only to Marumakkatayam families or Aliyasantana families; and as has already been pointed out in the case of Tiyyans who follow the Makkatayam Law, they will be married under this law. The insertion of the word "or families" will embrace the whole class.

The Hon'ble C. SANKARAN NAYAR seconded the amendment.

The amendment was then put and carried and the section as amended was agreed to.

SECTION 8.

This section runs as follows :—

8. (1) Any person entitled to receive a notice under sub-section (1) of section 7, any member of the tarwad of either party or any person having any expectancy of succession to the property, if any, of such tarwad or of either party may within one month from the date of such service of notice object to such registration on the ground that such Sambandham or registration is in contravention of the conditions prescribed in section 3.

(2) Such objection shall be in writing signed by the person objecting and shall be presented by the objector or his duly authorized agent to the Registrar who shall file the same in his office. A copy of such objection shall at the expense of the objector be served on the party by whom notice was given under section 5.

(3) On receipt of a notice of objection under section 7, the Registrar shall not proceed to register the Sambandham as a marriage until the expiry of four months from the receipt of such notice unless such notice is in the meantime withdrawn.

(4) If no such objection be made under this section and if neither party withdraws the notice under section 7, sub-section (2), such Sambandham may at any time, not being less than one month nor more than six months from the service of the notice under section 7, be registered as a marriage.

The Hon'ble V. BHASHYAM AIYANGAR.—I propose a similar amendment with regard to this section. I beg to propose that the words "or families" be inserted

between the words "tarwad" and "of," and also the word "family" be inserted between the words "or" and "of" after the words "of such tarwad."

The Hon'ble S. SRINIVASA RAGHAVAIYANGAR seconded the amendment.

The amendment was put to the Council and carried and the section as amended was agreed to.

SECTION 9.

This section runs as follows :—

9. Any person objecting to the intended registration of a Sambandham may; after complying with the provisions of section 8, file a suit in any civil court having local jurisdiction (other than a Court of Small Causes) for a declaratory decree declaring that such registration would contravene one or more of the conditions prescribed in section 3.

The Hon'ble V. BHASHYAM AIYANGAR.—I beg to propose that the word "any" be omitted and in lieu thereof the words "a competent" be substituted; and also the following words be omitted: "having local jurisdiction (other than a Court of Small Causes)." It will be rather difficult to apply in these cases to Courts having local jurisdiction. I leave the question to be governed by general law. The suit will be a declaratory one for declaring that a certain registration is invalid.

The Hon'ble Mr. CROLE seconded the amendment.

The amendment was put to the Council and carried.

The section as amended was put and carried.

SECTIONS 10, 11, 12, 13 AND 14

were then passed without any alteration.

SECTION 15.

This section runs as follows :—

15. (1) A marriage shall be null and void only—

(a) If either party is subject to a personal law of marriage according to which he or she as the case may be cannot validly contract a marriage with the other.

(b) If a relationship can be traced between the parties through some common ancestor who stands to each of them in a nearer relationship than that of great-great grandfather or great-great grandmother, and by reason of such relationship a Sambandham between them is prohibited by any custom or usage applicable to the community to which they or either of them belong.

(c) If either party has a husband or wife living whose Sambandham with such party has been registered as a marriage under this Act and such marriage is not null and void under clauses (a) and (b) of sub-section (1).

(2) A marriage shall not be invalid on the ground that the Sambandham or registration contravenes any of the grounds mentioned in section 3 other than those specified in clauses (a), (b) and (c) of sub-section (1).

The Hon'ble C. JAMBULINGAM MUDALIYAR.*—Mr. President, the amendment which stands in my name is that clause (a) of section 15 "if either party is subject to a

* Shortly after the commencement of this speech, His Excellency the Governor returned to the Council-room and resumed the chair.

personal law of marriage, &c.," up to the end of the clause be omitted. I rise to move this amendment with some amount of diffidence, because I stand alone among the Hon'ble Members of the select committee in regard to this amendment. At the same time I assure you that it is only after the most careful consideration and after an effort to reconcile, if possible, my views with those of my colleagues, that I have been forced to adopt the position that I take now. This provision, I feel, has a serious objection, which I consider to be of great importance, because in my view it affects the first principles of legislation and administration in this country. I therefore most earnestly request that you will, before deciding your minds on this matter, bestow the utmost consideration on that aspect of the question. The revised Bill introduced into the Council last November by the Hon'ble Sankaran Nayar provided a form of marriage for those people who have a certain social custom of a man and a woman living together, without such living being termed a marriage. That Bill made no distinction about caste, but it provided a form of marriage for all those people whose union at present is stigmatized as concubinage. It was at the introduction of that Bill we find that the objection based upon the ground of personal law was made by my Hon'ble friend Mr. Bhashyam Aiyangar in a speech, that I shall have to refer to in detail. The grounds mentioned in that speech have also been to some extent repeated to-day and certain other grounds have been added to them; but it will be sufficient when I deal with that portion, to take that speech as the basis and the standard on which we should discuss the whole question, because that speech with what has been added to-day, puts forth very clearly and fully everything that can possibly be said on the other side. The Bill introduced by the Hon'ble Sankaran Nayar made no distinction about castes and owing to the opposition raised by my Hon'ble friend Mr. Bhashyam Aiyangar, the select committee met his objections by making a provision in sections 3 and 15; clause (a) of section 3, as you know, runs in these terms:—

"(a) Neither party must be subject to a personal law of marriage according to which he or she, as the case may be, cannot validly contract a marriage with the other party."

The same provision in identical words has been repeated in section 15, and my objection is to the repetition of that provision in section 15. To make myself more clear as to what I am going to say, I should like to make a reference to the framework of this Bill. Section 3 contains six conditions as conditions pre-requisite, conditions precedent to a valid marriage; and out of these six, three have been selected and repeated in section 15 for rendering a marriage null and void even after certain intermediate conditions for registering it have been gone through. You will notice that in sections 7 and 8, various forms of notices are prescribed, and various people are described, to whom notice should be sent about an intended marriage, and all these people are given an opportunity to take objection before the Registrar. An intended marriage, if it offends any of the conditions mentioned in section 3, can be prevented. There is also another provision in section 8 that even after registration and after marriage, within three months, on certain conditions, a marriage registry can be cancelled, so that, to guard the due fulfilment of the various conditions mentioned in section 3, we have ample devices made in these various sections; and various persons—not simply the guardians of the married couple—but various persons interested in the property are also given notice and the opinion of these people is taken and their objections considered. If after all these diverse notices to various people no one objects, it means the tacit consent on the part of those people to recognize this

marriage registry. It is not simply the wish on the part of the intended husband or wife which is to be weighed in regard to a marriage, but the wishes of his family people and the wishes of his kith and kin for whom he has regard. Every one of them gives, if no objection is taken, a tacit consent and complete acquiescence, and the marriage is celebrated in the form prescribed. Now we come to section 15; and this section says that at any time after registration—it may be 20 or 25 years, the husband may be dead or living—it is left to any person, who might not have been born at that time, but who came into existence long after, to come and apply before a Court that that marriage was not regular, and that the marriage was therefore null and void and the children born of that marriage were bastards. This is the position given by clause (a) of section 15. It is against this principle which is embodied in section 15, that I have objection, which I have characterized in my minute of dissent in strong language; I called it immoral and said it was against public policy. I hope I shall be able to show that I am justified in using that language.

This objection on the ground of personal law—so far only as section 15 is concerned—ranks with two other conditions, for the purpose of rendering the marriage null and void. This is given by the Committee the foremost place though I cannot divine what there is so much mystic about it. I find there are some other conditions, which are entitled to greater consideration from a social and ethical point of view. Yet I find that this is given the first rank. However, I shall not quarrel about the rank. The next condition in section 15, clause (b), is that incestuous marriages shall be void. The third condition is that bigamous marriages shall be void. I understand that in laying down the conditions for rendering marriages absolutely null and void, there ought to be some basic principle on which we should proceed. In section 3 we find six conditions mentioned, three of which are not essential but are mere irregularities. If objection is taken in time a marriage can be prevented; but once the marriage is registered, there is nothing in them to render the marriage null and void. In importing conditions in the latter section 15, which is intended to render a marriage null and void, we must find some basic principle, on which we should consider whether those conditions are so vital as to make a marriage null and void, twenty-five or thirty years' hence. If we examine the condition in clause (b), I understand there would be physiological reasons which may be urged against incestuous marriages, though people may differ as to what are incestuous and what are not. Social reasons of a very strong character as well as ethical reasons will be urged. Taking the next class of bigamous marriages all the civilized nations of the western world are agreed that bigamous marriages ought not to be recognized. The same grounds are practically urged against bigamous marriages and against incests. When we come to objections of personal law, it is difficult to divine any such basic principle on which we can seek to make the marriage null and void at any time.

To consider the various arguments that may be urged in behalf of the provision in this section, I have already stated that the best course would be to take the speech of my Hon'ble and learned friend Mr. Bhashyam Aiyangar and traverse the grounds given there. It might appear that the arguments I am now using are arguments not simply against clause (a) of section 15, but also against clause (a) of section 3. But I submit that I have recognized and allowed the insertion of clause (a) in section 3 for other reasons, which I shall presently explain; and if this Council will consider that my arguments are strong enough when directed against the principle itself in section 3, the same arguments will tell with much greater force against the retention of the clause in section 15. Therefore the appearance of these arguments as being directed

also against clause (a) of section 3 need not take away their value in considering section 15. I might also mention that the speech of November 4th was directed against a different position; the position to-day is greatly changed since that speech. The speech that was addressed then and to-day was to urge the insertion of the principle somewhere in the Bill; and now we have progressed so far as to recognize the insertion of that provision in section 3 and therefore there is a considerable change in the present position.

I must observe with very great reverence to the Hon'ble Bhashyam Aiyangar that the whole issue and the real issue has been greatly complicated and, I should say, confused by introducing East Coast Brahmans and Pattars into the bargain. Of course my learned friend took advantage of the speech of the Hon'ble Mr. Crole and urged arguments which would probably be very good arguments for the East Coast Brahmans and Pattars. But my position in so far as the Bill is concerned is entirely different. I do not in any way sympathize with the position taken up by the Hon'ble Mr. Crole in saying that the Bill, as introduced, had such a wide range as to affect the East Coast Brahmans and Pattars or that it was intended to affect them. To my mind it appears that the reference to the East Coast Brahmans and Pattars is utterly irrelevant. Some apprehension is felt that no sooner is this Bill passed in its present shape, than the East Coast Brahmans would run up to the West Coast and contract some illegal marriages. It was fully a quarter of a century ago, when the Bill which finally became Act III of 1872 was before the Imperial Legislative Council, we had similar apprehensions felt, and many native gentlemen of eminence sent up their apprehensions in very long minutes and very long letters. I shall just refer to one or two of them to show the apprehension that was felt in exactly the same manner as is now being felt by the Hon'ble Bhashyam Aiyangar in this matter. I am reading from the Supplement to the *Gazette of India*, dated 27th January 1872, which contains the discussion on that Bill. The Hon'ble Ramayyengar who was then an additional member of this Council sent up his opinion in this form:—

"There are hundreds of young men who may not wish to become Brahmans, but who would still be eager to avail themselves of the license afforded by this Marriage Bill to contract marriages according to their own individual fancies. Nothing will be easier than for one of them to appear before a Registrar whom he does not know, who does not know him, and who will hardly have any position as an official, subscribe before him the formulæ required by the Act, and get the hand of the girl of his choice. This done, there will be nothing to prevent such a person (except when he has married an outcast) from going back to his parents, or his being received as a penitent sinner to live thenceforward, to all appearance, as an orthodox Hindu."

Proceeding again he says:—

"This will be regarded as an invitation to a Brahman to marry a Pariah girl; to a Mudali, Chetty, or Pariah, to seek the hand of a Brahman girl; and, in fact, it has already been said that it is tantamount to telling young India—'Do you set at defiance your social customs and usages and your institution of caste, and we shall be ready to stand by you and support you with all the strength of the strong arm of the law.'"

This was the apprehension felt by Mr. Ramayyengar twenty-five years ago; and other gentlemen of eminence followed suit and expressed their apprehensions in probably much stronger language, importing greater alarm. A quarter of a century has elapsed and this day we do not find a single misalliance like that. We have not

got any reference to make, even to a single alliance like that—a Hindu going to a Registrar and falsely swearing that he is a Brahmo, simply for getting the girl of his choice. The provision of the Bill is necessarily wide; but the question is whether any body intended that either East Coast Brahmans or Pattars should be brought under this Bill, or whether it is intended that it should be made applicable to them even optionally. We find in the Commissioner's report not a single reference to the East Coast Brahmans or Pattars. I have studied the correspondence between this Government and the Government of India and I do not find a single suggestion that it was under contemplation to include these people also. In moving the Bill last time, the Hon'ble Member in charge of it, whose statements I think may be taken as an exposition of the intentions of the Bill, said:—

"The wording I have adopted is necessary in order that a Nambudri Brahman or a male member of a Kovilagam may contract a marriage if he chooses. Otherwise there will be no form applicable to him as the Brahman and Kshatriya marriage ritual was not applicable to a marriage with a Nayar woman."

That is the statement made by the Hon'ble Mover of the Bill and I submit there is absolutely no ground for misapprehension on this point. Then it may be contended that, though it was not intended, the wording being somewhat wide, it is quite possible that similar occurrences may happen. My reply to that suggestion is that many a thing is possible under the sun, until it is proved to be impossible with mathematical accuracy. What we have to consider is the sphere of practical legislation. I consider that the sphere of practical legislation is co-extensive only with the range of probabilities, not all kinds of fanciful and imaginary possibilities.

Taking the case of Pattars, their case requires a slightly different treatment. It seems that these Pattars are Brahmans of the East Coast who have migrated to the west and settled themselves down there; and during their long stay on the West Coast, they have got into the habit of keeping a Nayar woman besides the lawfully-wedded wife. They have probably something in the shape of sambandham as Nayars have; but it is a distinctive feature of these Pattars—to distinguish them from the Nambudris—that every member of the Pattar family has a Brahman lady for his wife married according to Hindu sacrament. Therefore if the Pattar keeps an extra Nayar woman, it is simply because he has no responsibilities; he has not got to provide for the woman and her children, or bear any responsibility of giving them property by gift or otherwise. Therefore it is a matter of luxury. But it becomes a matter of necessity with the Pattars to acquiesce in the demands of the Nayar women, when these claim the privilege of registering the marriages; when this is done, there is absolutely no chance of their taking up this extra burden, in addition to the burden of their own wives. If as bachelor he has registered a sambandham with a Nayar woman and if he wants to marry a Brahman girl, he has no chance of getting the Brahman girl, until he gets rid of the Nayar woman; if he wishes to get a Brahman wife, he has only to give notice of divorce and all complications are set at rest. I do not see any difficulty at all in the case of Pattars. I must also point out that this argument that I have advanced is also a sufficient answer to the fears of bigamy that were raised by my Hon'ble friend Mr. Bhashyam Aiyangar in his speech. I may however point out that these fears have been set at rest by the wise provision that my Hon'ble friend has introduced in section 3.

With reference to East Coast Brahmans and Pattars, there is further a guarantee which is a complete answer to all the alarms and fears which have been expressed—

that these Pattars and East Coast Brahmans will run up and contract romantic connections and register marriages, and I shall describe that guarantee in the words of the Hon'ble Mr. Cockerill who took part in the discussion of Act III of 1872, when similar apprehensions were expressed by a member of the Viceroy's Council to the effect that it gave facility for contracting clandestine marriages and gave room for any one to contract a disreputable marriage. The Hon'ble Member said:—

"Social considerations, family influences and regard for the credit and influence of the family name—these prove sufficient deterrents in Europe and there is no reason to think that here such restraining influences are likely to be in any degree less effective."

I shall not stop there but shall refer to the opinion expressed by the Viceroy. Says His Excellency at the conclusion of the debate on that Bill: "I am not disposed to attribute much importance to the argument that the Bill, even in its original form (His Excellency refers to Sir Henry Sumner Maine's Bill for Civil marriages), would have acted as a provocation or facility to imprudent or demoralizing connections. If we regard the powerful influence exerted by family relations and the prescriptions of caste in this country, it does not seem probable to me that many persons would have availed themselves of the liberty embodied in the measure to contract engagements of an unworthy nature. But all hazard of such an evil has been obliterated by the limitations of age now imposed, with reference both to the man and the woman in the case of persons marrying without the consent of parents or guardians. The stipulations in this respect are now so prudent and guarded that there does not seem to be the least room left for the operation of deception or passion."

I submit that, with reference to the portion that I have read, the Bill now before the Council has got similar prudential restrictions, restrictions of age and restrictions about the consent of guardians. Act III of 1872 laid down restrictions of age only; but our Bill goes further and says that the consent of every soul living in the tarwad shall be impliedly given to the registration of marriage whether of minors or adults. If any member of the tarwad takes any objection under any of the conditions mentioned in section 3, the registration is stopped. We stand on a much stronger position than the position given to people under Act III of 1872; and there is under our Bill far higher guarantee of safety for these young men not being decoyed away on romantic purposes than under Act III of 1872. I therefore dismiss entirely out of consideration the East Coast Brahmans and Pattars; and we shall entirely confine our attention to the case of Nambudris, examine it and see how far it is inconvenient to give them this registration of marriage.

We have been told that among the Nambudris only one member can marry. My Hon'ble friend has qualified it by certain statements to-day which I shall consider presently. The general rule is that only one member can marry and the others must live in concubinage with Nayar women. This is not merely a temporary alliance or simply a fortuitous connection, but it is a sambandham identical in all respects with the sambandham of a Marumakkatayam man with a Marumakkatayam woman. That position has been to a certain extent assailed this day by the Hon'ble Mr. Sturrock and the Hon'ble Mover himself. I shall make a reference to confirm my statement. Sir T. Muttusami Aiyar at the end of his memorandum says:—

"On the other hand that the Nambudri Brahmans themselves are compelled to go through the same formalities of wedding proves that, owing to social progress, the Nayar women insist on giving the union the character of a marriage."

So that we find the deliberate expression of the President of the Marriage Commission, that the Nambudri person goes through the same formalities in identically the same form with the Nayar woman as in any other sambandham. I am perfectly willing to concede that in certain kovilagams there is some kind of difference. We are not here to legislate for a few kovilagams, say, two, three, ten or fifteen, but for the whole of the Nambudri population; therefore we must take the general state and condition of these people and not those exceptional cases. As I said, the sambandhams are exactly identical; but unfortunately we find that the Nambudri-Nayar sambandham, as well as any other sambandham has been treated as concubinage. Now I ask, is there any basis, any reason, any ground, for making a difference between a sambandham of a Nayar with a Nayar, and the identical sambandham gone through with identical formalities of a Nambudri man with a Nayar woman? My Hon'ble friend has raised certain inheritance difficulties, legal difficulties, which I shall treat presently. I shall now deal with the common-sense point of view, leaving the legal question to a later stage. The legislature intends, by means of this Bill, having taken into consideration the position of affairs on the West Coast, to ennoble, dignify and elevate the social usage which prevails on the West Coast. Would you refuse to a Nayar woman, who is according to the custom of the country the consort of a Nambudri, that privilege of dignifying and ennobling that connection? I would go further and ask, would you refuse to a Nambudri Brahman, if he himself wishes to have that connection as a marriage—would you refuse him to elevate and ennoble that connection into a marriage? That is the real issue. We must, for the present, free ourselves from all the trivial difficulties and interested sophistry that have been raised and attempt the solution of the general problem on higher grounds. I say, my Lord, that by introducing clause (a) in section 15 and thereby rendering the registration, which has been to the hearts, I say hypothetically, of every Nambudri man and all his relatives, null and void, we violate justice, equity, and good conscience. I shall show presently that it is against the principles of British administration and also British legislation. I shall later on read some passages from the memorable debate on Act III of 1872 and shall leave it to your Lordship and the members of this Council to attach to the opinions expressed therein such value as you may consider fit and proper. In the meantime I shall very briefly pass in review and examination some of the objections, that have been raised on the ground of personal law and the arguments that have been given in favour of its retention in section 15. It has been repeated to-day that the custom of only a senior member of a Nambudri family marrying is only a custom, that it has not the force of law; and that it is a custom that has grown up to suit the convenience of the particular circumstances of the Nambudri family. It is only a practice; some call it custom but would not call it law. I have no intention of quarrelling about the name, a name divested of its meaning has no charm for me; but I submit that this rule of only the senior member of the family marrying, far from being a custom grown up in recent days for the purpose of suiting the convenience of Nambudri families, is a tenet and doctrine entered in a book held most sacred by the Nambudris—a book according to which he regulates his daily life, according to which he regulates his sleeps and baths. In this book—Kerala Anacharams—, this rule is entered, call it what you will, custom, practice, or anything you like.

His Excellency the PRESIDENT.—I am sorry to interrupt the Hon'ble Member. He seems to be speaking on section 3, to which the Council has agreed. That having been settled, the question before the Council is section 15. Having allowed the law

to interfere and prevent the marriages from being registered, the question is, whether when wrong marriages are brought about, they should be declared null and void. I think the Hon'ble Member is speaking on what has already been accepted by the Council.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—I obey the chair, but I beg to explain that I already submitted that the arguments appearing as urged against section 3 will be arguments put in a stronger form in support of my amendment. I am sorry to take up your Lordship's time, but the exigencies of the occasion require me to take up your Lordship's time; and I crave permission to go over some of the grounds already urged for the purpose of showing that the objections urged are not sufficiently of an essential character to allow this clause to be introduced in section 15.

His Excellency the PRESIDENT.—It is not a question of time, but it is a question of applicability. It seems to me that the remarks which the Hon'ble Member is addressing himself to, in regard to this section are remarks to which, if he liked, he should have addressed himself under section 3.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—I shall try to confine myself to the present section. I submit that the position I take has a relevancy. If it is established, as stated by the Hon'ble Mr. Bhashyam Aiyangar, that it is a personal law of the Nambudri that every member should marry and should have a wife according to Hindu law, then the argument that the objection should not find a place under section 15 gets weak. If, on the other hand, as I say, it is not actually so, and according to the existing custom a Nambudri has to take a Nayar woman and that usage is a social usage and he has no sacramental marriage with Nambudri women generally, then the argument for retaining that provision under section 15—to say that the marriage is absolutely null and void—gets extremely weak. It is only, therefore, on the balance of these positions, that I have thought fit to traverse some of the remarks of my Hon'ble friend. If your Lordship would debar me from traversing any of the grounds mentioned by the Hon'ble Bhashyam Aiyangar, then I submit that my arguments must necessarily get weak so far as this section is concerned.

His Excellency the PRESIDENT.—The Hon'ble Member would be more in order if he would confine his remarks to section 15; he should have mentioned all that he wishes to mention now when we discussed section 3.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—I allowed that section on different grounds. So far as the principles are concerned my objections will apply to both. I allowed clause (a) in section 3 on other grounds, not grounds mentioned by the Select Committee or the Hon'ble Bhashyam Aiyangar, but I have my own grounds for allowing it in section 3.

His Excellency the PRESIDENT.—As I have already said the Hon'ble Member's remarks apply to section 3 and he should have advanced them at an earlier stage of the discussion. I hope I am not hard in ruling the Hon'ble Member must stick to section 15 at the present moment. I regret that the question is rather involved.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—It is in a way involved when it is put in the form that the marriage shall be null and void. Seeing that there is an inherent defect in the principle, I am obliged to address the Council on the point. I shall, however, be willing to abide by what the President says.

His Excellency the PRESIDENT.—That particular point having been conceded in section 3, what is the use of speaking against it now. The Hon'ble Member could have then made his remarks with greater propriety.

The Hon'ble Mr. STURROCK.—Although I am opposed to the Hon'ble Jambulingam Mudaliyar's amendment, I am afraid that his position cannot be fairly laid before the Council unless he is in a position to refute some of the arguments that have been already advanced under section 3. Under the section about registration, the registrar is not empowered to hold an enquiry; if the parties make an application for registration, he has merely to see whether any objection is raised, and, if no objection is raised, he must register the marriage. In certain cases a marriage so registered cannot afterwards be challenged. But in the two particular cases now under discussion the question may be challenged and, if so, a marriage can be declared null and void from the beginning. Mr. Jambulingam Mudaliyar is willing to concede that if any objection is raised, marriage shall not take place; but if the registration is allowed to take place, he considers that it ought not to be afterwards open to challenge. I consider that it ought to be open to challenge. I do not see how Mr. Jambulingam Mudaliyar can clearly state his position without going over the old ground.

His Excellency the PRESIDENT.—If the Hon'ble Member would confine himself to the particular line of argument pointed out by the Hon'ble Mr. Sturrock, I should have nothing to say. The Hon'ble Member is bringing forward arguments to show why these parties should not have been married in the first instance.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—I consider that the grounds urged by my Hon'ble friend Mr. Bhashyam Aiyangar are the only grounds for retaining clause (a) both in section 3 and in section 15. I have not heard any different grounds for having clause (a) in section 15, which throughout becomes a matter of principle. The retention of clause (a) in section 3 is only a matter of expediency in my opinion. There is nothing inherently wrong in principle about a marriage like that coming about; it is only one of the irregularities in my view, which like any of the other irregularities can be condoned by subsequent registration. But the most important and vital provision is the provision of clause (a) in section 15 towards which, I believe, really all these arguments of my friend are directed. The insertion of clause (a) in section 3 is only a matter of expediency for silencing opposition, or going in the line of least resistance. Because it has been further considered proper to render a marriage absolutely null and void, the real question of principle arises in section 15 and not there. I can point out, as an illustration, that clause (b) in section 3 has not been repeated in section 15, it is only an irregularity and not a principle; but if it is brought under section 15, it becomes a matter of principle and would render the marriage null and void. However, according to your Lordship's direction, I shall try to be as brief as possible in my remarks.

It is said that the Nambudri has to go and live in the Nayar woman's house. That is cited as an objection not only for the initial marriage, but for rendering the marriage null and void. No marriage could possibly exist between a Nayar woman and Nambudri man, because a Nayar woman could not go and live with a Nambudri in his house, so that the objection is an objection to the inclusion of clause (a) in section 15, and not simply to its inclusion in section 3. To that objection I answer that this is so with all Malayalis, whether they be Nayars or Tiyyans. In the Ceded Districts and Northern Circars, there is a caste called the *Kapu* caste among whom, as a rule, the Illatom son-in-law goes and lives in the father-in-law's house and still a good and valid marriage exists, just as much a marriage as in any other part of the country. Therefore I submit an objection like this that the Nayar woman does not go and live in a Nambudri's house could not be a ground on principle for saying that such a marriage should be rendered null and void. Then in disparagement of the Nayar-Nambudri

sambandham, which has been termed "so-called," some statements are made to show that they go to the very root of marriage, that they are such essentials for marriage as to render the registry null and void even after several years. It is said that a Nambudri bathes very often, it is also said that he must bathe whenever he touches a Nayar woman, and he could not eat the food given by a Nayar woman nor drink the water given by her. I am not prepared to give full credit to this statement. I have only to point out that so far as bathing is concerned, all Malayalis of all castes are very fond of bathing; and so far as eating is concerned, I understand that in the east coast there are certain high priestly classes, among whom the father-in-law or the mother-in-law cannot eat the food cooked or touched by the daughter-in-law, and similarly a married daughter pollutes by her touch the food in her mother's house. There is still a valid sacramental marriage among them. These rules should not therefore be considered of such vital force as to make a marriage null and void. If I can make a slight reference to the sacred books of the Nambudris, I find that under rules 9 and 10 of Sankarachariar's Anacharams "You must bathe if you touch another; you must bathe if you happen to be near another." So that a Nambudri has to bathe not only when he touches a Nayar woman, but also, if he adheres to his sacred books, every time he touches a person or approaches another person, be that person his father, mother, or sister. There is one other ground which I consider to be of great importance. It is said that this particular feature of the Nayar-Nambudri marriage was not before this Government or Government of India.

Sir T. Muttusami Aiyar in page 62 of his report says:—

"Again, the marriage to be legalized must be between persons who are permitted to cohabit with each other by the custom obtaining for the time being in the caste to which they belong. It will be observed from the marriage custom already described that there are two restrictions on marriage due to caste."

Speaking about the doctrine of Anulôma, Sir T. Muttusami Aiyar says:—

"Both these restrictions have, as explained before, a legal origin, the one in the general rule of Hindu law obtaining at present on the other side of the ghâts, and the other in the Anulôma doctrine of ancient Hindu law. In dealing with a customary marriage in a society which recognizes caste as a *quasi*-religious institution, I see no alternative but that of recognizing such marriage customs as have a legal origin, although I would not fossilize them but help on social evolution by inserting the words 'for the time being', and thereby recognizing any change which may take place from time to time owing to the spread of education." Proceeding he says:—

"Further, the form in which marriages may be contracted under the Act ought to be described as the one customary in the caste or class to which the woman belongs. It is necessary to describe it so in order that a Nambudri Brahman or a male member of a Kovilagam may contract a marriage under the Act if he chooses to do so; otherwise there may be no form applicable to the case, as the Brahman or Kshatriya marriage ritual does not apply to a marriage with a Nayar woman. In dealing with the intricate question of caste it will be seen that I kept before my mind three principles, viz., (i) that the State should not repudiate caste restrictions, for such repudiation would be deemed to be an interference with caste rules, (ii) that it should tolerate such restrictions only so far as they have a legal origin and passed into what might be deemed a customary law, and (iii) that society should be left free to alter them from time to time with reference to the requirements of social marriage."

One of the grounds I have given in my minute of dissent is that this retention of clause (a) in section 15 arrests the growth of society; but its inclusion in section 3 and exclusion from section 15 helps social evolution without causing disturbance to the present social feelings. On this point, four of the Commissioners who signed the report in page 40 state "Our President is of opinion that 'the marriage to be legalized must be between persons who are permitted to cohabit with each other by the custom obtaining for the time being in the caste to which they belong.' He says, 'in dealing with a customary marriage in a society which recognizes caste as a *quasi*-religious institution, I see no alternative but that of recognizing such customs as have a legal origin although I would not fossilize them, but help on social evolution by inserting the words 'for the time being' and thereby recognizing any change that can take place from time to time owing to the spread of education.' Here, with due respect, we must express our doubt as to whether the phrase 'for the time being' would have the desired effect of preventing fossilization." The Commission took a much wider and more liberal view. I find that your Lordship's government has taken—I am speaking subject to correction—the more liberal view enunciated by the members that signed the report. In G.O., No. 54, Legislative, dated 26th September 1892, embodying a letter of reference from this Government to the Government of India, I find the following stated in paragraph 13 of the letter:—

"The President appears to propose in paragraph 16 (ii) that such marriage customs 'as have a legal basis' should be expressly recognized in the new Act and that, by the insertion of the words 'for the time being,' provision should be made for changes in custom. It seems, however, to Government that this is unnecessary and that the signatories of the report show, in paragraph 68, reason for doubting whether the insertion of the words 'for the time being' would have the desired effect. His Excellency in Council is of opinion that it will be enough if the law should attach the proposed legal incidents to connections which are in accordance with the customs of the caste of both parties and prefers to make no attempt to specify these customs; room will, in this way, be left for development and change of custom which would, of course, have to be proved in accordance with established legal principles."

