PROCEEDINGS

OF THE

COUNCIL OF THE GOVERNOR OF FORT ST. GEORGE FOR MAKING LAWS AND REGULATIONS.

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

The Council met at the Council Chamber in Fort St. George at 11 A.M. on Monday, the 4th November 1895.

PRESENT:

His Excellency the Right Hon'ble the GOVERNOR OF MADRAS, G.C.I.E.—*Presiding.*
The Hon'ble Mr. H. W. BLISS, C.I.E.
The Hon'ble Mr. J. GROSE, M.A.
The Hon'ble Colonel J. PENNYCUICK, R.E., C.S.I.
The Hon'ble S. SRINIVASA RAGHAVAIYANGAR, B.A., C.I.E., Diwan Bahadur.
The Hon'ble Mr. C. S. CROLE.
The Hon'ble GHULAM MUHAMMAD HASAN ALI KHAN BAHADUR.
The Hon'ble Mr. A. T. ARUNDEL.
The Hon'ble Mr. E. GIBSON.
The Hon'ble Mr. J. STURROCK.
The Hon'ble the MAHARAJA OF VIZIANAGRAM, G.C.I.E.
The Hon'ble Mr. D. DUNCAN, M.A., D.Sc.
The Hon'ble Mr. J. F. PRICE, C.S.I.
The Hon'ble V. BHASHYAM AIYANGAR, B.A., B.L., C.I.E., Diwan Bahadur.
The Hon'ble Mr. G. L. CHAMBERS.
The Hon'ble P. RANGAYYA NAYUDU.
The Hon'ble C. SANKARAN NAYAR, B.A., B.L.
The Hon'ble K. KALYANASUNDARAM AIYAR, B.A., B.L.
The Hon'ble N. SUBBA RAO PANTULU, B.A., B.L.
The Hon'ble C. JAMBULINGAM MUDALIYAR, B.A., M.L., Rao Bahadur.
The Hon'ble C. VIJIARAGHAVACHARIAR, B.A.

NEW MEMBERS.

His Excellency the PRESIDENT.—The Secretary will read out the names of those gentlemen who will take their seats as additional Members of Council.

The Secretary.—The following gentlemen take their seats as additional Members of Council :—

(1) The Hon'ble Mr. G. L. Chambers.
(2) The Hon'ble P. Rangayya Nayudu Garu.
(3) The Hon'ble the Revd. W. Miller, M.A., LL.D., C.I.E.
(4) The Hon'ble C. Sankaran Nayar Avargal, B.A., B.L.
(5) The Hon'ble K. Kalyanasundaram Aiyar Avargal, B.A., B.L.
(6) The Hon'ble N. Subba Rao Pantulu Garu, B.A., B.L.
(7) The Hon'ble C. Jambulingam Mudaliyar Avargal, B.A., M.L., Rao Bahadur.
(8) The Hon'ble C. Vijiaraghavachariar Avargal, B.A.

QUESTIONS.

His Excellency the President.—I would now ask the members who have put questions merely to state the numbers of their questions on the Agenda paper, as this will be quite sufficient for their identification and will save the time of the Council.

The Hon'ble C. Sankaran Nayar.—I. With reference to my question, asked on the 22nd January, "whether Government sees any objection to deputing Agricultural Inspectors to selected centres to carry out experimental cultivation side by side with the ryot," and the report of the Revenue Board thereon that there are the following objections to the proposal :—

(1) the ryot must be selected,
(2) land adjacent to his must be put at the disposal of Government,
(3) the Agricultural Inspector must be equipped with cattle, agricultural implements and labour,
(4) the nature, value and object of the suggested experiments should be made plain before Government can possibly saddle tax-payers with the cost which such experiments would entail,

whether there is any objection to carrying out the experiments,

(1) if the ryot is selected to the satisfaction of the Agricultural Inspector or any other Government official,
(2) if the land adjacent to his is placed at the disposal of Government,
(3) if cattle, agricultural implements and labour are supplied to him,

on condition that the produce of the land is delivered to the ryot ?

The object is to show that the Government estimate of the cost of cultivation and the produce of the land is incorrect and ought not to be taken as a basis for settlement operations, and in case it turns out to be correct to serve as an object lesson to the ryot.

The Hon'ble Mr. Grose.—I. The Government is of opinion that, even if the objections detailed by the Hon'ble Member were met, the experiment would be useless as far as regards supplying a basis for settlement operations. To establish such a basis it would be necessary to have numerous farms under costly supervision in several parts of the district, and the suppliers of the cattle, instruments and labour would have to be impartial and not desirous of proving that the land produced little at a great cost. It is impossible for the Government to guarantee the fulfilment of these conditions.

The Hon'ble C. Sankaran Nayar.—II. The Board of Revenue say in their report that the opening of five farms at selected centres with the object of carrying on experiments in agriculture has been sanctioned by Government, and is only held in abeyance for want of funds : will Government be pleased to open at least one farm in Malabar, as the ryots in Malabar are willing to supply land, cattle, agricultural implements and labour for the purposes of experiment ?

The Hon'ble Mr. Grose.—II. As to establishing an experimental farm in Malabar, if the Hon'ble Member will indicate to the Revenue Board a convenient locality where a sufficient parcel of land (say 100 acres) suitable for agricultural experiment can be made available, the proposal to establish a farm will be carefully considered.

The Hon'ble C. Sankaran Nayar.—III. (1) Is it a fact that from the Mysorean conquest of Malabar up to the present time the taluks of Chirakkal, Kottayam and the Kadattanat portion of the modern Kurumbranat taluk have been exempt from the establishment cess, since transformed into the village-cess, and levied in other parts of the district ?

(2) Is the Government aware that the exemption is based on the recognised fact that the assessments, especially on wet and miscellaneous lands in North Malabar, are comparatively heavier than those in South Malabar—a circumstance which formerly influenced the Supervisor and the Second Commissioners not to extend the village-cess to North Malabar—and that this state of things was deliberately continued by Government even when Act IV of 1864 was enacted ?

