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[Despatch Abstract.]

MALABAR MARRIAGE BILL.

Communicating to the Select Committee memorial from the
Editor "Malabar and Travancore Spectator" and another suggesting
certain amendments in the --.

BACK PAPERS.

FURTHER PAPERS.

No. 118, LEGISLATIVE, 8TH NOVEMBER 1895.

GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

READ—the following paper :—

Memorial from M.R.Ry. K. M. NARAIANA MENON, Editor, *Malabar and Travancore Spectator*, and another, to His Excellency the Governor in Council of Fort St. George, dated Palghat, 1st November 1895.

MAY IT PLEASE YOUR EXCELLENCY,—At the last meeting of the Legislative Council, your Excellency in Council was pleased to accord leave to the Hon'ble Sankaran Nayar to introduce a Bill to provide for a form of marriage for persons following the Marumakkattayam and Aliyasantana Laws.

2. In this connection we beg to invite the attention of your Excellency in Council to the articles bearing on the Bill published in the *Malabar and Travancore Spectator*, which form the enclosure to this memorial. We think the amendments suggested in them are eminently called for, and we trust your Excellency in Council will therefore be pleased to amend the same in the directions indicated therein.

ENCLOSURE.

EXTRACTS from the *Malabar and Travancore Spectator*.

THE MALABAR MARRIAGE BILL.

August 15, 1895.—We have carefully perused the Malabar Marriage Bill which we reprinted a few days ago and have discussed its provisions with some of the leaders of the various schools of thought on the subject. We therefore at the outset beg leave to mention that our observations are not merely the individual opinions of the present writer, but the collective wisdom of influential members of light and leading of the Nair community.

The word "Tarwad" occurs in several sections of the Bill and requires to be defined. At present the tarwad may include several families with community of pollution but with no community of property. As it is obviously unnecessary and inexpedient to comprise within the meaning of the term all such families, it is, we think, reasonably suggested that the meaning of the term should be restricted to the members of a Marumakkattayam-following family having community of interest in a common property. Otherwise, it will be open to members of families who have practically no interest whatever in a marriage to object to it on the most frivolous grounds. Section III of the Bill empowers Government to appoint Registrars of Marriages under the Act. While it is unnecessary to interfere with this provision, it is well to state that the balance of opinion is in favour of appointing only respectable and decently-paid officials as Marriage Registrars. For the present it is suggested that the appointment of Sub-Registrars as "Marriage Registrars" within their present territorial jurisdiction is the most feasible arrangement. In section IV it will be well to add "if any" after caste, in order that a person who does not want to retain caste may, without let or hindrance, give notice to the Registrar of an intended marriage. No doubt by the section itself the mention of caste in the notice is optional, but to obviate future troubles in the interpretation of the section and to make assurance doubly sure, the addition of the words "if any" is suggested. Section VI (1) says that the Registrar shall serve a copy of the notice at the applicant's expense on the other party to the marriage connection, or the legal guardians, if any, of the parties to the marriage connection, and also on the karnavens of the tarwads, if any, to which they belong. This section appears to us defective in that it does not provide for a notice to be served on the father of the parties to the marriage, who if they have previously registered their marriage become their legal guardians. In this case it is obviously unnecessary and irksome to serve a notice on the karnaven, or obtain his consent. The intentions of the father and the karnaven often conflict, and it is not wise under the circumstances to leave it in the power of the karnaven to thwart the registration of a marriage. It

seems to us highly necessary to provide that a person may renounce his right to the tarwad gain by it, in the sum of his share of the tarwad property, it will enable individual members to shake off trammels of the joint family system. At present, individual members are at liberty to dispose of their self-acquisitions just as it suits them, at the same time retaining full rights in the tarwad. Consequently, relinquishment of this right will not in the least prejudicially affect the welfare of the tarwad. A provision to this effect is therefore absolutely necessary both in the interests of the tarwad and of the individual member, whose personal liberty is now somewhat interfered with by being unable to do so. In this case the karnaven's consent to the marriage should not be required at all. It is difficult to see what valid objection can be raised to the provision we advocate. Section VI (1) enacts that a person may withdraw notice under section IV at any time before the registration of the marriage. This provision affords scope for jilting and trifling with innocent women's love and is sure to work hardship. For instance, a connection between parties may be arranged and the customary form given through the understanding that the marriage shall be registered, and as an earnest of what is intended a notice may be caused to be served on other party as required by section IV. But it is quite possible that the man may continue the connection for six months and then withdraw the notice and discard the woman altogether, although he may have already begotten upon her. In this case the withdrawal of the notice and subsequent flight land the woman in a real dilemma. If the virginity of a woman is once interfered with, she finds it difficult to get a man to propose to her. If she turns out a mother, her chances of rearing and supporting a child. It would, therefore, be highly cruel to make it possible to seduce women with impunity. We would therefore propose that a withdrawal should be permitted only with the consent of the other party, in the case of the woman on her certifying that she has received compensation and that sufficient provision has been made for the maintenance of the offspring of their connection. A proviso to section IV seems called for to meet cases wherein both the parties to the marriage, their legal guardians and their karnavens present themselves before the Registrar to get the marriage registered. In such a case the necessity for the notice is not apparent. The only persons who can have any objection to the marriage are the persons aforesaid, and the only object served by postponing the marriage is to afford people who have no interest in the marriage to come forward and raise frivolous objections. Moreover, the delay in such a case is likely to inconvenience parties a good deal. We shall illustrate what we mean by a possible case. An old karnaven of a house may, on his death bed, wish to give his issue a legal status. The karnaven and legal guardian of the wife and even all the members of the tarwad of the parties to the marriage may be present on the spot, but still the old man must keep waiting a month to allow people who have nothing whatever to do with the marriage to weigh the *pros* and *cons* of the intended legalisation of the connection and to object and further delay the matter if only to annoy him. Meantime, it is also quite possible that the man may die without accomplishing his last wish. Take again the case of young men who want to leave for foreign parts. The delay in such a case is, in our opinion, simply vexatious and serves no useful purpose whatever. A further provision requiring Marriage Registrars to attend the private residence of parties on payment of a prescribed fee for the purpose of registering marriages is by no means a superfluous one. In section VII (1), we can understand the justice of legal guardians being empowered to object to a marriage. But we fail to see why the members of the tarwad of the parties to the marriage, much less "any other person interested," should be authorised to object to a marriage. "Any other person interested" is a very vague and dangerous term and may include any one of the community. What useful object is sought to be secured by the introduction of this undenominational individual passes our humble comprehension. Practically, the section leaves the door of objection widely open to be entered into by those who choose, and places the registration of marriages at the mercy of anybody and everybody. "Any other person interested" forsooth! We should like to know how interested. The provision to our mind appears ridiculous as it paves the way for meddlesome people to interfere with other people's affairs without any check and ought therefore to be expunged. Clause (c) of this section also deserves to be expunged for reasons which have been fully explained by a correspondent in our leading columns last week. We entirely agree with him in that opinion and are glad to note that there is almost a universal opposition to the clause, not only from Malabar, but from the people of other coast also. Clause (d) is somewhat meaningless in face of the fact that there is no form of marriage particular to a caste or locality. As a matter of fact, there is no recognised form of marriage anywhere, while in some places no form of any kind is gone through. A form is recognised in North Malabar, but we doubt whether a Sambandham is less valid on the ground that the recognised form has not been adopted. In South Malabar each one invents the form he means going through, and innovations are the order of the day. To object to the registration of a marriage on this account is, to say the least of it, purely arbitrary. The last paragraph of clause (1), section VII, authorises any one on behalf of an objector to sign the objections raised. We think it advisable that only a duly authorised agent should be allowed to do this. Section XI simply provides that a certificate of marriage shall be entered in the marriage certificate book duly signed by the parties, &c. We are strongly of opinion that the issue of marriage certificates to the parties to the marriage is

September 5, 1895.—In a previous issue we dwelt upon the provisions of the Malabar Marriage Bill relating to the registration of marriages and their validity. To-day we propose to speak of the provisions for divorce and of the rights and obligations arising from marriages under the Act. Sections 16 to 18 deal with the manner in which a divorce is to be obtained. A party wishing to get the marriage dissolved has merely to make an application to the District Munsif within whose jurisdiction the respondent resides and to wait for six months after the service of notice on him, when the Court will declare the marriage dissolved unless the petition has been withdrawn in the meanwhile. This provision is simple in the extreme and is highly acceptable to the large majority of the people to whom the Act would apply. In fact the Bill leaves the dissolution of marriages as free and unfettered as it now is in Malabar; but in order to check frivolous divorces, a provision such as the one suggested by the Government of India of paying compensation in lieu of alleging good and reasonable grounds is in the opinion of some called for. Personally, we are among those who believe that neither of the parties to a marriage is competent to form an unbiased and judicial opinion about the other and we would therefore make a third party judge between them and grant or refuse a decree for divorce. But the balance of opinion is decidedly in favour of the very simple method provided in the Bill.