In paragraph 14 it is stated "to sum up: the measure which the Governor in Council would see enacted, would, I am to say, be on the following broad lines:— Every marriage socially recognized as such, to be registrable under the Act, &c." In the letter from the Secretary to the Government of India, Home Department, to the Chief Secretary to the Government of Madras, embodied in G.O. No. 42, Legislative, of the 1st March 1894, we find:—

"5. I am now to communicate the conclusions at which the Government of India have arrived after carefully considering the subject-matter of the correspondence. Accepting Sir T. Muttusami Aiyar's opinion that the union called *sambandham* produces no legal effect whatever, they entirely agree with the Government of Madras that legislation should be resorted to in order to give such effect to what is already recognized as a marriage in society among the classes concerned, but which does not at present create any legal relation or rights as to maintenance, inheritance, and the like. The Governor-General in Council accepts all the main heads of the measure sketched out in paragraph 14 of the letter under reply, with the exception of the proposed extension of the Hindu Wills Act to areas in the Madras Presidency other than the Malabar and South Canara districts, and subject to the following remarks as to head (b)."

So that it is not correct to say that these social usages between Nayers and Nambudris are new institutions pounced upon this Council without previous consideration by the Government of Madras or the Government of India. I cannot bring myself to believe that this Government or the Government of India used the language such as has been used, without taking into consideration the recommendation of the Commission in their report. I have specially pointed out the paragraph of the letter of this Government, where special reference is made to paragraph 16 (2) of Sir T. Muttusami Aiyar's memorandum. Further, it seems to me that this marriage, supposing it is registered with the consent of all the parties, is not such a bad thing as to render it null and void; because there is nothing inherently wrong. Sir T. Muttusami Aiyar pointed out that after all this is not a novel practice; it is the ancient practice called Anulôma, far more ancient than the laws of Yajñavalkya and Mitakshara, revered by sages whom we adore to this day and practised by them. He points out that it has a legal basis. If under the present condition of things there is some kind of revulsion to that, let us recognize it as an obstacle to registering it as a marriage; but the marriage having proceeded, there could be no reason whatever on the ground of personal law to go to the root of marriage and render it null and void.

I would now refer to the reasons mentioned in the report of the Select Committee, from which reasons I have dissented entirely. One of the reasons given is that there is no demand for legislation. That has been given as a ground for including clause (a) in section 3 and in section 15. This at best ignores that a Nayar woman has also rights like the Nambudri. It postulates that in all marriage contracts it is only the man that is to be consulted and that woman and children have nothing to be consulted about—that the Government has nothing to consult about the woman and children but only the Nambudri Brahman. That is the hypothesis that we start with. But what reason is there for assuming that there is no demand for legislation? What right have you to say that the Nayar women are not anxious and willing to improve their position by getting some rights which may be given them under this Act? Then it is said that the registration of these sambandhams is contrary to public policy, inasmuch as it would enforce celibacy on Nambudri females. That is an argument which I could not possibly understand; and it seems my Lord to be a grim and cruel irony on the fate of Nambudri females, whose present lot is as some one said “to blush unseen and to die unwedded.” That is their present state; to say that clause (a) is necessary in both the sections 3 and 15 on the ground of personal law in order to protect the Nambudri females is, I say, a heartless irony on the present fate of Nambudri women. I submit that no law passed either by this legislature or the Imperial legislature could be more potent in its effect to inflict life-long and enforced celibacy on the Nambudri woman than the law promulgated by Sankarachariar, in his Anacharams, by which the Nambudri is guided in his daily life and daily action. Only two alternatives can possibly arise by the omission of clause (a) in section 15. It might happen that the Nambudris may like to register the Nayar connections as marriages under this Act; and if that is the consequence, we shall not be inflicting any hardship on the Nambudri women because they will be no worse than what they are now. Again, no sooner is this law passed with the omission of clause (a) in section 15, than the Nayar woman might insist on the sambandham being registered; otherwise she would not consort with him; and when this demand is made, if the Nambudri refuses it, the only possible result would be that he would go back to the Nambudri woman, and even if that be the indirect result of this Bill with the amendment I wish to make in it, that will be conferring a great boon on subjects who are entitled to certain rights.

Some objections have been raised saying that *sradh* will not be performed—I have heard those objections stated. It seems to me unnecessary to meet them, because under the present rules a Nambudri has no sacramental form of marriage, and therefore no son to perform his *sradh*. His brother's son or uncle's son or some such collateral relation performs his *sradh* at present. That is a difference which has to be noted between the East Coast Brahmans and the Nambudris. I wish to point out another difference between the East Coast Brahmans and the Nambudris. According to the East Coast rules a Brahman girl must be married before puberty, more strictly between eight and ten years of age; but if we transfer ourselves to the West Coast, we find that there are Nambudri women growing up to *chhage* in their maidenhood and dying with marriage tali being tied round the neck of the corpse as if in mockery of marriage.

I now wish to address myself to an important consideration. Supposing a Nambudri has a personal law of marriage under which he could marry, a law which he respects and which has a vitality—supposing all that is true, I address myself to the important consideration whether a Nambudri is at liberty to choose another personal law, namely, the personal law of sambandham *plus* the registration, or whether he is bound by reason of his birth and race to stick to his own personal law. My Hon'ble friend Mr. Bhashyam Aiyangar referred to the speech of Sir James Fitz James Stephen to show that no innovation could possibly be made in the personal law. Supposing people have a personal law which personal law is respected by them, which has a vitality among them and according to which they are living, it is not for the legislature or the State to go and tell them that they shall not live by that law and that the legislature will not recognize that law, and thus compel them to give it up. I shall illustrate the proposition by a single instance. Supposing the Hindu law says that a marriage is valid only according to certain rituals and certain formalities, and unless those formalities and rituals are observed the marriage is not valid, it is not for the legislature to say that marriages under these rituals will not be recognized but only marriages performed under other rituals. That is supported by the great authority of Sir James Fitz James Stephen. That is entirely different from saying that no person in India shall change his personal law and that all people by reason of their birth and race are wedded to a particular law even though the people do not like it. With the first proposition, which I have been mentioning and which I have been illustrating, I entirely agree; it is supported by the opinion expressed by Sir James Fitz James Stephen. The second proposition I emphatically repudiate as having no basis whatever in law. Referring to the distinction between personal and territorial law, in page 62 of the supplement to the *Gazette of India* that I mentioned, we find—

His Excellency the PRESIDENT.—The Hon'ble Member is again straying away from the point. He should stick to section 15.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—I wish to point out now that supposing there is a personal law, he is at liberty to alter it. If he alters it, it is not for the legislature under section 15 to go and tell him that he is not to alter it. Supposing a Nambudri has a personal law by which he marries, I submit that according to law he can alter it, if he chooses to alter it; and it is not for the legislature to go and tell him that he shall not alter it.

His Excellency the PRESIDENT.—I would ask the Hon'ble Member to confine himself to the section before us.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—That is the distinction as to the nature of personal law. It is absolutely necessary, to understand the capacity of any person living in India, to say whether he can take a personal law or not or whether the legislature should take its stand and say "you should not take any other law and if you do, it will be held invalid." For this reason it is necessary to know the nature of personal law.

The Hon'ble Mr. BLISS.—My Lord, I beg leave to rise to a point of order. The Hon'ble Member has taken up more than one hour and during the whole of this time, his speech, as far as this section is concerned, has been entirely irrelevant to the subject. I submit to your Lordship that the Council has already decided to retain clause (a) in section 3 and the only question is whether that particular disqualification is such as to render the marriage null and void. We have nothing to do with personal or territorial law. Supposing that state of things had existed which is expressed in that section, is that to render or not render a marriage null and void, if any objection is brought up against it. I appeal to you, my Lord, to prevent any further waste of the time of this Council.

His Excellency the PRESIDENT.—I have already ruled that the Hon'ble Member is wandering away from the point. His remarks would have been more appropriate under section 3. I have been giving him a great deal of latitude to see how he would bring his remarks within the scope of section 15. I consider that he has missed the opportunity of making his remarks on section 3, and I must really call his attention to the fact that he ought not to stray away from clause (a) of section 15. The remarks that the Hon'ble Member wishes to make would have been much more appropriate under section 3.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—I shall read only one passage which shows that if a person chooses to change his personal law, it is not for the legislature to go and tell him that he should not.

His Excellency the PRESIDENT.—Such remarks would have been appropriate in regard to section 3. They do not refer, as far as I can see, to this section. This section says that a marriage is null and void, if any person has infringed section 3. That is the point and not whether section 3 is good or bad.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—Then I would only submit that this inclusion of clause (a) under section 15 sanctions or encourages concubinage on the West Coast.

To say that under section 3 (a) a Nambudri shall not at all register his marriage or social usage with a Nayar woman, to admit as correct that the junior members of a Nambudri family could not marry, and then to render such a connection, if it takes place, null and void under clause (a) of section 15, is, I say, virtually giving legislative recognition to concubinage, which a Nambudri is practising—it is in fact putting the seal and approbation of legislature on concubinage, which is practised. To that extent, the provision is an-immoral one. Next I contend that it violates principles of natural justice. I contend that it reduces to the position of a concubine, a woman who might have been a life-long companion with the feeling and consciousness that she was a wife; then it bastardizes children who are not responsible for their birth, and who might have been during all their life-time considering themselves as the offspring of an honourable connection; lastly I submit that this provision arrests the growth of society and puts the stamp of immobility on it and this violates the first principles of British Administration. Then I submit there are certain fundamental principles

of legislation in this country; those principles have been recognized all along by legislators and they permeate every act of every legislature in this country. One of those principles is the principle that is laid down as an ultimate rule of decision for every court, a principle which should guide legislation in this country as established, after an elaborate examination and exposition of all extant authorities, by Sir James Fitz James Stephen—the principle of equity, justice and good conscience. There is also another principle which has been vouchsafed to us and which is contained in the great proclamation of Her Majesty the Queen Empress, namely, "that no man shall lie under a disability." Clause (a) of section 15 virtually puts under disability a person to do things which might be quite to his heart. Then there is another principle, that no legislature could sanction immorality, either expressly or impliedly, and if any Act violates all these principles it is not worthy of our consideration. I submit that these principles which have been followed in all Acts of legislature, which have been explained in the discussion on Act III of 1872 and with which His Excellency the Viceroy was in fullest sympathy, must be recognized on this occasion as before. That principle has been explained by the Viceroy thus:—

"The Bill as it is now framed, explained and described by the powerful arguments of my Hon'ble friend, is necessary to relieve a portion of our fellow subjects from a distinct disability, nay, even from a penalty under which they labour. It is in thorough harmony with the principles upon which the Government is founded, namely, complete and entire liberty and tolerance in respect of every religious creed within the limits of the empire. I cannot conceive that any man will venture at this time of day to object to this principle, the existence of which is coeval with our rule in India. On the part of the Government I must say that I am quite prepared to declare that we are determined to carry out that great principle in this matter, and that we intend to relieve this, the Brahmo-Samaj, or any other sect of our fellow-subjects, from any disability under which they labour. Other religious sects in India have been similarly relieved; and no matter what reasons may be brought to the contrary, I am prepared here to say that this Government will never consent to continue a state of the law which has the effect of imposing a severe disability upon a portion of our fellow-subjects, going possibly even to the extent of making their wives concubines, their children bastards, and rendering the evolution of their property insecure."

Therefore I submit on these grounds that this principle in clause (a) of section 15 should not commend itself to your Lordship. I only wish to answer one particular phase of the objections which were urged by my Hon'ble friend Mr. Bhashyam Aiyangar this day, that is, if a Nayar-Nambudri connection is recognized—

His Excellency the PRESIDENT (interrupting).—Does the Hon'ble Member speak on section 3 (a) or section 15 (a)?

The Hon'ble C. JAMBULINGAM MUDALIYAR.—Section 15 (a).

His Excellency the PRESIDENT.—The Hon'ble Bhashyam Aiyangar spoke on section 3.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—But his remarks apply to this section also. Once a marriage is registered, objection is urged under clause (a) of section 15, that it contravenes all principles of Hindu law and therefore it must be null and void. Such objections have been urged under section 3, and I say that all these

objections are virtually objections about clause (a) of section 15, which is a very important one, rendering as it does a marriage null and void and its place in section 3 is not of such great importance. His objections therefore virtually and directly apply to section 15 and these objections have to be met, especially the objection that if this is not rendered null and void, there will be complications about inheritance.

His Excellency the PRESIDENT.—The question is whether a marriage should be declared null and void on certain conditions. The Hon'ble Member still seems to be labouring under the impression that section 15 (a) is section 3 (a). I would remind him that it is not so.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—Am I to understand, my Lord, that the objections raised under section 3 (a) have no reference to section 15 (a).

His Excellency the PRESIDENT.—The Hon'ble Member can refer to section 15 (a), but not to section 3 (a). If this is not done, I am afraid that I must rule him out of order.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—After the strong language I advisedly used in my minute of dissent and in my speech in denouncing this measure, it is hardly necessary for me further to urge on the Council that this provision ought not to find a place in section 15.

His Excellency the PRESIDENT.—Has the amendment a seconder?

The Hon'ble P. RANGAYYA NAYUDU.—My Lord, to prevent it from being lost for want of a seconder, I beg to second the amendment.

The amendment was then put and lost, three voting for and eleven against it.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—The other amendments of mine to this section are merely consequential, and I therefore request that I may be permitted to withdraw them.

Permission having been granted, the following amendments of which notice had been given were withdrawn:—

“Alter (b) and (c) in the same section into (a) and (b).”

“In clause (b) of the same section as thus altered substitute “clause” for “clauses” and omit “and (b)” at the end of the clause.”

The Hon'ble K. KALYANASUNDARAM AIYAR.—There is a mistake in my amendment and I beg to withdraw it.

Permission having been granted, the following amendment was accordingly withdrawn:—

“In section 15 (1), clause (a), to omit all the words after “law” in line 2.”

The Hon'ble V. BHASHYAM AIYANGAR.—I beg to propose that the following words be added at the end of clause (c): “or with whom she or he is otherwise legally married.”

The Hon'ble C. VIJAYARAGHAVACHARIAR seconded the amendment.

The amendment was put and carried.

Section 15 as amended was then passed.

SECTION 16.

This section runs as follows:—

(1) No marriage under this Act shall be held invalid by reason of any irregularity in the giving of notice under section 5 or of any person entitled to be served with copy of notice under section 7, not having been so served, or by reason of any irregularity in the publication or service of the copy of such notice or in complying with the provisions of sections 11 and 12.

(2) But when any person entitled to be served with copy of notice under section 7 has not been so served, it shall be competent to him to institute a suit within three months from the date of registration of the sambandham for cancellation of such registration on all or any of the grounds mentioned in section 3.

The Hon'ble V. BHASHYAM AIYANGAR.—I beg to propose that in the last line of sub-section (1) the figure “(9)” be inserted between the words “sections” and figure “11”.

The Hon'ble C. SANKARAN NAYAR.—Is it not a mistake? Should not 9 be 5?

The Hon'ble V. BHASHYAM AIYANGAR.—Yes, it should be “5”.

The Hon'ble the ADVOCATE-GENERAL seconded the amendment.

The amendment was put and carried.

Section 16 as amended was then passed.

SECTIONS 17, 18, 19 AND 20

were passed without any alteration.

SECTION 21.

This section runs as follows:—

Six months after the presentation of a petition by both parties or in cases where the application is made by one party alone six months after the service of notice under section 20, the Court shall, unless such application is withdrawn in the meantime, declare in writing the marriage dissolved. Upon such declaration the marriage shall be deemed dissolved from the date of such declaration; and no declaration made under this section shall be held invalid by reason of any irregularity in complying with the provisions of sections 19, 20 and 21.

The Hon'ble V. BHASHYAM AIYANGAR.—I beg to propose the following amendment:—

“Omit the words ‘unless such application is withdrawn in the meantime’ and substitute the following: ‘on the motion of the applicants or applicant’”.

In this section, as it now stands, the Court to whom the application has to be made has *suo motu*, to declare that a marriage has been dissolved at the end of six months. All that I propose is that a motion must be made by the parties concerned to make that declaration.

The Hon'ble S. SRINIVASA RAGHAVAIYANGAR seconded the amendment.

His Excellency the PRESIDENT.—Does the Hon'ble Member in charge of the Bill accept it?

The Hon'ble C. SANKARAN NAYAR.—Yes.

The amendment was put and carried.

Section 21 as amended was then passed.

SECTION 22

was passed without any alteration.

SECTION 23.

This section runs as follows :—

Where a husband following the Marumakkatayam or the Aliyasantana Law of Inheritance dies intestate in respect of his self-acquired or separate property or any portion thereof, one-half of such property or in the event of no member of his tarwad surviving him, the whole of such property shall devolve in equal shares on his widow and children.

The Hon'ble V. BHASHYAM AIYANGAR.—The object of the amendment which I propose, and of which I gave notice, is to express more unequivocally the intention of the Select Committee. Of course the word now used is the word "husband" and it might be construed as necessarily implying that the section does not apply to a widower. But the object of the section is that even the property of a person who married under this Act and lost his wife should devolve upon his children equally, but if he has no children and only the widow, then it is to devolve upon the widow only; but if he has both widow and children it is to devolve upon them equally. As the section now stands, it might possibly lead to some contention that this section only relates to cases in which a male dies leaving a widow. The amendment which I therefore propose is to substitute the words "male person" in lieu of "husband". If the words "male person" are substituted, the section would apply to the case of a person who has a wife living and also to the case in which he is a widower. I also propose to omit the words "in equal shares on his widow and children" and in lieu thereof substitute the following :—

"On his widow, if he leaves no children; and shall devolve in equal shares on his children if he leaves no widow; and shall devolve in equal shares on his widow and children if he leaves both widow and children."

This brings out the idea more clearly. No provision is made for the remaining half because it devolves according to his personal law on his tarwad; but inasmuch as there is no heritable blood between the father and his children under the Marumakkatayam Law, it is necessary to secure that right of inheritance both to his children and his wife. Of course the Hon'ble Sankaran Nayar explained to the Council the reasons why it was impossible to create a kind of tarwad or tavazhi estate which, though it may sound like an estate known to the Marumakkatayam system of inheritance, will really be in a state unknown to that system of inheritance. The property of the father would devolve only upon his children, because a man's children do not as such form any tarwad; but the Marumakkatayam system knows of two kinds of property, namely, the tarwad property and tavazhi property, or separate self-acquired property. Instead of creating a tarwad property which is unknown to the Marumakkatayam system, we might create a self-acquired estate which is known to that system. That self-acquired estate may be disposed of by gift *inter vivos*. It was considered desirable to create this right of inheritance, because as it was already stated, if the father was to be married, it was only right and proper that the children should have the right of inheritance to the property of the father.

The Hon'ble C. SANKARAN NAYAR seconded the amendment.

The Hon'ble Mr. BLISS.—May I ask the Hon'ble Member if it is not too vague to insert the words "male person"? surely it would seem better to say "any person." The Hon'ble Member may be right and I simply throw out the suggestion to the very strong body of vakils who surround me.

The Hon'ble V. BHASHYAM AIYANGAR.—There cannot be a wife unless a person is married, and unless a woman is legally married she cannot have the status of a widow.

His Excellency the PRESIDENT.—I would draw the attention of the Hon'ble Member to the fact that in every other section we have got the words "husband" and "wife," but when we come to section 23 the Hon'ble Member proposes to have "male person."

The Hon'ble V. BHASHYAM AIYANGAR.—Because the husband may be a widower and the wife may be a widow.

The Hon'ble Mr. BLISS.—If the male person is living, how can she be a widow?

The Hon'ble V. BHASHYAM AIYANGAR.—Under section 24 she might die a widow—she might be a widow or wife. Therefore I say a "female person." But if we have the word "husband," then it might be argued that it contemplates only the case in which a person dies leaving a widow.

His Excellency the PRESIDENT.—Then would you not say whose "marriage is registered under the Act"?

The Hon'ble V. BHASHYAM AIYANGAR.—No, because "children" is defined as the offspring of a marriage registered under the Act. Generally the word "children" may apply to illegitimate children also; but by the definition of the word "children" in this Bill, it is confined to legitimate children. But the word "widow" cannot apply to anybody except a married woman.

The Hon'ble the ADVOCATE-GENERAL.—The word "man" should be substituted for "male person."

The Hon'ble V. BHASHYAM AIYANGAR.—Yes.

His Excellency the PRESIDENT.—The question is to leave out the word "husband" and to insert the word "man."

The amendment was put and carried.

The Hon'ble the ADVOCATE-GENERAL.—I would ask the Hon'ble Bhashyam Aiyangar if he would accept the following wording in the place of his further amendment :—

"On his widow if he leaves no children; on his children in equal shares if he leaves no widow; and on his widow and children in equal shares, if he leaves both widow and children."

The Hon'ble V. BHASHYAM AIYANGAR.—Yes.

The Hon'ble Mr. BLISS.—It should be "or on his children" and "or on his widow and children."

The amendment, as modified by the Hon'ble the Advocate-General and the Hon'ble Mr. Bliss, was put and carried.

Section 23 as amended was then passed.

SECTION 24.

This section runs as follows:—

Where a wife following the Marumakkatayam or the Aliyasantana Law of Inheritance dies intestate in respect of her separate or self-acquired property or any portion thereof, such property shall devolve in equal shares upon her children.

The Hon'ble V. BHASHYAM AIYANGAR.—The first amendment I have to propose is to substitute the word "woman" for "wife." The next amendment is to omit the words "such property shall devolve in equal shares on her children" and in lieu thereof substitute the following:—

"One-half of such property shall devolve on her husband if she leaves no children; and shall devolve in equal shares upon her children if she leaves no husband; and shall devolve in equal shares on her husband and children if she leaves both husband and children; and in the event of no member of her tarwad surviving her, the whole of such property shall devolve on her husband."

I should just like to explain the reasons for the amendment which I move. Under the Marumakkatayam system there is heritable blood between the mother and the children. Even independently of this Bill, the children of a woman, though according to our conception we might regard them as illegitimate, have a right of inheritance to the mother—the mother, children and their descendants forming the tarwad with a community of property. Therefore unlike the case of the husband, between whom and the children according to the personal law of Marumakkatayam there is no right of inheritance, there is a distinction between the property left by a female married under this Act, and that left by a male married under this Act. If a male is married under this Act, it is necessary for the legislature to provide for the inheritance of his property to his children; but in the case of the wife, that is not absolutely necessary; according to the Marumakkatayam law, a separate or self-acquired property will go to her children and the descendants of the children of whom she is the common ancestress which is referred to by the technical expression tavazhi. One view that is held is that on the death of a Nayar woman, her property—I am referring to the separate or self-acquired property—devolves on the tavazhi which means her lineal descendants who form the members of the tarwad. This point cannot be regarded altogether as settled, though in a recent decision the Sub-Judge of Palghat, after taking evidence, came to the conclusion that on the death of a Nayar lady her self-acquired property devolves upon her descendants—that is, upon the tavazhi, of which she is the common ancestress. Another view is held; namely, that on her death it passes to the whole tarwad of which she is a member, but not the common ancestress. That is the difference between a tarwad and tavazhi. She may be a middle person in the tarwad, she might have ancestors who are members of the tarwad; but when we talk of the tavazhi as distinct from tarwad, it means her lineal descendants who are members of the tarwad; but when we talk of the tarwad, it means not only her lineal descendants, but also her collateral descendants who are members of the tarwad, between whom there is community of property. Therefore, how the self-acquired property will devolve is a point not yet altogether set at rest. If it is intended to secure any special benefit to her children who are the offspring of marriages registered under this Act, then it may be just and proper to secure one-half of her property to her children, that is to say, to the children who are sons and daughters of her sambandham registered as a marriage under this Act. Then the remaining half will devolve according to the Marumak-

katayam law, and I cannot definitely say whether it will devolve upon the whole tarwad or upon her own lineal descendants, or upon the members of her tavazhi though the Sub-Judge of Palghat in a recent decision held the latter view. Therefore my position is this: That either this section must altogether be omitted, or if it is considered desirable that a special right of inheritance should be conceded to her children by the sambandham registered under this Act, I submit that only one-half of the property should so devolve. As the section now stands, her illegitimate children and other members of the family would get no benefit of any portion of the self-acquired or separate property. Therefore my proposal is to encourage the registration of sambandhams under this Act even on the part of females, and it is in this view my amendment is proposed. Another object I had in view was this: Inasmuch as out of the property of the husband we give one-half to the wife, though under the existing law she has no right, and make the widow a co-sharer with his children in one-half of the husband's self-acquired property. It seems to me, therefore, only just and proper that the husband also should have a right of inheritance in the property of the wife. Therefore, what I propose is that one-half of the self-acquired property of the female should be diverted from its usual line of inheritance and divided between her husband and her legitimate children, and then the remaining half should devolve according to the existing law. It is to carry out this object I propose the amendment of which I gave notice. Just as in the case of a husband we leave one-half to devolve on the members of the tarwad, so in regard to the self-acquired property of the female one-half of the property will be diverted from its present line of inheritance and will devolve upon the legitimate children and the husband in equal shares, and the remaining half would, as under the existing law, devolve upon her tavazhi or the tarwad whatever may be the ultimate decision of the High Court in the Palghat case.

The Hon'ble N. SUBBA RAO PANTULU.—I second the amendment.

The Hon'ble S. SRINIVASA RAGHAVAIYANGAR.—I wish to ask the Hon'ble mover of the amendment why the word "husband" has been introduced in the amended portion?

The Hon'ble V. BHASHYAM AIYANGAR.—Under the existing law a wife has no right to a share of the property of the husband, yet under section 23 we make the wife a co-sharer with the children in the one-half of the separate property of the husband.

The Hon'ble S. SRINIVASA RAGHAVAIYANGAR.—Then is it on the ground of reciprocity?

The Hon'ble V. BHASHYAM AIYANGAR.—Not only on that, but also on the fact that when the law constitutes the relationship of husband and wife by marriage there ought to be a mutual right of inheritance also. When you constitute the relationship of marriage, according to all enlightened principles, there ought to be the right of inheritance.

The Hon'ble C. SANKARAN NAYAR.—As the Bill originally came before the Council, half the property of the wife was to be divided among the children, but we now have the entire property divided among the children for reasons suggested by the Hon'ble Bhashyam Aiyangar. I am prepared to revert to my original intention, that is to restrict their share to half the property. Otherwise, there may be the fact that we shall be depriving her other children of any share of the property. But the point to

which I wish to draw the attention of the Council is whether at this stage it is advisable to include the husband as one of the sharers with the children. That is the only point which requires some consideration. Your Lordship will see that when the Bill was introduced and was under discussion we thought when the marriage was legalized it was only fair that the wife and children ought to be entitled to maintenance during their life-time and it was accordingly so provided for. The Government of India have also considered that some provision ought to be made for wife and children after the husband's death and accordingly we gave them the other half of the husband's property. When we came to consider the question it was found that half of her property also should be given to her children. Till now the idea was that they should take it as a joint estate, forming themselves, as my friend advocated, into a tarwad. The idea of the husband taking a share of the property did not come into consideration. At the same time I must state one circumstance which is in favour of my friend's motion and which he has omitted to mention. When originally I asked leave to introduce the Bill I suggested that half the share of her property should devolve upon the husband and her children, and so far as I remember no objection has been taken by anybody interested in the question in Malabar. Subsequent to the resolution of Government in the subsequent proceedings and the steps we took, the husband did not come in for his share. I did not myself see any unfairness or injustice in giving the husband some share of the property with the children, in the half share of the property of the wife. But I feel bound to place before the Council that in the first Bill which I introduced we have been proceeding all along as if the husband was not to get a share. What I would suggest is whether it would not be more advisable simply to say that half the property of the wife shall devolve on her children than to complicate the question by bringing in the husband at this last stage.

The Hon'ble S. SRINIVASA RAGHAVAIYANGAR.—My Lord, I share the objections stated by the Hon'ble Sankaran Nayar. I believe the principle on which a portion of the self-acquired property was given to the wife under section 23 is that the woman is entitled to get some maintenance, so long as he lives, and that she should get some provision for her further maintenance after his death. The same reasons I do not think hold in the case of the property left by the wife, and the husband I do not think is a party entitled to share the property.

My Lord, I do not see any great reason, also, for giving the husband the whole share. One of the reasons for giving a share is that one of the parties to be married is entitled to maintenance. That is true as I said in the case of the wife but not in the case of the husband; half the share has been adopted in the case of the wife as a rough indication of what would be necessary for her maintenance. For these reasons I am inclined to oppose the amendment and to agree in the remarks of the Hon'ble Sankaran Nayar.

The Hon'ble P. RANGAYYA NAYUDU.—According to Hindu law if a woman leaves children and husband, it is the children that get the whole of the property of the woman and not the husband. In the Marumakkatayam law the husband is nowhere mentioned. Why should we now introduce in this Bill the husband and give him a share of the property? If the wife leaves children, then the children are the proper parties to inherit the whole property but not the husband.

The Hon'ble V. BHASHYAM AIYANGAR.—I do not insist on the husband being recognized as a sharer with children.

The Hon'ble Mr. BLISS.—What is to become of the children?

The Hon'ble V. BHASHYAM AIYANGAR.—If there are children they will be members of the tarwad. I will however alter my amendment and let the words run thus:—

“One-half of such property shall devolve in equal shares upon her children and, in the event of no member of her tarwad surviving her, the whole of such property shall devolve on her husband.

The Hon'ble Mr. BLISS.—Supposing that the woman does not like to marry under this Act and has one child by the last husband and that she gets ten other children by falling in love with others, what share will these children get?