(3) Will the Government be pleased to state in these circumstances the reasons for imposing the village-cess when no corresponding reduction is made in the land revenue in the taluks above referred to ?

(4) Is it a fact that, in addition to the land revenue and the local cess amounting to two annas in the rupee, petty cesses known as (1) Kangâni, (കങ്ങാണി), (2) Pattonna (പത്തോന), (3) Azhikkâpanom (അഴിക്കാപണം), (4) Vittuvâdu (വിത്തവാട), (5) Talivâram (തളിവാരം), (6) Kayattunellu (കയറ്റനെല്ല), (7) Vêlipanom (വേലിപണം), (8) Vettilakettu (വെറ്റിലകെട്ട), and (9) Kûzhâpattom (ഞാഴപ്പാട്ടം), are now levied in North Malabar, and that the village-cess is proposed to be superadded to the above rates ?

(5) Will the Government defer the imposition of the village-cess in North Malabar, pending the disposal of the settlement question ? If it is to take effect at once, will the Government consider the propriety of making a corresponding abatement in the land revenue, admitted to be heavier in North than South Malabar, with a view to equalise the incidence of taxation as fairly as possible ?

(6) Will the Government also consider the expediency of immediately abolishing the nine items of the taxation described in question (4) above ?

The Hon'ble Mr. Grose.—III. (1) and (3) What is known in Malabar as the Amshom Service Fund is derived from a cess at the rate of 10 per cent. on the revenue of rice lands in the six southern taluks of the district, which has been levied since the beginning of the century. This cess was not imposed in the taluks of Chirakkal, Kottayam and part of Kurumbranat, on the ground that the assessments in those taluks were heavier than in those of the south. Owing, however, to the great rise in prices in recent years and in consideration of the fact that assessments throughout Malabar are notoriously light, the Government has decided that there is no longer any reason why the land-holders of these taluks in the north of the district should be exempted from contributing to the maintenance of the village service. Orders have been accordingly issued for the introduction of the Village Cess Act into these taluks.

(2) The Government is aware that this statement is made on page 679 of Volume I of Mr. Logan's Manual of Malabar. In the latter portion of this question, the Hon'ble Member refers apparently to G.O., No. 3028, dated 18th September 1862, in which, on a representation made by the then Collector of Malabar (Mr. Ballard) that rice lands in North Malabar were believed to be more highly assessed than similar lands in South Malabar, the Government deemed it inexpedient to extend to the latter the 10 per cent. cess levied on the former. But it would also appear from Mr. Pelly's letter read in that Government Order that, while the assessment on rice lands in North Malabar was believed to be heavier than in South Malabar, that on dry and garden lands was considered to be lighter, and that it was suggested by Mr. Pelly that, if additional funds were required for village establishments, they might be raised by a cess which should be imposed not on any particular class of lands, but generally on the whole holding of the ryots. This is the plan now followed. And it may also be noted that whereas the cess is levied in South Malabar at the rate of 10 per cent. that in North Malabar will be levied at less than $4\frac{3}{4}$ per cent. of the assessment. Even if the cess levied in the South Malabar taluks be distributed over the entire land revenue, the resulting incidence will be 6·8 per cent. against 4·7 per cent. in the case of the Northern taluks.

(4) and (6) Assuming that the petty cesses referred to are of the nature of contribution to village servants, the Hon'ble Member's attention is invited to section 6 of the Village Cess Act of 1893 which prescribes that—

"On this Act coming into force as provided in section 2 in any district or part of a district, all fees, contributions and allowances collected or demandable for the remuneration of village officers shall absolutely cease and determine.

"Whoever thereafter in such district or part of a district demands, collects or receives such fees, contributions or allowances shall on conviction before a Magistrate, be liable to a fine not exceeding Rs. 100."

(5) For the reasons given in the answer to the Hon'ble Member's first question the Government is not prepared to defer the introduction of the Cess Act, pending the new settlement, nor does Government consider that there is any ground for making a corresponding reduction in the land revenue demand.

The Hon'ble K. Kalyanasundaram Aiyar.—IV. Will the Government be pleased to state what instructions it has given to the Engineer specially deputed to prepare a scheme for improving the irrigation of the Tanjore district?

His Excellency the President.—IV. The Assistant Engineer deputed to prepare a scheme for improving the irrigation of the Tanjore district is working under the orders of the Superintending Engineer, V Circle, and the general lines on which the project is to be drawn are shown in the office-note No. 290, dated 7th November 1894, printed in Proceedings of Government, No. 3292 W., dated 29th December 1894, a copy of which will be furnished to the Hon'ble Member.

2. Before deciding on the description and details of the works required to be carried out, it will be necessary to ascertain the proportions of flood waters which the Cauvery and the Vennar rivers can carry with safety, and how far the Coleroon can be made to carry the balance; also how the silting up of the head of the Cauvery at the upper anicut can be prevented and the sand sent down the Coleroon, the flood embankments of which have to be raised and improved. Instructions have been sent to the Superintending Engineer to arrange for the necessary information being obtained.

3. On completion of the plans and estimates for the works required for the distribution of water for irrigation, an opportunity of inspecting them will be given to the Hon'ble Members of the Legislative Council who represent the District Boards and Municipalities of the southern groups, and the various peoples' associations and other interested parties in Tanjore will be consulted.

The Hon'ble K. Kalyanasundaram Aiyar.—V. Will the Government be pleased to obtain and furnish information regarding the amount of salary grant paid during the last two years (1) to mission institutions, and (2) to non-mission institutions under private management?

The Hon'ble Dr. Duncan.—V. The Hon'ble member will be supplied with a copy of a statement compiled in the office of the Director of Public Instruction which contains the information asked for. It is presumed that the question refers solely to salary grants paid from Provincial funds.

The Hon'ble K. Kalyanasundaram Aiyar.—VI. Will the Government be pleased to state whether, in view of the large surplus revenue in the Provincial treasury and of the answer given on the 14th November 1893 by the Hon'ble Mr Garstin to a question on the subject (*vide* page 57 of the Proceedings of the Legislative Council for 1893), any, and if so, what steps have been taken to secure an increase in the strength and pay of taluk establishments in this Presidency?