The provisions relating to succession are open to various serious objections. Section 19 provides that the separate and self-acquired property of a person dying intestate shall be divided equally between the wife and children and the tarwad, the former taking the property as if they formed a tarwad. Opinion is divided as to the necessity for any one other than the wife and children inheriting the self-acquired and separate property of a person dying intestate. Many are strongly of opinion that the whole property should devolve on the wife and children, while a few who still wish to keep up the Marumakkattayam system do not wish to leave their brothers and sisters unprovided for. There is, however, no difference of opinion on one point and that is upon the *taravazhi* taking the place of the tarwad. From a long time past, it was the custom for the *taravazhi* to inherit a man's self-acquisitions. Mr. Justice Holloway, who was then too powerful in the High Court and who vastly admired the Roman law, reversed that order of things and made the tarwad heir to the property in accordance with what he wished Marumakkattayam law to be, and in conformity with Roman institutions. This ruling of the High Court was meant to give a longer lease of life to that law of succession, but the people were wise in their generation and either acquired property in the name of their brothers and sisters or made gifts to them *inter vivos* of self acquisitions. It is undoubted that the tendency for generations has been to prefer *taravazhi* to tarwad in regard to succession and it is difficult now to divert it. The evidence recorded by the Commission went to establish the present inclination in favour of the *taravazhi*. It has therefore been a surprise, not only to us, but to many, that the Hon'ble Sankaran Nayar should not have consulted public feeling in this matter. There is no reason to believe that the honourable gentleman is unaware of the public sentiment, and while so we can find no excuse for his incorporating in the Bill a provision repugnant to the inclination of the present generation, merely for the purpose of perpetuating the already discredited Marumakkattayam law of succession. The Bill further provides that the wife and children shall take the property descending to them from the father as if they formed a tarwad. Here again is visible an unjustifiable attempt to place the joint family system of Malabar on a solid basis which is highly to be deplored. The effect of the proviso making the wife and children inherit the property as if they formed a tarwad is to make the property impartible and the consequence is that the bequest becomes useless to the issue for all practical purposes. Until recently, an individual's right over separate property was attached and sold in satisfaction of his private debts and this was indeed reasonable. What, in the name of common sense, is the object of a father leaving property to his children, if no absolute individual ownership in it can be exercised? The stupidity and

unwelcome nature of the provision becomes clenched to the hilt when we remember that was almost a universal prayer to the Marriage Commission for incorporating in the Marriage Bill a provision for claiming a partition of tarwad property. If therefore the wife and child cannot be made sole heirs to the self-acquisitions of a husband, section 19 should be altered substituting tavazhi for tarwad and making division possible among the issue at least after the demise of the widow. In the event of a person having no *tavazhi* to inherit the property whole property must descend to the wife and children and not to the tarwad or *attal* heirs. It is we think monstrous, not to say insulting to the civilization of the nineteenth century to force the Marumakkattayam-following Malayalees, who belong to it not by choice but by accident of birth, to prefer persons with whom no blood relationship can be traced as heirs to the issue begotten by them. We trust both Mr. Sankaran Nayar and other honourable members of the Council will realize the unreasonableness of the provisions embodied in section 19 and amend it in the light of the above remarks. Next we come to the devolution of property in the case of a wife or widow dying intestate. Here the honourable gentleman in charge of the Bill seems to have taken leave of common sense and of all recollections of the custom of the country. Section 20 provides that in cases of intestacy half the self-acquisitions and separate property of a man shall lapse to the tarwad, while the other half is to go to her children. The earnings of a woman has never been recognized as a source of tarwad income and the male members of most of the males to earn and support the females of the tarwad, and that it is shameful to live on their bounty. Hence it has never been the practice to claim for the tarwad the separate property of a female, her issue being left in unmolested enjoyment of ownership in her property. But recently a case came on for adjudication before the experienced Sub-Judge of Palghat Mr. E. K. Krishnan, who after recording overwhelming evidence on the point decided that separate property of a female descends to her issue to the exclusion of the rest of the tarwad. Such being the case we cannot conceive what justification can be found for an undesirable departure from the present custom and for creating to the tarwad rights which it does not possess. Surely it is not pretended that the Bill under discussion is meant to consolidate and place on a firmer basis the Marumakkattayam tarwad system. Why then this unjustifiable solicitude for it by creating on its behalf rights at present unknown? The wife's self-acquisitions should undoubtedly go to her issue and should be partible among them in equal shares. As the wife and children are made heirs to the property of a man dying intestate, it is reasonable that the husband should also go in for a share of the wife's property in the event of her dying without leaving a will. All are agreed that the children must have the exclusive right to the property of the mother. Failing them at least, the husband should be entitled to a share of the wife's property. The most unobjectionable provision in such a case would be to divide in equal shares between husband and the *tavazhi*, the former retaining the reversionary right against the tarwad. There is no good disguising the fact that no one is for the tarwad, and I think justly and reasonably so.

We commend the above remarks to the honourable members of the Legislative Council in the earnest belief that they will see their way to amend the Bill in the light of them. We would again add that the views herein expressed are not solely the opinions of the present writer but the result of a thorough enquiry and elaborate discussion with various gentlemen of high standing, several of whom are leaders of the different schools of thought on the subject.

August 3, 1895.—A leading Malayalee who represents an influential school of thought writes to us as follows:—

I crave space in your journal to ventilate the views of a large section of enlightened Nair community on the provisions of the Malabar Marriage Bill now on the Legislative anvil. The framing of the Bill, which has been looked forward to with so much anxiety, is both defective and disappointing in various respects. As one closely acquainted with the author of the Bill, I may be permitted to surmise that the introduction of indefensible principles in the Bill may after all have been of the nature of Hobson's choice. I shall in this communication confine myself to the consideration of the provision relating to the caste system which the Bill seeks to recognise and perpetuate. Section 7 (1) enacts that the caste system which the Bill registration of marriages between parties whose cohabitation according to objection may be raised to the would render them liable to religious excommunication. Now in the present state of Nair society, the term *religious excommunication* is somewhat meaningless. As a matter of fact the Nairs have long ago given up insistence upon a rigid observance of caste, it being a common thing for the educated and well-to-do among them to inter-dine with the Pariah, and when the globe. The Hindu religion does not contemplate a lower caste than the Pariah, and when the food cooked and served by him at railway refreshment rooms is freely partaken of by the Nairs without compunction or loss of caste, it is easy to believe that they have no scruples whatever about inter-dining. There are doubtless many who, while not objecting to the practice by others, do not themselves do so. There is yet a small number, whom light has yet to reach, who in a manner object to a free intercourse with those who have infringed the traditional caste

rules, but who, being entirely powerless to get a bull of excommunication issued, inflict social ostracism on them. *Religious excommunication* has thus been a myth since a long time past. Time was when the jail-returned convicts were required to undergo *prayaschittam* before readmission into caste on the ground that they had eaten food cooked or touched by the lower classes. That practice has now almost died away and no convict loses his caste or performs expiation by reason of it. If in the matter of inter-dining the Nairs now have no caste or religious scruples, how much less so is the case in the matter of inter-marriages? The past period of a generation has wrought wonderful changes in the ideas, sentiments and practice of the Nairs. And this in a large measure accounts for their rapid progress in all directions. It must be admitted that inter-marriage at the present day is not quite so common. I have however no doubt that, if no obstacles are thrown in the way of our progress, inter-marriage with other classes will be of so frequent an occurrence that caste in the future will in substance remain but a shadow of the past. To pessimists, this would appear a mere dream. But the dreams of to-day often become the realities of to-morrow. This consummation is very much hampered by a statutory recognition of caste which renders inter-marriage impossible and gives an impetus to a meaningless custom of conservatism, which according to all authorities has been the bane of the country. I can understand the objection of the orthodox people to associate with a Nair lady marrying a Thiya. But I fail to see why an enlightened legislature should help them to the prejudice of the parties to the marriage. By all means let the couple live as man and wife and let them have that status. Who is injured by it? Whose rights are invaded? If the majority of Nairs do not like it, they may easily exclude from society the parties to such a marriage. They are welcome to do so. It is difficult to grasp the wisdom underlying a provision which makes a rigid observance of caste customs imperative on those wishing to take advantage of the marriage law. Consistently with a growing tendency to get marriages registered, reform in the direction of caste observances becomes obviously impossible. I have in vain tried to believe that a perpetuation of this system is not what a British legislature attempts to achieve. When the Government or the British public is approached with a prayer for extended political privileges, it is usual for them to taunt us with our caste observances. If this be really an impediment to progress—which it undoubtedly is—why make our improvement unattainable? To careful observers there is visible in Malabar a desire to do away with caste altogether and to form into a united nation of Malayalis. But how many of us who work towards reaching that goal grieve to see a retrograde provision retarding all future progress! It only remains for us to hope that the members of our Legislative Council will unitedly work to get this obnoxious and mischievous provision expunged from the Bill.