The Hon'ble V. BHASHYAM AIYANGAR.—The other half.

The Hon'ble Mr. BLISS.—Why should one get half and the other ten get the other half?

The Hon'ble V. BHASHYAM AIYANGAR.—Because the others are illegitimate. As the section now stands they will get nothing, and therefore I provide one-half for them.

The Hon'ble C. SANKARAN NAYAR.—We defined children by excluding all children born to her otherwise than by marriage, and it therefore becomes necessary to alter this section. The only other possible way to alter the section is to say that such property shall devolve in equal share upon her sons and daughters, whether of sambandham or not. Then he will retain the original recommendation of the Select Committee.

His Excellency the PRESIDENT.—Would not that be preferable?

The Hon'ble V. BHASHYAM AIYANGAR.—That would be beyond the scope of this Bill. That would be defining the rights of inheritance of children who are not offspring of a marriage under the Act.

His Excellency the PRESIDENT.—I understand the Hon'ble Member to say that the other half is set apart for her illegitimate children who become members of the tarwad.

The Hon'ble V. BHASHYAM AIYANGAR.—One-half will go to the illegitimate and legitimate children and the other half to the legitimate children only, both forming members of the same tarwad.

The two amendments of the Hon'ble V. Bhashyam Aiyangar—the latter in its altered form—were then put and carried.

Section 24 as amended was then passed.

Section 25 was then passed without any alteration, and the schedules and the preamble were agreed to.

The Hon'ble C. SANKARAN NAYAR.—My Lord I move under Rule 51 for the passing of this Bill into law. Your Lordship will see that we accepted only the amendments of the Select Committee, other amendments being mainly verbal with the exception of the very last one in which we recognize the husband's right to the share of the property after the extinction of the tarwad. We originally suggested that half the property should be given to the children and other half to the tarwad. We now retain that provision about half the property of the children, but we now say that if the tarwad is extinct then that half may go to the husband. There is nothing in that provision which conflicts with the tarwad law or which is against the provisions of the old Bill.

The Hon'ble V. BHASHYAM AIYANGAR.—According to the present wording it will not be half but the whole.

The Hon'ble C. SANKARAN NAYAR.—Yes, I mean to say that so far as the tarwad is concerned they are not deprived of any property. Even now we have been saying that the property shall be divided between the children and the tarwad, and it is only on the extinction of the tarwad that the husband gets a share. I really do not see that it is necessary on account of that amendment only to defer the passing of this Bill into law. I would therefore propose that this Bill be now passed into law.

The Hon'ble C. JAMBULINGAM MUDALIYAR seconded the motion.

The Hon'ble Mr. BLISS.—Under Rule 51 I object to the passing of the Bill into law at this meeting. The fact of the matter is we have been at it for more than six hours and we have had a number of amendments. It is true that the majority are only verbal, but the risk of mistakes creeping in if the Bill is passed into law now seems to be considerable. We shall have another meeting of the Council about the 10th or 12th of March and it seems to me it would be a very much safer thing that we should leave the passing of this Bill till the next meeting so as to give the Secretary time to thoroughly look into the matter and to see that nothing has been overlooked. I want to have it sent to the Government of India in a complete form so that it will be all plain sailing and there will be no more trouble about it. It is better to have it reprinted and see there is no mistake in it.

The Hon'ble C. SANKARAN NAYAR.—Then I withdraw my motion.

The SECRETARY having announced that there was no further business before the Council, His Excellency the President dissolved the meeting.

(By order.)

LIONEL DAVIDSON,
Secretary to Council.

Proceedings of a Meeting of the Council of the Governor of Fort St. George assembled for the purpose of making Laws and Regulations under the provisions of the Acts of Parliament, 24 and 25 Victoria, Cap. 67, and 55 and 56 Victoria, Cap. 14.

The Council met at the Council Chamber in Fort St. George at 11 A.M. on Wednesday the 11th day of March 1896.

PRESENT:

His Excellency the Right Hon'ble the GOVERNOR OF MADRAS, G.C.I.E.—*Presiding.*
The Hon'ble Mr. H. W. BLISS, C.I.E.
The Hon'ble Mr. J. GROSE, M.A.
The Hon'ble Mr. J. STURROCK.
The Hon'ble Mr. D. DUNCAN, M.A., D.Sc.
The Hon'ble Mr. J. F. PRICE, C.S.I.
The Hon'ble Mr. G. L. CHAMBERS.
The Hon'ble P. RANGAYYA NAYUDU.
The Hon'ble the Rev. W. MILLER, M.A., LL.D., C.I.E.
The Hon'ble C. SANKARAN NAYAR, B.A., B.L.
The Hon'ble N. SUBBA RAO PANTULU, B.A., B.L.
The Hon'ble C. JAMBULINGAM MUDALIYAR, B.A., M.L., Rao Bahadur.
The Hon'ble K. KALYANASUNDARAM AIYAR, B.A., B.L.
The Hon'ble C. VIJAYARAGHAVACHARIAR, B.A.
The Hon'ble S. SRINIVASA RAGHAVAIYANGAR, B.A., C.I.E., Diwan Bahadur.
The Hon'ble Mr. C. S. CROLE.
The Hon'ble Mr. A. T. ARUNDEL.
The Hon'ble VELLORE MUHAMMAD SHERIFF KHAN BAHADUR.
The Hon'ble Mr. E. GIBSON.
The Hon'ble the ADVOCATE-GENERAL.
The Hon'ble Colonel D. McN. CAMPBELL, R.E.
The Hon'ble Mr. H. P. HODGSON.

QUESTIONS.

Mr.
The Hon'ble K. KALYANASUNDARAM AIYAR—

- Qu 309 [I] (a) Is it true that in the Tanjore district a special tax on trees is collected in some cases even when such trees stand on assessed lands?
(b) Will the Government be pleased to state the extent of the lands in that district subject to this dual system of taxation?
(c) Will the Government be pleased to order the remission of one of the two taxes in Tanjore and also where it exists in other districts?
- Qu 310 [II] (a) Is it a fact—(1) that in the recent settlement of Tanjore no census was taken of tope trees and (2) that the ryots continue to pay tax on trees according to the old paimash?

(b) Will the Government be pleased to state—

- (1) the amount of the tax so collected,
- (2) the number of trees on which the same is levied, and
- (3) the number of those now actually in existence?

(c) Will the Government be pleased to state also the amount of the tax that may be levied on the lands on which those trees stand in lieu of the tree tax?

III. (a) Is the Government aware that in Tanjore the conversion of dry lands into wet is effected by the ryots at great cost and labour by digging the former down to the level of the adjacent wet lands?

(b) Will the Government be pleased to state—

- (1) whether in the re-settlement of Tanjore the full wet rates have not been invariably levied on lands which had been classed under dry in the old paimash and had been converted into wet by the ryots subsequently, and
- (2) whether the ryots have not in consequence been deprived of the benefit resulting from their own improvements?

The Hon'ble Mr. GROSE—

I to III. The Government is not in a position to answer these questions fully; further inquiries will be made.

Mr. The Hon'ble K. KALYANASUNDARAM AIYAR—

Q. 312 [IV] Will the Government be pleased to state—

- (1) the amount collected as village cess in Tanjore in 1894-95,
- (2) the village establishment maintained by Government in that district, and
- (3) the annual cost of the same to Government?

The Hon'ble Mr. GROSE—

- Q. 312 [IV] (1) The amount collected as village cess in Tanjore in 1894-95 is Rs. 1,47,360.
- (2) The village establishment maintained by Government consists of 1,442 karnams, 1,442 munsifs, and 1,442 vettis.
- (3) The annual cost of the above establishment is Rs. 2,75,328.

Mr. The Hon'ble K. KALYANASUNDARAM AIYAR—

Q. 313 [V] (a) Will the Government be pleased to state the improvements effected by the South Indian Railway Company "to increase the comfort and convenience of native passengers" and the amount spent on the same since 22nd January 1895, the date of the reply of the Hon'ble Colonel Pennycuik to my question No. XXXIV? [Vide page 15, Proceedings of the Legislative Council, Madras, 1895.]

(b) Will the Government be pleased also to state the amount spent by the said Company during the same period on "the provision of retiring accommodation for third-class passengers" mentioned in the same reply?

The Hon'ble Colonel CAMPBELL, R.E.—

Q. 313 [V] The Circular No. XV Railway referred to in the reply to question 34 on 22nd January 1895 was ordered to be cancelled and withdrawn and Circular No. 14 R., dated 10th July 1895, has been substituted. This has been published in G.O., No. 509 K. of 8th August 1895, and in the Part I of the *Fort St. George Gazette*.

Reports have been called for from the Railway Administrations in the Madras Presidency, and the attention of the Government Inspectors of Railways has been specially given to the measures therein enumerated.

At the present time the proposals made by the Agent of the South Indian Railway are before the Board of Directors of that Railway and a special report has also been made to the Government of India by this Government. Until the sanction of the Board is received the nature and extent of the measures cannot be made public as the reforms are not obligatory, but with the permission of His Excellency the Governor in Council a copy of the Agent's letter to the Board of the South Indian Railway embodying a scheme of improvements will be placed at the disposal of the Honourable Member.

The amount spent by the Company since January 1895 in carrying out works of increased waiting-room accommodation (for native passengers), widening and lengthening platforms for all classes, improving latrine accommodation, wells and water-supply to platforms (for native passengers) has been between rupees thirty and forty thousand, of which about five hundred has been for medical attendance and temporary latrines expressly for native pilgrim passengers.

PETITIONS, &c.

The SECRETARY.—I have the honour to report that G.O., No. 18, Legislative, dated 3rd March 1896, has been communicated to the Legislative Council and is laid on the table. I have also to report the receipt of certain additional memorials and telegrams regarding the Malabar Marriage Bill identical in form with those laid on the table at the last Council meeting. I have next to lay on the table the correspondence relating to the forest policy in this Presidency for which the Hon'ble C. Jambulingam Mudaliyar asked at the last meeting of the Council. Lastly, I have to report the receipt of a letter from the ex-Diwan Peishkar of Cochin, Mr. A. Sankariah, protesting against the Malabar Marriage Bill on the ground that the Legislative Council has failed to meet the objections raised in his first memorial.

A BILL TO REPEAL MADRAS ACT III OF 1882 AND SECTION 49 OF ACT XXIV OF 1859.

The Hon'ble Mr. BLISS.—My Lord, I beg to move that the Bill which stands in my name—that is a Bill to repeal Madras Act III of 1882 and section 49 of Act XXIV of 1859—be read in Council. The whole purport of the Bill is contained in the Statement of Objects and Reasons which has been before the Council and the public for some time; and I do not know if there is anything more for me to add to it except that it seems desirable that whenever we can we should clear the Statute Book of superfluous matter.

The Hon'ble Mr. PRICE seconded the motion.

The Hon'ble N. SUBBA RAO PANTULU.—May I ask the Hon'ble Member in charge of the Bill under what circumstances the notification referred to in the Statement of Objects and Reasons was extended to this Presidency by the Government of India?

The Hon'ble Mr. BLISS.—I will answer as to this afterwards.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—My Lord, I oppose the motion that is now before the Council. My reasons for doing so are twofold. I think we have

no power to take the Bill into consideration and to pass it, and even if we had the power, it is in the highest degree undesirable to exercise it in the present instance. The Bill before us proposes to repeal the whole of Act III of 1882 and section 49 of Act XXIV of 1859. The Council has the power to repeal the former Act being a local Act, but it has no such power in regard to the latter. It is called erroneously the Madras Act in the Bill, but it is an India Act; and this Hon'ble Council cannot repeal any portion of any Act passed by the supreme legislature except on strict compliance with the provisions of section 5 of the new Indian Councils Act of 1892. It is true that on former occasions this Act XXIV of 1859 has been amended and portions of it repealed by three Madras Acts; but all that was done under section 42 of the Indian Councils Act of 1861. Under that Act the Madras legislature had the limited power of amending and repealing laws and regulations made by the supreme legislature in so far as they affected our Presidency, provided they were passed prior to the coming into operation of the Indian Councils Act of 1861. That power to amend and repeal has been extended by section 5 of the new Indian Councils Act to all Acts passed by the supreme legislature, no matter when they were passed, whether before or subsequent to 1861. While the power so to amend and repeal has been extended, the exercise of it has been placed under some restraint by the new Indian Councils Act of 1892, that is, we cannot repeal or amend any portion of an Act of the supreme legislature except with the previous sanction of the Governor-General. I would call the attention of Hon'ble Members to the clear and unambiguous language of section 5 of the new Indian Councils Act and draw special attention to the words "but not otherwise" in that section. That section reads as follows:—

"5. The local legislature of any province in India may from time to time, by Acts passed under and subject to the provisions of the Indian Councils Act, 1861, and with the previous sanction of the Governor-General, but not otherwise, repeal or amend as to that province any law or regulation made either before or after the passing of this Act by any authority in India other than that local legislature: Provided that an Act or a provision of an Act made by a local legislature, and subsequently assented to by the Governor-General in pursuance of the Indian Councils Act, 1861, shall not be deemed invalid by reason only of its requiring the previous sanction of the Governor-General under this section."

In the face of such clear expression of the law, if we are asked to rely upon section 42 of the old Indian Councils Act and to proceed to repeal section 49 of Act XXIV of 1859 on the ground that it was passed prior to the coming into operation of the Indian Councils Act of 1861, we shall be excluding from the operation and the purview of section 5 of the new Indian Councils Act all laws and regulations passed by the Supreme Legislative Council before 1861; in other words we should have to read the words "made either before or after the passing of this Act," as if they are "made either before or after the passing of this Act, provided they were made subsequent to the coming into operation of the Indian Councils Act of 1861." Unless we import those words into that section, we cannot repeal any Act passed before 1861 by the supreme legislature, without the sanction of the Governor-General. That is, I believe, a violent and unwarranted construction to be placed upon the unequivocal language of section 5. If one whole class of Acts were intended to be excluded, the legislature would have said so. As far as I am aware, I do not believe that sanction has either been asked for or obtained to repeal section 49 of Act XXIV of 1859. The Government of India in their letter, dated 22nd November 1895, say: "It will apparently be advisable for the Local Government to repeal section 49 of

the Madras Police Act XXIV of 1859 as well as Madras Act III of 1882, since the provisions of sections 30, 30-A, 31 and 32 of Act V of 1861, which have now been extended, replace those of section 49 of the former Act." I respectfully submit that according to ordinary sense to be put upon the word "sanction," this is not a sanction; this is simply a suggestion from the Government of India that a certain thing is advisable, but cannot be taken to be a sanction as contemplated by section 5 of the Indian Councils Act. Even supposing we had the power to pass this Bill—though I hold that it would be *ultra vires* to pass it—I ask whether it is desirable to do so. I submit that it is altogether undesirable to do so. The object of the Bill, we are told, is to allow certain provisions of the Imperial legislature, namely, Act V of 1861, which has been recently extended to this Presidency, to reign supreme. Of the sections so extended, sections 15, 15-A, 16, 30 and 30-A are the same as sections 4, 5, 6, 10 and 11 of the amending Act VIII of 1895. The sections to which I have referred embody provisions relating to the quartering of an additional police force in disturbed areas at the cost of the inhabitants of the locality to be apportioned by the District Magistrate. That officer has, further, the right of exempting persons from liability to bear any proportion of the cost and has also the power of awarding compensation, &c. We all know under what circumstances this Act VIII of 1895 was passed; it was passed in the teeth of much opposition in the North of India, both from Indians and Europeans, officials and non-officials. The strangest portion of it is that Madras took no part in the criticisms of that Act in any stage.

It will also be remembered that the Hon'ble Mr. Mehta, of Bombay, proposed an adjournment of the consideration of the Bill on the ground that it had not been sent to Madras for publication. He was answered by Sir Anthony MacDonnell, who was in charge of the Bill, that it was not necessary to do so, because it was not the intention of the Government of India to extend that Act to the Madras Presidency. He further added, to the best of my recollection, that the India Government expected local legislation on the subject on lines similar but more suited to the circumstances of this Presidency. The late Hon'ble Mr. Clogstoun, the representative of the Madras Government, while he shared the regret of the Hon'ble Mr. Mehta, opposed the amendment on the ground that it was not the intention of the Government of India to extend the Act to the Madras Presidency; and he also added that happily the circumstances of Madras were different and that such an Act as that was not required for it. He made an exception in the case of those unfortunate but misguided Mappillas of Malabar with regard to whom he said there was a special Act. In the face of these declarations and assurances of the India Government and the trusted representative of the Madras Government, Mr. Clogstoun, I am surprised that that Act found its way into this Presidency and this Bill into this Council. Under these circumstances I humbly protest against a measure of this sort being passed by this Council. If we had been asked about the subject at that time, that is, if the Bill which became Act VIII of 1895 had been sent to Madras for publication and opinion, I am pretty certain that there would not have been anything like unanimous support, I am pretty certain, my Lord, that the venerable Chief Justice of the High Court would not have sanctioned a measure which has provoked no better defence of its principles from Sir James Westland than that the Indian constable in matters of riots is any day worth two Judges of the High Court. Such a measure would not have been supported at all by the public of Madras. Now why should we disappoint everybody by having a law amidst us from the discussion of which we were excluded altogether?

The Hon'ble Mr. BLISS.—My Lord, I beg to rise to a point of order. The Hon'ble Member's speech is entirely irrelevant. The only point is whether the section should be repealed or not.

His Excellency the PRESIDENT.—The Hon'ble Member mixes up the two points. He should direct his attention more particularly to the Bill before us and more especially to the point whether this particular section should be repealed or not.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—I say, my Lord, that it should not be repealed, but should be left alone and that, if necessary, a new Bill should be introduced in accordance with the views of the Government of India. If I had not been interrupted by the Hon'ble Member, I should have finished saying so by this time. I oppose the Bill firstly on the ground that we have no power to pass such a Bill as this, and secondly on the ground that it is unnecessary and undesirable to get rid of the old law. Act VIII of 1895 is more stringent than the corresponding law in England. The justification for its introduction by the Government of India was that there were special circumstances in the north of India to demand it. I respectfully submit that, instead of repealing the present law, it is better to have a law more suitable to the circumstances of this Presidency in the place of an Act admittedly barbarous in its principles and pernicious in its effects but justified on the ground of special necessity in the north of India.

The Hon'ble N. SUBBA RAO PANTULU.—I should like to know before I offer my remarks what the Hon'ble Mr. Bliss has to say with regard to my question.

The Hon'ble Mr. BLISS.—I should like to hear what other Hon'ble Members have to say first.

The Hon'ble N. SUBBA RAO PANTULU.—I have enquired of the Hon'ble Mr. Bliss because if my question is answered I may have to modify my remarks. When I received a copy of this Bill, I may say that it was for the first time that I came to know that the notification of the Government of India under Act V of 1861, as amended by Act VIII of 1895, was extended to this Presidency, extending as it does provisions which provoked opposition in the Supreme Council.

I must express my disappointment at the way in which legislation is proposed to be undertaken by Government under the colour of this Bill. Though it appears on the face of it to be a simple and non-contentious measure, it raises important questions as to the rights and privileges of this Council and of the people at large. It is our duty, therefore, to carefully consider whether we should allow this Bill to proceed on the lines on which it is prepared. In other words, we have to see whether legislation is undertaken on principles which safeguard the usefulness of this Council and the interests of the public. This Bill is described in the Statement of Objects and Reasons as a sequence of the notification of the Viceroy extending to this Presidency certain sections of Act V of 1861, as amended by Act VIII of 1895—the exemption and compensation clauses which raised a storm of opposition in the northern parts of India. I say the northern parts of India, as the Police Bill of the Supreme Council was professedly enacted for the benefit of those parts. The Bombay and Madras Presidencies have special Acts of their own, and consequently these two Presidencies were not consulted in the passing of the Police Amendment Bill before the Supreme Council, now Act VIII of 1895. When it was pointed out by the Hon'ble Mr. P. Mehta that section 46 of Act V of 1861, as modified by the Select Committee, gave power to the Government of India to extend any of its provisions to Madras and Bombay, and that these Presidencies were brought within the reach of that Act,

the Hon'ble Sir Anthony MacDonnell in charge of the Bill said:—"The Act has never been extended to the Madras or Bombay Presidency, and the Governments of these Presidencies have provided themselves with Police Acts more adapted to local circumstances than Act V of 1861 was held by them to be. For this reason it was not considered necessary to consult the Madras and Bombay Governments in regard to the amendment of the Act which has never been in force within their jurisdictions. . . . I may, however, say that the Government of India have at present no intention of extending Act V of 1861 to either the Madras or Bombay Presidency." The late Hon'ble Mr. Clogstoun, the official member representing Madras, said:—"It is to be regretted, I think, that the Bill was not published in the Gazettes of the Madras and Bombay Presidencies to which section 46 of the Bill gives the Governor-General in Council power to extend it, but the reason doubtless was that there is no immediate intention to extend the Act to these Presidencies." Thus it will be seen from the proceedings of the Supreme Council that it was distinctly understood that the contentious sections of the amendment Bill would not be extended to this Presidency, and that it was never expected that this Presidency would be deprived of a voice in this important piece of legislation. On the other hand, the member in charge of the Bill declared that "it is the expectation of the Government of India that the Government of Madras and possibly the Government of Bombay will, on a suitable opportunity, review their Police Acts." When the Hon'ble Mr. Bliss announced at the meeting of the Council in April last that a Bill would be introduced in this session to amend the Police Act, I for one did not expect that legislation would be introduced for this Presidency under a notification of the Government of India, that the discussion of the question would be taken out of this Council, and that this Council would be forced to subscribe to a Bill of this kind. So long therefore as this notification is in force, it may be considered useless to discuss how far the provisions of the Imperial Act are suitable and necessary for the conditions of this Presidency. But to understand clearly the conditions of the country and the necessity for this Bill, I propose to glance at the course of legislation in this Presidency. When Act XXIV of 1859 was passed, there was no provision therein enacted corresponding to section 15 of Act V of 1861, about levying the cost of additional Police Force from the inhabitants of any part of the country which shall be found to be in a disturbed state. It must be remembered that by that time the Mappilla Outrages Act XX of 1859 had been passed—a coercive and punitive measure to provide against the fanatical outbreaks of Mappillas. Now 23 years after, Act III of 1882 was passed enacting for the first time the provisions of section 15 of Act V of 1861 above referred to. It was apparently introduced more for the sake of symmetry than on the ground of real necessity. In the Statement of Objects and Reasons the reason for the measure is thus stated:—"It is expedient that the Government should possess this power which Act V of 1861 confers upon local Governments in other parts of India, and the Bill is framed on the lines of section 15 of that Act." The Hon'ble Mr. D. F. Carmichael in introducing that Bill in the Council said "that a similar provision existed in every other Police Code in India. There seemed to be nothing more proper than that where from the conduct of the inhabitants of any particular locality, it became necessary to increase the ordinary complement of Police, the inhabitants of that locality should be required to pay for it." Thus, though there was no necessity for it, there could apparently be no objection to such legislation. It gave legal sanction to the old rule that the village or town should be held responsible for the conduct of any of its members. In these circumstances one might well pause and ask what the necessity now is for introducing wholesale into this

Presidency the "divide and rule" clauses of Act VIII of 1895 of the Supreme Council. When, at the meeting of November 1893, I asked whether Government did not consider it desirable to appoint a committee of representative gentlemen to advise Government on the best way of preventing any temporary excitement of feeling arising between Hindus and Muhammadans, Your Excellency was pleased to answer, "I am happy to say that Government considers that the state of feeling between the two classes mentioned is so far satisfactory in this Presidency that it is not necessary to appoint a committee as suggested." After this declaration from Government, we may conclude that there is no necessity shown for extending the exemption and compensation clauses of the Imperial Act.

Now with regard to section 49 of Act XXIV of 1889 proposed to be repealed, I am afraid Government has not given much attention to the subject. The new sections 30, 31 and 32 of the Imperial Act extended to this Presidency do not deal with the question effectively. I do not know if the attention of Government was drawn to the provisions of the Bombay Act IV of 1890—sections 44, 47, 48, 50 and 54—which enters on the subject into much greater detail and where sufficient safeguards are laid down for the preservation of established rights and customs. I should have thought that if Government wished to grapple with the question satisfactorily, it would see that the question was discussed in the local legislature, and what provisions should be enacted suitable to the conditions of this Presidency. I should not be understood as saying that there is no occasion for reviewing our Police Acts in the light of the experience gained during the last 37 years since Act XXIV of 1859 was passed. I would draw Your Excellency's attention to section 17 of the Imperial Act, which has not been extended to this Presidency. If you compare the corresponding section 16 of the Madras Act, you will find that there is no care exercised in the way in which the provisions of the Imperial Act have been extended to this Presidency. The Madras Act makes the Police the sole Judge for enlisting special Police officers, the Magistrate's duty being simply to at once comply with the application of the Police. The Imperial Act gives some form of discretion to the Magistrate to comply with such application. The words are "unless he sees cause to the contrary." The Bombay Act gives complete discretion to the Magistracy. The necessity for amending this section and placing the Police under the orders of the Magistracy will be clear if the Council is acquainted with the extraordinary manner in which the powers vested in the Police under section 16 were recently abused by them at Masulipatam. The local authorities apprehended that there would be a disturbance between Hindus and Muhammadans in connection with the celebration of the Dasara in October 1893. The Superintendent of Police enlisted under the section members of both the religious classes. It is not necessary to enter into the details of this enlistment "of respectable inhabitants of both classes," in the phraseology of the Hon'ble Mr. Bliss, who answered my question on the subject. Those who were specially qualified to serve as Police officers were not enlisted. Neither the Reserve Police Force nor the local Volunteer Corps were called out for the occasion. The services of the Military and Police pensioners of Government and village servants were not enlisted on the occasion as the Police might have done under the Act. But "respectable inhabitants" including the headmaster of the local high school and some pleaders, merchants, trustees and servants of religious institutions were enlisted. The point I wish to lay stress on now is that they were not discharged for nearly six weeks after enlistment, though, as a matter of fact, the inhabitants stopped their Dasara festivities and made no attempt whatever to celebrate the same. The only explanation which the Hon'ble Mr. Bliss could give was this, "the local authorities

have complete discretion to select whom they think fit for service as special Police officers. Section 16 of the Police Act leaves the time, for which special Police officers shall be retained entirely to the discretion of the Police officer at whose request they were enrolled. The Superintendent seems to have considered it advisable to retain them in the present instance till the 16th or 17th November," i.e., or nearly a month after Dasara itself was over.

His Excellency the PRESIDENT.—I am sorry to interrupt the Hon'ble Member. I do not think special constables come under this Bill.

The Hon'ble N. SUBBA RAO PANTULU.—My point is simply this: that the limited scope in which this Bill is introduced is not a proper and satisfactory way of dealing with the subject. In the face of the facts mentioned by me, I submit that opportunity should be taken to amend section 16 on the lines of section 21 of the Bombay Act and section 17 of the Imperial Act. I may if necessary draw Your Excellency's attention to other defects in the Police Act. But I need not dwell further on the subject. I wish to show that, if it is desired to review our Police Acts, it is highly desirable to invite the opinion of the public and also of responsible officers of Government and then undertake legislation in a satisfactory manner.

There is another important question that arises in connection with this Bill. I submit this legislation does not secure the independence of this Council and safeguard the interests of the people. Under section 42 of the Councils Act, 24 and 25 Victoria, c. 67, the local Legislature is invested with powers to make laws and regulations for the "peace and good Government" of this Province subject to the powers of the Supreme Council under section 22. But under section 22 the Supreme Council has expressly refrained from legislating for this Presidency. The recent discussion in the Supreme Council shows clearly that it is intended that this Legislature should review its Police Acts and that the Police Act of the Supreme Council would not be forced on this Presidency. I submit therefore that, if the notification is allowed to be in force permanently, and if this legislation in the form in which it is introduced is proceeded with, it is no more than surrendering the rights of this Council to legislate in a matter when it is eminently desirable that it should. I am sure that these different aspects of the question were not brought to the notice of Government when this legislation was undertaken. I do not think it is the intention of Government that the discussion of the applicability and necessity of the contentious sections covered by the notification should be taken out of the hands of this Council. I do not think it is the intention of Government that a notification should take the place of legislation. I hope Government now sees at what great disadvantage this Council and the public are placed by the way in which legislation is introduced in this Council. The question naturally arises, what is the course that should be adopted now. I submit that this Bill should be withdrawn, that the Government of India should be requested to withdraw the notification, and that a Bill dealing with the subject completely should be introduced. Or, if the notification should, for any reason, be in force for a time, by all means let the notification be in force till a satisfactory measure is passed by the Council. For that purpose I suggest that this Bill may be withdrawn and a measure dealing with the whole subject may be introduced, and after it is passed by the Council, the Government of India may be requested to withdraw the notification. If this course does not commend itself to Government, I think it would be well if this Bill be referred to a Select Committee to review the Police Acts of the Presidency. I hope, my Lord, that the Government will take sufficient time to consider the subject before it resolves to proceed with this Bill in the face of these difficulties.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—I just wish to add only a few words to what fell from the Hon'ble C. Vijayaraghavachariar and the Hon'ble N. Subba Rao Pantulu. It seems to me impossible to understand the way in which this Bill has been brought about or how the notification, extending the provisions of Act VIII of 1895 to this Presidency, was issued. In view of the fact that no reference was made to this Presidency or the Presidency of Bombay, and that these Presidencies were not given an opportunity of representing their views on the matter of Act VIII of 1895, when it was under discussion in the Viceregal Council, in view of the statement made by Sir Anthony MacDonnell that it was not intended that the Act should be extended to Madras, and in view also of the statement made by the Hon'ble Mr. Bliss in April last that legislation would be soon taken in hand for the purpose of revising the Police Act, the evident meaning of that statement and the proper course to be adopted was not that a notification should be sent down from the Government of India and that we should introduce a Bill repealing the existing provisions without any opportunity of discussing it, but that an entirely new Bill should be introduced giving the fullest opportunity to the members of this Council to criticize it and to place their views before the Council for its consideration. From the papers which my friend Mr. Vijayaraghavachariar has placed in my hands, it appears that this extension of Act VIII of 1895 has been made *at the instance of this Government in August 1895*, some time after that statement was made by the Hon'ble Mr. Bliss. When the country was given to understand that legislation would be taken up in this Presidency and that the fullest opportunity would be given to the members of this Council for discussing the provisions of the Bill that might be introduced, I do not understand how three months after, a notification could be asked for from the Government of India to set at rest all discussion and coerce in a way the members of this Council to vote for a Bill on which no different vote can be given except "aye". The reason put forward is that it is unnecessary; so far the reason is clear. But how it has been rendered unnecessary is a thing that we have to judge. I therefore submit that, in view of these facts, the manner in which the clauses of Act VIII of 1895 has been extended to this Presidency and the present Bill has been introduced cannot commend itself to the Hon'ble Members of this Council.