The Hon'ble Mr. Grose.—VI. As the Hon'ble Member could have seen for himself by an examination of the budget figures at his disposal, it is an entire misconception to think that there is a "large surplus revenue in the Provincial treasury." A draft scheme has been prepared by the Board of Revenue, but it is under contemplation to test the adequacy of the proposals made by personal inspection of representative taluks by a member of the Board of Revenue. This will necessarily take time.

The Hon'ble K. Kalyanasundaram Aiyar.—VII. Will the Government be pleased to furnish a statement showing the number of Government buildings in the Presidency rented out to Government servants, the sums spent on their construction or purchase, the expenditure incurred in repairs, improvements, furniture, &c., during the last five years, and the amount of rent realised therefrom during the same period?

The Hon'ble Col. Pennycuick.—VII. A statement containing the information asked for is now under preparation, and the Hon'ble Member will be furnished with a copy of it.

The Hon'ble P. Rangayya Nayudu.—VIII. Whether the Government will be pleased to call for a return of Sub-Magistrates appointed in the several districts from 1893 up to date, showing their names, general qualifications and special qualifications, and to see whether in these cases the rules issued by the Government and the Board of Revenue when the nominations of Stationary Magistrates were made in 1892 have been conformed to?

The Hon'ble Mr. Grose.—VIII. The Government sees no need to call for a return of Sub-Magistrates recently appointed as suggested by the Hon'ble Member. Application is made to Government to invest with powers, under the Code of Criminal Procedure, every Magistrate appointed, and the form of application supplies the requisite information as to the service and qualifications of the nominee.

The Hon'ble P. Rangayya Nayudu.—IX. Will the Government be pleased to state the percentage of the sums expended on the water-works of mufassal municipalities during the last three years which has been paid for pipes, steam-engines, and other plant ordered from England; through which officer or department the same are ordered, the firm or firms from which they are purchased, and the manner—whether by tender or by private contract—in which the purchases are made?

The Hon'ble Mr. Bliss.—IX. A statement containing the particulars asked for by the Hon'ble Member will be supplied to him.

The Hon'ble N. Subba Rao Pantulu.—X. With reference to the answer given at the meeting of 20th November 1894, about the appointment of District Judges, that the present condition of affairs is not so satisfactory as it might be, and that the subject is receiving the careful consideration of Government, will Government be pleased to state what steps have been taken to place this branch of the Judicial service on a more efficient and satisfactory footing?

The Hon'ble Mr. Bliss.—X. The matter has for some time past been under consideration; the Government of India will be addressed at an early date.

The Hon'ble N. Subba Rao Pantulu.—XI. (*a*) In connection with the re-settlement of the Godavari district now in progress, has Government ordered that there should be a re-classification of soils in the Delta taluks?

(*b*) If so, will Government be pleased to state the reasons for ordering the said re-classification in spite of the pledges of Government embodied in the Settlement Manual and in the Standing Orders of the Board of Revenue, No. 1, paragraph 4, that in the case of districts once settled there will be no re-classification of the soils?

(*c*) Will Government be pleased to place on the table the reports received and the orders passed by Government on the subject?

XII. Will Government be pleased to state the reasons that led to the change made in May last in the principles of re-settlement so long accepted by Government and the people?

The Hon'ble Mr. Grose.—XI. (*a*) Yes. The Government, upon considering the reports of the Deputy Commissioner and of the Revenue Board, decided that a re-classification of the soils of the Delta of the Godavari was necessary.

XI. (*b*) and XII. In 1883 the Madras Government, on a reference from the Government of India, intimated that it was prepared to assent to the principle that, in districts in which the revenue had been adequately assessed, the rates of assessment should be revised entirely with reference to prices, and that no re-classification of soils or re-calculation of grain outturn should be attempted. But the Secretary of State, in a despatch dated 8th January 1885, to the Government of India, refused to consent to the general scheme for the amendment of the settlement system proposed by the Government of India, especially that part of it which contemplated that the enhancement of assessments should be determined solely on the ground of a rise in prices, and declared against the policy of laying down hard-and-fast rules pledging the Government of the future to a particular line of action in dealing with revisions of settlement. This despatch was communicated to this Government only in November 1893, and it then became necessary to issue instructions to the Board of Revenue to revise the Standing Orders and the Settlement Manual, with a view to bring them into agreement with the policy laid down by the Secretary of State. This was done in G.O., No. 263, Revenue, dated 11th May 1895. Between 1883 and 1893, Government had no intimation that the scheme for re-settlement set forth by the Government of India had been disallowed.

XI. (*c*) The Government is not prepared to place upon the table the papers asked for by the Hon'ble Member.

The Hon'ble N. Subba Rao Pantulu.—XIII. Is it a fact that Godavari is one of the districts held by Government in 1883 to have been adequately assessed in the settlement of 1861, and consequently exempt from re-classification?

The Hon'ble Mr. Grose.—XIII. In reply to a letter from the Government of India, this Government wrote in 1883 that it would assent to the proposal that increase of prices should alone be considered in future revisions of settlement in districts in which the revenue had been adequately assessed, and added that "such districts will be those which have been surveyed and in which the assessments have been fixed by the Settlement Department." Godavari is one of the districts mentioned amongst those

tors, such as is contemplated by Regulation XXVI of 1802, is maintained in Malabar. The revenue patta is made out in the name of the occupant, whether he is the proprietor or a person holding under a proprietor, and the collectors of the revenue deal only with him. What necessitated the adoption of this system of settling with the occupant, which has been designated by the High Court as an "anomalous" system, was the circumstance that when the land tax was fixed by the Mysore Government the *janmis* had either fled from the country or could not be induced to attend at the cutcherries of the Mysore officials. It was continued after the British Government obtained possession of the country, because it was suitable to the retiring habits of the *janmis* and to their frequent absenteeism, because it suited the peculiar land tenures of the district and because it always worked so well that Government never found occasion to interfere with it. The High Court has decided that in Malabar the *janmi* is legally entitled to be registered as proprietor under Regulation XXVI of 1802; that he is the person to be treated as landholder under the Rent Recovery Act; and that Government must deal with him in taking steps for the realization of the revenue payable on the land. This makes it necessary to register the *janmis* and to give the Collector authority and machinery for the purpose. Hence the Bill which will enable the Collector to register the proprietors as landholders after summary inquiry. It gives him no power to determine titles in cases of dispute and leaves objecting parties to get their titles established in the Civil Courts.