ORDER—No. 118, Legislative, dated 8th November 1895.

Communicated to the Select Committee.

(True Extract.)

J. F. PRICE,
Chief Secretary.

To the Select Committee on the Malabar Marriage Bill.

Exd. A. Raiff.

Gobt. of {1895} Madras.
LEGISLATIVE.

Issued

Recd.

Encl.

G.O., No. 118, 8th November 1895.

NOVEMBER.

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Communicating to the Select Committee memorial from the Editor, "Malabar and Travancore spectator" and another suggesting certain amendments in the —



To,

HIS EXCELLENCY

THE GOVERNOR-IN-COUNCIL,

of Fort St. George,

MADRAS.

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WE BEG TO REMAIN,

MAY IT PLEASE YOUR EXCELLENCY,

YOUR EXCELLENCY'S MOST OBDT. SERVANTS,

Palghat
1st Nov. 1895

1. H. U. Karaianna Menon

Editor, "Malabar and
Travancore Spectator"

2. P. Parupetty amma

EXTRACT FROM THE "*Malabar and Travancore Spectator*."

The Malabar Marriage Bill, August 15, 1895.

We have carefully perused the Malabar Marriage Bill which we reprinted a few days ago and have discussed its provisions with some of the leaders of the various schools of thought on the subject. We therefore at the outset, beg leave to mention that our observations are not merely the individual opinions of the present writer, but the collective wisdom of influential members of light and leading of the Nair community.

The word 'Tarwad' occurs in several sections of the Bill and requires to be defined. At present the Tarwad may include several families with community of polution, but with no community of property. As it is obviously unnecessary and inexpedient to comprise within the meaning of the term all such families, it is, we think, reasonably suggested that the meaning of the term should be restricted to the members of a Marumakkathayam following family having community of interest in a common propety. Otherwise, it will be open to members of families who have practically no interest whatever in a marriage, to object to it on the most frivolous grounds. Section III of the Bill empowers Government to appoint Registrars of Marriages under the Act. While it is unnecessary to interfere with this provision, it is well to state that the balance of opinion is in favour of appointing only respectable and decently paid officials as Marriage Registrars. For the present it is suggested that the appointment of Sub Registrars as "Marriage Registrars" within their present territorial jurisdiction, is the most feasible arrangement. In Section IV it will be well to add "if any" after caste, in order that a person who does not want to retain caste may, without let or hindrance, give notice to the Registrar of an intended marriage. No doubt by the Section itself, the mention of caste in the notice is optional, but to obviate future troubles in the interpretation of the section and to make assurance doubly sure, the addition of the words "if any" is suggested. Section VI (1) says that the Registrar shall serve a copy of the notice at the applicant's expense on the other party to the marriage connection, or the legal guardians, if any, of the parties to the marriage connection, and also on the Karnavens of the Tarwads, if any, to which they belong. This section appears to us defective in that it does not provide for a notice to be served on the father of the parties to the marriage, who if they have previously registered their marriage become their legal guardians. In this case it is obviously unnecessary and irksome to serve a notice on the Karnaven, or obtain his consent. The intentions of the father and the Karnaven often conflict, and it is not wise under the circumstances, to leave it in the power of the Karnaven to thwart the registration of a marriage. It seems to us highly necessary to provide that a person may renounce his right to the Tarwad. While the Tarwad will not in the least suffer by such renunciation and will on the other hand gain by it, in the sum of his share of the Tarwad property, it will enable individual members to shake off trammels of the joint family system. At present, individual members are at perfect liberty to dispose of their self acquisitions just as it suits them, at the same time retaining their full rights in the Tarwad. Consequently, relinquishment of this right will not in the least prejudicially affect the welfare of the Tarwad. A provision to

this effect is therefore absolutely necessary both in the interests of the Tarwad and the individual member, whose personal liberty is now somewhat interfered with by being unable to do so. In this case the Karnaven's consent to the marriage should not be required at all. It is difficult to see what valid objection can be raised to the provision we advocate. Section VI (1) enacts that a person may withdraw the notice under section IV at any time before the registration of the marriage. This provision affords scope for jilting and trifling with innocent women's love and is sure to work hardship. For instance, a connection between parties may be arranged and the customary form gone through, on the understanding that the marriage shall be registered, and as an earnest of what is intended, a notice may be caused to be served on other party as required by section IV. But it is quite possible that the man may continue the connection for six months and then withdraw the notice and discard the woman altogether, although he may have already begotten upon her. In this case the withdrawal of the notice and subsequent flight land the woman in a real dilemma. If the virginity of a woman is once interfered with, she finds it difficult to get a man to propose to her. If she turns out a mother, her chances of getting a proper husband are still less, while she has the additional responsibility of rearing, and supporting a child. It would, therefore, be highly cruel to make it possible to seduce women with impunity. We would therefore propose that a withdrawal should be permitted only with the consent of the other party, in the case of the woman on her certifying that she has received compensation and that sufficient provision has been made for the maintenance of the offspring of their connection. A proviso to section IV seems called for to meet cases wherein both the parties to the marriage, their legal guardians and their Karnavens present themselves before the Registrar to get the marriage registered. In such a case, the necessity for the notice is not apparent. The only persons who can have any objection to the marriage are the persons aforesaid, and the only object served by postponing the marriage is to afford people who have no interest in the marriage to come forward and raise frivolous objections. Moreover, the delay in such a case is likely to inconvenience parties a good deal. We shall illustrate what we mean by a possible case. An old Karnaven of a house may, on his death bed, wish to give his issue a legal status. The Karnaven and legal guardian of the wife and even all the members of the Tarwad of the parties to the marriage may be present on the spot, but still the old man must keep waiting a month to allow people who have nothing whatever to do with the marriage to weigh the pros and cons of the intended legalisation of the connection, and to object and further delay the matter if only to annoy him. Meantime, it is also quite possible that the man may die without accomplishing his last wish. Take again the case of young men who want to leave for foreign parts. The delay in such a case is, in our opinion simply vexatious and serves no useful purpose whatever. A further provision requiring Marriage Registrars to attend the private residence of parties on payment of a prescribed fee for the purpose of registering marriages, is by no means a superfluous one. In section VII (1), we can understand the justice of legal guardians being empowered to object to a marriage. But we fail to see why the members of the Tarwad of the parties to the marriage, much less "any other person interested" should be authorised to object to a marriage. "Any other person interested" is a very vague and dangerous term and may include any one of the community. What useful object is sought to be secured by the introduction of this undenominational individual,

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SEPTEMBER, 5, 1895.

In a previous issue we dwelt upon the provisions of the Malabar Marriage Bill relating to the registration of marriages and their validity. Today we propose to speak of the provisions for divorce and of the rights and obligations

arising from marriages under the Act. Sections 16 to 18 deal with the manner in which a divorce is to be obtained. A party wishing to get the marriage dissolved has merely to make an application to the District Munsiff within whose jurisdiction the respondent resides and to wait for six months after the service of notice on him when the Court will declare the marriage dissolved unless the petition has been withdrawn in the meanwhile. This provision is simple in the extreme and is highly acceptable to the large majority of the people to whom the Act would apply. In fact the Bill leaves the dissolution of marriages as free and unfettered as it now is in Malabar; but in order to check frivolous divorces, a provision such as the one suggested by the Government of India of paying compensation in lieu of alleging good and reasonable grounds, is in the opinion of some called for. Personally, we are among those who believe that neither of the parties to a marriage is competent to form an unbiassed and judicial opinion about the other and we would therefore make a third party judge between them and grant or refuse a decree for divorce. But the balance of opinion is decidedly in favour of the very simple method provided in the Bill.