The Hon'ble the ADVOCATE-GENERAL.—Your Excellency, in the remarks I am about to make I shall confine myself strictly to the legal question which has been raised by the Hon'ble Vijayaraghavachariar. He says that, with reference to the Indian Councils Act of 1892, the previous sanction of the Governor-General in Council is absolutely essential. No doubt that is so, and the only question is whether that sanction has been obtained. My Lord, I shall not discuss the other question raised, namely, whether it was right and expedient or otherwise for the Governor-General in Council to issue this notification. The question is—had he the power to issue it. That power was conferred on the Governor-General in Council, and this notification was issued thereunder. The practical result of the notification is to repeal all those Acts which this Bill seeks to repeal. That being so, is there not solid foundation for the remarks made in paragraph 4 of the letter, dated 22nd November 1895, No. 785. I take it that there could be only one answer to that question and that is in the affirmative. The paragraph runs thus:—"I am to add that it will apparently be advisable for the Local Government to repeal section 49 of the Madras Police Act XXIV of 1859 as well as Madras Act III, of 1882 since the provisions of sections 30, 30-A, 31 and 32, Act V of 1861, which have now been extended, replace those of section 49 of the former Act." The question remains whether that suggestion does not amount to the previous sanction of the Governor-General in Council, which is

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"(2) The Governor in Council may, by an order in writing accompanied by a statement of his reasons for making the same, in like manner modify such declaration or cancel it and dissolve the Municipal Council and pass such orders as he may deem fit as to the disposal of the property theretofore vested in such Municipal Council."

The Hon'ble C. JAMBULINGAM MUDALIYAR.—Before proceeding to the next amendment, I think it will be better to take up my new section 4-D.

His Excellency the PRESIDENT.—Yes.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—I beg to propose that the following be inserted as section 6-B of the Bill:—

6-B. After section 4-C of the Act insert the following:—"4-D. This Act shall not be extended to any town or village unless the Governor in Council shall have been satisfied that three-fourths of the adult male population of such town or village are chiefly employed in pursuits other than agricultural; and that such town or village contains a number of inhabitants not being less than 5,000."

The object of this amendment is to provide a minimum qualification. Two limits I have provided for in this section. To towns and villages with these specified qualifications, Municipal laws would not be a burden. I understand that at present the smallest Municipal town has a population of 6,000, and I ask if 5,000 is not a reasonable limit to place. I consider that some such limit of qualification is necessary to give Municipal laws to a town or a village, because that will be a sort of security to the people of towns and villages below that qualification that they will only have unions and milder and less stringent provisions than Municipal laws. They will not have to pay taxes which the Municipal towns have to pay. If the Council considers that the limit is too high, I shall be even prepared to reduce three-fourths to one-half, and 5,000 to 4,000. I may point out that this is not a new invention of mine. Section 10 of the Bengal Act has a much lower limit, where the population limit is 3,000. There is also the restriction of an average of not less than 1,000 to the square mile in the Bengal Act; but I omitted it as I thought that it might interfere with the discretion of Government. I submit that my amendment will be very acceptable to the people because certain people will know that their towns will not be made into Municipalities. I may add my Lord that a similar provision is made in the Bombay Act where the population limit is 2,000.

The Hon'ble P. RANGAYYA NAYUDU.—I second the amendment proposed.

The Hon'ble Mr. BLISS.—In my opinion it is impossible to accept this amendment. It is true that the limit as to inhabitants is fixed at 5,000, but it is very easy to show that towns with smaller population than that require Municipalities. I will only instance the case of Kodaikānal which has not, I believe, even a population of 1,000. Though it has an extremely small population, yet it appears to be absolutely necessary to establish a Municipality in that town. The place is getting rapidly into an extremely insanitary state; and your Lordship on your recent visit to that locality has been approached with complaints on the matter. The only remedy is to give it a Municipality which would have at any rate the powers, if not the resources, to keep the place in a pretty good condition. For that reason we find it necessary to oppose this motion. As to the remark of the Hon'ble Member that the Municipalities are a burden on the people, I can only say that Municipal institutions are intended to improve the condition of the people and to increase their health and convenience, and I am at a loss to understand what induced the Hon'ble Member to propose this

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been carried; namely, that regarding the substitution of the expression "financial year" for "official year."

The amendment was seconded, put and carried.

Section 5 as amended was then carried.

Between Sections 5 and 6.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—I beg to move the insertion of the following section after the definition of the word "year" and before section 6 of the amended Bill:—

"6. For sub-section (1) of section 4, shall be substituted the following section:—

"4. (1) The Governor in Council may, by notification, declare his intention to constitute as a Municipality any town, village, hamlet, bazaar, station or other local area or any group of the same in the immediate neighbourhood of one another.

(2) Every such notification shall define the limits of the local area to which it relates.

(3) Any inhabitant of a local area in respect of which a notification has been published under sub-section (1) may, if he desires to object to anything therein contained, submit his objection in writing to the Governor in Council within six weeks from the publication of the notification and the Governor in Council shall take all such objections into consideration.

(4) When six weeks from the date of the publication have expired and the Governor in Council has considered and passed orders on such objections as may have been submitted to him, the Governor in Council may, by notification, declare the local area or any portion of it to be a Municipality."

I have drafted this section with four sub-sections to take the place of sub-section (1) of section 4. That section relates to the creation of Municipalities, and I considered that the sub-section was very meagre and did not provide for the hearing of objections on the part of the people that may be concerned. The four clauses of my amendment put the matter very clearly, the chief feature of the amendment being that it provides for six weeks' time being given.

The Hon'ble Mr. BLISS.—My Lord, I may say that this is accepted.

The Hon'ble Mr. GIBSON.—It is open to anybody to address Government on any subject at any time, but in this amendment a restriction is placed on that liberty.

The Hon'ble Mr. BLISS.—We noted the matter and thought that they might be allowed to address Government; but if we give everybody the right to come and address Government, it is impossible to give them unlimited time. The suggestion of the Hon'ble Member to give six weeks' time is a very good one and therefore we have very much pleasure in accepting it.

The new section 6 of the Bill was then agreed to.

Section 6.

This section runs as follows:—

6. For sub-section (2) of section 4, shall be substituted the following sub-section:—

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"(xxxv) 'Public water-courses, springs, wells and tanks' include those used by the public to such an extent as to give it a prescriptive right to such use."

"(xxxvi) 'Year' means the year beginning on the first day of April, or such other date as may hereafter be fixed by the Governor in Council by notification."

The Hon'ble C. JAMBULINGAM MUDALIYAR.—I beg to propose the following amendment: "Add after the word 'poles' in clause (xx) of section 3 of the Act the words 'but not slings or cots used for the conveyance of children or aged people.'" The definition of the word 'palanquin' runs thus—"Palanquin, the tonjons, manchils and chairs carried by men by means of poles." In the Ther the Objects and Reasons it is stated that the word "palanquin" must be ^{the} may include dhoolies and chairs carried by means of poles on men's shoulders. Statement of the same purpose, and this is carried out by the present definition. So defined as to Committee also considered that the definition should not in ^{the} arked as they serve carrying aged or sick people, and the present definition does ^{not} do. But the Select the intention of the Select Committee in this respect. A ^{number} of slings, &c., used for made by a certain body in Paper No. 12. I believe it was not seem to carry out definition was not made to cover this objection. ^{an} tation about this was

The Hon'ble N. SUBBA RAO PANTULU seconded the amendment oversight that the

The Hon'ble Mr. PRICE.—My Lord, I accept the amendment.

The amendment was put and carried.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—I beg to propose that the "relatives" contained in clause (xxiii) of section 3 of the Act be omitted. The definition of the word "relatives" has been introduced in consequence of ^{the} on of itself being found in sections 10-A and 30 of the Act. I have taken objection ^{to} his that word in those sections; and if my amendments to omit those words are accepted, the word "relative" is here unnecessary.

The Hon'ble Mr. PRICE.—The amendment is accepted.

The amendment was put and carried.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—I beg to withdraw the first amendment standing in my name as being identical with that just accepted, viz., "that clause (xxiii) of section 3 of the Act be omitted", and to move that "from section 3 of the Act as reprinted, clause (xxxv) be omitted." My only objection to that definition is that it is likely to be abused. If this definition is intended to confer on Municipalities a right to wells long used by the people, such a power ought not to be given to the Municipalities. In places where there is scarcity of water, owing to the generous impulses of the owners the use of wells has been allowed to the public; but under this definition a Municipality might interfere and bring about bad feeling between owners and the public.

The amendment fell through for want of a seconder.

The Hon'ble Mr. PRICE.—I move that clause (xxxvi) of the new section 3 of the Act be omitted. This amendment is merely consequential on one that has already

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and 22 of the Act; and they remarked with regard to the latter that the Secretary of State had taken exception to a clause similar to section 22 in the case of the Central Provinces Local Self-Government Act on the ground that it appeared to be inconsistent with the existing law. They further pointed out that section 25 might also be considered in this respect. In the course of the letter, they expressed the hope that the Government of Madras would be able, ere long, to see its way to remedy these defects. When the first Bill came up in 1893, the Government of India again drew attention to the matter, and the Government of Madras in reply consented to withdraw section 22; but when the Bill came before the Select Committee last year, they, for reasons which will be found on page 3 of their report, recommended its retention. When the amended Bill went up to the Government of India, however, they insisted that sections 22 and 25 should be omitted from the existing Act. I therefore beg to propose: "That in sub-section (1) of section 3 the words 'section 22, section 25' be inserted immediately after the words 'section 7.'"

The Hon'ble Mr. Bliss seconded the amendment.

The amendment was put and carried.

The Hon'ble Mr. PRICE.—The amendment which I am about to propose is in consequence of its having been pointed out that the definition in clause (xxxvi) of section 5 of the Bill is opposed to that in the Madras General Clauses Act, 1891; the Government of India has stated that the term "financial year" should be used for "official year." I therefore beg to move the substitution of the following for sub-section (3) of section 3 of the Bill:—

"For the words 'official year' wherever they occur, shall be substituted the words 'financial year'."

The Hon'ble Mr. Bliss seconded the amendment.

The amendment was put and carried.

Section 3 as amended was then carried.

Section 4

was carried without alteration.

Section 5.

This section runs as follows:—

5. For section 3, shall be substituted the following section:—

"3. In this Act, unless there is something repugnant in the subject or context:—

"(xx) 'Palanquin' includes tonjons, manchils and chairs carried by men by means of poles.

"(xxiii) 'Relatives' means, with reference to any individual, his lineal ancestors and descendants, fathers-in-law, mothers-in-law, sons-in-law, daughters-in-law, brothers, sisters, brothers-in-law, sisters-in-law, uncles, nephews, nieces and first cousins.

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it would be considered at a meeting of the Council to be held at Ootacamund during the time the Government was there. Unavoidable circumstances, however, prevented this being done. I do not think that the delay which has occurred is altogether a matter for regret, as it precludes any impression that Government is now attempting to run the Bill through the Council without having allowed sufficient time for its consideration by those concerned. The amendment of the District Municipalities Act has been under consideration and discussion for very nearly six years. During that time every Municipality has had its say with regard to it. So have the Chief Medical, Sanitary and Educational Officers of Government and such persons as take any interest in Municipal affairs. The Select Committee after numerous sittings has revised the Bill which, with the Committee's report, is now before the Council; and this has been criticized by the Government of India. It appears to me therefore that the Bill has been quite sufficiently before those interested in the matter. There is a formidable looking array of amendments on the Agenda paper; but many of these are of a very trivial nature or merely consequential, and others I shall be able to accept without discussion. The points on which there is likely to be a difference of opinion are comparatively few in number and are well marked. In my opinion, therefore, there is no ground whatever for further delay with regard to this Bill. I therefore beg to move that the Bill to amend Act IV of 1884 be taken into consideration.

The Hon'ble Mr. Bliss.—I beg to second the motion, my Lord.

The motion was put and carried.

His Excellency the PRESIDENT.—We will take up the Bill section by section. The mover and seconder of the original motion will be considered to have, respectively, proposed and seconded the various sections * as they are put to the Council. Is the preamble agreed to?

The preamble was agreed to by the Council.

Sections 1 and 2

were accepted without alteration.

Section 3.

This section runs as follows:—

3. (1) Section 2, section 6, section 7, the proviso to section 39, the proviso to section 50, section 57, sub-section (3) of section 65, section 67, section 70, section 71, section 74, section 76, section 87, section 112, section 123, section 139, section 198, section 199, section 225, sub-section (5) of section 255, section 285, and section 287 are hereby repealed.

(2) The words "at a meeting" shall be omitted from every section of the Act where they occur, except from section 30.

(3) For the words "official year", wherever they occur, shall be substituted the word "year".

The Hon'ble Mr. J. F. PRICE.—When conveying the assent of the Governor-General to Act IV of 1884, the Government of India drew attention to sections 16

* Note.—The words 'section' and 'sub-section' when italicized refer to sections and sub-section of the Bill; when in roman they refer to the Act under amendment. Thus "section 10" means the tenth section of the Bill as revised by the Select Committee; "section 10" means the tenth section of the Act as revised by the Select Committee.

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right, I am bound to confess that before long we should be held to have seriously violated the Queen's Proclamation issued in 1858, which is the standard which usually guides the conduct of Government in these delicate matters. For myself, I am satisfied that the measure, which I hope will be passed shortly, is one of a very mild order. I do not anticipate that any great results will come from it, but I believe it will satisfy the cravings and desires of a certain section of the community, and I am perfectly convinced that to a certain class of people in Malabar it will come as an acceptable and welcome measure. There are others outside the scope of the Bill many of whom may possibly wish to be brought within it; if so, there is nothing to prevent their doing so by slightly amending the Act in the future if it is shown to the satisfaction of this Council and the Government of India that no harm will result from such a measure. As the Hon'ble Member in charge of the Bill rightly says, this is an instalment of reform; but how long it will remain only an instalment is wrapped up in the mystery of the future. That there may be some movement in the direction which Mr. Crole thinks necessary, I will not deny it, and if there is, there will be plenty of opportunities and facilities given for discussing the matter and bringing those classes within the scope of the Act. As matters stand at present we may rest assured that what will be placed in the Statute Book will be acceptable to a large class in Malabar, and will not do anything as far as I can see to inflame the passions of the susceptibilities of others. I am bound to say I have heard with a good deal of surprise the connection which Mr. Crole has managed to see between the passing of this Bill and the Mappilla outbreak. With all respect to Mr. Crole I cannot help thinking that his ideas are somewhat far-fetched and that he has drawn somewhat freely on his imagination for the suggestions he has given to us. Possibly in this respect Mr. Crole may be better informed than I am, but all I can say is that at present we are all in the dark as to the origin of this outbreak. It is open to some people to attribute it to one cause and some to another, but in this particular respect I hardly see how a Marumakkatayam measure is to be mixed up with the Mappilla outbreak. It is hardly necessary to say any more at present except on behalf of Government to congratulate the Hon'ble mover of this Bill on the trouble to which he has been put for many years in introducing and carrying a measure which, though it does not go as far as he could wish, yet has the approval of Government, the Council and the people whom he represents.

The Hon'ble Mr. CROLE.—May I explain to your Lordship that I never in the course of either of my two speeches referred to any thing intended to be in the nature of a directory or a mandatory provision in respect of the Bill. I am only pleading for the mild and permissive provision which formed part of the original Bill. No body need take advantage of it unless he likes. My argument is that it would absolve Government from all responsibility in this matter.

His Excellency the PRESIDENT.—I quite followed the Hon'ble Member.

The motion that the Bill be passed into Law was then put to the Council and carried.

BILL TO AMEND THE MADRAS DISTRICT MUNICIPALITIES ACT,
ACT IV OF 1884.

The Hon'ble Mr. J. F. PRICE, in moving that the report of the Select Committee upon the above Bill and the Bill as amended by the Committee be taken into consideration, said: My Lord, when nearly a year ago I presented to the Council the report of the Select Committee on the Bill to amend Act IV of 1884, it was hoped that

raised to the present form of the Bill, simply because we do not go further and legalize other connections. It may be advisable to deal with them when they ask for it and when the time comes. But there is absolutely no reason why any voice should be raised at present against the Bill. The reference to the Mappillas by the Hon'ble Mr. Crole is most unfortunate, because they have nothing whatever to do with the Bill under consideration. In their case no question has been raised as to whether their laws ought to be interfered with or whether they ought to be left alone.

Therefore, My Lord, I submit to your Lordship and to the Members of this Council, that, so far as this Bill goes, with which alone we are concerned, there is not the slightest reason why this Bill should not be passed. It does not interfere with any other classes; it only says that it would not take within its scope certain classes of people. If they want legislation, it may be a question whether another Bill should not be introduced. That has to be discussed on different principles; and the mere fact that there is some opposition is certainly the reason why that should be discussed separately and why this Bill should be discussed on its own merits and not be considered in connection with the other.

The Hon'ble S. SRINIVASA RAGHAVAIYANGAR.—I wish to ask a question of the Hon'ble mover of the Bill for the information of the Council, that is, whether as the Hon'ble Mr. Crole said, there are polyandrous Brahmans in Malabar.

The Hon'ble C. SANKARAN NAYAR.—Not that I am aware of.

The Hon'ble Mr. CROLE.—May I put the question in another form. I want to know from the Hon'ble Mr. Sankaran Nayar whether there are not Marumakkatayam Nambudri families in Malabar.

The Hon'ble C. SANKARAN NAYAR.—Yes! there are.

His Excellency the PRESIDENT then said.—I only rise for a few moments, because I think, after what has fallen from the Hon'ble Mr. Crole, I am expected to say a few words. The other day Mr. Crole addressed Government in almost upbraiding terms for not taking this opportunity of going into Malabar and extending the scope of the Bill now before us in such a way as to include certain classes who are now left outside, on the grounds of morality. He asks us to go to Malabar as far as I can gather and make a crusade there, because the customs of the people there do not conform to what he considers right and moral. I am bound to say that I think that this is a matter which the Government must approach with the greatest delicacy. The Governments of India and of Madras throughout the whole of this business, as the Hon'ble Sankaran Nayar will admit, have always treated the subject with the greatest caution and circumspection. I do not suppose that if it had been left to the Government of Madras or the Government of India to move on the grounds of public morality, decency and good repute they would have moved in the matter at all. It was only when the question was brought forward by one of the people themselves that the measure was allowed to proceed on the understanding that it would not interfere with the religious habits and usages of the people. Instead of this Mr. Crole would have us go into Malabar and by an Act of Council stop the habits which he does not approve. He tells us that polyandry was put down without opposition in Ceylon in 1869. All I can say is that polyandry is still the custom in some parts of India and I have not heard yet that the Government of India has legislated regarding it. It may be right or it may be wrong. We all have different opinions as to what is right and what is wrong, but if we are to go into the country and insist on squeezing all opinions into the same mould as our own, and making the people conform to the customs and usages which we think

in sympathy with the first instalment which the Hon'ble C. Sankaran Nayar has got, towards improving the condition of society in that part of the country.

The Hon'ble C. SANKARAN NAYAR.—Only very few observations I have to make, my Lord, with reference to the speech of the Hon'ble Mr. Crole; this speech itself is the very best indication why this Bill should be passed in its present form. So far as those classes of persons are concerned, for whom this Bill provides a form of marriage, no objection is taken. But the objection taken is that we have left out of the scope of this Bill certain of the classes for whom also it is said we ought to provide a form of marriage. So far as that matter is concerned there are very strong objections on the other side against providing a marriage law for them. When I first introduced the Bill into Council, rather when I asked for leave to introduce the Bill, some four or five years ago, the objection taken was that no Bill was necessary, as they had a form of marriage that any court could recognize. Then the Marriage Commission was appointed, and when it took evidence — those interested in the matter may see it from the report submitted by the late Sir T. Muttusami Aiyar — it was distinctly found that there were certain classes of people interested in raising objection to the Bill. He points out that Brahmans as a class and secondly Kovil-agams as a class are interested in raising objections to the Bill. It is a remarkable circumstance that not one of those who were in sympathy with the original Bill itself has submitted any memorial to the effect that if certain classes of people are excluded from the Bill, they do not want it. The only men who have sent up memorials to this Council to the effect that they do not want the Bill unless certain classes are included in it are those men who have consistently opposed the Bill from its very commencement. Those that signed the memorials have been generally objecting to the Bill with a view that it might be rejected. As to the question whether certain classes of people are to be included or not, there exists a difference of opinion. But among those who take a sympathetic view of the matter and who really wish for a marriage law, not one of them says — if they do so I shall be surprised — they do not want the marriage Bill in the form in which the Select Committee put it forward, unless Brahmans are included in it. It is only those who have been opposing it from the commencement that have signed these memorials, which are dictated by opposition to the Bill in its entirety and not because Brahmans are excluded from it. As I said, I shall be very much surprised if any person, who has been in favour of the Bill before, now comes forward and says that he does not want it unless Brahmans are included in the Bill. So much my Lord, for the memorials, that have been referred to by the Hon'ble Mr. Crole. Then as to the other matter, I stated before and I state again that it is time enough to legislate to legalize those marriages between Brahmans and others, when we have the Brahmans themselves in Malabar coming forward—I do not say a considerable section but a number of them coming forward—and asking for a Bill to legalize those marriages. It will then show to us that these provisions would not be a dead letter. Such a demand has not come before the Council; but in the case of others we had the demand made by them. And in the case of those connections which Mr. Crole wants to be legalized and which are not legalized by this Bill, I submit again that the Brahmans of Malabar, the Nambudris, have not asked for it. It will be time enough for us to consider whether we ought to legalize them, when they ask for such legislation. The memorials that have come did not come from them but from others who wish to wreck the bill. There is no reason why the present Bill should not be passed. We deal with certain classes of people and we do not want to interfere with the customs and habits of certain other classes. What we say is there is no objection to legalizing the marriage connections of these classes. Objection cannot be

her husband. I have made inquiries since the last meeting of the Council. I am prepared to meet the Council with authorities in support of my statement. Another thing is, when you speak of Nayars I do not know what the Council is supposed to understand. Nayar is no caste at all. It is an agglomeration resulting of a military migration as far as can be discovered. It contains every caste, from the very highest caste of what I shall call for the present Sudra, down to pot-makers and barbers. The expression Nayar does not mean any particular caste. The fact of the matter is, a Nayar touching a lower class Nayar whom he has married, is subject to all the pollutions that we were asked to weep over in the case of the Nambudri who accidentally touches his wife. Malabar is the place for bathing, and is a priest-ridden district; all these customs run down to the very minutest gradation of caste. Surely, your Excellency, I have said enough to show that a gigantic mistake has been made, first in introducing sectarian and caste prejudices in this Bill, and secondly in the way that the exclusion sought for has been expressed. I contend that you are only throwing, by passing this Bill into an Act, all the persons who we thought were excluded by this Bill into the courts, which is a most undesirable thing. There is one thing that I wish to say in conclusion and that is this:—We are now under the shadow of tragic events in Malabar, and the warning of the Malabar Tenancy Commission ought never to be for one moment absent from the mind of this Council. When they sent in this final report they warned the Madras Government to be very chary about engaging in legislation regarding Malabar, which would only lead to trouble. This attempt at the exclusion of all the noble families on the west coast has given rise to feelings of excitement which, to say the very least, is most undesirable. No person conversant with the members of the family as I am can fail to see that it has caused an intense amount of irritation, and my allusion to the Mappilla outbreak comes in this way. I do not say that a Mappilla has any real interest in the *sambandham* of a Kshatriya woman. But unfortunately for us the Mappilla is the guard and trusted servant of these noble and princely houses. The fact that there is that discontent, that feeling of outraged decency and the feeling of insult burning in the bosoms of his masters cannot fail to affect a community which is in the highest degree inflammable. For that reason alone we ought not to furnish an inducement to what I may call excitement and unrest by the passing of this Bill in its present form. Now, your Excellency I have done. I am perfectly well aware that in spite of the observations I have made this Bill will be passed. I quite recognize that. I am not going to vote for Mr. Sankaran Nayar's Bill. But I congratulate him upon having retained even this ruined fragment and wreck of his original Bill. I have made these observations as clearly as possible within the time at my disposal, for this purpose—that I may strengthen his hands to take advantage of the agitation which is coming, and to quicken the time when the amending Act will be introduced which will remove the gross injustice which has been inflicted on the noble and princely houses of the west coast.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—I am sorry, my Lord, that I have to trouble the Council again for a few minutes. I do not want to trouble your Lordship with a speech, but I cannot miss this opportunity of entering my most emphatic and solemn protest against the most objectionable provisions that have been introduced. But I do congratulate, my honourable friend, Mr. Sankaran Nayar, on having introduced the Bill which at least is a very moderate instalment and which I hope is the first instalment of the measure towards the progress of society in that part of the country. I hope that the time will not be far off when the injustice and the inequality on which I have been commenting will be removed. With these few words of protest on that particular portion of the Bill, if I vote for the Bill, it is because I am

following effect: "Provided that the issue of such a connection is not to inherit any property other than what the husband could leave by will under the present law." That would exclude all the difficulties of the present Bill. I have got a very high Brahman authority for saying that if that proviso had been originally introduced into this Bill it would not have been opposed to the notions of east coast Brahmans. Now, amidst all discussions that I have been referring to, while we have heard a great deal about Brahmans—amongst whom my oldest friends are numbered,—we never have had a single defender of the unfortunate women, still more of the unfortunate offspring. They were left entirely out in the cold, while the Select Committee is jubilant that the people concerned have said nothing on the matter. I look upon it that it is a very great defect in the discussions of this Bill that nobody stood up for these women and children. However since the subject was warmly debated the other day, there has been a wide awakening in Malabar. I think I am not trespassing upon any secrets when I say, that the real feelings of the classes, which have been excluded from this Bill, have been brought to your Excellency's notice in a private interview; however, it has certainly been brought to mine, and I consulted the Secretary yesterday, with the result that I came to know that 19 separate memorials have been received as a result of the discussion in this Council. What becomes of the Select Committee's assertion that nobody cares a rap for this question? The fact of the matter is that in Malabar it is very difficult to rouse interest in a thing that does not come before the people. They are slow to move; when they do move, they are excessively intelligent. One of the chief petitions is by a recent Collector in the British service, Mr. Manavedan Raja, who ought to know what he is speaking about. He is one of the persons who has come all the distance from Malabar on purpose to ventilate a grievance, which is a strange commentary on the reasons of the Select Committee. Mr. Manavedan Raja has written a petition of 17 paragraphs, which I presume is in the hands of the Members. I hesitate to read it, because it verbally re-asserts all the statements that I made the other day. The truth practically amounts to this: there is a good deal of ignorance concerning this subject, and secondly here it is proved that the idea that these people did not care for the marriage Bill has been refuted 19 times since the last meeting of the Council. I have a list here of the mis-statements which I extracted from the speeches of the members on the 4th November last, but time presses, and I will spare the Council that. I want to say something about the ideas which prevail in this Council, and which have been rammed down our throats by persons, who ought to know better, regarding the position of the Nambudri Brahmans. With reference to these people who are disposed of as Nayars, it must be recollected that the Zamorin and those noble families on the west coast are as a rule of the higher caste, Kshatriyas and Samanthas. These persons are vegetable eaters. When this Council recollects that, for 1,100 years, these noble families on the west coast have been propagated by connections with Nambudris, each from an original female ancestress, I want to know how many degrees they are inferior to Brahmans in blood. The Zamorin is to all intents and purposes a Brahman, but is called a Samantha. When either a Kshatriya or a Samantha forms connection with a Nambudri Brahman, we are told if the latter touches the wife he is immediately polluted and plunges into the tank to clear himself of his pollution. That statement with reference to a connection that involves sexual union has always appeared to me intensely absurd. As a matter of fact it is opposed to what takes place in the western coast. Strange as it may appear to this Council, which has heard statements diametrically opposed to what I make, a Kshatriya woman or a Samantha woman and a Nayar woman of the higher class is in the habit of living in Brahman houses, and of eating in the same room with

as Nayars. I do not believe that, on a fair and reasonable interpretation of this section, excluding, as must be done, all reference to the discussion at the last meeting of the Council, there is a single Nambudri in the Malabar district who would be legally excluded from taking advantage of this Bill under the words of clause (a) in sections 3 and 15, because there is nothing in the *sambandham* registered that is hostile to the personal law of marriage. He has got no personal law of marriage in the sense which the Select Committee intended, but he has got a customary law of social marriage, and it is that, which your Excellency in Council and the Governor-General in Council determined to legalize. I rather suspect that the efforts, sectarian efforts, which brought about this clause will only produce this much, that it will drive these people into the courts, and every case will have to be decided at great expense, because each one differs slightly from the other. We are going to compel courts to decide what this Council ought to have done for itself. Mark you the *personal law* of marriage of a Brahman is a very curious thing. The classic law of Manu appears to have legalised the marriage of a Brahman, after he had taken a Brahman spouse, with females of the three inferior castes in their order. The modern so-called *personal law* exhibits equally interesting idiosyncrasies; it includes for instance kulinism in Bengal; it includes, in the coast towns of Bombay and North-West India, polyandry, where a man marries his infant son to a grown up girl, he co-habits with her, raises children from her for his son, and when the son attains the age of maturity he finds his wife an old woman, so he marries the progeny which has been raised by his father to another grown-up girl, and co-habits with her in the same fashion. There is another Brahman custom of *personal law*. On the east coast you have got a polygamous law of Brahman marriage, and on the west coast in Malabar, as a result of Brahman marriage being restricted to the head of the Nambudri family, you have now a custom which began with polyandry, and which is now dignified by the word law. This long custom has justified your Excellency's Council in saying, "we cannot allow the state of matters to go on any longer. Our courts of law declare that these women who live with these men for years and years and who have no intention of deserting them until death severs them, must be made honest women whatever may be the objections raised on the east coast." Your Excellency's Council also determined that it was a sin against civilisation to continue to bastardise, as British courts bastardise, the issue of such marriages. It is agreed that all such *sambandhams* should be registrable under this Bill. I ask whether in the light of what I said, the objectors have not overreached themselves by placing this Council in an awkward predicament, because it is very doubtful whether this question has not hereafter to be decided only by the courts instead of being decided in a simple manner by this Council. I might mention one curious thing about the so-called *personal law* which we are now told is such a clear cut thing, which nobody can make a mistake about and which is of so sacred a character as to be even above ordinary morality. It is strange to say that in this district of Malabar there is another personal law of marriage among the Nambudris, and that is Marumakkatayam. As to polyandrous Brahmans of Malabar I want to know how they are to be kept out of the scope of this Bill. There is a part of the country in North Malabar full of Brahmans who have never given up polyandrous habits. They cannot possibly take a position under the definition of personal law of marriage as it is understood in this coast. Therefore I say keep to Malabar and nothing else. I object altogether to leave these unfortunate people at great expense to go to court, and to litigate what has now become a conundrum as to whether clause (a) really effects the exclusion which its framer intended to effect. What he ought to have done, if he wished to preserve them from the consequence of the Brahman-Sudra marriage, was, to have put in a proviso to the