It has been suggested that in the peculiar circumstances of Malabar it would be politic to make the tenants in some cases responsible for the payment of land revenue on the land occupied by them. There is a great deal to be said in favour of this position, but the provisions necessary to establish it would require long and careful consideration and would involve a change in what has been the law of this country for a century. It must therefore be postponed for future consideration and there will be an opportunity for this when the Malabar Tenancy Law which is engaging the attention of Government and which, I hope, will shortly be laid before the Council is discussed. The Government of India have told us that the necessity for such a law is urgent, and that speedy action must be taken with respect to it.

It has also been suggested that the necessity for the registration of *janmis* has been suddenly discovered and that the Bill has been "sprung" on the public without giving them time for due consideration of it. The necessity for the registration became obvious when the High Court issued its decree in September 1889, six years ago, and Government issued a public proclamation in April 1893, two years ago, which contains the following passage:—"With a view therefore to bring the public registers maintained under Regulation XXVI of 1802, of which the pattas are the counterparts, into conformity with the requirements of the law as enunciated by the High Court, to safeguard the revenues of the State and to place the janmis in that legal position which the High Court has declared they should occupy, His Excellency the Right Hon'ble the Governor in Council has been pleased to direct that with a view to the accurate registration of *janmam* titles every individual *janmam* estate . . . . shall be separately surveyed and registered . . . . and that the name of the *janmi* of each such estate shall be ascertained by summary enquiry . . . . subject to the ultimate decision of the civil courts in cases of disputes."

The Bill has been framed on the lines of the summary provisions of the Codes of the Panjab and the Central Provinces, under which the "Records of Rights" in those provinces are prepared and maintained. The word "prospectively" in the definition of "estate" in section 2 refers to the fact that the land of a *janmi* is not liable to payment on account of land revenue till it is actually taken up by an occupant. Sections 3 to 5 give the *janmis* an opportunity of coming forward and stating their claims before the Collector proceeds to make the summary inquiry under section 6. It will be observed that according to section 4 the District Collector, or the chief local officer in charge of the revenue administration of the district, is to fix the date for the registration of estates in any local area, whereas under section 6 it is the Collector or any officer who for the time being is authorized to exercise the powers of the Collector, who is to hold the summary inquiry and to register. This work will generally be done by the Deputy Collectors who have been appointed for the purpose. Under Act 7 of 1827 they are subject to the same control in all respects as a Covenanted Assistant Collector is subject to, and under Regulation VII of 1828 the proceedings of such Assistant Collectors are "subject, in all cases and in the fullest manner, to

the superintendence, control and revision of the Collector, who shall have power to direct generally that the proceedings of any of his subordinates shall be regularly submitted to himself before the decision, order, or sentence, is carried into execution and to confirm, modify, or annul them, or issue any further orders in the cases as he may see fit."

It has been doubted, considering the reluctance of *janmis* and tenants to submit to the registration, whether the officer authorized to hold the summary inquiry under section 6 will have power, as a Revenue Court, to punish persons guilty of contempt of court, and to compel the attendance and true answering of witnesses; but I do not think these doubts are well founded. Under Act III of 1869 Revenue officers have power to summon all persons resident within the district and require the production of any document which they consider may be relevant Under Act V of 1893, when an officer has been appointed to make an inquiry into any matter connected with the administration of the revenue, he may examine any one and reduce into writing the statement made by the person so examined, and the person is bound to answer truly. Under section III of the Indian Evidence Act the word "Court" includes all persons legally authorized to take evidence and "evidence" means and includes all statements which the court permits or requires to be made before it by witnesses, and all documents produced for the inspection of the court. Under section 4 (*a*) of the Indian Oaths Act X of 1893 all courts may administer oaths and affirmations and section 14 requires that persons giving evidence shall be bound to state the truth.

The restriction in section 7 was taken word for word from section 78 of Act XVIII of 1881 of the Central Provinces, and was meant to meet the fact that if the Collector were bound to hear all evidence tendered, the work of registration would take up an enormous time, but on further consideration we have come to the conclusion that the restriction might be relaxed to a certain extent, and that in cases of dispute the nature of the dispute, &c., should be recorded. I have given notice of an amendment to this effect.

The latter part of section 8 about costs would not be necessary in any other district. There, suits as to title are frequent. The Collector always professes himself ready to abide by the decision of the court and costs are never given against him. However, the procedure in Malabar will be entirely new, and it seems desirable that the security of the Collector from costs should be expressly provided for there. The provision affects the Civil Procedure Code, so the prior consent of the Governor-General is necessary under section 5 of the Council Act of 1892. It has been granted.

Section 12 is a very important section. I have given notice of an amendment which will not alter its meaning in any way, but will make that meaning clearer.

With regard to section 14, I would only remark that to avoid delay, if for no other reason, it is desirable that appeals should stop with the District Collector. He has, as I have said, full power to revise the proceedings of the registering Deputy Collectors and nothing further is required. The prior consent of the Governor-General has been given to section 15.

As section 16 is worded it unintentionally contravenes section 12 inasmuch as it allows any person to bring a suit for land which has been sold under the Rent Recovery Act. If the Bill is taken into consideration, I intend to propose an amendment which will make it consistent with section 12.

And here my Lord, I may say, that if the Bill is read in Council, it is my intention to propose that it should be referred to a Select Committee and not passed into law at once. On the agenda paper it is stated that I will move that the operation of the Council rules be suspended in view to the immediate passing of the Bill, but with your Lordship's permission, I will refrain from making that motion.