The provisions relating to succession are open to various serious objections. Section 19 provides that the separate and self acquired property of a person dying intestate shall be divided equally between the wife and children and the Tarawad, the former taking the property as if they formed a Tarawad. Opinion is divided as to the necessity for any one other than the wife and children inheriting the self acquired and separate property of a person dying intestate. Many are strongly of opinion that the whole property should devolve on the wife and children while a few who still wish to keep up the Marumakkathayam system, do not wish to leave their brothers and sisters unprovided for. There is, however, no difference of opinion on one point and that is upon the *Tavazhi* taking the place of the Tarawad. From a long time past, it was the custom for the *Tavazhi* to inherit a man's self acquisitions. Mr. Justice Holloway who was then too powerful in the High Court and who vastly admired the Roman law reversed that order of things and made the Tarawad heir to the property in accordance with what he wished Marumakkathayam law to be and in conformity with Roman institutions. This ruling of the High Court was meant to give a longer lease of life to that law of succession but the people were wise in their generation and either acquired property in the name of their brothers and sisters or made gifts to them *inter vivos* of self acquisitions. It is undoubted that the tendency for generations has been to prefer *Tavazhi* to Tarawad in regard to succession and it is difficult now to divert it. The evidence recorded by the commission went to establish the present inclination in favour of the *Tavazhi*. It has therefore been a surprise not only to us but to many that the Hon'ble Sankaran Nair should not have consulted public feeling in this matter. There is no reason to believe that the honorable gentleman is unaware of the public sentiment and while so we can find no excuse for his incorporating in the Bill a provision repugnant to the inclination of the present generation, merely for the purpose of perpetuating the already discredited Marumakkathayam law of succession. The Bill further provides that the wife and children shall take the property descending to them from the father as if they formed a Tarawad. Here again is visible an unjustifiable attempt to pale the joint family system of Malabar on a solid basis which is highly to be deplored. The effect of the proviso making the wife and children inherit the property as if they

formed a Tarawad is to make the property impartible and the consequence is that the bequest becomes useless to the issue for all practical proposes. Until recently an individual's right over separate property was attached and sold in satisfaction of his private debts and this was indeed reasonable. What in the name of common sense is the object of a father leaving property to his children, if no absolute individual ownership in it can be exercised? The stupidity and unwelcome nature of the provision becomes clenched to the hilt when we remember that there was almost a universal prayer to the marriage commission for incorporating in the Marriage Bill a provision for claiming a partition of Tarawad property. If therefore the wife and children cannot be made sole heirs to the self acquisitions of a husband, Section 19 should be altered by substituting *Tavazhi* for Tarawad and making division possible among the issue at least after the demise of the widow. In the event of a person having no *Tavazhi* to inherit the property, the whole property must descend to the wife and children and not to the Tarawad or *attaladakkom* heirs. It is we think monstrous, not to say insulting to the civilization of the nineteenth century, to force the Marumakkathayam following Malayalees, who belong to it not by choice, but by the accident of birth, to prefer persons with whom no blood relationship can be traced as heirs, to the issue begotten by them. We trust both Mr. Sankaran Nair and other honourable members of the Council will realize the unreasonableness of the provisions embodied in Section 19 and amend it in the light of the above remarks. Next we come to the devolution of property of a wife or widow dying intestate. Here the honourable gentleman in charge of the Bill seems to have taken leave of common sense and of all recollections of the custom of the country. Section 20 provides that in cases of intestacy half the self-acquisitions and separate property of a wife shall lapse to the Tarawad while the other half is to go to her children. The earnings of a woman has never been recognised as a source of Tarawad income and the male members of most Tarawads have been loth to claim it. Rightly or wrongly the idea has also been that it is the duty of the males to earn and support the females of the Tarawad, and that it is shameful to live upon their bounty. Hence it has never been the practice to claim for the Tarawad the separate property of a female her issue being left in unmolested enjoyment of ownership in her property. But recently a case came on for adjudication before the experienced Sub Judge of Palghat Mr. E. K. Krishnan, who after recording an overwhelming evidence on the point decided that a separate property of a female descends to her issue to the exclusion of the rest of the Tarawad. Such being the case we cannot conceive what justification can be found for an undesirable departure from the present custom and for creating to the Tarawad rights which it does not now possess. Surely it is not pretended that the Bill under discussion is meant to consolidate and to place on a firmer basis the Marumakkathayam Tarawad system. Why then this unjustifiable solicitude for it by creating on its behalf rights, at present unknown! The wife's self-acquisitions should undoubtedly go to her issues and should be partible among them in equal shares. As the wife and children are made heirs to the property of a man dying intestate, it is but reasonable that the husband should also go in for a share of the wife's property in the event of her dying without leaving a will. All are agreed that the children must have the exclusive right to the property of the mother. Failing them at least, the husband should be entitled to a share of the wife's property. The most unobjectionable provision in such a case would be to divide it, in equal shares

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between husband and the Tavazhi, the former retaining the reversionary right against the Tarawad. There is no good disguising the fact that no one is for the Tarawad and we think justly and reasonably so.

We commend the above remarks to the honourable members of the Legislative Council in the earnest belief that they will see their way to amend the Bill in the light of them. We would again add that the views herein expressed are not solely the opinions of the present writer but the result of a thorough enquiry and elaborate discussion with various gentlemen of light and leading, several of whom are leaders of the different schools of thought on the subject.

AUGUST, 3, 1895.

A leading Malayalee who represents an influential school of thought writes to us as follows:—

I crave space in your journal to ventilate the views of a large section of enlightened Nair community on the provisions of the Malabar Marriage Bill now on the legislative anvil. The framing of the Bill, which has been looked forward to with so much anxiety is both defective and disappointing in various respects. As one closely acquainted with the author of the Bill, I may be permitted to surmise that the introduction of indefensible principles in the Bill may after all have been of the nature of Hobson's choice. I shall in this communication confine myself to the consideration of the provision relating to the caste system which the Bill seeks to recognise and perpetuate. Section 7 (1) enacts that objection may be raised to the registration of marriages between parties whose cohabitation according to the custom of the caste, would render them liable to religious excommunication. Now in the present state of Nair society, the term *religious excommunication* is somewhat meaningless. As a matter of fact the Nairs have long ago given up insistence of a rigid observance of caste, it being a common thing for the educated and well-to-do among them to interdine with any caste on the face of the globe. The Hindu religion does not contemplate a lower caste than the pariah and when the food cooked and served by him at Railway refreshment rooms is freely partaken of by the Nairs without censure or loss of caste, it is easy to believe that they have no scruples whatever about inter-dining. There are doubtless many, who while not objecting to the practice by others do not themselves do so. There is yet a small number whom light has yet to reach, who in a manner object to a free intercourse with those who have infringed the traditional caste rules, but who being entirely powerless to get a bull of excommunication issued, inflict social atrocism on them. *Religious excommunication* has thus been a myth since a long time past. Time was when the jail-returned convicts were required to undergo *prayaschittam* before re-admission into caste on the ground that they had eaten food cooked or touched by the lower classes. That practice has now almost died away and no convict loses his caste or performs expiation by reason of it. If in the matter of interdining the Nairs now have no caste or religious scruples, how much less so is the case in the matter of intermarriages. The past period of a generation has wrought wonderful changes in the ideas, sentiments and practice of the Nayers. And this, in a large measure accounts for their rapid progress in all directions. It must be admitted that intermarriage at the present day is not

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quite so common. I have however no doubt that, if no obstacles are thrown in the way of our progress, intermarriage with other classes will be of so frequent an occurrence, that caste in the future will in substance remain but a shadow of the past. To pessimists, this would appear a mere dream. But the dreams of today often become the realities of tomorrow. This consummation is very much hampered by a statutory recognition of caste which renders intermarriage impossible and gives an impetus to a meaningless custom of conservation, which according to all authorities has been the bane of the country. I can understand the objection of the orthodox people to associate with a Nayar lady marrying a Thiya. But I fail to see why an enlightened legislature should help them to the prejudice of the parties to the marriage. By all means let the couple live as man and wife and let them have that status. Who is injured by it? Whose rights are invaded? If the majority of Nairs do not like it, they may easily exclude from society the parties to such a marriage. They are welcome to do so. It is difficult to grasp the wisdom underlying a provision which makes a rigid observance of caste customs imperative on those wishing to take advantage of the marriage law. Consistently with a growing tendency to get marriages registered, reform in the direction of caste observances becomes obviously impossible. I have in vain tried to believe that a perpetuation of this system is not what a British legislature attempts to achieve. When the Government or the British public is approached with a prayer for extended political privileges, it is usual for them to taunt us with our caste observances. If this be really an impediment to progress which it undoubtedly is, why make our improvement unattainable. To careful observers there is visible in Malabar a desire to do away with caste altogether and to form into a united nation of Malayalis. But how many of us who work towards reaching that goal grieve to see a retrograde provision retarding all future progress! It only remains for us to hope that the members of our legislative Council will unitedly work to get this obnoxious and mischievous provision expunged from the Bill.

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98th Co. 10. 95

From
The Editor
"Malabar & Travancore
Spectator" & another

To,

His Excellency the
Governor in Council
Fort St. George
Madras.

Dated 1st Nov. 1895

Recd. 2/11/95
Legd. 5/11/95
GOVERNMENT OF MADRAS

Inclos. 5.

Praying that the Malabar
Marriage Bill may be
amended on the lines
indicated.

N

From No. 1187 8-11-95
PS

Communicated to the

Committee

to all
8-11-95

To the Select Committee
on the Malabar

Depd
10/11

No. 118, LEGISLATIVE, 8th NOVEMBER 1895.

GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

READ—the following paper :—

Memorial from M.R.Ry. K. N. NARAIANA MENON, Editor, *Malabar and Travancore Spectator*, and another, to His Excellency the Governor in Council of Fort St. George, dated Palghat, 1st November 1895.

MAY IT PLEASE YOUR EXCELLENCY,—At the last meeting of the Legislative Council, your Excellency in Council was pleased to accord leave to the Hon'ble Sankaran Nayar to introduce a Bill to provide for a form of marriage for persons following the Marumakkattayam and Aliyasantana Laws.