belief is—it is a personal one—that caste sets up impassable barriers to social progress, upholds immutable distinctions by arbitrary and absurd laws which are enforced by irresponsible authority, maintains a standard of right and wrong entirely independent of the essential principles of moral science, and disunites and weakens the people who are subject to its rules—and the present is an instance of that. The Bill itself has no relation to east coast Brahmans. The scope of it need not stir up any such fear in any east coast Brahman's breast. The fact of the matter is that the district of Malabar is a tract *sui generis*. There is no other tract in India with the same, or, at all events, similar conditions. The Bill was intended to meet the conditions of the persons living in that tract, and those conditions only. Mr. V. Bhashyam Aiyangar was placed on the committee, and to simplify matters I would make the committee speak for themselves. The committee has taken up the unfortunate Brahman view of the matter. It urged upon the Council to adopt the amendment which had already been alluded to, and which excited considerable dispute on the last occasion. The committee urged the amendment on the Council for these two reasons: "This feature"—the inclusion of the Brahmans—"of the Bill has not been considered by the Local Government or the Government of India, and no application has been made to the legislature on behalf of those who have a personal law of marriage for such a provision as is objected to." They again said, "There has been no demand for legislation by the classes referred to, and this feature of the Bill has not been apparently considered by the Governments of Madras and India." This has been refuted a dozen times over. It is refuted in every line of the document sent to the Hon'ble Members. I have myself drawn attention to extracts which are not contradicted. I do not propose to occupy the time of the Council in dinning it into their heads again. It was not the intention to exclude a Nambudri, or any Brahman resident in Malabar, from the scope of this Bill until Mr. Bhashyam Aiyangar stood up in this Council on the 4th November. What did the Select Committee do? To meet what is practically the east coast objection,—I have shown that nobody on the other side has raised any objection to it—this provision was entered "That neither party must be subject to a personal law of marriage according to which he or she as the case may be cannot validly contract a marriage with the other party." Your Excellency, I would not have opposed it with the vehemence I did the other day had it not been that the Select Committee under Mr. Bhashyam Aiyangar's guidance had introduced the Brahman into it. Because, if Your Excellency would carefully examine that section, you will find that it excludes from the scope of this Bill Nambudri *sambandhams* with Kshatriya and Nayar women. I do not understand distinctly what the Select Committee mean by personal law of marriage. I know what my personal law of marriage is. We carry that personal law of marriage into a foreign country, we take it away again. In our own country the so-called personal law of marriage would be called the territorial law of marriage, and that is the recognized rule under the provisions of private international law. But I presume what is meant here is, that this is a caste law of marriage. However, take it that way. I take the Nambudri as an example. The territorial law of marriage of Malabar is that only the oldest member of the Nambudri family can enter into a Brahman marriage, while the other males and females, as far as that family is concerned, are consigned to celibacy. But a custom was established by an *acharam*, or ordinance, of Sankarachariar in A.D. 825 by which the members, who were deprived of the form of marriage within the caste, were allowed to form an alliance with the women of the country. That has now become what Sir Muttusami Aiyar very properly called customary law sanctioned by the prescription of, well nigh, 1100 years. And these persons are as much entitled to the protection of this Bill

ation before the Commission, gave their usual servile evidence. They contradicted each other; they would not come to the point. They gave evidence very much as a Komati or a Chetty does in a Court. Since that time there is not one single petition of the nature of dissent lodged by them. The Bill, after various vicissitudes, was eventually recommended to the Government of India by your Lordship's Government, and after some secret history, which the members will be able to fill up for themselves, the Government of India, after extraordinary and inexplicable delays, allowed Mr. Sankaran Nayar to proceed with his Bill. When they did so, Sir Muttusami Aiyar was the authority who was at the back of the Bill and, as I explained at considerable length at the last meeting when I had the honour of addressing the Council, Sir Muttusami Aiyar intended everybody, who contracted social relations which he deliberately declared to have now become imbued with the property of the customary law, to come under the scope of the proposed enactment. On the 4th of November last, when this Council consigned this Bill to a Select Committee, as far as those present who were cognisant of the effect of the law were concerned, that I believe was the opinion of every one of us. Mr. Bhashya. Aiyangar, whose absence to-day I deplore, suddenly sprang upon this Council a new idea that there were persons who would be injured by the overriding in this Bill of the personal law of marriage as he called it. Up to this time your Excellency will observe everything was plain sailing, everybody was agreed, there was no note of discord. Mr. Bhashyam Aiyangar delivered a long address more calculated for acceptance in courts of justice than in an assemblage met together to pass laws. But I propose to select two passages from that speech which I cannot help thinking have had some effect on what afterwards took place. He emphatically says that this Bill within the meaning of clause 5, section 43 of the Indian Councils Act, very seriously affects the religion and religious usages of a class of Her Majesty's subjects in India. He objects to it on this ground, inferentially telling us that the Council has no right to deal with such subjects. No doubt the Councils Act says we are prohibited from interfering with these particular matters, namely, the religious rites and usages of people. What Mr. Bhashyam Aiyangar forgot to say was that in the body of section 43 there is a clause "except with the sanction of the Governor-General in Council." Very good, we had the sanction. There was no necessity for raising that point. I cannot help thinking that the question of religion and religious usages had considerable influence in the subsequent discussion. He thus brings for the first time the introduction of castes and the mention of Brahman into this discussion. As far as this Council goes, I think, that is a serious misfortune, because, as I shall show immediately, it has raised, what is too common in Malabar, man against man. Mr. Bhashyam Aiyangar says that it is not competent for us to alter the personal law of marriage of Brahmans, whether they be Nambudris or persons living in the east coast of Southern India. Now in the speech of the Hon'ble gentleman, you will find the *fons et origo* is Brahmans and Brahmanical spirit, and so on all through the remainder of his speech. It is an unmixed misfortune when sectarian prejudices of that sort come into a Bill, from which these considerations were studiously omitted. A very great misfortune it is indeed. I may mention here, that for my own part it was clear to me that the objections to this Bill could have been overcome in quite a different way from the manner which was eventually adopted in the Select Committee. Because all that was in Mr. Bhashyam Aiyangar's mind was that Brahman boys on the east coast, seeing that the daughters of Malabar were fair, might institute an exodus, casting away what he calls their personal law of marriage, and might enter into marriage relations on the west coast. I, for my own part, do not see why they should not. The time has gone by when the legislature, by any active interposition, can maintain caste. My

made by the applicant. It would probably enable a husband or wife after once giving a notice of dissolution to wait for years and after a change of circumstances make the motion referred to in this section suddenly and without any further notice. It seems to be undesirable that an application should lie over for any length of time and therefore this amendment is suggested.

The Hon'ble Mr. STURROCK seconded the amendment.
The amendment was put and carried.

The Hon'ble C. SANKARAN NAYAR.—I beg to propose that at the end of the same section the following words be added "if no such motion is made within the time hereinbefore prescribed the Court shall dismiss the petition". This is intended to empower the Court to reject the application if it is not proceeded with. Otherwise the application may be on the file of the Court for a long time, and the Court may not reject it unless a special power is given to it to do so.

The Hon'ble the ADVOCATE-GENERAL seconded the amendment.
The amendment was put and carried.

The Hon'ble C. SANKARAN NAYAR.—I beg to propose that in section 22, line 12 *, the word "that" be inserted after the word "provided". This is purely a verbal amendment.

The amendment was put and carried.

The Hon'ble C. SANKARAN NAYAR.—I beg to propose that in section 25 the words "from time to time directs" be omitted and the words "may direct" be inserted.

The Hon'ble P. RANGAYYA NAYUDU seconded the amendment.
The amendment was put and carried.

The Hon'ble C. SANKARAN NAYAR.—My Lord, all these sections have been put to the Council and have all been passed. Subsequent to the last meeting, one or two memorials have been received in which one objection is again insisted on, that is, as to the exclusion of certain classes of people under the provisions of section 3, clause (a), and section 15, clause (a); and that these sections had not been fully discussed at the last meeting. No objection has been taken as regards others. I believe the Council may as well pass the Bill as it now stands. I therefore move that the Bill be passed into law.

The Hon'ble C. VIJAYARAGHAVACHARIAR seconded the motion.

The Hon'ble Mr. C. S. CROLE, in opposing the motion, said :—Your Excellency, I propose to ask the forbearance of the Council for a few moments while I explain the reasons which prompt me to withhold my vote for the motion which has been proposed by my Hon'ble friend Mr. Sankaran Nayar. No body recognises more than I do the tact, forbearance, toleration and patience with which he has seen the original Bill wrecked, knocked about, and maimed almost beyond recognition, and on his cheerfulness under misfortune I congratulate him. It appears to me to be necessary that this Council should again be asked to question themselves as to whether they know exactly what they are being asked to do. The Bill before the Council was under discussion for some four years and odd, and all through that discussion it was intended to apply to all persons in Malabar who have been in the habit of entering into social relations called *sambandhams*. Not a soul ever raised the question as to whether anybody should be excluded. Of course Nambudri Brahmans, when under examin-

* Note.—The reference is to the copy of the Bill as revised by the Council on the 26th February 1896, in which the lines of each page were numbered.

Then he went on to say : "The matter is, we believe, now under the consideration of these Governments, and the Government of India does not now see reason to suppose that the operation of Act V of 1861 will differ very materially in extent from what it is at present. But if, owing to special circumstances or in particular tracts, the Government of Madras or Bombay applies to have the whole or any part of this Act extended, I find in the law no obstacle to meeting its wishes. The Bill has been well ventilated, and in regard to one of the most important provisions of it, we have had the benefit of the Bombay Government's advice. I may, however, say the Government of India have at present no intention of extending Act V of 1861 to either Madras or Bombay Presidency." That is perfectly right so far as the Madras Presidency is concerned. How it can possibly be said that there was a pledge I cannot understand. Then there was a reference made to what the late Mr. Clogstoun said, but Mr. Clogstoun went off rather on a side issue. I can see no grounds whatever for any of the remarks which have been made in this matter. As to the general question of amending the Police Act we have already referred the matter to the Government of India, and we found, to our regret, that the Government of India did not share our views. As far as I can see, if the Police Act is taken up for amendment as now proposed, there will be nothing much in it to amend so far as the Police of this Presidency is concerned. But if any Hon'ble gentlemen should think otherwise, I can only say the Government will be glad to consider the views put forward by them. Another objection is that it is advisable to keep the existing Madras Act III of 1882, so that District officers may have the option as to whether they will proceed under Act III of 1882, or whether they will proceed under the sections of Act V of 1861, which have now been extended. As to that, I must submit that the option in the matter is not with the District officers; it is with the Government. The District officers have no power to set these sections in motion; it must be at the instance of Government. If the District officers are told to do a certain thing by Government, they cannot do a different thing. It follows therefore that to leave these enactments in the statute book would be to make it cumbersome. To all practical purposes the enactments are dead and there is no intention of reviving them.

His Excellency the PRESIDENT.—The question is that this Bill be read in Council.
The motion was put and carried, 16 voting for and 4 against it.

The Hon'ble Mr. BLISS.—I now move that the Bill be not referred to a Select Committee, but be taken into consideration.

The Hon'ble Mr. PRICE seconded the motion.

The Hon'ble N. SUBBA RAO PANTULU.—I wish to say one word on this motion, and it is this. It has been stated by the Hon'ble Member in charge of the Bill that all the different sections of Act XXIV of 1859 have been considered! One reason why I laid some stress upon section 16 of Act XXIV of 1859 is to show that that section is one of the several sections that requires amendment. It is a section which is not on the lines of the Imperial Act V of 1861, nor on the lines of Bombay Act IV of 1890. It is a section under which the whole power is vested in the Police and the Magistrate has no discretion whatever. I submit that, as this is a Bill which is apparently intended to revise the Police Act of this Presidency, opportunity should be taken to put the Act on as satisfactory a footing as possible, and to remedy all the defects that may be found therein. It would be well if the matter were referred to a Select Committee, and a revised Bill submitted by them for acceptance by the Council.

required. The very course suggested by the Governor-General in Council is being carried out in the Bill now before the Council. Surely, as a matter of common sense, the suggestion must be taken to be sufficient sanction for the carrying of it out. The Governor-General, having suggested the course we are now taking, will in all human probability give the assent that is necessary in order to turn this Bill into an Act.

The Hon'ble K. KALYANASUNDARAM AIYAR.—May I know, my Lord, what the exact motion before the Council is?

His Excellency the PRESIDENT.—The motion is that Bill be read in Council.

The Hon'ble K. KALYANASUNDARAM AIYAR.—If that is so, there is no obstacle to that being read in Council under section 5 of the Indian Councils Act. That section seems to contemplate that previous sanction is necessary for passing a measure, but it does not prohibit the reading of a Bill. I do not see what the remarks that have been made have to do with the question that the Bill be read in Council.

His Excellency the PRESIDENT.—The Hon'ble Member appears to be perfectly right so far as he goes in the objection he has taken.

The Hon'ble Mr. BLISS.—After the remarks of the learned Advocate-General on the legal aspect of the question, I do not think it necessary to trouble the Council at any great length. There cannot, it seems to me—I appeal to the common sense of the gentlemen that sit around me—be any doubt that when a man suggests, to me that I should do such and such a thing, he will sanction my doing it. As the Advocate-General has said, even supposing that such a technical difficulty exists, there is nothing in the Councils Act to prevent us from passing any Act we please, subject to the chance that we run of its being disallowed by the Governor-General. On this point, however, I think the Hon'ble Members may relieve their minds of any fears that may be entertained. As to the other question raised, I do not intend to follow Hon'ble Members into the numerous irrelevant remarks that have been made—for instance one member took up the question of special constables; that is not even remotely hinted at in the correspondence that passed about this Bill or in the Bill itself, and in fact I was quite surprised that any body should have thought it worth his while to mention it. I will not follow them into those matters. I will simply go into the question that has been raised as to the intention of Government. It is insisted that in April last this Government had in view legislation on the subject. That is perfectly true. This Government had the subject in view and had prepared proposals to that end, in the course of which considerable attention was devoted to the existing Act. Having considered carefully what amendments were to be made, it submitted the proposals to the Government of India, but the Government of India, I must say, did not altogether accept the views of this Government as to amendments in the Act. Therefore—to cut a long story short—we proposed to the Government of India that this section should be repealed. The Hon'ble Members are, therefore, entirely mistaken in supposing that the Government did not devote the fullest possible attention to this matter. In regard to the question raised as to the Government of India having given a pledge not to extend the provisions of Act VIII of 1895 to this Presidency, I must say—I have read carefully what passed in Council at Calcutta—that I am unable to find that any pledge of the kind was given. The question was raised by a gentleman of the name of Mehta and he was answered in this way by Sir Anthony MacDonnell: “The Act has never been extended to the Madras or Bombay Presidencies and the Governments of these Presidencies have provided themselves with Police Acts more adapted to local circumstances than Act V of 1861 was held by them to be.”

in clause (c) of the same section I would insert before the last word “belongs” the words “belong or.”

The Hon'ble C. JAMBULINGAM MUDALIYAR seconded the amendment.

The amendment was put and carried.

The Hon'ble C. SANKARAN NAYAR.—I beg to propose that in section 5 instead of the words “when a sambandham is intended to be registered,” the following be inserted: “When it is intended to register a sambandham.”

The Hon'ble C. JAMBULINGAM MUDALIYAR seconded the amendment.

The amendment was put and carried.

The Hon'ble C. SANKARAN NAYAR.—I propose that at the end of the same section in lieu of “it is intended to be formed” the following be substituted: “it is intended to form it”.

The Hon'ble N. SUBBA RAO PANTULU seconded the amendment.

The amendment was put and carried.

The Hon'ble N. SUBBA RAO PANTULU.—I beg to move that in section 7, sub-section 1, line 10 *, the word “and” be omitted and a comma inserted after the word “notice”. In line 11, substitute the word “and” for “as also”.

The Hon'ble C. JAMBULINGAM MUDALIYAR seconded the amendment.

The amendment was put and carried.

The Hon'ble C. SANKARAN NAYAR.—I propose that in section 15, clause (b), the words “or belongs” be added after the word “belong”.

The Hon'ble the Rev. Dr. MILLER.—I think the phrase “belong or belongs” is an awkward one. I would move that “they belong or each of them belongs” be inserted throughout the Bill wherever a similar phrase occurs.

The Hon'ble C. VIJAYARAGHAVACHARIAR seconded the amendment.

The amendment was put and carried.

The Hon'ble C. SANKARAN NAYAR.—I beg to move that in section 16, sub-section 1, the words “any person entitled to be served with copy of notice under section 7, not having been so served” be omitted and the following be inserted “failure to give notice under section 7 to any person entitled to receive it”. This is intended to make the wording of the section better.

The Hon'ble P. RANGAYYA NAYUDU seconded the amendment.

The amendment was put and carried.

The Hon'ble C. SANKARAN NAYAR.—I propose that in section 18, line 20 *, the words “and are being” be omitted. The reason is that they appear to be unnecessary.

The Hon'ble the ADVOCATE-GENERAL seconded the amendment.

The amendment was put and carried.

The Hon'ble C. SANKARAN NAYAR.—I propose the insertion of the following additional words after the word “dissolved” in section 21: “Provided that such motion is made within seven days after the expiration of the six months or if the Court is closed, then that such motion is made on the day on which the Court is re-opened”. The section as it now stands does not say whether the petition for dissolution of marriage is to be rejected or not after the expiry of the six months if no motion is

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The Hon'ble Mr. BLISS.—My Lord, with reference to the Hon'ble Member's remark, I would simply say that the Government does not consider that section 16 of Act XXIV of 1859 requires amending.

The motion was put to the Council and carried, 16 voting for and 2 against it.

The Hon'ble Mr. BLISS.—I now move that the Bill be taken into consideration and that Council Rule 46 be suspended for that purpose.

The Hon'ble Mr. PRICE seconded the motion.

The motion was put and carried.

The preamble and the single section of the Bill were next passed.

The Hon'ble Mr. BLISS.—I now move that the Bill be passed into law.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—I wish to make a verbal alteration. It should not be "*Madras Act XXIV of 1859.*" It is an India Act.

His Excellency the PRESIDENT.—It is a clerical error and should be altered.

The Hon'ble N. SUBBA RAO PANTULU.—I wish to inquire of the Hon'ble Member in charge of the Bill if this measure is the whole or only an instalment of what was promised with regard to the revision of the Police Act.

The Hon'ble Mr. BLISS.—There is no intention of bringing forward any amendment of the Police Act.

The motion, that the Bill be passed into law with the correction suggested by the Hon'ble C. Vijayaraghavachariar, was put and carried.

MALABAR MARRIAGE BILL.

The Hon'ble C. SANKARAN NAYAR.—May I request your Lordship to allow me to make some slight amendments in the Bill?

His Excellency the PRESIDENT.—I have no objection to their being put.

The Hon'ble C. SANKARAN NAYAR.—In section 2 of the Bill I propose that in lieu of "a male person" the word "man" be inserted, and in lieu of "female person" the word "woman" be inserted. This is merely verbal.

The Hon'ble P. RANGAYYA NAYADU seconded the amendment.

The amendment was put and carried.

The Hon'ble C. SANKARAN NAYAR.—I propose that in the same section in line 18 * the word "alliance" be omitted.

The Hon'ble N. SUBBA RAO PANTULU seconded the amendment.

The amendment was put and carried.

The Hon'ble N. SUBBA RAO PANTULU.—I beg to move that in section 2, line 33 *, after the words "section 3, clause (a)," the following be inserted: "the last word of section 3, clause (c), section 15, clause (a), and the last word of section 15, clause (c)."

The Hon'ble C. JAMBULINGAM MUDALIYAR seconded the amendment.

The amendment was put and carried.

The Hon'ble N. SUBBA RAO PANTULU.—I beg to propose that in section 3, clause (b) line 6 *, before the word "belongs" the words "belong or" be inserted. Similarly,

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amendment. I do not see why the people of a town who follow agricultural pursuits should be deprived of the privileges which they should enjoy. Putting aside all questions of this sort, it would be inadvisable to tie our hands in the manner proposed, as I believe it would be very much better to leave the Government to establish Municipalities wherever it is found convenient to do so. But the Council will see that the Government only establishes a Municipality wherever it is found necessary.

The Hon'ble N. SUBBA RAO PANTULU.—I agree with the Hon'ble Mr. Bliss in thinking that this provision is not necessary.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—May I offer a word of explanation in reply?

His Excellency the PRESIDENT.—Yes, but it would be better to wait until all the others have done.

The Hon'ble S. SRINIVASA RAGHAVAIYANGAR.—The new section as it is worded would apply not only to the constitution of new Municipalities but also to outlying villages in close proximity to existing Municipalities. Very often such villages may be *foci* of disease and sanitary arrangements may have to be made with respect to them; and for this purpose, the villages may have to be added to existing Municipalities. But according to the present proposal, the inhabitants of the villages will have the right to object to the villages being added to the Municipalities. I think a provision of this kind is altogether unnecessary and undesirable.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—I just wish to offer a word of explanation. I did not mean by what I said that the Municipality was a burden on the people. Municipal towns do not feel it a burden, but purely agricultural towns would feel Municipal law a burden if it is extended to them. When a town is mostly composed of agricultural people, certainly the various Municipal laws would be unsuited to such village areas; but I do not mean it as any slur on the existing Municipal institutions.

The amendment was put to the vote and lost.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—I now beg to move the omission of section 6 and the substitution in place thereof of the following section:—

"6-A. For sub-section 2 of section 4 the following shall be substituted:—

"4-A. (1) The Governor in Council may, by notification, declare his intention—

- (a) to exclude from a Municipality any local area comprised therein, and defined in such notification; or
- (b) to include within a Municipality any local area in the vicinity of the same and defined in the notification.

"(2) Any rate-payer of a Municipality or inhabitant of a local area in respect of which a notification has been published under sub-section (1) may, should he object to the alteration proposed, submit his objection in writing to the Governor in Council within six weeks from the publication of the notification and the Governor in Council shall take such objection into consideration.

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“(3) When six weeks from the publication of the notification have expired and the Governor in Council has considered the objections, if any, which have been submitted under sub-section 2, the Governor in Council may, by notification, exclude the local area or any portion of it from the Municipality or include the whole or any portion of it therein as the case may be.”

This section relates to the alteration of municipal areas either by increase or decrease. It contains the principle of giving six weeks' notice. This is like the previous section No. 4 which has been carried.

The Hon'ble Mr. BLISS.—I second the amendment.

The amendment was put and carried.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—I beg to propose that the following new section be inserted in the Act :—

“4-B. (1) When any local area has been excluded from any Municipality under section 4-A, the Governor in Council shall, after consulting the Municipal Council, frame a scheme determining what proportion of the balance of the Municipal fund and other property vested in the Council shall vest in Her Majesty for the benefit of such local area, and in what manner the liabilities of the Council shall be apportioned between the Council and the Secretary of State for India in Council; and on the scheme being notified, the property and liabilities shall vest and be apportioned accordingly.”

“(2) All property vested in Her Majesty under clause (b) of section 4-B (1) shall be applied under the orders of the Governor in Council to discharging the liabilities imposed on the Secretary of State for India in Council under that sub-section, or for the promotion of the safety, health, welfare or convenience of the inhabitants of the said local area.”

This is consequent on the previous section as to the alteration of Municipal areas either by addition or subtraction. From the previous section certain consequences follow, and this section is intended to explain those consequences. This section will not be brought into operation when only a bit of land is taken away from the Municipal area and added to a Local Fund area. But if any important portion is excluded—say that either Trichinopoly or Madura is divided into two Municipalities—the question then arises how the balance of property should be divided between the original Municipality and the portion excluded and constituted into a separate Municipality or added to any Local Fund area. In such cases the principle which I want to see carried out is that the Municipal Council in the first instance ought to be consulted and after its wishes have been ascertained the Government ought to frame a scheme for effecting a division of the balance of property. Added to that is also the liability. If any such Municipality has any debt and if any portion of its area is taken and added to a Local Fund area, then the Local Fund should also take a portion of the liability, if it is to take a portion of the property and the balance of money. All that I say that the existing Municipal Councils which are affected should be consulted in the matter. Otherwise it comes to this that the Government might pass any order. Although we have confidence in the justice of the orders of Government still the other party who is affected by the order should be consulted in a matter like this. It may be asked why the Secretary of State should take the liability. To that I answer :

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that the Secretary of State who represents the Government is simply the medium between one Municipal Council and another or a Local Fund Board and does not take the responsibility absolutely but that every expenditure is to be defrayed from the Local or Municipal exchequer. The Secretary of State simply acts as a medium for transferring the liabilities from one to the other and dividing the properties between two Municipalities or between a Municipality and a Local Fund Board to which the Municipal area might be transferred. The only point that might be urged is that such cases have not taken place till now. They might not have. But there is a probability and possibility of such things taking place when a Municipality becomes too unwieldy to be managed, when the Government might think of separating a considerable portion of that Municipal area and adding it to a Local Fund Board or constituting it into a new Municipality. From the passing of 4-A as to the inclusion or exclusion of a portion of Municipal area, it follows as a logical sequence that there must be some provision by which the liabilities and the assets of the existing Municipality should be divided; and if that is to be done I say the Municipal Council must be consulted before that scheme is worked out. If there is a severance of an unimportant portion, the Municipal liabilities and assets may be left untouched. But if the Government is prepared to give a pledge that when a portion of Municipal area is taken away the Municipal liability and assets will not be touched, I do not press my motion. But I do not believe the Government can take that view, as it is only reasonable to divide the property in such cases. For these reasons I submit that this section is very necessary.

The Hon'ble C. VIJAYARAGHAVACHARIAR seconded the amendment.

The Hon'ble Mr. BLISS.—I regret I cannot accept the amendment. The Hon'ble Member says that he does not intend the section to apply to cases where there is a transfer of a survey number or other small piece of land, but in the second section the word used is “shall” which means that even if an area equal to the area of this room is passed over to another Municipal Council or to a Local Fund Board, the inevitable result would be the apportionment of property and liabilities. Putting aside all verbal criticisms, however, it appears to me that a proposal of this kind is quite unnecessary. Practically, as far as I can see, the Hon'ble Member cannot quote a case where it would be possible to put this section into operation. I do not remember any case where land has been taken away from a Municipality.—I am reminded * that there was a question about it in Waltair in which certain ground was proposed to be taken away by the railway authorities. But it must be remembered that those lands were of absolutely no value and it is not likely that to those lands any substantial rights which the Municipality possessed were attached. To make a rule of this kind would simply hamper the hands of Government. It should be quite sufficient to retain the existing rule.

The amendment was put and lost, three voting for and fourteen against it.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—In consequence of my section 4-D having been lost, I cannot put 4-C in its original form and I therefore withdraw it, and move for the insertion of the following section in the place of it :—

* By His Excellency the President.

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"4-B. (1) The Governor in Council may, by an order in writing published, together with a statement of his reasons for making the same,—

- (a) modify or cancel any notification issued under sub-section (4) of section 4 and dissolve the Municipal Council, and
- (b) supersede for a specified period any Municipal Council which is not competent to perform or persistently makes default in performing the duties imposed on it by law or exceeds or abuses its powers.

Provided that no such orders shall be passed without previously intimating to the Municipal Council the grounds upon which the proposal is based and considering the explanations and objections, if any, of the Municipal Council.

- (2) Upon the dissolution of a Municipal Council under sub-section (1) (a) the Governor in Council may pass such orders as he may deem fit as to the disposal of the property theretofore vested in such Municipal Council.

- (3) (a) Upon the supersession of a Municipal Council under sub-section (1) (b) the following consequences shall ensue :—

- (i) All the members of the Municipal Council shall forthwith vacate their offices as such.
- (ii) All the powers and duties of the Council shall during the period of supersession be exercised and performed by such person or persons as the Governor in Council appoints in that behalf.
- (iii) All property vested in the Council shall, during the period of supersession, vest in the Governor in Council.

(b) On the expiry of the specified period of supersession, the Municipal Council shall be reconstituted and the members who vacated their offices in consequence of the supersession shall not be deemed disqualified for re-election or re-appointment as such."

The Hon'ble Mr. BLISS.—I will only make one suggestion. That is, that in sub-section (1), clause (a), the word "or" be substituted for "and"; with this alteration I second the motion.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—I accept the alteration.

The Hon'ble N. SUBBA RAO PANTULU.—Clause (b) of sub-section (1) proposes to vest a new power in Government for suspending Municipal Councils for a certain period. The present powers of control which Government exercises are found to be sufficient and there is no necessity for introducing this new clause. Under this clause if Municipal Councils are suspended, the inhabitants would still have to pay the taxes. An officer will be appointed, he will collect the taxes and carry on the administration as if the Municipal Council were in existence. The inhabitants will feel the burden of paying the taxes and not have the benefit of enjoying real Municipal administration. Under the present Act whether the Municipal Council consists of nominated or elected members, the inhabitants have the consolation of having a Municipal Council. This provision would be felt as a real grievance. Once the power is given by the statute, it may be exercised. I submit that no necessity has been shown for the

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insertion of this clause for the first time now, and I would respectfully urge that the amendment be not carried.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—I oppose the insertion of this clause. Considering the large powers which the Collector and the Government have over Municipal Councils, it is absolutely uncalled for.

The Hon'ble Mr. GIBSON.—In regard to the objection made by the Hon'ble Subba Rao Pantulu, it appears to me that it is somewhat imaginary. It is very desirable that the Government should have this power, and I do not think that there is any need for any alarm.