In 1893 it was considered that the purpose of the Bill might be effected without legislation; it simply directs the carrying out of an operation which was made compulsory by a Regulation passed 93 years ago, but as the Regulation has remained in abeyance so long, and as the results attending the application of it in Malabar will be so considerable, it has been thought expedient by the Executive Government to give it the publicity ensured by bringing the Bill before the Legislative Council.

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

The motion was put to the Council and carried unanimously.

His Excellency the President.—The Secretary will now read the title of the Bill.

The Secretary read the title of the Bill.

The Hon'ble Mr. Grose.—My Lord, the Bill having been read in Council, the question now arises whether it should be referred to a Select Committee. As I have stated already, I do not think it is absolutely necessary to pass the Bill into Law at once. There appears to be a general desire for time to consider it, and I move "that the Bill be referred to a Select Committee."

The Hon'ble V. Bhashyam Aiyangar seconded the motion, which when put to the Council was carried unanimously.

The Hon'ble Mr. Grose.—I move "that a Select Committee consisting of the following gentlemen be appointed to consider the Bill with instructions to report on the same within ten days: the Hon'ble Mr. Bliss, the Hon'ble the Advocate-General, the Hon'ble Mr. Gibson, the Hon'ble V. Bhashyam Aiyangar, the Hon'ble C. Sankaran Nayar, the Hon'ble C. Vijiaraghavachariar, and the mover."

The Hon'ble Mr. Price seconded the motion, which, when put to the Council, was carried unanimously.

A BILL TO LIMIT THE LOCAL EXTENT OF THE MADRAS RENT RECOVERY ACT VIII OF 1865.

The Hon'ble Mr. Grose.—My Lord, I have the honour to move that Bill III of 1895, being a Bill to limit the local extent of the Madras Rent Recovery Act VIII of 1865, which has been published under rule 33, may be read in Council.

The Bill is limited to one section which states that the provisions of the Rent Recovery Act shall not apply to Malabar or the Wynaad. The question has been mooted whether by simply providing that the Act shall not apply to Malabar we shall revive the Regulation which it repeals as regards Malabar This doubt is met by section 9 of the General Clauses Act I of 1891, which states that for the purpose of reviving a repealed Regulation, it shall be necessary expressly to state such purpose.

Under section 3 of Act VIII of 1865 all the inamdars in Malabar, where 11,500 acres are held on that tenure, and under section 13 all landholders under ryotwari settlements or in any way subject to the payment of land revenue direct to Government and all registered holders of land in proprietary right who have taken a written agreement from their tenants as to rent may proceed to recover arrears by distraint. The Act was passed thirty years ago, but no arrears have yet been realized under it in Malabar. The proprietors there, when their tenants owed them arrears, have always resorted to the ordinary procedure of the Civil Courts. There are many reasons for this. The chief is that an idea that *janmis* could not recover rent from their tenants under the Act seems to have been prevalent throughout Malabar. It was based on the fact that distraint has never been known in Malabar, and though it was a mistaken idea, it had as much influence as if it had been correct. But the distraint clauses, so far as the existing law goes, might be used any day and they will no doubt be used if they remain the Law, when the *janmis*, being registered, become, one and all, directly responsible for the payment of revenue. It is in the highest degree inexpedient that this summary power of distraint should be exercised in Malabar. This fact has always been recognized in Travancore, and when the Bill with regard to *janmis* and tenants now before the Travancore Council was under preparation, it was insisted on. In the statements of objects and reasons this quotation is made from the report of the Janmi Commission: "The power of distraining for arrears given by the Madras Regulations to the landlords is a power liable to great abuse in the hands of needy agents of *janmis* and cannot safely be entrusted to them without causing wide discontent. Distraint was unknown to the Travancore and Malabar systems of land tenure, and the introduction of the novel expedient of distraint by private landlords cannot be thought of until other and less objectionable remedies have been tried and found inefficacious." In the minute of 1885 by Sir Charles Turner on the draft Bill relating to Malabar land tenures he said: "Malabar Law contained no provision for distraint. No one experienced in the mischiefs that attend that remedy in other parts of India can doubt that this in itself was an enormous advantage." The exercise of the power of distraint by Hindu *janmis*, or, as will generally be the case, by their agents, who are often a low class of men, on their Moplah tenants is likely to lead to a repetition of those outbreaks of which there was a bad instance last year. To us who are responsible for the administration of the country it seems manifest that these outrages are often caused or fostered by agrarian discontent, and that if the landlords in Malabar have the powers of distraint possessed by landlords in other parts of the Presidency, we cannot be assured of the peace of the district.

Recognizing the fact that the *janmis*, though it was impossible to give them the summary powers of distraint which are contained in Act VIII of 1865, might want modified powers of distraint in order to be able to realize their rents and pay the Government demand, it was at first proposed to give them the same powers of distraint through the Civil Courts which are granted to the zamindars of Bengal under Chapter XII of the Bengal Tenancy Act, but the Government of India have asked us to consider the necessity of any distraint very carefully. At present, as I have stated, distraint is not exercised in Malabar or Travancore. In the Punjab nothing in the nature of distraint exists and no inconvenience or hardship results from the want of it. In the Central Provinces there are no summary powers of distraint, but the landlord may prohibit the removal of produce while he sues for rent. The question as to how far distraint is necessary is one of some difficulty everywhere, and the special circumstances of Malabar make it specially difficult there, so it is proposed to leave the subject to be dealt with in connection with the Tenancy Law for Malabar, which, as I have said, is now engaging the attention of Government. I have just had put into my hands a petition from the *janmis* of Malabar in which they urge that they would require the power of distraint when they have to pay revenue to Government, and that it is therefore desirable that the Bill should not be passed into law. After carefully considering what they have said, I have come to the conclusion that the necessity for preserving the peace of Malabar is such that the Act must be suspended at once.

The Hon'ble Mr. Arundel seconded the motion.

His Excellency the President.—The question is that the Bill be read in Council.

The motion was put to the Council and carried unanimously.

His Excellency the President.—The Secretary will now read the title of the Bill.