2. In this connection we beg to invite the attention of your Excellency in Council to the articles bearing on the Bill published in the *Malabar and Travancore Spectator*, which form the enclosure to this memorial. We think the amendments suggested in them are eminently called for, and we trust your Excellency in Council will therefore be pleased to amend the same in the directions indicated therein.

ENCLOSURE.

EXTRACTS from the *Malabar and Travancore Spectator*.

THE MALABAR MARRIAGE BILL.

August 15, 1895.—We have carefully perused the Malabar Marriage Bill which we reprinted a few days ago and have discussed its provisions with some of the leaders of the various schools of thought on the subject. We therefore at the outset beg leave to mention that our observations are not merely the individual opinions of the present writer, but the collective wisdom of influential members of light and leading of the Nair community.

The word "Tarwad" occurs in several sections of the Bill and requires to be defined. At present the tarwad may include several families with community of pollution but with no community of property. As it is obviously unnecessary and inexpedient to comprise within the meaning of the term all such families, it is, we think, reasonably suggested that the meaning of the term should be restricted to the members of a Marumakkattayam-following family having community of interest in a common property. Otherwise, it will be open to members of families who have practically no interest whatever in a marriage to object to it on the most frivolous grounds. Section III of the Bill empowers Government to appoint Registrars of Marriages under the Act. While it is unnecessary to interfere with this provision, it is well to state that the balance of opinion is in favour of appointing only respectable and decently-paid officials as Marriage Registrars. For the present it is suggested that the appointment of Sub-Registrars as "Marriage Registrars" within their present territorial jurisdiction is the most feasible arrangement. In section IV it will be well to add "if any" after caste, in order that a person who does not want to retain caste may, without let or hindrance, give notice to the Registrar of an intended marriage. No doubt by the section itself the mention of caste in the notice is optional, but to obviate future troubles in the interpretation of the section and to make assurance doubly sure, the addition of the words "if any" is suggested. Section VI (1) says that the Registrar shall serve a copy of the notice at the applicant's expense on the other party to the marriage connection, or the legal guardians, if any, of the parties to the marriage connection, and also on the karnavens of the tarwads, if any, to which they belong. This section appears to us defective in that it does not provide for a notice to be served on the father of the parties to the marriage, who if they have previously registered their marriage become their legal guardians. In this case it is obviously unnecessary and irksome to serve a notice on the karnaven, or obtain his consent. The intentions of the father and the karnaven often conflict, and it is not wise under the circumstances to leave it in the power of the karnaven to thwart the registration of a marriage. It

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seems to us highly necessary to provide that a person may renounce his right to the tarwad. While the tarwad will not in the least suffer by such renunciation and will on the other hand gain by it, in the sum of his share of the tarwad property, it will enable individual members to shake off trammels of the joint family system. At present, individual members are at perfect liberty to dispose of their self-acquisitions just as it suits them, at the same time retaining their full rights in the tarwad. Consequently, relinquishment of this right will not in the least prejudicially affect the welfare of the tarwad. A provision to this effect is therefore absolutely necessary both in the interests of the tarwad and of the individual member, whose personal liberty is now somewhat interfered with by being unable to do so. In this case the karnaven's consent to the marriage should not be required at all. It is difficult to see what valid objection can be raised to the provision we advocate. Section VI (1) enacts that a person may withdraw the notice under section IV at any time before the registration of the marriage. This provision affords scope for jilting and trifling with innocent women's love and is sure to work hardship. For instance, a connection between parties may be arranged and the customary form gone through on the understanding that the marriage shall be registered, and as an earnest of what is intended a notice may be caused to be served on other party as required by section IV. But it is quite possible that the man may continue the connection for six months and then withdraw the notice and discard the woman altogether, although he may have already begotten upon her. In this case the withdrawal of the notice and subsequent flight land the woman in a real dilemma. If the virginity of a woman is once interfered with, she finds it difficult to get a man to propose to her. If she turns out a mother, her chances of getting a proper husband are still less, while she has the additional responsibility of rearing and supporting a child. It would, therefore, be highly cruel to make it possible to seduce women with impunity. We would therefore propose that a withdrawal should be permitted only with the consent of the other party, in the case of the woman on her certifying that she has received compensation and that sufficient provision has been made for the maintenance of the offspring of their connection. A proviso to section IV seems called for to meet cases wherein both the parties to the marriage, their legal guardians and their karnavens present themselves before the Registrar to get the marriage registered. In such a case the necessity for the notice is not apparent. The only persons who can have any objection to the marriage are the persons aforesaid, and the only object served by postponing the marriage is to afford people who have no interest in the marriage to come forward and raise frivolous objections. Moreover, the delay in such a case is likely to inconvenience parties a good deal. We shall illustrate what we mean by a possible case. An old karnaven of a house may, on his death bed, wish to give his issue a legal status. The karnaven and legal guardian of the wife and even all the members of the tarwad of the parties to the marriage may be present on the spot, but still the old man must keep waiting a month to allow people who have nothing whatever to do with the marriage to weigh the *pros* and *cons* of the intended legalisation of the connection and to object and further delay the matter if only to annoy him. Meantime, it is also quite possible that the man may die without accomplishing his last wish. Take again the case of young men who want to leave for foreign parts. The delay in such a case is, in our opinion, simply vexatious and serves no useful purpose whatever. A further provision requiring Marriage Registrars to attend the private residence of parties on payment of a prescribed fee for the purpose of registering marriages is by no means a superfluous one. In section VII (1), we can understand the justice of legal guardians being empowered to object to a marriage, much less "any other person the members of the tarwad of the parties to the marriage, much less "any other person interested," should be authorised to object to a marriage. "Any other person interested" is a very vague and dangerous term and may include any one of the community. What useful object is sought to be secured by the introduction of this undenominational individual passes our humble comprehension. Practically, the section leaves the door of objection widely open to be entered into by those who choose, and places the registration of marriages at the mercy of anybody and everybody. "Any other person interested" forsooth! We should like to know how interested. The provision to our mind appears ridiculous as it paves the way for meddlesome people to interfere with other people's affairs without any check and ought therefore to be expunged. Clause (c) of this section also deserves to be expunged for reasons which have been fully explained by a correspondent in our leading columns last week. We entirely agree with him in that opinion and are glad to note that there is almost a universal opposition to the clause, not only from Malabar, but from the people of other coast also. Clause (d) is somewhat meaningless in face of the fact that there is no form of marriage particular to a caste or locality. As a matter of fact, there is no recognised form of marriage anywhere, while in some places no form of any kind is gone through. A form is recognised in North Malabar, but we doubt whether a Sambandham is less valid on the ground that the recognised form has not been adopted. In South Malabar each one invents the form he means going through, and innovations are the order of the day. To object to the registration of a marriage on this account is, to say the least of it, purely arbitrary. The last paragraph of clause (1), section VII, authorises any one on behalf of an objector to sign the objections raised. We think it advisable that only a duly authorised agent should be allowed to do this. Section XI simply provides that a certificate of marriage shall be entered in the marriage certificate book duly signed by the parties, &c. We are strongly of opinion that the issue of marriage certificates to the parties to the marriage is

indispensably necessary inasmuch as it would be impossible to prove the registration of a marriage in the unfortunate event of loss of the marriage certificate book. What would be a good arrangement is to prepare a marriage certificate in triplicate, the parties, witnesses and all being required to sign in all the three documents, two of them being on loose paper and the other in the book. The loose sheets may be handed over to the parties to the marriage to be kept by them for use as occasion arises. Section XII (a) is open to very serious objection. The preliminaries that have to be gone through before registration of a marriage afford sufficient time within which to object to a marriage on the ground of consanguinity or affinity. That being the case, the registration of a marriage ought to be final and conclusive proof that no provisions of the Act have been contravened. If the validity of a marriage could be called into question even long after registration (perhaps after the death of one or both of the parties), what finality is there for this challenge? The retention of this provision will lead to a great deal of false swearing when the property bequeathed by a deceased parent is litigated between the issue and the members of the tarwad. This surely ought to be guarded against, as it will be taking away by one hand what has been given by the other, let alone the moral aspect of the question. We shall consider the remaining provisions of the Bill in a future issue. Meantime we invite the attention of the Hon'ble Mr. Sankaran Nayar to the suggestions herein set forth.

September 5, 1895.—In a previous issue we dwelt upon the provisions of the Malabar Marriage Bill relating to the registration of marriages and their validity. To-day we propose to speak of the provisions for divorce and of the rights and obligations arising from marriages under the Act. Sections 16 to 18 deal with the manner in which a divorce is to be obtained. A party wishing to get the marriage dissolved has merely to make an application to the District Munsif within whose jurisdiction the respondent resides and to wait for six months after the service of notice on him, when the Court will declare the marriage dissolved unless the petition has been withdrawn in the meanwhile. This provision is simple in the extreme and is highly acceptable to the large majority of the people to whom the Act would apply. In fact the Bill leaves the dissolution of marriages as free and unfettered as it now is in Malabar; but in order to check frivolous divorces, a provision such as the one suggested by the Government of India of paying compensation in lieu of alleging good and reasonable grounds is in the opinion of some called for. Personally, we are among those who believe that neither of the parties to a marriage is competent to form an unbiased and judicial opinion about the other and we would therefore make a third party judge between them and grant or refuse a decree for divorce. But the balance of opinion is decidedly in favour of the very simple method provided in the Bill.