The Hon'ble the ADVOCATE-GENERAL.—The Hon'ble Mr. Subba Rao Pantulu spoke of consolation. Where does consolation come in when the Municipal duties are badly performed? Where a Municipal Council is not competent or persistently fails to perform the duties imposed on it by law, or exceeds or abuses its powers, it is very necessary that the Government should interfere.

The Hon'ble N. SUBBA RAO PANTULU.—I am sorry that I have not been correctly understood. If a Municipal Council makes default in performing its duties, Government has at present the power of cancelling the notification under which the Municipality has been constituted. Government may have a Municipal Council wholly consisting of nominated members with a paid Chairman to do all that is necessary to carry on the administration of the town and place it on a better footing. There will thus be on the Council some of the inhabitants who will administer the affairs of the town even though they are nominated Councillors, and this will be some consolation to those who pay taxes.

The Hon'ble Mr. ARUNDEL.—In clause (b) of sub-section (1) the words used are "which is not competent." That seems to leave it rather vague and uncertain; they should be "which in his opinion is not competent."

The Hon'ble C. VIJAYARAGHAVACHARIAR.—It may be left as it is. Incompetency has to be proved before effect is given to this clause.

The Hon'ble N. SUBBA RAO PANTULU.—I do not think the alteration is necessary.

His Excellency the PRESIDENT.—Let me put the minor amendments first. The first amendment is that "or" should be substituted for "and" in clause (a) and the second, that the words "in his opinion" be inserted after "which" in clause (b) of sub-section (1).

The two amendments were put and carried.

The section proposed by the Hon'ble Jambulingam Mudaliyar as thus amended was then agreed to.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—I now propose the insertion of the following section in the Bill :—

"6-C. For section 5 shall be substituted the following section :—

'5. This Act shall come into force in, or cease to apply to, any Municipality or part of a Municipality as the case may be, on such date as may be specified in the notification mentioned in section 4, sub-section (4), or section 4-A, sub-section (3).'

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The present section 5 appears to me to be very meagre. Therefore I put it in this form.

The Hon'ble Mr. PRICE.—I accept it, my Lord, with some slight alteration. It should read thus, now that we have accepted the revised form of section 4-C :—

"5. This Act shall come into force in, or cease to apply to, any Municipality or part of a Municipality as the case may be, on such date as may be specified in the notification mentioned in sub-section (4) of section 4, or sub-section (3) of section 4-A, or clause (a) of sub-section (i) of section 4-B."

The Hon'ble C. JAMBULINGAM MUDALIYAR.—I have no objection to the addition. The amendment as revised was put and carried.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—In consequence of my previous amendment having been lost, I do not propose to move the addition of the following two clauses to section 4 of the Act, the amendment of which I gave notice :—

"(3) Any inhabitant of a local area in respect of which a notification has been published under clause (1) may, if he objects to the proposed extension of the Act, submit his objection in writing to the Governor in Council within six weeks from the date of publication of the notification, and the Governor in Council shall take his objection into consideration.

(4) When six weeks from the date of publication of the notification have expired and the Governor in Council has considered the objections, if any, which have been submitted under clause (3), the Governor in Council may, by a notification in the *Fort St. George Gazette*, declare such town, village, hamlet, suburb, bazaar, station or the other local area, or any number of the same, to be a Municipality."

Section 7

was carried without alteration.

The Council then adjourned for tiffin at 2 P.M., and re-assembled at 2-45 P.M.

Between Sections 7 and 8.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—My Lord, my amendment is that section 9 of the Act be omitted. Section 9 runs as follows :—"The Revenue Officer in charge of the Division of the District wherein any Municipality is situated shall *ex-officio* be a Municipal Councillor of such Municipality." I respectfully submit it is altogether unnecessary that this provision should be retained. It will be remembered that this is an Act of 1884 and was passed before the Income-tax Act was passed. In all the large Municipalities, the Councillors are, almost entirely, traders and pleaders; and I know from experience that in matters in which the Revenue Officer is interested it is absolutely impossible to prevail upon the traders to vote against him. They tell me that owing to the loose system of account-keeping in this country the Revenue Officer has got large powers in hands to harass them. I mean that every one of them is afraid that if he goes and votes against the Revenue Officer, he might carry his grudge against him in the discharge of his other duties. All that I say is that the merchant Councillors are afraid of him, and this fear affects their independence. I do not see any necessity at all for retaining this section. It

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will be remembered that the Government has the power of appointing a certain proportion of the Councillors and there is absolutely no necessity that the Revenue Officer in charge of the Division should be an *ex-officio* Member of the Council. The Government may at any time appoint the Revenue Officer as a Councillor of a Municipality wherever it may be necessary. But what I say is that a Revenue Officer as such should be an *ex-officio* Municipal Councillor is altogether uncalled for. On the other hand, it affects the independence of large municipalities and certainly the small ones. I therefore propose, my Lord, that this section should be repealed.

The Hon'ble K. KALYANASUNDARAM AIYAR.—I beg to second the motion, my Lord, for the same reasons as those which the mover has urged.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—There are other reasons also. It may be pointed out that in the early days of Municipal life it might have been considered necessary to have the Revenue Officer of the Division on the Municipal Council to get through the work. But the twelve years' experience gained in these Municipal Councils shows us that there is no necessity to keep the Revenue Officer on the Municipal Councils any longer. Further his being made an *ex-officio* Councillor and a permanent quantity in every Municipality implies a permanent suspicion on the part of Government as to the Municipal Councillors' capacity or honesty to do the work. In any case it is undesirable that this provision should be retained. My Lord, judging from the views of Government expressed in the various administration reports of the Municipalities, I think I am justified in saying that in a majority of cases the administration of these Municipalities is very fair. That is the opinion of Government. No doubt I am conscious, my Lord, that there are erring Municipalities which on account of their eccentricities have brought discredit not only upon themselves but reflected that discredit upon other Municipalities. Those Municipalities have met with condign punishment at the hands of Government and their condition need not be taken as a general test for treating other Municipalities. I beg to point out that there are very extensive powers in the hands of Government to check and rectify errors. For instance section 31 of the Act provides that no sooner a Municipal Council passes its Proceedings than the Chairman has to send them as a matter of duty to the Divisional Officer so that the Divisional Officer has an immediate check to see whether the Municipal Council has gone wrong and to correct it if necessary. Section 37 of the Act gives ample power to the Collector and also to the Divisional Officer to suspend resolutions of the Council and to carry out various other things to set right erring Municipalities. So much power is given to these officers that there is absolutely no necessity for retaining the Revenue Officer on the Municipal Council whose presence affects freedom of voting and, I am afraid, even freedom of debate. As pointed out by the Hon'ble C. Vijayaraghavachariar the Government has always the power of appointing a certain proportion of the Councillors and if in any particular place the Government should consider the Revenue Officer ought to be a member, they could easily appoint him, without making him a permanent quantity in every Municipal Council. As occasion arises and whenever there is a necessity the Government can appoint him as a member. Lastly I beg to point out, my Lord, that this *ex-officio* Municipal Councillor is an anomalous person in this Presidency. I have gone through the various Acts of the other Presidencies including Burma and Punjab and I do not find this provision there. I do not see why we should have the constant watch and ward over the affairs of the Municipalities in this Presidency, of this officer, who is at the same time an income-tax gatherer and a Magistrate.

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The Hon'ble Mr. ARUNDEL.—The Hon'ble gentleman has given us the results of his experience, and I will speak of the results of my own experience during the time that I have spent in the service of Government. I began as an Assistant Collector. I have found it to be of the greatest advantage that the Divisional Officer should be a member of a Municipal Council. My latest experience is that of a Collector and I may say with confidence that the administration of the Municipalities in the Kistna District would not have been one tithe as efficient as it has been if the Revenue Officers had not been members of Municipal Councils. The fact that the Divisional Officers are members of Municipal Councils in this Presidency is one of the reasons why the Municipal administration of the Madras Presidency is such a great success; and if other provinces follow our example they will make more progress than they have hitherto done. Take for instance the Municipalities of Masulipatam, Bezwada and Guntur; I found that in them the assistance given by the Divisional Officers was of the greatest advantage in securing their efficient administration.

The Hon'ble Mr. BLISS.—I should like to supplement these observations with one more remark. With reference to the difference between this Presidency and other Presidencies, it is too often forgotten that a Collector in this Presidency, to a very large extent, if not entirely, corresponds to a Commissioner in other parts. The duties of a Collector in this Presidency are very much larger than those of a Collector in other provinces, such as Burma, Central Provinces and the Punjab. One need only consider the District of Tanjore which has five large Municipalities. It is absolutely impossible for the Collector to go to each one of these Municipalities, and he must leave the Divisional Officer to look after them so as to keep himself in touch with what goes on in each of the large towns in the district. Not only are there certain powers given to the Divisional Officer, but he can take action in cases of emergency. It is very much more likely that the Divisional Officer will be able to act with efficiency if he is a member of the Municipality than otherwise. There are a good many Municipalities where the conduct of affairs would be impossible but for the help of the Divisional Officer.

The Hon'ble Mr. GIBSON.—I should like to say that, during the period of four years I was the Collector of Tanjore with charge of five Municipalities, the general complaint was not that the Divisional Officer interfered too much with the administration of Municipalities, but that he interfered too little. He did not attend meetings as often as he could, and he did not afford as much attention as I desired as to what the Municipalities were doing. So far from the Divisional Officer being, in any sense, what one member has suggested, a spy and watch over the work of the Municipality, the general complaint was that he left the Municipalities to do pretty well as they pleased as if he was never a member. The Hon'ble Members who have spoken in favour of the amendment have forgotten one point. The Divisional Officer is a man who is necessarily acquainted or should be acquainted with everything that is going on in the vicinity of a Municipality. For instance the Municipality might not know that at a certain time an epidemic of cholera or small-pox broke out. It is the duty of the Divisional Officer to let the Municipality know what he knows and give them timely information as to what action should be taken. In that respect his services to the Municipality are invaluable. It would be a great mistake if this amendment were adopted, because the valuable assistance and advice of the Divisional Officers would be lost to the Municipalities.

His Excellency the PRESIDENT.—The question is that section 9 of the Act be repealed.

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The motion was put to the Council and lost.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—I would suggest that the names be taken.

The following was the result of the voting:—

<i>For.</i>		<i>Against.</i>	
The Hon'ble C. Sankaran Nayar.		The Hon'ble Mr. H. W. Bliss.	
" P. Rangayya Nayudu.		" Mr. J. Grose.	
" C. Jambulingam Mudaliyar.		" Mr. J. F. Price.	
" C. Vijayaraghavachariar.		" Mr. E. Gibson.	
" K. Kalyanasundaram Aiyar.		" Mr. A. T. Arundel.	
		" Mr. J. Sturrock.	
		" Mr. H. P. Hodgson.	
		" Dr. Duncan.	
		" the Rev. Dr. Miller.	
		" V. Muhammad Sheriff	
		" Khan Bahadur.	
		" S. Srinivasa Raghava-	
		" aiyangar.	
		" the Advocate-General.	
		" Colonel Campbell.	

The Hon'ble K. KALYANASUNDARAM AIYAR.—My amendment, viz., "to omit section 9," being identical with the one just lost, I propose to withdraw it.
The amendment was by leave withdrawn.

Section 8.

This section runs as follows:—

8. For section 10, shall be substituted the following section:—

" 10. (1) Subject to the conditions contained in section 10-A and to such rules and other conditions as may be prescribed by the Governor in Council, the other Municipal Councillors may be—

- (a) either wholly appointed by the Governor in Council, or
- (b) partly so appointed, and partly appointed by election by the tax-payers and inhabitants of the Municipality or of a part thereof.

(2) All appointments under this section shall be notified in the *Fort St. George Gazette*."

The Hon'ble N. SUBBA RAO PANTULU.—I beg to propose the following amendment:—

"In sub-section (1) of the new section 10 substitute the following for the words 'may be' and clauses (a) and (b):—'shall be partly appointed by the Governor in Council and partly appointed by the tax-payers and inhabitants of the Municipality or of a part thereof;

Provided that in a Municipality which has not been constituted for three years all such Municipal Councillors may be appointed by the Governor in Council.'"

This will be introducing the important principle of election in all the Municipalities which are more than three years old.

The Hon'ble Mr. BLISS.—That amendment is accepted. I second it.

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The amendment was put and carried.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—I propose that the figure “(1)” be omitted after “10”; and that sub-section (2) of section 10 be struck out.

The Hon'ble Mr. BLISS.—I second the motion.

The amendment was put and carried.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—My Lord, my next amendment is to omit sub-section (1) of section 10 and to substitute four clauses for it. As regards the first clause it runs in these terms:—

“(1) The Municipal Councillors of each Municipality shall be appointed partly by the Governor in Council and partly by election by the tax-payers and inhabitants thereof under such rules and conditions as may, from time to time, be prescribed by the Governor in Council.”

I think that this has been accepted by Government in accepting the Hon'ble Mr. Subba Rao's amendment, this being nearly the same as his. I therefore beg leave to withdraw it.

This clause was by leave withdrawn.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—I am sorry, my Lord, I cannot withdraw clause (2) which runs as follows:—

“(2) The proportion of the Municipal Councillors of every Municipality of 20 years' standing and upwards, appointed by election as aforesaid, shall be not less than three-fourths of the whole number of the Municipal Councillors fixed for the Municipality under section 8 of the Act.”

Section 12 of the present Act says—

“In any Municipality, where the Municipal Councillors are partly appointed by election, the number of the persons so appointed shall, unless the Governor in Council otherwise directs, be three-fourths of the whole number of the Municipal Councillors.”

My amendment simply takes away the qualifying expression “unless the Governor in Council otherwise directs,” and puts another qualification “If the Municipality has existed for 20 years.” I think it is only fair and right that if a Municipality has acquitted itself well for 20 years, it should be allowed its full complement of elected Councillors. At present we have carried the amendment about supersession and in the face of such absolute powers there is no reason why three-fourths of the number of councillors allowed for any Municipality should not be appointed by election. The powers of control given to Government are sufficient to make the Municipalities, if they are worth anything, to work fairly well. It does seem to me that if the time is ever to come in Southern India, the time has come when the Municipalities of 20 years' standing should get the full complement of elected Councillors.

The Hon'ble K. KALYANASUNDARAM AIYAR seconded the amendment.

The Hon'ble Mr. PRICE.—The proposal which the Hon'ble Member makes is that in every Municipality of 20 years' standing and upwards there must be no less than three-fourths of the Municipal Councillors appointed by election. The Hon'ble Member has perhaps overlooked the fact that there is no Municipality of 20 years' standing or even anything approaching it. Municipalities were constituted only by Act IV of 1884.

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The Hon'ble C. VIJAYARAGHAVACHARIAR.—May I explain, my Lord?

His Excellency the PRESIDENT.—Yes.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—There was an earlier Act.—I beg the pardon of the Hon'ble Member—called the Towns' Improvements Act No. III of 1871—not to mention the Act of 1865—under which Municipal Councils came into existence. There are therefore many Municipalities of 20 years' standing.

The Hon'ble Mr. PRICE.—They are not *Municipalities*.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—It is only a matter of verbal expression.

The Hon'ble Mr. PRICE.—The amendment proposed by the Hon'ble N. Subba Rao Pantulu and accepted by Government gives to Municipalities of not less than three years' standing the right of election. The Government as far as I am aware is always willing to allow a reasonable proportion of elected Councillors. The circumstances of different Municipalities vary and in some cases it would be hardly desirable to allow so many elected members as three-fourths of the number simply because a Municipality has been in existence for more than 20 years. I consider that it is not advisable that Government should be bound by any hard and fast rule. I think that Government may be trusted to do all that is necessary and desirable in the matter.

The Hon'ble N. SUBBA RAO PANTULU.—There is one point that I would like to mention. The amendment proposed is that after 20 years' standing every Municipality shall have three-fourths of the members elected. Under section 12 we find that where the privilege of election is given to a Municipality which shall be extended under the amendment just carried to such as are of not less than three years' standing, the number of persons appointed by election, unless the Governor in Council otherwise directs, is three-fourths of the whole number of the Municipal Councillors. Thus three-fourths is the general rule now laid down for all Municipalities of more than three years' standing. Again if we make it compulsory that after 20 years' standing there must be three-fourths of the members elected, we come in conflict with section 13 whereby the Governor in Council may cancel by notification any of the privileges given to Municipalities under that section. I think as the section stands it is more elastic than giving three-fourths elected members at the end of 20 years which might be taken to imply that before the end of 20 years Municipalities ought not generally to have three-fourths of their members elected.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—There is again a misapprehension. The amendment does not prevent the full complement being given earlier to a Municipality. It simply says that it shall be compulsory on the part of Government to give the full proportion at the end of 20 years.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—In all the Municipalities the proportion of elected members is three-fourths, I quite agree in the remarks that fell from my hon'ble friend * on the right that section 12 of the Act gives as much power as is required.

The Hon'ble Mr. BLISS.—Probably the Hon'ble Member has not noticed section 12. As the law now stands no Municipality may be entirely deprived of elected members, but no Municipality can get elected members without special

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sanction from Government. According to the Hon'ble N. Subba Rao's amendment, every Municipality must have elected members; and in the absence of a special order from Government, the number of elected members must be three-fourths of the full number of Councillors except in one case, viz., where the Municipalities have not been in existence for three years, as to which the Hon'ble Member will no doubt admit that it is not advisable to give them elected members as soon as they come into existence. I hope he will be satisfied with the present provision.

The Hon'ble Mr. ARUNDEL.—I fail to see the force of the argument that because a Municipality has existed for 20 years it should therefore be allowed three-fourths of its full number to be elected Councillors. That argument seems to be based on a singular misconception that all the councillors of Municipalities would be much better qualified at the end than at the beginning of that term; but the Municipal Councillors change very often and a Municipality of 20 years' standing may be in no better position than one three years' old. It may be that at the end of 20 years the Government may find it necessary not to give them the full complement of elected members.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—I did not say that the Councillors could be trained by the end of 20 years. A good many of them would probably die by that time. What I meant to say was that the electors would become trained during these 20 years in the matter of elections and so they can be allowed to elect three-fourths of the number. The Hon'ble Member, I am sorry, mistook the force of my amendment.

The amendment was put and lost.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—My Lord, I beg to withdraw clause (3) which runs as follows:—

“(3) In every other case the proportion of the Councillors elected as aforesaid shall be such as the Governor in Council may, from time to time, determine, provided it is not, in any case, less than one-third of the whole number fixed as aforesaid.”

This clause was by leave withdrawn.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—I propose clause (4) which runs as follows:—

“(4) After the Governor in Council has directed that the Municipal Councillors of a Municipality appointed by election as aforesaid shall constitute a particular proportion of the whole number of Councillors, under sub-sections (2) and (3) of the section he shall not afterwards direct that under the said sub-sections they shall constitute any smaller proportion thereof except in compliance with the request of a majority of the electors of the Municipality, or for some reason to be stated in writing and which the Governor in Council may deem sufficient as affecting public interests.”

So far as this is concerned I have taken it from section 5 of the Punjab Act. The object of this provision is that there may be no capricious action on the part of Government. I beg pardon of Government. What I mean to say is there should be the feeling of security on the part of the people that when once the privilege is conferred upon a Municipal Council it cannot be easily taken away. We trust to Government to do its best, but Government can only act on materials placed before it and I know the worth of the materials that are often placed before Government. Therefore it does seem to me that this privilege once bestowed should not be easily taken away except on the two conditions mentioned in the amendment. The retention of a clause like that which is found in the Punjab Act will infuse more confidence into people and the Councillors. It cannot be forgotten that the office of a Municipal

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Councillor is after all an honorary one and the Municipal Councillors are made to bear hostile criticisms year after year and it seems desirable that their position must be secured and the privileges conferred on a Council ought not to be taken away lightly. Such instances have been many in Southern India—but I am not here to criticize the action of Government in dealing with Municipal Councils—still in the interests of the public at large I would urge that the privileges once granted ought not to be easily taken away. If such a provision as this is good for the Punjab I submit respectfully that by giving the very same thing to the Madrassis, no harm could possibly happen to Government. I hope this will be accepted by Government; if not, I hope it will be carried by this Council.

The amendment fell through for want of a seconder.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—I withdraw my next amendment as it is unnecessary, now that I have lost all the preceding amendments. This amendment has reference to the re-numbering of sub-section (2) of the section.

This amendment was by leave withdrawn.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—My next amendment runs as follows:—

“Section 10 of the Act.—To clause (1) add the following proviso:—

‘Provided that not less than one-third of the Councillors appointed by election shall be by the voters throughout the Municipality and the rest by wards.’”

This is rather an important one. The question is whether the Councillors should be elected by particular sections of the town called wards or by the voters throughout the Municipal area. The practice at present throughout Southern India seems to be that Councillors are elected by portions of a town called wards. As far as my experience goes, voters are most unequally distributed in the several parts of the town. In some wards the voters are 1,000 in number and upwards, while in other wards the number is so low as 30 with the result that a man who has influence in the small ward has the best chance of getting in, and if he is not over-scrupulous about getting into the Council, it is most easy to get into it by getting all the 30 to vote for him. There are certain men who have no particular influence in any particular part of the town, but who are well-known to the inhabitants of the whole town. I therefore beg to propose that one-third of the Councillors appointed by election shall be by the voters throughout the town. Suppose the Act lays down that sixteen Councillors are to be elected; I say that a certain number of them should be elected by the wards and the rest by the whole town. Rules may be made by Government as to the date of such elections and so on. What I say is that the election should be both by the whole town and by the wards of the town. Persons who go to a town newly should be given the chance of being elected by the whole town and my amendment will prevent unscrupulous men from getting into the Council.

The amendment fell through for want of a seconder.

Section 8 of the Bill as amended was then carried.

Section 9.

This section runs as follows:—

9. After section 10, the following sections shall be inserted:

“10-A. (1) In order to be qualified to be appointed a Municipal Councillor a person must—

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- (a) be of the male sex;
- (b) have completed his twenty-fifth year;
- (c) be resident within the Municipality or within two miles of the limits thereof;
- (d) not be a Municipal Councillor or an officer or servant holding office under this Act;
- (e) not have been convicted of any such offence or subjected by a Court of Justice to any such order as implies, in the opinion of the Governor in Council, a defect of character which unfits him to be a Municipal Councillor;
- (f) not be an uncertificated bankrupt or undischarged insolvent;
- (g) not be a person interested, otherwise than as a shareholder in Joint Stock Company, in any contract made with, or work done for, the Municipal Council.

(2) No person is qualified to be appointed a Municipal Councillor if any of his relatives or servants or any person in whose service he is employed is a member of the Municipal Council.

"10-B. (1) Whoever, being qualified to vote at any election under this Act, or claiming to be so qualified, accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any gratification whatever, as a motive or reward for giving, or forbearing to give, his vote in any such election, shall be liable to a fine not exceeding one hundred rupees for every such offence.

(2) Whoever, by any gift or reward, or by any promise or agreement or security for any gift or reward, corrupts or procures, or offers to corrupt or procure, any person to give, or forbear to give, his vote in any election under this Act, shall be liable to a fine not exceeding five hundred rupees for every such offence".

The Hon'ble K. KALYANASUNDARAM AIYAR.—This section my Lord prescribes qualifications and disqualifications of persons becoming Councillors. I am of opinion that an Honorary Magistrate for the Municipal town should not be eligible to be elected a Councillor of the Municipality. There are various reasons for the amendment. My amendment is—"In section 10-A at the end" of clause (d) to add the words 'or an Honorary Magistrate for the Municipal town.'

The Hon'ble Mr. BLISS.—Perhaps you will allow me to intervene and say that another amendment has been put in by the Hon'ble N. Subba Rao Pantulu on the subject. If the Hon'ble Member is willing to put it in the way drafted by the Hon'ble N. Subba Rao Pantulu, the Government is prepared to accept it.

The Hon'ble K. KALYANASUNDARAM AIYAR.—Then I withdraw my amendment, as the one proposed by the Hon'ble N. Subba Rao meets my view.
The amendment was by leave withdrawn.

The Hon'ble N. SUBBA RAO PANTULU.—I beg to propose the addition of the following words to the end of clause (d) of section 10-A of the Act:—

"or an Honorary Magistrate for the Municipal town unless, in the case of his being an Honorary Magistrate, the Governor in Council exempts him from the disqualification."

The amendment was agreed to.

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The Hon'ble K. KALYANASUNDARAM AIYAR.—I beg to withdraw my amendment to omit clause 2 of section 10-A, as the amendment of the Hon'ble C. Jambulingam Mudaliyar is preferable.

The amendment was by leave withdrawn.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—I beg to propose that, from sub-section (2) of the new section 10-A, the words "relatives or" be omitted.

The Hon'ble Mr. BLISS.—I accept the proposal and second the motion.

The amendment was put and carried.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—I beg to move the following amendment:—

"Add the following to section 10-B (1) and (2) after the words 'every such offence' at the end:—

'and shall for a term of seven years be disqualified from voting at any such election and from being elected a Municipal Councillor.'"

These words are taken from the Madras Municipal Act with the alteration that "seven years" are substituted for "ever." Both the giver and the taker of a bribe are punished in a Criminal Court, and there is no reason why we should not put this limitation on such people.

The Hon'ble Mr. BLISS.—With reference to this motion I beg to point out that the first sub-section of 10-B applies to a person that is bribed and the second sub-section applies to the person who gives the bribe. It is now proposed—I quite agree to it—that the person who receives the bribe should be disqualified for seven years. But there is one fact that has been overlooked, viz., that no such provision is made for the person who gives the bribe.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—That is a mistake. It must be made applicable to both. I would propose a third sub-section in the following terms which will include both the cases:—

"(3) Every person convicted under either of the preceding sub-sections shall, for a term of seven years, be disqualified from voting at any such election and from being elected a Municipal Councillor."

The amendment as thus revised was put and carried.

The Hon'ble N. SUBBA RAO PANTULU.—I propose that in sub-section 2 of section 10-B "200" be substituted for "500."

The amendment was put and carried.

Section 9 as amended was carried.

Section 10.

This section runs as follows:—

10. In section 13, for the figure and word "(iii) and" shall be substituted the word and figure "and (iii)", and at the end of the section shall be added the words "but such cancellation or modification shall not come into force until three months after the same shall have been notified in the Fort St. George Gazette".

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The Hon'ble C. JAMBULINGAM MUDALIYAR.—I propose to omit from *section 10* the words beginning from “and at the end of the section” up to the end, and in place thereof to substitute the following:—

“And for the proviso to this section shall be substituted the following: ‘Provided that the Governor in Council may, by notification accompanied by a statement of his reasons for making the same, cancel or modify such declaration; but no such notification cancelling or modifying a declaration made under clauses (ii) and (iii) of this section shall be issued without previously intimating to the Municipal Council the intention of the Governor in Council to issue such notification and the grounds therefor, and considering the explanations and objections, if any, of the Municipal Council or the Chairman; and no such cancellation or modification shall come into force until three months after the same shall have been notified in the *Fort St. George Gazette*.’”

This is the same as that on which the Hon'ble Vijayaraghavachariar has spoken under the previous section. I say that when it is found necessary to alter the proportion of the elected Members certain procedure should be adopted. I need not add anything further in the way of reasons to those which have already been stated by my Hon'ble friend. I submit that this is the appropriate place for a provision of this kind.

The Hon'ble Mr. BLISS.—There is one small alteration that should be made in this amendment. The words “*Fort St. George Gazette*” are unnecessary with reference to the Madras General Clauses Act. With this alteration I second the motion.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—I accept it.

The amendment as altered by the Hon'ble Mr. Bliss was put and carried.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—Part of my next amendment is simply consequential on the amendment I have lost. I therefore beg to withdraw the following portion of it:—

“From clause (ii) of section 13, the words ‘if any’ be omitted and the words ‘under the provisions of section 10’ be added after the word ‘thereof’ and the proviso be repealed.”

This portion of the amendment was by leave withdrawn.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—I now propose that clause (iii) of section 13 be repealed. This is in view of the amendment proposing that every Chairman shall be elected. I need not detain the Council for more than a minute. My amendment elsewhere says that every Chairman shall be elected, and in order to give effect to that amendment, I want this clause to be repealed. When I come to move the amendment that every Chairman shall be appointed by election I shall give the reasons for it.

The Hon'ble K. KALYANASUNDARAM AIYAR.—I would suggest that the consideration of this clause should stand over till the other question is disposed of by the Council.

The Hon'ble Mr. BLISS.—We have now to consider that clause (iii) be omitted; and if this is not omitted then the amendment that every Chairman shall be elected falls to the ground. The question may as well be taken up now.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—The question of elected Chairman is wound up with the question of the Secretary. The objection to having an elected

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Chairman is that the Municipal Council does not get a full time man and therefore the Government does not find the administration of Municipalities as efficient as it would be if a full time man is appointed. As a remedy for that, I propose the appointment of a Secretary; and if that is carried the Government will be more in a position to concede to the request contained in the other amendment that every Municipal Council shall have its own elected Chairman. I submit, my Lord, that that question may come up with the question of the Secretary and may then be disposed of. I do not know if the Government is prepared to accept my amendment as to the appointment of a Secretary.