The Secretary thereupon read the title.

The Hon'ble Mr. Grose.—My Lord, the Bill having been read, the question now arises whether it should be referred to a select Committee. I do not think it necessary or desirable so to refer it. This, of course, would involve delay, and in a matter like this, which concerns the public peace, delay should be avoided. The chief duty of a Select Committee is to shape a Bill so as to accomplish the objects aimed at. This Bill is so short and plain that there will be nothing for the Select Committee to work on. I will therefore move: "That this Bill be not referred to a Select Committee."

The Hon'ble Mr. Arundel.—I beg leave to second the motion.

The Hon'ble V. Bhashyam Aiyangar.—My Lord, I submit that this Bill may be referred to the same Select Committee, to which the other Bill has been referred, with instructions to report on it also within ten days. If there is any apprehension of section 13 of the Rent Recovery Act being enforced by landlords in Malabar, that will take place only when the registration of land under the other Bill is completed, and probably not until the new settlement. If the provisions of Act VIII of 1865 have not hitherto been availed of by the landlords in Malabar, there is no fear that they are likely to be enforced immediately. Of course, as explained by the Honourable Member in charge of the Bill, and as stated by the association of *janmis* in the memorial that has just been referred to, there is a likelihood of the provisions of section 13 of the Rent Recovery Act being availed of by the landlords, when the *janmis*' names are substituted for those of the tenants. As has been already explained, hitherto pattas were issued in the name of the actual occupant, that is, the tenant; and he was held liable for the revenue due to Government, process being taken against him. In this state of things, there was no occasion whatever for the *janmis* to avail themselves of the provisions of section 13 of the Rent Recovery Act. Though this Bill purports to exclude Malabar from the whole of Act VIII of 1865, yet practically it would be only section 13 of the Rent Recovery Act that would be

repealed so far as Malabar is concerned. In the very nature of things, the rest of the Act is scarcely applicable to Malabar, because there are no zamindaris, mittas or jagirs in it; and therefore the provisions of the Rent Recovery Act relating to exchange of pattas and muchilikas and summary suits are inapplicable to Malabar. I may state that so far as section 13 is concerned, though the Act has been in full operation throughout the Presidency for years, yet even in districts other than Malabar, the provisions of section 13 have rarely been availed of by landlords, for the purpose of levying by distraint the rents due by tenants to whom the land has been let under an agreement in writing. No doubt, in other districts, the provisions relating to the distraint of the tenant's property have been fully availed of by the proprietary class of people, namely, zamindars, inamdars and jagirdars; but so far as ryotwari holders are concerned, there have been indeed very few cases in which the provisions of section 13 have been availed of. In Malabar it has not been availed of as already stated, and inasmuch as the occasion, when it is apprehended that the janmis will avail themselves of the provisions of section 13, will not take place until the passing of the other Bill—or rather until the other Bill is carried out—, I think this Bill may be referred in the usual course to the Select Committee. I think that this Bill, being a cognate Bill, may be considered by the same Committee, and possibly may be incorporated with the other Bill, thus avoiding the necessity for a separate Bill and a separate Act for repealing, either in whole, or in part, Act VIII of 1865. It is just as easy to incorporate its provisions in the Land Registration Bill which it is proposed to pass in respect of Malabar. Nobody will, for one moment, question the statement made by Government after due inquiry, that there would be a likelihood of the breach of the peace, if the janmis avail themselves of the provisions of section 13 in Malabar, when this registration is effected, and the revision of assessment also takes place, which, I presume, will result in the enhancement of the present assessment. Though nobody would maintain that there would be no breach of the peace, if the summary power of distraint should be allowed in Malabar, yet it is possible that some suggestion might be made and might be considered by the Select Committee, which would have the effect of mitigating the hardships that the landlords complain of. The complaint they make is one the reasonableness of which is patent on the face of it; and I am glad that it is the intention of Government to bear this in mind and to provide for it in the Tenancy Bill which it is proposed to introduce in respect of Malabar. From the nature of the Bill it is sure to be a very comprehensive one, and though we may all wish and even expect that it may be passed soon, yet we know from our experience that our wishes as a general rule are not realized and that important measures are delayed very long. Therefore if some suggestions can be made which can be introduced in this very Bill or in the Land Registration Bill, and which may satisfy the landlords to a reasonable extent, I think the necessities of the case can be met. Of course I do not say whether it will be possible to do so or not; but it seems to me that the matter is one that is worthy of consideration, and I submit there is no immediate apprehension of any danger of breach of the peace in Malabar. The complaint which the *janmis* make is this; that hitherto the land revenue due to Government out of the profits of the land was collected and received by Government direct from the tenant, while the landlords received from the tenants only the *micchawaram* of the profits of the land. But after the registration of the land, the name of the *janmis* will be substituted for that of the tenants, and the landlord will have to advance out of his own pocket the assessment due to Government, so that Government may not adopt coercive measures and distrain *his* movable property. When the tenant knows that Government is not going to levy it from him and distrain his movable property, and that the landlord cannot distrain his movable property and summarily collect the rent from him, his natural tendency will be to put off payment of the rent and to leave the landlord to enforce his remedy by the tedious process of a law suit, because it is proverbial in India, if not in every other country, that debtors are not very anxious to discharge their debts. Further it is to the interest of the tenant to drive the landlord to a Law Court, because the courts will charge him only 6 per cent. interest. The result is, he were to borrow elsewhere and would have to pay 12 per cent. that the landlord will not only have to wait to receive what payment of it as his profit, but will have to advance out of his own pocket the may be due to Government. For these reasons I oppose the motion made by the re... Member in charge of the Bill.