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S. B. Ashian

a provision for claiming a partition of tarwad property. If therefore the wife and children cannot be made sole heirs to the self-acquisitions of a husband, section 19 should be altered by substituting tavazhi for tarwad and making division possible among the issue at least after the demise of the widow. In the event of a person having no *tavazhi* to inherit the property, the whole property must descend to the wife and children and not to the tarwad or *attalodakkem* heirs. It is we think monstrous, not to say insulting to the civilization of the nineteenth century, to force the Marumakkattayam-following Malayalees, who belong to it not by choice but by the accident of birth, to prefer persons with whom no blood relationship can be traced as heirs to the issue begotten by them. We trust both Mr. Sankaran Nayar and other honourable members of the Council will realize the unreasonableness of the provisions embodied in section 19 and amend it in the light of the above remarks. Next we come to the devolution of property of a wife or widow dying intestate. Here the honourable gentleman in charge of the Bill seems to have taken leave of common sense and of all recollections of the custom of the country. Section 20 provides that in cases of intestacy half the self-acquisitions and separate property of a wife shall lapse to the tarwad, while the other half is to go to her children. The earnings of a woman has never been recognized as a source of tarwad income and the male members of most tarwads have been loth to claim it. Rightly or wrongly the idea has also been that it is the duty of the males to earn and support the females of the tarwad, and that it is shameful to live upon their bounty. Hence it has never been the practice to claim for the tarwad the separate property of a female, her issue being left in unmolested enjoyment of ownership in her property. But recently a case came on for adjudication before the experienced Sub-Judge of Palghat, Mr. E. K. Krishnan, who after recording overwhelming evidence on the point decided that the separate property of a female descends to her issue to the exclusion of the rest of the tarwad. Such being the case we cannot conceive what justification can be found for an undesirable departure from the present custom and for creating to the tarwad rights which it does not now possess. Surely it is not pretended that the Bill under discussion is meant to consolidate and to place on a firmer basis the Marumakkattayam tarwad system. Why then this unjustifiable solicitude for it by creating on its behalf rights at present unknown! The wife's self-acquisitions should undoubtedly go to her issue and should be partible among them in equal shares. As the wife and children are made heirs to the property of a man dying intestate, it is but reasonable that the husband should also go in for a share of the wife's property in the event of her dying without leaving a will. All are agreed that the children must have the exclusive right to the property of the mother. Failing them at least, the husband should be entitled to a share of the wife's property. The most unobjectionable provision in such a case would be to divide it in equal shares between husband and the *tavazhi*, the former retaining the reversionary right as against the tarwad. There is no good disguising the fact that no one is for the tarwad, and we think justly and reasonably so.

We commend the above remarks to the honourable members of the Legislative Council in the earnest belief that they will see their way to amend the Bill in the light of them. We would again add that the views herein expressed are not solely the opinions of the present writer but the result of a thorough enquiry and elaborate discussion with various gentlemen of light and leading, several of whom are leaders of the different schools of thought on the subject.

August 3, 1895.—A leading Malayalee who represents an influential school of thought writes to us as follows:—

I crave space in your journal to ventilate the views of a large section of enlightened Nair community on the provisions of the Malabar Marriage Bill now on the Legislative anvil. The framing of the Bill, which has been looked forward to with so much anxiety, is both defective and disappointing in various respects. As one closely acquainted with the author of the Bill, I may be permitted to surmise that the introduction of indefensible principles in the Bill may after all have been of the nature of Hobson's choice. I shall in this communication confine myself to the consideration of the provision relating to the caste system which the Bill seeks to recognise and perpetuate. Section 7 (1) enacts that objection may be raised to the registration of marriages between parties whose cohabitation according to the custom of the caste would render them liable to religious excommunication. Now in the present state of Nairs, the term *religious excommunication* is somewhat meaningless. As a matter of fact the Nairs have long ago given up insistence upon a rigid observance of caste, it being a common thing for the educated and well-to-do among them to inter-dine with any caste on the face of the globe. The Hindu religion does not contemplate a lower caste than the Pariah, and when the food cooked and served by him at railway refreshment rooms is freely partaken of by the Nairs without compunction or loss of caste, it is easy to believe that they have no scruples whatever about inter-dining. There are doubtless many who, while not objecting to the practice by others, do not themselves do so. There is yet a small number, whom light has yet to reach, who in a manner object to a free intercourse with those who have infringed the traditional caste rules, but who, being entirely powerless to get a bull of excommunication issued, inflict social ostracism on them. *Religious excommunication* has thus been a myth since a long time past.

Manick

July 11/8

Time was when the jail-returned convicts were required to undergo *prayaschittam* before re-admission into caste on the ground that they had eaten food cooked or touched by the lower classes. That practice has now almost died away and no convict loses his caste or performs expiation by reason of it. If in the matter of inter-dining the Nairs now have no caste or religious scruples, how much less so is the case in the matter of inter-marriages? The past period of a generation has wrought wonderful changes in the ideas, sentiments and practice of the Nairs. And this in a large measure accounts for their rapid progress in all directions. It must be admitted that inter-marriage at the present day is not quite so common. I have however no doubt that, if no obstacles are thrown in the way of our progress, inter-marriage with other classes will be of so frequent an occurrence that caste in the future will in substance remain but a shadow of the past. To pessimists, this would appear a mere dream. But the dreams of to-day often become the realities of to-morrow. This consummation is very much hampered by a statutory recognition of caste which renders inter-marriage impossible and gives an impetus to a meaningless custom of conservation, which according to all authorities has been the bane of the country. I can understand the objection of the orthodox people to associate with a Nair lady marrying a Thiya. But I fail to see why an enlightened legislature should help them to the prejudice of the parties to the marriage. By all means let the couple live as man and wife and let them have that status. Who is injured by it? Whose rights are invaded? If the majority of Nairs do not like it, they may easily exclude from society the parties to such a marriage. They are welcome to do so. It is difficult to grasp the wisdom underlying a provision which makes a rigid observance of caste customs imperative on those wishing to take advantage of the marriage law. Consistently with a growing tendency to get marriages registered, reform in the direction of caste observances becomes obviously impossible. I have in vain tried to believe that a perpetuation of this system is not what a British legislature attempts to achieve. When the Government or the British public is approached with a prayer for extended political privileges, it is usual for them to taunt us with our caste observances. If this be really an impediment to progress—which it undoubtedly is—why make our improvement unattainable? To careful observers there is visible in Malabar a desire to do away with caste altogether and to form into a united nation of Malayalis. But how many of us who work towards reaching that goal grieve to see a retrograde provision retarding all future progress! It only remains for us to hope that the members of our Legislative Council will unitedly work to get this obnoxious and mischievous provision expunged from the Bill.

ORDER—No. 118, Legislative, dated 8th November 1895.
Communicated to the Select Committee.

(True Extract.)

L. DAVIDSON,
Ag. Under Secy. to Govt.

To the Select Committee.

on the Malabar marriage Bill

No. 118, LEGISLATIVE, 8TH NOVEMBER 1895.

GOVERNMENT OF MADRAS.

No. LEGISLATIVE DEPARTMENT.

Read—the following paper :—

Memorial from M.R.Ry. K. N. NARAIANA MENON, Editor, *Malabar and Travancore Spectator*, and another, to His Excellency the Governor in Council of Fort St. George, dated Palghat, 1st November 1895.

MAY IT PLEASE YOUR EXCELLENCY,—At the last meeting of the Legislative Council, your Excellency in Council was pleased to accord leave to the Hon'ble Sankaran Nayar to introduce a Bill to provide for a form of marriage for persons following the Marumakkattayam and Aliyasantana Laws.

2. In this connection we beg to invite the attention of your Excellency in Council to the articles bearing on the Bill published in the *Malabar and Travancore Spectator*, which form the enclosure to this memorial. We think the amendments suggested in them are eminently called for, and we trust your Excellency in Council will therefore be pleased to amend the same in the directions indicated therein.

ENCLOSURE.

EXTRACTS from the *Malabar and Travancore Spectator*.

THE MALABAR MARRIAGE BILL.

August 15, 1895.—We have carefully perused the Malabar Marriage Bill which we reprinted a few days ago and have discussed its provisions with some of the leaders of the various schools of thought on the subject. We therefore at the outset beg leave to mention that our observations are not merely the individual opinions of the present writer, but the collective wisdom of influential members of light and leading of the Nair community.