The Hon'ble Mr. BLISS.—It will simplify matters if your Lordship will allow me to make a statement on behalf of Government. One of the greatest difficulties that we have in the administration of Municipalities is the absolute impossibility in most places of getting men who can devote their whole time to the work of a Municipal Chairman. It is a very difficult matter for any person to look after a town unless he has the whole of his time at his disposal to do his work. We are therefore driven by that necessity to the device of a paid Chairman. But sometime ago some Hon'ble Member—I think it was Mr. Subba Rao—in conversation with me suggested that a paid Secretary who should be in a somewhat different position from the ordinary Municipal servants might be appointed instead of a paid Chairman and that the paid Secretary could do the executive work of the Municipality for the Chairman. If we have a paid Secretary, we may not find it necessary to ask the Municipal Councils to have a paid Chairman. The business of the Chairman then would be to preside at the meetings of the Council, to direct their deliberations and to be responsible for the course of policy to be pursued in the town. As the law stands at present the executive work also is vested in the Chairman and the whole burden is put on him; and we therefore came to the conclusion that in this matter the best way out of the difficulty would be to have an elected Chairman or to appoint a Chairman but to let the work be actually done by a paid Secretary. The amendment of the Hon'ble C. Jambulingam Mudaliyar, which is found on the bottom of page 11 of the Agenda paper, which expresses the views of Government, and which the Government intends to support, safe-guards the position of the Secretary. If the Hon'ble C. Vijayaraghavachariar will read it, I have no doubt it will meet his view. Although it is not in the same words as his, it will be enough to satisfy him. Another question is that of having a Vice-Chairman. I find that there is an inclination on the part of certain persons who have interested themselves in this Bill to get rid, as far as possible, of the Chairman-delegate and to substitute in his place the Vice-Chairman who is to be elected. We shall accept the amendment in the form it is put at the bottom of page 6 of the Agenda paper. Having thus stated what the Government thinks as to the best way of arranging the Municipal executive work, we feel unable to accept the amendment of the Hon'ble Member that the Chairman should always be elected. Unfortunately in these latter days we have had difficulties with one or two elected Chairmen and we have found it necessary to put in paid Chairmen to carry on the duties of Municipalities. If we can pass the Bill in the form in which it will be presented to the Council either by Government or by the gentlemen who have kindly undertaken to bring forward amendments which will meet the views of Government, my inclination in regard to these Municipalities is make a clean sweep of what has gone before and make a fresh start. There is a Municipality that the Hon'ble Member opposite is interested in, where we had our difficulties and we found it necessary to put in a paid Chairman. If we get this Bill passed in the form in which it is presented to the Council, the best thing we could do there

would be to get rid of the paid Chairman and put in his place a paid Secretary who would do the executive work and be responsible for it, restoring to the people of Salem the privileges of electing a Chairman. There is again Trichinopoly. I do not think any Hon'ble Member comes from Trichinopoly. I should be very glad to restore to Trichinopoly the privilege of electing its own Chairman who would be responsible for the conduct of business, at the meetings of Council and for the policy to be pursued by the Council. It is impossible to run the business of a busy and prosperous Vakil with that of the Municipal Chairman. My hope is that the Hon'ble Member will meet us in this way, we will meet him as to the paid Secretary. I think the suggestion to appoint a paid Secretary is an admirable one which is calculated to solve a great many of our difficulties. We cannot absolutely lay down that in every case the Chairman shall be elected. There are cases in which the Chairman should be elected and there are cases in which that cannot be done. I would only instance the case of Anantapur, in the Ceded Districts, where a meeting was called three times to elect a Chairman and they had no quorum on any of those occasions. Obviously in such cases the Government must retain in its hands the power of appointing a Chairman. As this is a very important matter I have detained the Council for some time and I hope the Hon'ble Members will see that it is necessary to retain this power in order to enable the Government to appoint a paid Chairman wherever it may be found necessary to do so. We accept the proposal of having a paid Secretary and also that about the election of a Vice-Chairman by the Council. I hope after this explanation as to what the views of the Government are, the Council will be satisfied with them.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—Am I to understand my Lord, that wherever there will be a paid Secretary there will be an elected Chairman.

The Hon'ble Mr. BLISS.—I cannot bind myself in that way.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—My question is whether a Chairman shall be elected or appointed. My amendment is that he shall be elected invariably, and I am not able to see from what the Hon'ble Member says—except that the Government intends to give the privilege of election to Salem and Trichinopoly—what the views of Government are on the subject.

The Hon'ble Mr. BLISS.—I am under the impression that I said that the Government accepted as a very good suggestion his proposal as to the paid Secretary, and I have also said that the Government is prepared to accept that proposal about the election of a Vice-Chairman. So Hon'ble Members will see that the election of a Vice-Chairman will have a double effect. He will be the real officer to represent the Chairman whenever the Chairman is absent. He will be the officer who will take charge of the town in case of a vacancy in the office of the Chairman to the exclusion of the Revenue Officer of the division. We shall be able to get rid of the Chairman-substitute—that is, an officer whose appointment has not always worked in the best possible manner. I thought I was meeting the Hon'ble Member in a liberal way; but I cannot on behalf of Government say that in every case where we appoint a paid Secretary we will allow a Chairman by election.

The Hon'ble Mr. A. T. ARUNDEL.—The Hon'ble Member will admit that the Government must have the power of appointing a Chairman in the case where a Municipal Council abstains from electing or refuses to elect a Chairman. But there is one other case in which all will admit that it is extremely desirable to appoint a Chairman—that is on the establishment of a new Municipality. It is almost impossible for gentlemen who are unacquainted with the transaction of public business

suddenly to take up the work of a new Municipality, organize it and carry it to a successful issue.

The Hon'ble N. SUBBA RAO PANTULU.—There may be Municipalities that would like to have a paid Chairman, and I know a Municipality that resolved to have a paid Chairman.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—I am sorry that in spite of what I have heard from the Hon'ble Member I am unwilling to withdraw my amendment. Granting that we are going to have a paid Secretary, still nothing has been shown why the Municipal Councillors cannot be allowed to elect their own Chairman. What is the difficulty in having elected Chairmen? What is the objection to it? It may be as in the case of Anantapur a Municipality might neglect to elect a Chairman but I have provided for such contingencies by saying that three months after the occurrence of a vacancy the Governor in Council may in such cases of neglect appoint any person who may be deemed fit and proper for the post. If any Municipality so far forgets the privilege given to it as not to elect a Chairman the Government will come forward and appoint a Chairman. To leave things as they are is in the highest degree unsatisfactory. We are going to have a paid Secretary whereby all the arguments for having a paid Chairman disappear—I mean the full time argument. I respectfully submit that if the full time argument which is so often urged by Government disappears with the appointment of a paid Secretary and the election of a Vice-Chairman, I cannot see anything at all in the way of a Municipal Council being allowed to elect its own Chairman. If any Municipal Council should debase itself by not electing a Chairman, the power is then given to Government for appointing a Chairman. Under these circumstances I do not see my way to withdraw my amendment.

The Hon'ble Mr. BLISS.—I am sorry that it is utterly impossible to meet the Hon'ble Member in this matter. It seems to me that there are numerous cases besides what has already been mentioned in which the appointment of a paid Chairman would be necessary. I may cite two cases, both of which are in the Hon'ble Member's own district—I mean Tiruppattūr and Vániyambādi. How long, I ask, will the people there take if they are allowed to elect a Chairman? Before they elect one, probably they will come to logger-heads and a riot will ensue between Hindus and Muhammadans.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—If the argument of Mussalmans against Hindus is once brought in, there is at once a death blow given to Local Self-Government. Then Local Self-Government can never be enjoyed until India ceases to contain at once Hindus, Mussalmans, Christians and Parsees. I cannot understand the force of the argument “we cannot give you the privilege of election, because Hindus and Mussalmans will come to logger-heads.” Are we to wait until Hindus become Mussalmans or Mussalmans Hindus? I emphatically protest against any such argument being used in enacting any such law as this. As far as I know racial questions seldom or never turn up before Municipal Councils—questions that affect Hindus as Hindus and Mussalmans as Mussalmans. If they do, enormous powers are given under the Statute by which the resolutions of a Municipal Council can be set at nought and the Municipal Council itself suspended. If they bring private feelings to bear in the conduct of business, enormous powers are given by the Statute to Government to keep the Municipal Councils straight. If that argument is relied on, I am afraid we shall never be within the reach of getting elected Chairmen at all. The only question to be considered is the question of efficiency on the one hand and the training that is given by Local Self-Government on the other. In dealing with Municipal

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questions, the Government too often overlooks the latter principle. I would only call the attention of this Council to the despatch of 1884.

His Excellency the PRESIDENT.—I am sorry to interrupt the Hon'ble Member. Let us go back to business.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—I am speaking on my amendment of clause (iii). If your Lordship will allow me, I will go on with my amendment.

His Excellency the PRESIDENT.—Yes.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—I respectfully submit that Government in dealing with questions of this sort too often takes efficiency alone into consideration and never the other aspect of the question as to the Municipal Council being a school for the training of men for Local Self-Government. In the despatch of 1884 I would respectfully submit it is admitted that errors would occur and the Government was called upon to put up with those errors for a long time. It goes on, to the best of my recollection, to say that wherever such a spirit as is necessary to make Local Self-Government a success is wanting, an endeavour must be made to create that spirit. I submit this is not the way of creating such a spirit. It is often said that people in Southern India are not fit for Local Self-Government. I emphatically deny it. Whatever may be the disadvantages of caste, caste has done this good. It has disciplined caste guilds to combine for general and unselfish purposes, to deliberate, to lead and to follow and to submit to the resolutions of the majority. Racial questions about Mussalmans and Hindus will, I hope, never be introduced into this question and should not be indulged in by any trusted and responsible officer of Government. It does considerable harm; it makes certain not over-scrupulous people to take advantage of such assertions and send petitions to Government on such grounds. No objection except the racial argument has been stated against my amendment. I cannot understand why a Municipal Council ought not to be allowed to elect its own Chairman. If the efficiency question is the only one to be taken into consideration, why should we not abolish Municipalities altogether. Call a man by any name you like and allow him to carry on the whole work. I would respectfully submit that the course pursued now makes Local Self-Government a farce. My Hon'ble friend Mr. Bliss took Tiruppattūr and Vániyambádi for instances when the elective franchise should not be bestowed. I say they are capable of electing a very good Chairman if the privilege is conferred on them. On the other hand there is now but one Chairman, namely, the Head Assistant Collector for both. He is the Chairman of the Municipalities, the original Magistrate, the appellate Magistrate and what not. It will be far better to allow these Municipal Councils to elect their own Chairmen. He would be far better than the Head Assistant Collector, who has multifarious duties to perform and who has to go visiting many places and who has to show the amount of work he has done. I hope the Hon'ble Members will be pleased to allow this privilege. If the Government is not willing to bestow this privilege on all Municipalities, I hope it would bestow it on some Municipalities of certain years' standing. The thing should not be left to the whims of Collectors; there should be something in the Statute which will show what Municipalities should get it and what not. My amendment is that it should be for all Municipalities. If the Government is not willing to do that, Municipalities of four or five years' standing may be excluded. Unless and until that is done the growth of Municipalities will be very slow indeed.

The Hon'ble K. KALYANASUNDARAM AIYAR.—I beg to second the amendment.

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The Hon'ble Mr. BLISS.—The Hon'ble Member has waxed wroth over the possibility of the Hindus and Mussalmans interfering with each other in Municipal affairs. I can only envy him the happy state of ignorance in which he is. Perhaps he has heard of a town called Vellore, which is not very far from his own district. I will tell the Hon'ble Member what happened the other day at Vellore. The Hon'ble Member is well aware that it is necessary from time to time to revise the list of voters in the Municipalities. For that purpose the Municipal Council of Vellore formed a sub-committee to inquire into different wards. In the town of Vellore there is one ward called the Mussalman ward. It so happened that the gentlemen who were appointed the members of the sub-committee were Hindus, viz, Chetties; and it would probably surprise the Hon'ble Member when I tell him that when they revised the list of voters in the Mussalman ward, they struck off the names of nearly all the Mussalman voters and retained only the names of a few of their own caste. Then again Vániyambádi has been quoted as an extremely virtuous place. The Collector had to cancel the order of the Vániyambádi Municipal Council about the tax on arts as being illegal. Instead of revising the assessment they reduced it from Rs. 1,990 to Rs. 620 without assigning any reason. The consequence was that their order had to be cancelled. I can only say, as I said before, that I envy the Hon'ble Member his happy state of ignorance.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—May I ask a question of the Hon'ble Member? Is there any explanation of the Municipal Councillors on record?

The Hon'ble Mr. BLISS.—There is the explanation of the Chairman.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—I know what the explanation (?) of the Chairman would be for them. Is there any explanation of the Councillors?

The Hon'ble Mr. BLISS.—No.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—Then you have not heard the other side.

The Hon'ble Mr. BLISS.—How can you say what there is in it without seeing it?

The amendment was put and lost.

The Hon'ble K. KALYANASUNDARAM AIYAR.—I beg to withdraw my amendment to omit the word "and" at the end of clause (ii) and to omit clause (iii) altogether in section 13.

The amendment was by leave withdrawn.

Section 10 as amended was carried.

Between Sections 10 and 11.

The Hon'ble N. SUBBA RAO PANTULU.—I propose that the following be substituted for section 14 of the Act:—

"14. Unless the Governor in Council appoint some person to be the Chairman of the Municipal Council, the Municipal Councillors shall appoint their Chairman by election, subject to the approval of the Governor in Council, and in accordance with such rules and conditions as may be prescribed by the Governor in Council.

"Provided that:

- (i) Every person so appointed must be qualified to be a Municipal Councillor under section 10-A;

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- (ii) When the Chairman appointed is not a Municipal Councillor, he shall, during his tenure of office as Chairman, which shall be for a term of two years, be *ex-officio* a Municipal Councillor irrespective of the strength fixed for the Council under section 13, and he shall not be reckoned in calculating the proportions of Municipal Councillors under sections 10 and 11."

The object of this amendment is to enable a Municipal Council to appoint a Chairman either from the Council or outside the Council. If not a member already he will exercise the privileges of a Municipal Councillor, but would not affect the constitution of the Council under the sections referred to.

The Hon'ble Mr. BLISS.—I second the amendment.

The proposition was put and carried.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—I propose that the following section be inserted after section 10 of the amended Bill :—

"10-A. The figure (1) shall be inserted at the commencement of section 14 and the following shall be added as sub-section (2):—

"(2) The Municipal Council may, with the previous sanction of, and in such manner as may be prescribed by, the Governor in Council, elect one of their number to be Vice-Chairman."

The first portion of the amendment is a verbal one consequent on the second part as to the appointment of a Vice-Chairman. After what has fallen from the Hon'ble Mr. Bliss it is unnecessary to give reasons for my amendment. A Vice-Chairman will serve the purposes of a Chairman-Delegate. Whenever there is a vacancy in the office of the Chairman he will become the Chairman until a proper Chairman is elected. If, on the other hand, when a Chairman is absent or vacated his seat, a temporary Chairman-Delegate is appointed, he may not have sufficient knowledge of the routine work and may make blunders which it may be inconvenient to rectify afterwards. But if we have a Vice-Chairman he will be an honorary officer like the Chairman having all the responsibilities vesting in him. He is a properly appointed official of the Municipality; he knows all the transactions of the Municipal Council; and he will be of very valuable assistance to the Chairman. In large Municipalities like Madura and Trichinopoly, where the work is growing up in various ways, such as water-works and drainage schemes, the assistance rendered by a responsible officer like the Vice-Chairman will be valuable. Such assistance is given in the Municipalities all over India, and it is desirable to give the same assistance to the Chairmen of Municipalities in this Presidency.

The Hon'ble Mr. BLISS.—I second the amendment.

The amendment was put and carried.

The Hon'ble K. KALYANASUNDARAM AIYAR.—I beg to withdraw the following amendments, of which I gave notice :—

"(a) In section 14 to omit the words in the beginning from "unless" to "Council".

"(b) In the same section, line 6, after the word "number" to add the words "or otherwise".

"(c) If the amendment (b) be accepted, to add a clause as follows :—

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"When the Chairman so appointed is not already a Municipal Councillor, he shall, during his tenure of office as Chairman, be *ex-officio* a Municipal Councillor, irrespective of the strength fixed for the Council under section 13, clause (i)."

With regard to (a), the Council has decided about the election of Chairmen. What is contained in (b) and (c) has already been secured by the amendment proposed by the Hon'ble N. Subba Rao Pantulu.

The amendments were by leave withdrawn.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—I beg to propose the following amendment :—

"From section 14, the words "unless the Governor in Council appoints one of the Municipal Councillors to be the Chairman of the Municipal Council" be omitted; the figure "(1)" be inserted before the words "the Municipal Councillors," the words "of every Municipality" after the same words, and the word "ordinarily" between the words "election" and "from"."

The Hon'ble K. KALYANASUNDARAM AIYAR seconded the amendment.

The amendment was put and lost.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—I beg to propose that the following sub-section be added to the same section :—

"(2) If the Chairman elected was not already a Municipal Councillor of the Municipality, he shall have all the rights and privileges of a Municipal Councillor thereof, but he shall not vote at a meeting of the Council except in case of equality of votes, nor be reckoned in calculating the proportions of the number of the Municipal Councillors under the provisions of section 10 of this Act."

If a Chairman comes from outside, I propose that he shall not have the double vote. He should only vote when there is an equality. I am not, however, strong about the matter, and I would leave it to the Council.

The Hon'ble C. JAMBULINGAM MUDALIYAR seconded the amendment.

The Hon'ble the Rev. Dr. MILLER.—I think it would be unfortunate if a Chairman—if he were an outsider as we have already decided that he may be—should not have the usual privilege of a Member. I do not see why he should be deprived of that ordinary privilege, which would weaken his position. I quite agree with the Hon'ble Mover of the amendment, that it is not a matter of the first-rate importance, but I think it would be unfortunate that he should be under any disability in the matter.

The Hon'ble Dr. DUNCAN.—It is stated in a previous amendment that he shall have the rights of a Municipal Councillor; if so, I cannot see how you can deprive him of any of his rights.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—I withdraw my amendment.

The amendment was by leave withdrawn.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—I beg to propose that the following sub-section be added :—

"(3) If within three months from the occurrence of a vacancy in the office of Chairman no person is elected" the Governor in Council may appoint such person as he deems fit to be Chairman."

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The Government is going to allow certain Municipalities to elect their own Chairman. If such Municipalities do not exercise the privilege within a certain time, the Government should have the power of appointing such persons as Chairmen as may be deemed fit.

The Hon'ble the Rev. Dr. MILLER.—I second the amendment.

The Hon'ble N. SUBBA RAO PANTULU.—One of the rules framed by Government says that if a Municipal Council fails to appoint a Chairman within a certain time, Government might itself appoint a person to the office.

The Hon'ble the Rev. Dr. MILLER.—It ought to be "shall" and not "may."

The Hon'ble C. VIJAYARAGHAVACHARIAR.—I put the word "may" with the intention that the Government under particular circumstances may be disposed to give some further time.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—This clause would have fitted in very well with the other amendments of Mr. Vijayaraghavachariar if they had been carried. As it is, he has lost the other amendments and this provision seems to be unnecessary. At present not only three months but also more time is given to Municipalities, as in the case of Anantapur. If a Municipality fails to appoint a Chairman the Government appoints him.

The Hon'ble N. SUBBA RAO PANTULU.—Under the present rules Municipal Councils get more time, but under this amendment you practically restrict the time given to each Municipality to elect a Chairman.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—The practice now is that whenever such a privilege is not taken advantage of, the Government withdraws the privilege. If my amendment be accepted, in the given instance, the Government appoints a Chairman, but the right of election once given stands. At present if the privilege is not exercised, it is withdrawn, but according to my amendment, though the privilege is not exercised, still it remains. I am sorry that the Hon'ble Member on my left did not see it.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—In that view, I withdraw my remarks.

The Hon'ble Mr. BLISS.—This ought to state that it is applicable to cases where a Municipal Council is allowed to elect a Chairman.

The Hon'ble C. VIJAYARAGHAVACHARIAR.—My amendments having been lost, all these points are not quite clear. It may be altered as the Government thinks proper.

The Hon'ble Mr. BLISS.—The Hon'ble Member may bring up the matter again to-morrow.

The Hon'ble K. KALYANASUNDARAM AIYAR.—It may appear as a proviso to section 14.

His Excellency the PRESIDENT.—The Council will now adjourn till 11 o'clock to-morrow morning.

(By order.)

LIONEL DAVIDSON,
Secretary to the Council.

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Municipal Council" and retain "likely . . . to bring the Municipal administration into contempt."

This was unanimously agreed to by the Council.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—I beg to propose the addition of the following sub-section to section 15.

"The word 'Vice-Chairman' shall be inserted after 'Chairman' in sub-section (2) of the same section."

The Hon'ble Mr. BLISS.—That is accepted, my Lord.

The amendment was put and carried.

The Hon'ble K. KALYANASUNDARAM AIYAR.—I beg to propose the addition of the following words to section 19 at the end of clause (iv) of sub-section (1):—

"Provided that when the Governor in Council proposes to take action under this clause he shall not pass any orders without giving an opportunity of explanation to the Chairman or Councillor concerned, and shall also record the reasons for the action taken."

The Hon'ble Mr. BLISS.—I have no objection to that, and second the proposal.

The Hon'ble P. RANGAYYA NAYUDU.—Instead of this clause we may adopt the following wording which is found in page 9 of the Agenda paper:—

"Any Chairman or Municipal Councillor whom the Governor in Council proposes to remove shall be entitled to have the charge or charges against him formulated and shall be furnished with a copy of the same and of the information on which the charges are based. He shall be allowed every reasonable opportunity to disprove the truth or accuracy of the information and generally to make his defence. If the Governor in Council then removes him, the order shall be accompanied by a statement of reasons for making the same."

I think this is more clear than the other amendment. It will be a sort of consolation to the party if he is given an opportunity of vindicating his character by calling in witnesses instead of simply forwarding an explanation. His explanation may or may not be satisfactory; but if he is allowed an opportunity of adducing evidence to show that he is not guilty, it would be more satisfactory. In every case where a man is declared guilty, he should be given an opportunity of vindicating his character and of proving that he is not guilty. Therefore instead of the proposed amendment if the clause I read is carried, it will be all right.

His Excellency the PRESIDENT.—The only way open to the Hon'ble Member is to throw out the present amendment, and propose the other when the time comes.

The amendment was put and carried, 17 voting for and 1 against it.

The Hon'ble K. KALYANASUNDARAM AIYAR.—I should like to withdraw my next amendment proposing to omit the words at the end of clause (iv) beginning with "or likely."

The amendment was by leave withdrawn.

The Hon'ble K. KALYANASUNDARAM AIYAR.—I beg to propose the following amendment:—

In the same section add a clause (v) to sub-section (1).

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precise as to the grounds on which a Municipal Councillor may be removed. The wording of the Bengal Act is "or if in the opinion of the Governor in Council he (the Municipal Councillor) has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct."

The Hon'ble Mr. BLISS.—I have no objection to the alteration of the wording in this way.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—I second the proposal.

The Hon'ble the Rev. Dr. MILLER.—I should say "or if he has in any way misused his position or been guilty of any other disgraceful conduct."

The Hon'ble Mr. CROLE.—That is exactly what we find now.

The Hon'ble N. SUBBA RAO PANTULU.—It may be said that a man that does not know English is not fit. The words "injurious to the efficiency" are rather vague. They might be applied to a "duffer."

The Hon'ble Mr. CROLE.—There may be plenty of duffers without affecting the efficiency of Municipal administration. In the effort to make a change, Dr. Miller, I am afraid, has come to the same wording as we now have. I understand that the Select Committee provided this clause on purpose to meet those cases that were not included in the other three clauses.

The Hon'ble Mr. ARUNDEL.—May I ask whether it is worth while to adopt any other amendment. The amendment brought before the Council has been put to the vote and lost. The change now brought forward is quite as vague, if not more so, than the present one. It seems to me that it is much better to leave it as it is.

The Hon'ble N. SUBBA RAO PANTULU.—As I said already under the present wording it may be argued that a man who does not know English is injurious to the efficiency of the Municipal Council. He must be guilty of some misconduct and that should be the only ground on which a Municipal Councillor can, if at all, be removed.

His Excellency the PRESIDENT.—Dr. Miller's proposal "or if he has in any way misused his position or been guilty of any other disgraceful conduct" seems to be better.

The Hon'ble the Rev. Dr. MILLER.—I cannot understand Mr. Crole when he says that I have come to the old position. The words "injurious to the efficiency to the Municipal Council" are vague. We might have an excellent man in the Council whose crotchets might be injurious, but we should not remove him on that account. Would this be better "if he has misused his position or acted in a way so as to bring the Municipal administration into contempt"?

The Hon'ble Mr. BLISS.—If he misused his position he would thereby bring the Municipal administration into contempt. Therefore it is unnecessary to have both the parts. We may leave out the words "injurious to the efficiency of Municipal administration" and simply say "bring the Municipal administration into contempt." A man who disgraces himself in a different way may not bring the Municipal administration into contempt.

The Hon'ble Mr. ARUNDEL.—The instance I mentioned is not met by the amendment now proposed.

The Hon'ble N. SUBBA RAO PANTULU.—I would have no objection to accept that as my amendment. I will omit the words "to be injurious to the efficiency of the

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speedily bring you to your proper bearings. There is not the least likelihood of any man refusing office out of self-respect if this provision is passed as I hope it will be. The question undoubtedly is a difficult one, but as to my Hon'ble friend Mr. Subba Rao's remark that these are dangerous weapons, I admit that there are dangers on both sides. I quite admit that there is no course in the world which is free from danger. Whatever we may do, either one way or the other, we will no doubt always be exposing ourselves to dangers of one kind or another. But I submit that the danger of any abuse arising from the Government using its power despotically and in an unreasonable way is infinitely less than the dangers that have arisen and that are arising day after day throughout the country from others using their powers despotically. If the Government should go wrong in this matter, certainly with the publicity that the newspapers afford, with the interpellation that the Council affords, with the possibility of appeal on every side to public opinion, the danger is infinitely small. For reasons such as these whatever the Hon'ble Mr. Bliss and the Hon'ble Mr. Price may feel and whatever view their private pledge may force them to take, I do hope that a majority of this Council will see that a provision such as this is passed.

The amendment was then put to the Council and lost, 4 voting for and 13 against it.

The Hon'ble Mr. BLISS.—I should like it recorded that the Hon'ble Mr. Price and I have not voted.

The Hon'ble the Rev. Dr. MILLER.—Let us take down the names.

The following was the result of the poll:—

<i>For.</i>	<i>Against.</i>
The Hon'ble N. Subba Rao Pantulu.	The Hon'ble Mr. H. P. Hodgson.
" C. Jambulingam Mudaliyar.	" the Rev. Dr. Miller.
" P. Rangayya Nayudu.	" the Maharaja of Vizianagram.
" K. Kalyanasundaram Aiyar.	" V. Muhammad Sharif Khan Bahadur.
	" Mr. Crole.
	" the Advocate-General.
	" Colonel McNeil Campbell.
	" Mr. Grose.
	" " Arundel.
	" " Gibson.
	" " Sturrock.
	" " Chambers.
	" Dr. Duncan.

Not Voting.

His Excellency the President.

The Hon'ble Mr. Bliss.

" " Price.

" " S. Srinivasa Raghavaiyengar.

The Hon'ble N. SUBBA RAO PANTULU.—As the Council is not for the omission of the clause, I would substitute the wording of the Bengal Act. That Act is more

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The Hon'ble P. RANGAYYA NAYUDU.—During the last fifteen years of Municipal administration there were only a few instances mentioned wherein the necessity for this clause was felt. But we are not legislating for a few instances, why should not we wait for some time more and see whether there will be a number of cases which require such an enactment as this? Further, as it was already said, this clause is so indefinite and objectionable that no man who has a grain of self-respect would condescend to seek either appointment or election to a Municipal Council. I can say that no man would be safe with this provision in the Act. Any officer, say a Tahsildar or a Sub-Magistrate, who has his likes and dislikes, may send in a report against the Councillor which report would go to Government. But the Government is not going to institute an inquiry or appoint a commission to inquire into the matter. Probably an explanation may be asked for, and, after the explanation is given, the Government would naturally take the explanation of its own officer in preference to the explanation of that man. What guarantee is there that any man would be safe if this rule were to come into existence?

The Hon'ble K. KALYANASUNDARAM AIYAR.—Will your Excellency permit me to offer one word of explanation. I never suggested that whenever a Council recommended the removal of a Councillor he should be removed by Government. What I submit is that if the Council is of opinion that a man should be removed from office, the Government might remove him, but it shall never remove him except on the vote of the Council.

The Hon'ble Mr. BLISS.—With reference to the remark of the Hon'ble P. Rangayya Nayudu that I cited only a few instances, I would point out that these are cases that occurred in the comparatively limited period of my tenure of office as a Member of Council. If the Hon'ble Member requires more, he can refer to the bundle of papers here.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—It must be said that such cases are of rare occurrence.

The Hon'ble P. RANGAYYA NAYUDU.—Are there 1,500 cases during these fifteen years?

The Hon'ble Rev. Dr. MILLER.—My Lord, this is a matter of great importance, and whatever may have been the pledge given by the Hon'ble Mr. Price and the Hon'ble Mr. Bliss, I think it is the duty of this Council to see that what is right is done. I should like just to notice two points. It has been said very strongly by the Hon'ble P. Rangayya Nayudu that no man with any self-respect would accept office under such a provision as this. Now it seems to me that men who are prepared to trust to Government in all their ordinary concerns should surely be prepared to trust to Government in a matter such as this. To me it does not seem in the least derogatory to self-respect that a gentleman should take office subject to terms like this. Take for instance a case which is very familiar to me and to many other gentlemen here, that of the University of Madras. I believe it is competent for your Excellency in Council to remove at any moment any Fellows from that University by gazetting them out without assigning any reason for doing so. But it has not to this day occurred to any Fellow of the University of Madras that it is injurious to his self-respect to take office under such terms or to hold it for long years. Why not? Because we have the perfect assurance in the first place that your Excellency in Council would not do anything outrageous in the matter; and in the second place if you are so ill-advised as to do so there would be a storm of public opinion that would

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which was for sale. When the purchase was complete, the purchaser received a notice from the Municipality that he would be prosecuted for shutting up a public road. The subsequent correspondence puts the things in even a worse light, because an offer was in effect made to withdraw the prosecution if the Chairman's property was purchased. I cannot say that these are spurious letters. They were placed before me by one of the prominent residents of Madras. I know the parties. The Government has now no power to touch a Chairman who disgraces himself in that way. I may also say that the appointment of that Chairman came before your Excellency's Government only a few days ago. The object of bringing this matter to my notice was that I should address your Lordship privately; but having no concern with Municipal matters, I did not feel myself justified in doing so. The papers are available if required by Government.

The Hon'ble Mr. BLISS.—Perhaps I may give a little bit of information to Hon'ble Members who have not had the opportunity of studying the question, if I mention the provisions which are in force in other parts of India.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—When I said the provision was peculiar to this Presidency, I should have made exception of one other Presidency.