The Hon'ble N. Subba Rao Pantulu.—I rise, my Lord, to oppose the motion before the Council that this Bill should not be referred to a Select Committee. I rise to oppose the motion because, I understand, it is the intention of the Hon'ble Member in charge of the Bill that it should be passed into law at this meeting. After reading the Statement of Objects and Reasons for this Bill and after listening to the speech of the Hon'ble Member in charge of the Bill, I am still not convinced of the urgency of this measure. Only three weeks' notice was given to the public with regard to this Bill. It is admitted that the Rent Recovery Act has been in force for nearly thirty years, and the reason or rather the necessity for repealing that Act so far as Malabar is concerned, is that the Council is passing another Bill, according to which the names of the tenants will be removed from the registers and the names of the proprietors, namely, the *janmis*, will be substituted therefor, and that on the introduction of the new settlement, the *janmis* may have recourse to the Rent Recovery Act—which is not considered desirable. If that is the reason for suspending the operation of the Rent Recovery Act so far as Malabar is concerned, then till the Land Registration Bill is passed into law, their names will not be registered. As the law stands at present in Malabar, the interests of the proprietors of land are sufficiently protected so far as the demand of Government is concerned. The process is first issued to the tenant in occupation and without any difficulty the revenue due to Government is collected from the ryots. Hereafter it is the proprietors of land, the *janmis* that will be held directly responsible for the revenue to Government, and therefore until their interests are sufficiently protected by the passing of the measures contained in the other Bill, I think it is rather too early to suspend the operation of Act VIII of 1865. I cannot see, therefore, the urgency of passing this measure at once without giving sufficient time to the public to lay suggestions before the Council. I am against the suspension of the Council rules, of which the Hon'ble Member in charge of the Bill has given notice, and which will be necessary if this Bill is to be passed into law at this meeting. Unless very strong reasons are put forward, I submit that such a procedure ought not to be adopted. I submit that no strong reasons have been placed before the Council to suspend the ordinary rules of procedure and to pass this Bill into law at once. As has been pointed out by the Hon'ble V. Bhashyam Aiyangar, if this Bill goes before a Select Committee, several suggestions may be placed before that body which would not place these *janmis* in a worse position than they are in at present. I think it is the duty of this Council to protect the interests of landlords as well as of tenants. There are several aspects of the question which concerns not only tenants, but also proprietors and which will have to be considered in passing these two Bills, so that it will be much better if these two Bills are taken up and considered together. I therefore oppose the motion for not referring the Bill to a Select Committee.

The Hon'ble the Maharaja of Vizianagram.—My Lord, with your Excellency's permission I wish to say that the previous speakers did not grasp the point of the Hon'ble Member in charge of the Bill when he proposed to pass the Bill into law at once and not to refer it to a Select Committee. No reason has been shown by the previous speakers to refer the Bill to a Select Committee. I think it is clearly necessary that it should not be referred to a Select Committee at all. Delay is dangerous in this instance. It is a sheer waste of time to refer the Bill to a Select Committee and no valid ground has been put forward for so doing, either by the Hon'ble V. Bhashyam Aiyangar or by the Hon'ble N. Subba Rao Pantulu. Any delay in this matter will be prejudicial to the interests of those that come under this Bill.

The Hon'ble P. Rangayya Nayudu.—I think we could have advanced arguments against the suspension of the operation of Act VIII of 1865, but I would only say that not a single reason has been adduced to induce us to vote for the suspension of rules. The suspension of rules is only to be availed of when there is an immediate danger apprehended; and if that immediate danger is to be avoided, then there is necessity for suspending an enactment. But here there is no immediate danger that has been apprehended or has been shown to exist, and therefore I do not see what necessity there is to pass this Bill in this unusual, unwarranted and indecent haste.

The Hon'ble Mr. Crole.—My Lord, I would appeal to my Hon'ble friend Mr. Grose to give way to what is evidently the general feeling of the non-official members, and to what is likewise my own feeling on the matter. The subject of land-holding in Malabar is an intricate one, so intricate indeed that I am about to

proceed to Malabar to investigate the tenancy question. I intend starting the day after to-morrow for that purpose. I cannot see why the Council should be asked to pass the Bill in this haste under circumstances which cannot arise until the other Bill is passed. There cannot be a rush to take advantage of the provisions of Act VIII of 1865 until the names of the *janmis* are substituted for those of the tenants and until you have the registration complete. Mr. Grose has in a dark way hinted at interruptions of the public peace, but he has not favoured the Council with any grounds for this apprehension. I know of no reason. The other day a Judge from up-country informed me that Malabar was in a state which required a thorough looking into, and I asked him the reasons. He said: "There are general grounds for supposing that this new settlement is causing turmoil in the district." A Tahsildar of that district came to Madras, and when I interviewed him on the subject he said that so far from the Malabar settlement causing any apprehension or turmoil in the public mind, not a single soul knew anything about it, or cared to know anything about it. Till the settlement is actually introduced, these people are of such a curious nature, that they will not take any trouble to understand what is coming to them. Mr. Grose has not thrown the slightest light on the matter so as to enable the Council to judge of this upheaval that he imagines is imminent in Malabar. I would place before your Lordship what I know on the subject and the result of my investigation. Though I do not quite agree with the Hon'ble Bhashyam Aiyangar entirely in regard to the operation of Act VIII of 1865 on the landholders in Malabar, yet I cannot see that there have been any grounds placed before the Council for separating one Bill from the other, for referring the one to the consultative action of a Select Committee and rushing through the other and taking steps which can never be retraced. I doubt very much whether it is necessary to withdraw Act VIII of 1865 from operation in Malabar. What after all is Malabar? Malabar, excepting Ernad and Walavanad, is a district of exactly the same character as any other district in the Presidency, and in Ernad and in Walavanad people are supposed to be ground down by *janmis* and *kanamdars*. What reason is there to suppose that these *janmis* will at once rush upon the provisions of this Act, while the other Act is not passed? At all events there is not the faintest reason for saying that in the other taluks of Malabar, the Moplahs require to be protected from *janmis*. As for distraint by landlords, I consider that from experience in my own country, it would be a very good thing for the tenant. In Scotland the landlord can come down upon the tenant, and that tends the tenant to make the tenant careful. If he is left to spend what he gets from the land and is allowed to fall into arrears, nothing but a Civil Court can interfere and stop him from extravagance. I am entirely groping in the dark in regard to the necessity for this Bill. Looking at Act VIII of 1865, and comparing it with the cumbrous process of Civil Courts, I would prefer, in the capacity either of a tenant or of a landlord, Act VIII of 1865. Another reason is that a Judge under Act VIII of 1865 is a revenue officer who understands the technicalities of the revenue law and revenue tenure. I have been a judge myself, and I know the crass ignorance of both bench and bar in regard to revenue matters. In every case that came before me under this Act during the years that I was a Judge, the Bar and the Judge were alike at sea. I would earnestly ask your Lordship and the Council to think twice before you deprive the tenants of Malabar of the protection—I call it protection, for it is no other—of Act VIII of 1865. In any case I would ask the Council to demand very clear reasons for the statement that the public peace is at stake and may be broken, unless the Bill is passed at this meeting.

