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Local & Munl. (1896) Department.

MISCELLANEOUS.

G.O., No. 737 L

DATED 20th April 1896.

[Despatch Abstract.]

Proceedings

Recording G.O. Legislative Department communicating ---
of a meeting of the Legislative Council held on the 26th February
1896.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Miscellaneous.

LOCAL AND MUNICIPAL DEPT.	
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[Despatch Abstract.]

Proceedings

Recording G.O. Legislative
 Septth Communicating Proceedings
 of a meeting of the Leg. Council
 held on the 26th February
 1896.

READ AGAIN ORDER OF GOVERNMENT, DATED
189 , No. , MISCELLANEOUS.

BACK PAPER, No.

OF 189

FURTHER PAPER, No.

OF 189

ENCLOSURES.

CURRENT No.

STATEMENT WITH DITTO.

ORDER OF GOVERNMENT

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DISPATCH
IN ORIGINAL (not paged).

N.B.—

- A — Copy in full
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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.

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With the permission of His Excellency the President—

The Hon'ble N. SUBBA RAO PANTULU asks the following questions:—

I. 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-

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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 examinations in oriental languages?

The Hon'ble Mr. BLISS:—

II. The following are the figures:—

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

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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

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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 :—

VII. 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 Gódavari 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 reference to the "dry" 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 :—

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 :—

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

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The Hon'ble N. SUBBA RAO PANTULU :—

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 :—

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 :—

X. Whether the "proposed" rules published in the *Fort St. George Gazette* of January 1895 with regard to the distribution of water in the Gódavari 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 McNEIL CAMPBELL :—

X. The rules for the distribution of water in the Gódavari 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 :—

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 Kavitikodu, 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 Gódavari 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?

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

The Hon'ble Colonel McNEIL CAMPBELL :—

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 :—

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 :—

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

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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 :—

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 :—

XIII. The merits of the system are now under the consideration of Government.

The Hon'ble N. SUBBA RAO PANTULU :—

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 :—

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.

The Hon'ble P. RANGAYYA NAYUDU :—

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?

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The Hon'ble Mr. BLISS :—

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.

The Hon'ble P. RANGAYYA NAYUDU :—

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

XVII. Whether, after so sending in his resignation, he withdrew the same?

The Hon'ble Mr. BLISS :—

XVI and XVII. The Government has received no report on the subject.

The Hon'ble P. RANGAYYA NAYUDU :—

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 :—

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.

The Hon'ble P. RANGAYYA NAYUDU :—

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 :—

XIX. The Government has no information on the subject.

The Hon'ble P. RANGAYYA NAYUDU :—

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?

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?

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?

XXIII. Will the Government be pleased to devise means whereby such calamities can be averted in future?

The Hon'ble Mr. GROSE :—

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.

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The Hon'ble P. RANGAYYA NAYUDU :—

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 :—

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 demiofficially 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.

The Hon'ble C. JAMBULINGAM MUDALIYAR :—

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 :—

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

The Hon'ble C. JAMBULINGAM MUDALIYAR :—

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 :—

XXVI. The correspondence in question will be laid on the table.

The Hon'ble C. JAMBULINGAM MUDALIYAR :—

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?

PETITIONS, &c.

The Hon'ble Mr. GROSE :—

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. Karunakara 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 Menon 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

12 A BILL TO REPEAL MADRAS ACTS III OF 1882 AND XXIV OF 1859.

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 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.

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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.

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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 Nayers 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 Nayers 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-

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ate-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 10, 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 Aiyengar, 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

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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 Aiyengar 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 Aliasantana 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 Marunakkatayam 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 practically 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 Westermarck 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 Westermarck 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 as 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, and 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 which hitherto had no institution of marriage, if 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 the Pattar family has a Brahman lady for his 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 responsibility of giving them property vide 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

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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)."

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

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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.

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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 :—

9. 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 NATUR.—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.

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The Hon'ble V. BHASHYAM AYYANGAR.—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. BRISS.—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.

Local & Municipal Dept.

CURRENT No. 1048

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following:—

Proceedings of a Meeting of the Legislative
Council held on 26th February 1896.

ORDER:— No. 57, dated 4th April 1896.

Communicated to the Public, Revenue, Public
Works, Educational and Local and Municipal departments,

for information and for such action as is required by
Public - Question No. I. :
Revenue-Questions Nos. VIII : the answers given to the questions as
and XX to XXIII :
Public Works-Question No. XI : marginally noted.
Educational - No. XIV.:

(True Extract)

W. R. S.

Ag. Under Secretary,
for Chief Secretary.

To
The Public Department.
,, Revenue
,, Educational
,, Public Works
,, Local & Municipal Dept.

Local & Municipal Dept.
CURRENT No. 10482

From

The Legislative Deptt

order No 937

Recorded

11/4/96
13-4-96

No. 37

Dated 4/4

Received 8/4

Enclosures

SUBJECT.

Comm. Progs. of a meeting
of the Leg. Council
held on the 26-2-96.

Note
Please see answers to questions
Nos XV-XIX and XXV. No action
necessary.

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DATED

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ORDER OF GOVERNMENT

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STATEMENT WITH DITTO.

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