The word "Tarwad" occurs in several sections of the Bill and requires to be defined. At present the tarwad may include several families with community of pollution but with no community of property. As it is obviously unnecessary and inexpedient to comprise within the meaning of the term all such families, it is, we think, reasonably suggested that the meaning of the term should be restricted to the members of a Marumakkattayam-following family having community of interest in a common property. Otherwise, it will be open to members of families who have practically no interest whatever in a marriage to object to it on the most frivolous grounds. Section III of the Bill empowers Government to appoint Registrars of Marriages under the Act. While it is unnecessary to interfere with this provision, it is well to state that the balance of opinion is in favour of appointing only respectable and decently-paid officials as Marriage Registrars. For the present it is suggested that the appointment of Sub-Registrars as "Marriage Registrars" within their present territorial jurisdiction is the most feasible arrangement. In section IV it will be well to add "if any" after caste, in order that a person who does not want to retain caste may, without let or hindrance, give notice to the Registrar of an intended marriage. No doubt by the section itself the mention of caste in the notice is optional, but to obviate future troubles in the interpretation of the section and to make assurance doubly sure, the addition of the words "if any" is suggested. Section VI (1) says that the Registrar shall serve a copy of the notice at the applicant's expense on the other party to the marriage connection, or the legal guardians, if any, of the parties to the marriage, who if of the tarwads, if any, to which they belong. This section appears to us defective in that it does not provide for a notice to be served on the father of the parties to the marriage, who if they have previously registered their marriage become their legal guardians. In this case it is obviously unnecessary and irksome to serve a notice on the karnaven, or obtain his consent. The intentions of the father and the karnaven often conflict, and it is not wise under the circumstances to leave it in the power of the karnaven to thwart the registration of a marriage. It

seems to us highly necessary to provide that a person may renounce his right to the tarwad. While the tarwad will not in the least suffer by such renunciation and will on the other hand gain by it, in the sum of his share of the tarwad property, it will enable individual members to shake off trammels of the joint family system. At present, individual members are at perfect liberty to dispose of their self-acquisitions just as it suits them, at the same time retaining their full rights in the tarwad. Consequently, relinquishment of this right will not in the least prejudicially affect the welfare of the tarwad. A provision to this effect is therefore absolutely necessary both in the interests of the tarwad and of the individual member, whose personal liberty is now somewhat interfered with by being unable to do so. In this case the karnaven's consent to the marriage should not be required at all. It is difficult to see what valid objection can be raised to the provision we advocate. Section VI (1) enacts that a person may withdraw the notice under section IV at any time before the registration of the marriage. This provision affords scope for jilting and trifling with innocent women's love and is sure to work hardship. For instance, a connection between parties may be arranged and the customary form gone through on the understanding that the marriage shall be registered, and as an earnest of what is intended a notice may be caused to be served on other party as required by section IV. But it is quite possible that the man may continue the connection for six months and then withdraw the notice and discard the woman altogether, although he may have already begotten upon her. In this case the withdrawal of the notice and subsequent flight land the woman in a real dilemma. If the virginity of a woman is once interfered with, she finds it difficult to get a man to propose to her. If she turns out a mother, her chances of getting a proper husband are still less, while she has the additional responsibility of rearing and supporting a child. It would, therefore, be highly cruel to make it possible to seduce women with impunity. We would therefore propose that a withdrawal should be permitted only with the consent of the other party, in the case of the woman on her certifying that she has received compensation and that sufficient provision has been made for the maintenance of the offspring of their connection. A proviso to section IV seems called for to meet cases wherein both the parties to the marriage, their legal guardians and their karnavens present themselves before the Registrar to get the marriage registered. In such a case the necessity for the notice is not apparent. The only persons who can have any objection to the marriage are the persons aforesaid, and the only object served by postponing the marriage is to afford people who have no interest in the marriage to come forward and raise frivolous objections. Moreover, the delay in such a case is likely to inconvenience parties a good deal. We shall illustrate what we mean by a possible case. An old karnaven of a house may, on his death bed, wish to give his issue a legal status. The karnaven and legal guardian of the wife and even all the members of the tarwad of the parties to the marriage may be present on the spot, but still the old man must keep waiting a month to allow people who have nothing whatever to do with the marriage to weigh the *pros* and *cons* of the intended legalisation of the connection and to object and further delay the matter if only to annoy him. Meantime, it is also quite possible that the man may die without accomplishing his last wish. Take again the case of young men who want to leave for foreign parts. The delay in such a case is, in our opinion, simply vexatious and serves no useful purpose whatever. A further provision requiring Marriage Registrars to attend the private residence of parties on payment of a prescribed fee for the purpose of registering marriages is by no means a superfluous one. In section VII (1), we can understand the justice of legal guardians being empowered to object to a marriage. But we fail to see why the members of the tarwad of the parties to the marriage, much less "any other person interested," should be authorised to object to a marriage. "Any other person interested" is a very vague and dangerous term and may include any one of the community. What useful object is sought to be secured by the introduction of this undenominational individual open to be entered into by those who choose, and places the door of objection widely mercy of anybody and everybody. "Any other person interested" forsooth! We should like to know how interested. The provision to our mind appears ridiculous as it paves the way for meddlesome people to interfere with other people's affairs without any check and ought therefore to be expunged. Clause (c) of this section also deserves to be expunged for reasons which have been fully explained by a correspondent in our leading columns last week. We entirely agree with him in that opinion and are glad to note that there is almost a universal opposition to the clause, not only from Malabar, but from the people of other coast also. Clause (d) is somewhat meaningless in face of the fact that there is no form of marriage particular to a caste or locality. As a matter of fact, there is no recognised form of marriage anywhere, while in some places no form of any kind is gone through. A form is recognised in North Malabar, but we doubt whether a Sambandham is less valid on the ground that the recognised form has not been adopted. In South Malabar each one invents the form he means going through, and innovations are the order of the day. To object to the registration of a marriage on this account is, to say the least of it, purely arbitrary. The last paragraph of clause (1), section VII, authorises any one on behalf of an objector to sign the objections raised. We think it advisable that only a duly authorised agent should be allowed to do this. Section XI simply provides that a certificate of marriage shall be entered in the marriage certificate book duly signed by the parties, &c. We are strongly of opinion that the issue of marriage certificates to the parties to the marriage is

indispensably necessary inasmuch as it would be impossible to prove the registration of a marriage in the unfortunate event of loss of the marriage certificate book. What would be a good arrangement is to prepare a marriage certificate in triplicate, the parties, witnesses and all being required to sign in all the three documents, two of them being on loose paper and the other in the book. The loose sheets may be handed over to the parties to the marriage to be kept by them for use as occasion arises. Section XII (a) is open to very serious objection. The preliminaries that have to be gone through before registration of a marriage afford sufficient time within which to object to a marriage on the ground of consanguinity or affinity. That being the case, the registration of a marriage ought to be final and conclusive proof that no provisions of the Act have been contravened. If the validity of a marriage could be called into question even long after registration (perhaps after the death of one or both of the parties), what finality is there for this challenge? The retention of this provision will lead to a great deal of false swearing when the property bequeathed by a deceased parent is litigated between the issue and the members of the tarwad. This surely ought to be guarded against, as it will be taking away by one hand what has been given by the other, let alone the moral aspect of the question. We shall consider the remaining provisions of the Bill in a future issue. Meantime we invite the attention of the Hon'ble Mr. Sankaran Nayar to the suggestions herein set forth.

September 5, 1895.—In a previous issue we dwelt upon the provisions of the Malabar Marriage Bill relating to the registration of marriages and their validity. To-day we propose to speak of the provisions for divorce and of the rights and obligations arising from marriages under the Act. Sections 16 to 18 deal with the manner in which a divorce is to be obtained. A party wishing to get the marriage dissolved has merely to make an application to the District Munsif within whose jurisdiction the respondent resides and to wait for six months after the service of notice on him, when the Court will declare the marriage dissolved unless the petition has been withdrawn in the meanwhile. This provision is simple in the extreme and is highly acceptable to the large majority of the people to whom the Act would apply. In fact the Bill leaves the dissolution of marriages as free and unfettered as it now is in Malabar; but in order to check frivolous divorces, a provision such as the one suggested by the Government of India of paying compensation in lieu of alleging good and reasonable grounds is in the opinion of some called for. Personally, we are among those who believe that neither of the parties to a marriage is competent to form an unbiased and judicial opinion about the other and we would therefore make a third party judge between them and grant or refuse a decree for divorce. But the balance of opinion is decidedly in favour of the very simple method provided in the Bill.