The Hon'ble Mr. BLISS.—What I have been able to find with the aid of the Secretary is this. Let us take the case of Bengal where the provision of law is "That the Local Government, whenever it thinks fit, may, on the recommendation of the Commissioners, remove any Commissioner appointed or elected under this Act if such a Commissioner has been guilty of any misconduct or any disgraceful conduct." Then I find that in the Punjab Municipalities the Local Government may remove a Councillor if he is dismissed from the public service. In the case of the Central Provinces the provision is "That the Local Government may remove a Chairman, Vice-Chairman or a member, if his continuance in office is undesirable in the interest of the public service or the Municipality." There is thus ample power invested in Government in the Central Provinces which was quoted the other day as being very successful in the matter of Municipal administration. In regard to the alarm which has been expressed by the Hon'ble Members opposite all I can say is—I hope they will not consider the comparison an objectionable one—that it seems to me very much like the alarm of a burglar in the presence of the police. So far as that alarm goes it is desirable that it should exist. However that may be, I am in a somewhat peculiar position in regard to this matter. I have received the greatest assistance—or rather we, myself and my Hon'ble friend the Chief Secretary—have received the greatest assistance from the Hon'ble Members opposite who have brought to our notice many most admirable amendments which we have the pleasure to adopt. Among the various questions discussed was the question of the omission of these words; and my Hon'ble friend the Chief Secretary and myself, after considering the matter carefully and seeing how serious a view was taken by Hon'ble Members opposite, said that we would not object to the motion to omit those words. So far as the Chief Secretary and myself are concerned we cannot vote for the retention of these words. But there is nothing in what we have done to pledge any other member of Council, or any other member or members of Council should choose to vote against it. It is a matter which is entirely in their discretion.

The Hon'ble K. KALYANASUNDARAM AIYAR.—The provision in the Bengal Act which has been quoted by the Hon'ble Mr. Bliss gives the power of deciding whether it is desirable that a Municipal Councillor should continue in office to the Council

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itself. I should certainly have no objection if a similar provision could be introduced in this Bill, namely that the Municipal Council should decide whether the continuance in office of a Councillor is in the public interest or not. On the recommendation of the Municipal Council the Government may exercise the power of removal. That seems to be a fair compromise between the two, and I beg that the Council will adopt that course.

The Hon'ble N. SUBBA RAO PANTULU.—I must express my regret in differing from the previous speaker. I am of opinion that if the decision were left to certain Municipal Councils, it might do greater harm than if it were left to Government. The reason for it is this. There are what are called factions or cliques in some Municipalities. If there is a majority or faction in a Municipal Council, this power will pass into the hands of a majority. I know of a case where the Chairman who was supported by a majority of Councillors wanted to get rid of a Municipal Councillor whose course of conduct was against that taken by the Chairman and others. If this power were in the hands of that majority, that Councillor is sure to be removed, and there would be a resolution of the Council that his presence would be an obstruction to the proper discharge of Municipal duties. We might easily conceive of several cases where such power might be used. With regard to the clause in question, I must say that the wording is very vague so much so that even an honest Councillor might be removed on the ground that his presence is injurious to the interests of the Municipal Council. "Efficiency" or "contempt" is a very vague word. Who is to be the judge of the efficiency of a Municipal Councillor with regard to the work done by him, and what is meant by it? That depends apparently on the individual opinion of the reporting officer. The clause is very elastic and would be a dangerous weapon that might be used against any Municipal Councillor. I think much might be said both for and against the proposition. But, on a balance of evils, I think it would be much better to omit it rather than retain it. I am not unmindful of the sometimes disgraceful conduct of certain Councillors. On careful and anxious consideration I am of opinion that this clause cannot be retained.

His Excellency the PRESIDENT.—The Hon'ble Member appears to think that something of this sort is necessary. But he only objects the wording of the clause. I would ask him if he would draft it in a different way.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—My Hon'ble friend Mr. Subba Rao, I thought, seconded me. If I knew it was to be such a half-hearted seconding I would not have cared for such a seconder.

The Hon'ble N. SUBBA RAO PANTULU.—I thought considering the vague way in which the clause is worded and the dangerous manner in which the power might be used, it would, on the whole, be best to omit it. If a majority of Municipal Councillors do not do their work properly, the Government can exercise the power recently introduced of suspension or supersession.

The Hon'ble Mr. GIBSON.—I should like to say one word in regard to what the Hon'ble N. Subba Rao Pantulu has just told us about the suggestion made by the Hon'ble K. Kalyanasutidaram Aiyar to leave the matter in the hands of Councillors. Some years ago I was acquainted with a Municipality in which five of the Councillors were members of one and the same family. They were not members for one term only, but managed to be on the Council year after year. This particular family could command five solid votes on any case that happened to come up. How will it be if in such a case the decision is left in the hands of the Municipal Council.

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The Hon'ble C. JAMBULINGAM MUDALIYAR.—I propose the following amendment:—

"Omit sub-section (4) of section 15 of the amended Bill, i.e., omit the new addition to clause (iv) of section 19 beginning from 'or likely to be injurious to the efficiency of the Municipal Council, &c.,' up to 'contempt'."

The Hon'ble N. SUBBA RAO PANTULU seconded the amendment.

The Hon'ble Mr. BLISS.—I should like to say a few words on the motion. I understand that the insertion of the words beginning from "or likely to be injurious to the efficiency of the Municipal Council, &c.," up to "contempt", is objected to very strongly by the Hon'ble Members opposite. I am not prepared, considering the assistance that they have given us in the matter of this Bill, to say that I will take a vote upon this question. But, at the same time, I think it necessary to state what the facts are which led to the insertion of these words, so that the Council may clearly understand what extreme necessity there is for the very summary way of dealing with Municipal Councillors who act in what I may describe as a disgraceful manner. I mentioned yesterday in speaking about another matter that in the case of a well-known Municipality, a sub-committee which had been appointed to revise the voters' list revised the list of voters in a Muhammadan ward by excluding nearly all the Muhammadans. I think it will be perfectly clear that any member of the Municipal Council who could be guilty of such conduct as this, and who could so thoroughly betray his trust, had very much better be expelled from the Council with every mark of ignominy. But that is not the only case in point; unfortunately, these cases are of very frequent occurrence. There was a case not very long ago in the Karur Municipality. A man was appointed a member of the Municipal Council who at the time was partner in a firm which held the toll contract of the Municipality. The fact of the partnership was not known at the time he was appointed to the Council. As soon as he became a member of the Municipal Council, the first thing he did was to get a vote remitting Rs. 500 due from the toll contractors to the Municipality. Fortunately this gentleman overlooked the fact that he had brought himself within the clutches of the criminal law by being a Municipal contractor and a Municipal Councillor at the same time. He was fined Rs. 1,000, which he had to pay, and he was thus adequately punished. Whether he subsequently resigned his seat on the Council or not I do not know. I have no doubt in my mind that in cases of that sort the Government, as the guardian of public interests, should have the power and right of dismissing such men from the Council. There was another case in a Municipality which is situated not a hundred miles away from where one of the Hon'ble Members sitting opposite lives. It is described in the Government Order in these terms:—

"In a case which recently came under the notice of Government a Muhammadan Municipal Councillor buried his wife and child in a burial-ground the use of which had been prohibited on sanitary grounds some years previously. The Municipal Council threatened prosecution, but was prevailed upon to withdraw the charge against the Councillor and to institute a prosecution against a distant relative of his instead. This person was convicted and fined five rupees by a Bench of Magistrates."

Here was a man whose duty as a Municipal Councillor was to support the Municipality, but instead of doing so he set at defiance the Municipal law. That man ought properly to be dismissed from the Municipal Council by any superior authority who may be able to deal with the matter. Then again we had another case in another Municipality where the Station Staff Officer brought to the notice of the Chairman the

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unsatisfactory state of the compounds of houses and the necessity for putting up fences around bungalows. After some correspondence there was a resolution passed by the Municipal Council in these very satisfactory terms: "That the Council is prepared to exercise the powers vested in it by section 156 of the District Municipalities Act by giving notice to house-owners and occupiers of houses to maintain and repair sufficient fences to compounds." Nobody would deny that this was the proper course to adopt. In order to maintain proper sanitation and to prevent cattle and people from straying into compounds and committing nuisances, it is very necessary that compounds should be protected by fences. Afterwards one of the Councillors gave notice that he intended to move for a re-consideration of this resolution, alleging that it involved hardship to landlords and that fencing was merely a matter between landlord and tenant. The matter came up before a meeting of the Municipality and the end of it was that by a majority of 12 to 5, out of 17 present, this most excellent resolution as to fencing was cancelled. Now if that had been the only thing, perhaps the Hon'ble Members may say "We cannot interfere," but I wish to bring to the notice of the Council that practically this resolution was carried by a number of landlords sitting on the Municipal Council and voting in favour of themselves. I say that such a performance is a most discreditable one. I have a list given me of the twelve members who voted for themselves. One man is a member of a firm which owns ten bungalows; the next has got one house; the next is the owner of two houses; the next is the member of a firm which owns ten houses; and the next is the agent of an estate which owns seven houses; and two others own one house each; and that is followed by the mention of two other Councillors who appear on the list, but the exact number of houses they own is not stated here. That makes nine out of twelve people who are directly interested in upsetting that very proper resolution of the Municipal Council. I say that people who can act in such a manner are very much better kept out of the Council. This is a matter in which I have been told, we may trust to public opinion. If you are to trust to public opinion, whose public opinion are you to trust to? The public opinion, I suppose, of enlightened gentlemen like those that I see before me who are elected to represent their fellow-countrymen in this Council. If one could estimate all public opinion from the public opinion of gentlemen like them, it would be all right, but I regret to say that in the list I have, I find the name of a gentleman who at that time was a member of this Council and who, in my opinion, disgraced himself by the action he took on that occasion. If I had had the power I should have dismissed him from that Council. I only regret I had not the power to mark thereby my sense of disapproval of his disgraceful conduct. These being the opinions I hold, it is only with very great reluctance that I consent to the elimination of those words from the section. I believe that this alteration of the law is very necessary for the efficiency of Municipal Councils and consider that it is very much to be regretted that the Hon'ble Members have not seen fit to give us their co-operation in this matter.

The Hon'ble Mr. ARUNDEL.—May I mention a case that occurred in my own experience and which can only be dealt with by the clause which is proposed to be excluded. The occurrence I refer to took place a good many years ago and it is unnecessary to mention the name of the Municipality. There was a Municipal Councillor who was on more than one occasion found to be intoxicated in the streets. I believe every Municipality would be desirous of excluding such Municipal Councillors, but so far as I can see there is nothing but the proviso which is proposed to be excluded, which would enable the Government to exclude such a person from the

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Council. If the Hon'ble gentlemen who desire to exclude it would consent to re-consider matters and withdraw their amendment after what has fallen from the Hon'ble Mr. Bliss and in view of the example I have given, which is an extremely rare one—I have not known another one in my experience—it would be all the better for Municipal administration.

The Hon'ble the Rev. Dr. MILLER.—I regret very much that the Hon'ble Mr. Bliss does not push this matter to the vote. I think it is highly desirable that such a provision as this should be retained in this Bill. It is perfectly true that one's natural feeling is to some extent against entrusting vague and indefinite powers to Government. But in the present state of matters in this country, I think it is absolutely necessary that somewhere or other there shall reside powers of this kind to take action in cases that are definitely and plainly wrong. I think that our friends who object to this provision, on re-consideration, may perhaps come to see that such a reserve power ought to remain in the hands of Government. If it is abused by Government, at any time, public opinion will easily exert itself against Government. The Government requires to be looked after like other people; and public opinion will very soon be brought to bear upon any abuse of this power by Government. We have public opinion in our non-official members of this Council and many gentlemen like them throughout the country, which will certainly be put in force at once if the Government should go too far in the exercise of this power. I say that no one except Government can be trusted to exercise the power—which it is very necessary should be exercised by some one—of coming down upon Municipal Councillors that disgrace themselves, although they may not act in such a way as to be touched by any definite or decisive law. I hope and urge very strongly that our friends will not press the amendment and that even if they do, the Hon'ble Mr. Bliss will stick to his guns in this matter.

The Hon'ble Mr. CHAMBERS.—I must say that I agree with the sentiments of the last speaker. I am decidedly of opinion that this power ought to be in the hands of Government. One reason for it is that this Act is intended to apply to many Municipalities the proceedings of which will not come to public notice. It is only the Government that will have the opportunity of learning from its own reports facts that public opinion can never be brought to bear upon. It is absolutely essential that Government should retain this power of dealing with the Councillors in the way spoken of by the Hon'ble Mr. Bliss.

The Hon'ble the MAHARAJA OF VIZIANAGRAM.—My Lord, with your Lordship's permission, I rise to express my entire approval of what the various speakers have said in favour of the retention of this clause.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—My Lord, I fully sympathize with the sentiments expressed by several speakers, but I must unfortunately stick to the position I have adopted. I am, indeed, very glad that the Hon'ble Mr. Bliss and the Hon'ble Mr. Arundel have to-day enlightened us on many cases of disgraceful conduct on the part of Municipal Councillors. I am very glad specially that it has been given out in such a public manner to the Council, so that it may go out to the ends of the Madras Presidency; but at the same time, I must express my deep regret that this kind of publicity was not adopted at the time when those things transpired and that publicity was not given in due form in the various District Gazettes and the Fort St. George Gazette in such a manner as to bring shame and discredit on those who misbehaved. Looking at the Select Committee's report I find on page 3

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these words: "The last part of clause (iv) of sub-section (1) has been inserted at the suggestion of Government. Cases, such as that mentioned by Government, in paper 38, in justification of its proposals are not likely to occur." I have seen the paper and it refers to the Muhammadan burial-ground case. That is the only one case mentioned in it. The report goes on to say: "But at times it would undoubtedly conduce to the efficiency of Municipal administration if Government possessed more extended powers in regard to the removal of Councillors." I admit that it may occasionally conduce to the efficiency of Municipal administration, but at the same time I submit it would conduce more ordinarily to the failure of Municipal administration, because if such a provision of a most undefined character is enacted on which interpretations can be put according to the temperament of the local officers, upon whose reports your Excellency will have to act—if that is the nature of the provision to be included in the section—I submit that your Lordship's Government will not get any respectable man to consent to the position of a Municipal Councillor on the precarious undefined tenure vouchsafed by the Act. The words in the section have no definite meaning and are capable of much distortion in the hands of people who may have a dislike to any particular man in connection with a local disagreement or a squabble they may have. I submit that in the long run it would be of the utmost danger to have such a provision as this. If we have any regard at all, as certainly we have, for the welfare and advancement of Municipal administration, we must vote against the retention of this provision in the Bill. I must further submit, my Lord, that this provision, just like some other provisions that I have been commenting upon yesterday, such as the existence of *ex-officio* Councillors, is peculiar only to this Presidency. The Hon'ble Mr. Bliss has said that he was very reluctant to consent to this amendment, but I would submit that my Hon'ble colleague Mr. Subba Rao and myself were also very reluctant to consent to some of the provisions on which the Hon'ble Mr. Bliss felt strongly. I therefore submit, my Lord, that we have been acting on the faith of these promises. I pray that this Council will set at rest the alarm that has been deeply felt throughout the country by reason of the insertion of this provision which people do consider a dangerous weapon in the hands of scheming men in districts. If the Government of Madras could have facilities for getting information from the mufassal without intervention of officials we would not be anxious about the insertion of the provision. But your Lordship and others responsible for Government know that there are men and men in the mufassal and we cannot give the same amount of credence and value to the words of all men. But the Government has all the same to give credence and value to the words of its officers. I would again submit that this is a dangerous provision which is best calculated to defeat the efficiency and progress of Municipal administration. It would be impossible for any man of self-respect to accept office on the precarious tenure which is offered by the section.

The Hon'ble Mr. CROLE.—My Lord, I am all in sympathy with freeing the Municipal Councils from the control of Government, wherever it is desirable to do so. But I may supplement the information laid before the Council by my Hon'ble friends Mr. Bliss and Mr. Arundel by giving an instance that occurred only the other day. A very prominent resident of Madras produced before me a Tamil correspondence between the Chairman of a Municipal Council and a resident in a Municipality. The thing seemed so serious that I asked him to have the documents translated and I then went over them. It seems that a resident had purchased from a particular party a property, while the Municipal Chairman wished him to purchase his own property

Proceedings of an Adjourned Meeting of the Council of the Governor of Fort St. George, assembled for the purpose of making Laws and Regulations under the provisions of the Acts of Parliament, 24 and 25 Victoria, Cap. 67, and 55 and 56 Victoria, Cap. 14.

The Council met at the Council Chamber in Fort St. George at 11 A.M. on Thursday, the 12th day of March 1896.

PRESENT:

His Excellency the GOVERNOR OF MADRAS, G.C.I.E.—*Presiding.*
The Hon'ble Mr. H. W. BLISS, C.I.E.
The Hon'ble Mr. J. GROSE, M.A., C.I.E.
The Hon'ble Mr. J. STURROCK.
The Hon'ble the MAHARAJA OF VIZIANAGRAM, G.C.I.E.
The Hon'ble Mr. D. DUNCAN, M.A., D.Sc.
The Hon'ble Mr. J. F. PRICE, C.S.I.
The Hon'ble Mr. G. L. CHAMBERS.
The Hon'ble P. RANGAYYA NAYUDU.
The Hon'ble the Rev. Dr. MILLER, M.A., LL.D., C.I.E.
The Hon'ble N. SUBBA RAO PANTULU, B.A., B.L.
The Hon'ble C. JAMBULINGAM MUDALIYAR, B.A., M.L., Rao Bahadur.
The Hon'ble K. KALYANASUNDARAM AIYAR, B.A., B.L.
The Hon'ble S. SRINIVASA RAGHAVAIYANGAR, B.A., C.I.E., Diwan Bahadur.
The Hon'ble Mr. C. S. CROLE.
The Hon'ble Mr. A. T. ARUNDEL.
The Hon'ble VELLORE MUHAMMAD SHARIF KHAN BAHADUR.
The Hon'ble Mr. E. GIBSON.
The Hon'ble the ADVOCATE-GENERAL.
The Hon'ble Colonel McN. CAMPBELL, R.E.
The Hon'ble Mr. H. P. HODGSON.

Between sections 10 and 11.

His Excellency the PRESIDENT.—The Hon'ble C. Vijayaraghavachariar has promised to bring up sub-section 3, wording it better.

The Hon'ble P. RANGAYYA NAYUDU.—He has drawn up his amendment.
The Hon'ble Mr. BLISS.—My Lord, at the time we adjourned yesterday, we were in some difficulty about the exact wording of a clause which the Hon'ble C. Vijayaraghavachariar proposed to add to section 14 of the Act; and it was decided that the matter should stand over in order to see if a better wording could not be worked out. On looking into the matter it appeared that it would be necessary to recast section 14 as it stands printed on page 6 of the Agenda paper in the amendment of the Hon'ble N. Subba Rao Pantulu and the whole section has been re-drafted as follows:—

- "14. (1) The Governor in Council may either—
"(a) appoint some person to be the Chairman of the Municipal Council, or
"(b) direct the Municipal Councillors to appoint their Chairman by election subject to his approval and in accordance with such rules and conditions as he may prescribe.

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" Provided that :—

" (i) Every person so appointed must be qualified to be a Municipal Councillor under section 10-A.

" (ii) When the Chairman appointed is not a Municipal Councillor, he shall, during his tenure of office as Chairman, which shall be for a term of two years, be *ex-officio* a Municipal Councillor irrespective of the strength fixed for the Council under section 13, and shall not be reckoned in calculating the proportions of the number of Municipal Councillors under sections 10 and 11.

"(2) If the Governor in Council has directed the Municipal Councillors to appoint their Chairman by election and the Municipal Councillors fail to make an appointment within two months from the receipt of such direction, or if the Municipal Councillors make on two successive occasions a nomination which does not meet with his approval, the Governor in Council shall himself appoint a Chairman.

"(3) The Municipal Council may, with the previous sanction of, and in such manner as may be prescribed by, the Governor in Council, elect one of their number to be Vice-Chairman."

It seems to me that if this is accepted it will meet our difficulties and put the matter in a proper way. Although the amendments of the Hon'ble N. Subba Rao Pantulu and the Hon'ble Jambulingam Mudaliyar have already been accepted, still I hope that the section as recast may be accepted by the Council in lieu thereof. I move therefore that for section 14 of the Act as amended yesterday be substituted the draft section which I have just read out.

The Hon'ble Mr. PRICE seconded the motion.

The motion was put and carried.

Section 11.

This section runs as follows :—

" 11. From section 15, the words 'by the removal, resignation or death of a Chairman' and the words 'in the place of the removed, resigning or deceased Chairman' shall be omitted."

The Hon'ble C. JAMBULINGAM MUDALIYAR.—I beg to propose the substitution of the following for section 11 :—

" 11. For section 15 shall be substituted the following section :—

" 15. (1) In any Municipality where the office of Chairman becomes vacant, the Vice-Chairman, or if there is no Vice-Chairman the Revenue Officer in charge of the division of the district wherein such Municipality is situated, shall assume charge of the office of Chairman and shall discharge the duties of the same until a Chairman is duly appointed.

" (2) In the temporary absence from a Municipality of the Chairman, his duties and powers shall devolve upon the Vice-Chairman, if any."

This section is to take the place of the present section 15 and the change is necessary by reason of the appointment of the Vice-Chairman upon which we decided yesterday.

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The Hon'ble Mr. BLISS.—This is accepted, my Lord.

The motion was then agreed to.

His Excellency the PRESIDENT.—Does any Hon'ble Member desire to move the amendments standing in the name of the Hon'ble C. VIJAYARAGHAVACHARIAR?

The Hon'ble P. RANGAYYA NAYUDU.—I beg to withdraw on behalf of the Hon'ble C. Vijayaraghavachariar the following amendment :—

" For section 15, the following be substituted :—

" (1) Every Municipal Council shall, from time to time, appoint one of its Councillors, or, subject to the sanction of the Governor in Council, any other person, to be its Secretary, for such term and on such salary as it may deem fit, and may, for reasons to be recorded, remove any person so appointed.

" (2) The Secretary shall be the Chief Officer of the Municipality and shall be under the control and act under the instructions of the Chairman, subject to such rules as the Governor in Council may prescribe in this behalf.

" (3) The Secretary, if he is not a Municipal Councillor of the Municipality, may, with the previous sanction of the Chairman, attend any meeting of the Municipal Council and address the Council on any matter relating to the municipality.

" (4) When the office of Chairman of any Municipality becomes vacant, the Secretary shall assume charge of the office and discharge the duties of the same until a Chairman is duly appointed. But he shall not have the power to vote at a meeting unless there be an equality of votes, nor be reckoned in calculating proportions of the number of the Municipal Councillors under section 10."

The amendment was by leave withdrawn.

Section 11 as amended was carried.

Section 12.

This section runs as follows :—

" 12. For section 16, shall be substituted the following section :—

" 16. No Municipal Councillor, other than the Chairman, shall receive any salary or other remuneration from the Municipal fund; and no Chairman shall receive any such salary or remuneration unless the payment thereof shall have been sanctioned by the Governor in Council or by the Municipal Council with the approval of the Governor in Council."

The Hon'ble P. RANGAYYA NAYUDU.—On behalf of the Hon'ble C. Vijayaraghavachariar I propose that from section 16 of the Act the words "the Governor in Council or by" be omitted.

The Hon'ble C. JAMBULINGAM MUDALIYAR seconded the amendment.

The Hon'ble Mr. PRICE.—This is accepted.

The amendment was carried.

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The Hon'ble N. SUBBA RAO PANTULU.—I beg to propose that the following sub-section be added to section 16 of the Act:—

“Where such salary is attached to the office of the Chairman, the Municipal Council shall be entitled to nominate such Chairman for the approval of the Governor in Council in accordance with such rules and conditions as may be prescribed by the Governor in Council.

“Provided that it shall be lawful for the Governor in Council himself to appoint such Chairman if the Municipal Council fail to make a nomination within two months from the receipt of an order from the Governor in Council directing them to nominate a Chairman or, if the Municipal Council make, on two successive occasions, a nomination which does not meet with the approval of the Governor in Council.”

This gives the power of nomination to the Municipal Council.

The Hon'ble Mr. BLISS.—This is accepted, my Lord.

The amendment was agreed to.

Section 12 as amended was carried.

Section 13.

This section runs as follows:—

“13. For sub-section (1) of section 17, shall be substituted the following sub-section:—

“(1) Subject to the provisions of section 19, every person appointed, as aforesaid, to be a Municipal Councillor shall continue in office for three years from the date of the *Fort St. George Gazette* wherein his appointment was notified under sub-section (2) of section 10 and he shall then cease to be a Municipal Councillor; and any Municipal Councillor appointed to be Chairman shall be deemed to have vacated such office on the expiry of the term for which he was originally appointed Municipal Councillor or on his otherwise ceasing to be a Municipal Councillor or upon the cancellation of a declaration made under section 13 (iii) in respect of the Municipality of which he is Chairman.”

The Hon'ble P. RANGAYYA NAYUDU.—On behalf of the Hon'ble C. Vijayaraghavachariar I beg to withdraw the following amendment, which is a consequential one:—

“That in sub-section (1) of section 17, the figure (5) be substituted for the figure ‘(2)’ and the words ‘or upon the cancellation of a declaration made under section 13 (iii) in respect of the Municipality of which he is Chairman’ be omitted therefrom.”

The Hon'ble C. JAMBULINGAM MUDALIYAR.—I propose the following amendments:—

“(a) Insert the figure ‘(1)’ at the commencement of *section 13* and in the new sub-section 1 of section 17 add the words ‘or Vice-Chairman’ after the word ‘Chairman’ where it first occurs and insert the words ‘in the case of a Chairman’ before the words ‘upon the cancellation.’

“(b) In sub-section 2 of section 17, after the word ‘Chairman’ shall be added the word ‘Vice-Chairman.’”

This is consequential on the appointment of the Vice-Chairman.

The Hon'ble Mr. BLISS.—It is accepted.

The amendment was then put to the Council and carried.

Section 13 as amended was agreed to.

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Section 14.

This section runs as follows:—

“14. In sub-section (2) of section 18, the words ‘or on quitting the district or division with the intention of remaining absent therefrom for more than three months’ shall be inserted after the word ‘situated.’”

The Hon'ble C. JAMBULINGAM MUDALIYAR.—I beg to propose the following amendment:—

Insert the following as *sub-section (1)* in *section 14* of the Bill:—

“(1) In sub-section (1) of section 18, after the word ‘Chairman’ shall be inserted the word ‘Vice-Chairman.’”

This is also consequential. This would enable the Vice-Chairmen also to send in their resignation.

The Hon'ble Mr. BLISS.—It is accepted, my Lord.

The amendment was put and carried.

The Hon'ble K. KALYANASUNDARAM AIYAR.—I beg to propose the following amendment:—

“That in sub-section (2) of section 18 of the Act the words ‘permanently or temporarily’ be inserted between the words ‘transferred’ and ‘from.’”

Section 18 of the Act runs as follows:—

“(1) Any person appointed, as aforesaid, to be Chairman or Municipal Councillor may tender his resignation to the Governor in Council, and on such resignation being accepted he shall be deemed to have vacated his office.

“(2) Any person holding a salaried office under Government who is a Municipal Councillor of any Municipality shall, on being transferred from the district or division wherein such municipality is situated, be deemed to have vacated his office of Municipal Councillor.”

The question has sometimes arisen whether this applies only to permanent transfers or also to temporary transfers. I say, my Lord, that the provisions of this section should apply to all cases of transfer, whether they be permanent or temporary.

The Hon'ble P. RANGAYYA NAYUDU seconded the amendment.

The Hon'ble Mr. PRICE.—I think, my Lord, the Hon'ble Member has overlooked the fact that if this amendment is adopted, it might come to pass that an officer who is temporarily transferred to act for two months would go out of office whereas one who went on leave for two months would not. It seems undesirable to insert the clause proposed; but I do not see any objection if the amendment is put so as to apply to three months' absence; say “on being transferred for more than three months from the district.” I see no objection to this, but I do not see what the object of inserting the words “permanently or temporarily” is.

The Hon'ble K. KALYANASUNDARAM AIYAR.—It would be difficult to say beforehand whether the transfer of an officer from a district would be for a short time or not.

* The words “or on quitting the district or division with the intention of remaining absent therefrom for more than three months” were inserted here by the Select Committee.

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The Hon'ble C. JAMBULINGAM MUDALIYAR.—When any officer is transferred the Government would not be able to make a definite statement as to whether the transfer would be for a long time or a short time.

The Hon'ble Mr. BLISS.—I do not really see much in the amendment. But if the Hon'ble Member lays stress on it, I have no objection to accepting it.

The amendment was put and carried.

Section 14 as amended was carried.

Section 15.

This section runs as follows :—

“15. (1) For the first fourteen words of sub-section (1) of section 19, shall be substituted the words ‘The Governor in Council may, by notification, remove any Chairman or Municipal Councillor, other than an *ex-officio* Chairman or Municipal Councillor’.

‘(2) In the same sub-section, the following clause shall be inserted as clause (i) :—

‘(i) on the ground that, at the time of his appointment, he was not qualified under Section 10-A to be appointed a Municipal Councillor ; and the present clauses (i), (ii) and (iii) shall be renumbered as clauses (ii), (iii) and (iv), respectively.

‘(3) In clause (ii) of the same sub-section, for the words ‘Criminal Court,’ shall be substituted the words ‘Court of Justice’.

‘(4) At the end of clause (iv) of the same sub-section, shall be inserted the words ‘or likely to be injurious to the efficiency of the Municipal Council or to bring the Municipal administration into contempt’ ”.

The Hon'ble C. JAMBULINGAM MUDALIYAR.—I beg to propose (a) that in section 15 (1) of the Bill the word “Vice-Chairman” be inserted between “any Chairman” and “or”, and (b) that for section 15 (3) the following be substituted : “In clause (ii) of the same sub-section the word “Vice-Chairman” shall be inserted after the word “Chairman”.

The first portion of my amendment adding the words “Vice-Chairman” after the word “Chairman” is merely consequential. As regards the second portion, the third sub-section of section 15 is to remove the words “Criminal Court” and substitute “Court of Justice”. I take objection to this and I say that the words “Criminal Court” should be retained.

His Excellency the PRESIDENT.—Is not the word “Vice-Chairman” covered by a Municipal Councillor?

The Hon'ble C. JAMBULINGAM MUDALIYAR.—He is a special officer and it is better to have the word inserted. He may be unfit to hold the office of the Vice-Chairman, but still he may be a good Councillor.

The Hon'ble K. KALYANASUNDARAM AIYAR.—Then that word must be inserted at the end of the section also after the word “Chairman”.

The Hon'ble Mr. BLISS.—I second the amendment, my Lord.

The amendment was put and carried.