The provisions relating to succession are open to various serious objections. Section 19 provides that the separate and self-acquired property of a person dying intestate shall be divided equally between the wife and children and the tarwad, the former taking the property as if they formed a tarwad. Opinion is divided as to the necessity for any one other than the wife and children inheriting the self-acquired and separate property of a person dying intestate, while a few who still of opinion that the whole property should devolve on the wife and children, while a few who still wish to keep up the Marumakkattayam system do not wish to leave their brothers and sisters unprotected for. There is, however, no difference of opinion on one point and that is upon the taravazhi taking the place of the tarwad. From a long time past, it was the custom for the taravazhi to inherit a man's self-acquisitions. Mr. Justice Holloway, who was then too powerful in the High Court and who vastly admired the Roman law, reversed that order of things and made the tarwad heir to the property in accordance with what he wished Marumakkattayam law to be, and in conformity with Roman institutions. This ruling of the High Court was meant to give a longer lease of life to that law of succession, but the people were wise in their generation and either acquired property in the name of their brothers and sisters or made gifts to them *inter vivos* of self acquisitions. It is undoubted that the tendency now to divert it. The evidence taravazhi to tarwad in regard to succession and it is difficult now to divert it. The evidence recorded by the Commission went to establish the present inclination in favour of the taravazhi. It has therefore been a surprise, not only to us, but to many, that the Hon'ble Sankaran Nayar should not have consulted public feeling in this matter. There is no reason to believe that the honourable gentleman is unaware of the public sentiment, and while so we can find no excuse for his incorporating in the Bill a provision repugnant to the inclination of the present generation, merely for the purpose of perpetuating the already discredited Marumakkattayam law of succession. The Bill further provides that the wife and children shall take the property descending to them from the father as if they formed a tarwad. Here again is visible an unjustifiable attempt to place the joint family system of Malabar on a solid basis which is highly to be deplored. The effect of the proviso making the wife and children inherit the property as if they formed a tarwad is to make the property impartible and the consequence is that the bequest becomes useless to the issue for all practical purposes. Until recently, an individual's right over separate property was attached and sold in satisfaction of his private debts and this was indeed reasonable. What, in the name of common sense, is the object of a father leaving property to his children, if no absolute individual ownership in it can be exercised? The stupidity and

unwelcome nature of the provision becomes clenched to the hilt when we remember that there was almost a universal prayer to the Marriage Commission for incorporating in the Marriage Bill a provision for claiming a partition of tarwad property. If therefore the wife and children cannot be made sole heirs to the self-acquisitions of a husband, section 19 should be altered by substituting *tavazhi* for tarwad and making division possible among the issue at least after the demise of the widow. In the event of a person having no *tavazhi* to inherit the property, the whole property must descend to the wife and children and not to the tarwad or *attaladakkom* heirs. It is we think monstrous, not to say insulting to the civilization of the nineteenth century, to force the Marumakkattayam-following Malayalees, who belong to it not by choice but by the accident of birth, to prefer persons with whom no blood relationship can be traced as heirs to the issue begotten by them. We trust both Mr. Sankaran Nayar and other honourable members of the Council will realize the unreasonableness of the provisions embodied in section 19 and amend it in the light of the above remarks. Next we come to the devolution of property of a wife or widow dying intestate. Here the honourable gentleman in charge of the Bill seems to have taken leave of common sense and of all recollections of the custom of the country. Section 20 provides that in cases of intestacy half the self-acquisitions and separate property of a wife shall lapse to the tarwad, while the other half is to go to her children. The earnings of most tarwads have been loath to claim it. Rightly or wrongly the idea has also been that it is the duty of the males to earn and support the females of the tarwad, and that it is shameful to live upon their bounty. Hence it has never been the practice to claim for the tarwad the separate property of a female, her issue being left in unmolested enjoyment of ownership in her property. But recently a case came on for adjudication before the experienced Sub-Judge of Palghat, Mr. E. K. Krishnan, who after recording overwhelming evidence on the point decided that the separate property of a female descends to her issue to the exclusion of the rest of the tarwad. Such being the case we cannot conceive what justification can be found for an undesirable departure from the present custom and for creating to the tarwad rights which it does not now possess. Surely it is not pretended that the Bill under discussion is meant to consolidate and to place on a firmer basis the Marumakkattayam tarwad system. Why then this unjustifiable solicitude for it by creating on its behalf rights at present unknown! The wife's self-acquisitions should undoubtedly go to her issue and should be partible among them in equal shares. As the wife and children are made heirs to the property of a man dying intestate, it is but reasonable that the husband should also go in for a share of the wife's property in the event of her dying without leaving a will. All are agreed that the children must have the exclusive right to the property of the mother. Failing them at least, the husband should be entitled to a share of the wife's property. The most unobjectionable provision in such a case would be to divide it in equal shares between husband and the *tavazhi*, the former retaining the reversionary right as against the tarwad. There is no good disguising the fact that no one is for the tarwad, and we think justly and reasonably so.

We commend the above remarks to the honourable members of the Legislative Council in the earnest belief that they will see their way to amend the Bill in the light of them. We would again add that the views herein expressed are not solely the opinions of the present writer but the result of a thorough enquiry and elaborate discussion with various gentlemen of light and leading, several of whom are leaders of the different schools of thought on the subject.

August 3, 1895.—A leading Malayalee who represents an influential school of thought writes to us as follows:—

I crave space in your journal to ventilate the views of a large section of enlightened Nair community on the provisions of the Malabar Marriage Bill now on the Legislative anvil. The framing of the Bill, which has been looked forward to with so much anxiety, is both defective and disappointing in various respects. As one closely acquainted with the author of the Bill, I may be permitted to surmise that the introduction of indefensible principles in the Bill may after all have been of the nature of Hobson's choice. I shall in this communication confine myself to the consideration of the provision relating to the caste system which the Bill seeks to recognise and perpetuate. Section 7 (1) enacts that objection may be raised to the registration of marriages between parties whose cohabitation according to the custom of the caste would render them liable to religious excommunication. Now in the present state of Nair society, the term *religious excommunication* is somewhat meaningless. As a matter of fact the Nairs have long ago given up insistence upon a rigid observance of caste, it being a common thing for the educated and well-to-do among them to inter-dine with any caste on the face of the globe. The Hindu religion does not contemplate a lower caste than the Pariah, and when the food cooked and served by him at railway refreshment rooms is freely partaken of by the Nairs without compunction or loss of caste, it is easy to believe that they have no scruples whatever about inter-dining. There are doubtless many who, while not objecting to the practice by others, do not themselves do so. There is yet a small number, whom light has yet to reach, who in a manner object to a free intercourse with those who have infringed the traditional caste

rules, but who, being entirely powerless to get a bull of excommunication issued, inflict social ostracism on them. *Religious excommunication* has thus been a myth since a long time past. Time was when the jail-returned convicts were required to undergo *prayaschittam* before re-admission into caste on the ground that they had eaten food cooked or touched by the lower classes. That practice has now almost died away and no convict loses his caste or performs expiation by reason of it. If in the matter of inter-dining the Nairs now have no caste or religious scruples, how much less so is the case in the matter of inter-marriages? The past period of a generation has wrought wonderful changes in the ideas, sentiments and practice of the Nairs. And this in a large measure accounts for their rapid progress in all directions. It must be admitted that inter-marriage at the present day is not quite so common. I have however no doubt that, if no obstacles are thrown in the way of our progress, inter-marriage with other classes will be of so frequent an occurrence that caste in the future will in substance remain but a shadow of the past. To pessimists, this would appear a mere dream. But the dreams of to-day often become the realities of to-morrow. This consummation is very much hampered by a statutory recognition of caste which renders inter-marriage impossible and gives an impetus to a meaningless custom of conservatism, which according to all authorities has been the bane of the country. I can understand the objection of the orthodox people to associate with a Nair lady marrying a Thiya. But I fail to see why an enlightened legislature should help them to the prejudice of the parties to the marriage. By all means let the couple live as man and wife and let them have that status. Who is injured by it? Whose rights are invaded? If the majority of Nairs do not like it, they may easily exclude from society the parties to such a marriage. They are welcome to do so. It is difficult to grasp the wisdom underlying a provision which makes a rigid observance of caste customs imperative on those wishing to get marriages registered, reform in the direction of caste observances becomes obviously impossible. I have in vain tried to believe that a perpetuation of this system is not what a British legislature attempts to achieve. When the Government or the British public is approached with a prayer for extended political privileges, it is usual for them to taunt us with our caste observances. If this be really an impediment to progress—which it undoubtedly is—why make our improvement unattainable? To careful observers there is visible in Malabar a desire to do away with caste altogether and to form into a united nation of Malayalis. But how many of us who work towards reaching that goal grieve to see a retrograde provision retarding all future progress! It only remains for us to hope that the members of our Legislative Council will unitedly work to get this obnoxious and mischievous provision expunged from the Bill.

ORDER—No. 118, Legislative, dated 8th November 1895.

Communicated to the Select Committee.
(True Extract.)

Ag. Under Secy. to Govt.

for Chief Secretary.

To the Select Committee on the Malabar Marriage Bill.

Exd. A. Raitt.

Govt. of {1895} Madras,
LEGISLATIVE.

Issued

Recd.

Encl.

G.O., No. 118, 8th November 1895.

NOVEMBER.

Malabar Marriage Bill.

Communicating to the Select Committee memorial from the Editor, "Malabar and Travancore spectator" and another suggesting certain amendments to the —.

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