The Hon'ble Mr. Bliss.—My Lord, the Hon'ble Member who just sat down and also the Hon'ble V. Bhashyam Aiyangar have expressed great surprise that these two Bills should be separate; in fact they saw no ground whatever why there should be two Bills at all. It seems to me that a conclusive reason why they should be separated is to be found in the fact that they have absolutely no connection whatever in regard to their subject. One is intended to secure the Government revenue and for no other purpose; the other is intended to prevent what Government believes a considerable danger, namely, an outbreak in Malabar. By saying that, I do not mean to ask the Council to think that we have any information that an outbreak is imminent in Malabar. That is not the case. Fortunately Malabar is now in an exceedingly peaceful state and we hope that it may long continue to be so. But it will be in the recollection of the Council that only eighteen months ago we had a serious outbreak. The whole history of Malabar seems to me to show that at no moment can we consider ourselves

absolutely secure. In Malabar, as in other places, it is the unexpected that always happens. Although we have at the present moment no grounds of apprehension that an outbreak is imminent in Malabar, yet it is impossible to disguise from oneself the fact that if this right of distraint which is now a legal right in Malabar is to be allowed, there will be every opportunity for an outbreak occurring. In the rest of the Presidency ever since the beginning of the century, distraint by landlords has been allowed and people are well accustomed to it; and as far as I can recollect there has never been any tendency to resist the action taken by landlords under Act VIII of 1865. But the case is entirely different in Malabar. This right of distraint has never been put into force in Malabar. I would ask any impartial person who considers the excitable nature of the people of Malabar and the many causes which there lead to dissension between the landlord and the tenant to picture to himself what must be the effect of one of the *karyasthans* or the agents of the *janmis*—who are represented to us as being not altogether the most desirable class of persons—going into the house of a Moplah and attaching his goods and chattels, and perhaps the very jewels on his wife's person. In the event of a thing of that kind occurring, it is almost certain to be followed by the breaking of the head of the *karyasthan*, if not by something very much worse. As far as I can see, if you wish, to a certain extent, to preserve the peace you should prevent the landlords of Malabar from exercising in future a right which they have hitherto neglected to exercise. As to the argument that has been adduced that until the registration of the *janmis* of Malabar is completed, circumstances do not arise under which it would be necessary for them to take advantage of Act VIII of 1865, I have to say that several months ago we appointed officers to carry on the work of registration in Malabar. I cannot say how far they have carried out that work, but the work of registration has been entirely completed to the best of my information in the South-East Wynaad. Therefore the *janmis* in the South-East Wynaad are at the present moment in a position to take advantage of this Act VIII of 1865, unless the law is altered. Therefore it seems to me it is not a case of waiting until the registration of the *janmis* is completed; but it is a case that may occur at any moment, the possibility of which will be increasingly more frequent as the number of registered *janmis* is increased. Another argument that has been used was that with the exception of Ernad and Walavanad, Malabar is just the same as any other district of the Presidency. That I think is a matter that I venture entirely to traverse. The fact of the matter is that one of the worst outbreaks that ever occurred in Malabar occurred in North Malabar; and I cannot see there is anything whatever to prevent another outbreak occurring there again. The argument used by the Hon'ble Subba Rao Pantulu was that it was a sudden proceeding to abrogate the law all at once, law which has been in force for thirty years. The point of the whole thing is that although the law has been nominally in force, yet it has not been practically in force in the district, and what we want to do is to prevent it from being used. If the landlords want to recover their dues, they must go to the Civil Courts. It is quite true that we have under contemplation the enactment of a special law for Malabar, but when that matter is taken up, which will be shortly, the question will also be carefully considered whether it will be right to give any right of distraint to the landlords of Malabar. The Hon'ble Members who have studied the course of legislation in regard to land in other parts of India must be perfectly well aware that there is a very strong feeling in most influential quarters, quarters much more influential than anything here, that such a right should not be allowed. The rights of distraint which they have in Bengal are exceedingly small, in the Punjab they have absolutely none, and in the Central Provinces they are very small. There is no question whatever that if we are determined to enact that the landlords of Malabar shall have any right of distraint in any shape or form, we may take it for granted that our proposals will be strongly opposed in very influential quarters. Indeed for my part it seems to me that by this Bill which is before the Council, we propose to take away nothing from the *janmis* of Malabar which they may be said to have. A man can hardly be said to have what he has never taken the trouble to make use of. It appears to me that in view to the possibility of a breach of the peace in the Malabar district, it is the bounden duty of Government to look about it and not to wait until it is a question of punishment rather than of prevention.

The Hon'ble C. Jambulingam Mudaliyar.—My Lord, with your Excellency's permission, I wish also to side with those Hon'ble Members who have opposed the motion

now before the Council. I shall not traverse the ground passed over by the Hon'ble V. Bhashyam Aiyangar as to the several bearings of each of these Acts, the position now and the would-be position of *janmis* and tenants, and the relief that would be required by the one or the other in case special action is taken under the Act. That portion has been so exhaustively gone over by the Hon'ble Bhashyam Aiyangar that I shall not touch upon it. But I wish to address myself specially to the particular manner in which this motion has been brought forward for the immediate passing of the Bill. The Statement of Objects and Reasons gives only two reasons for this Bill. For the present I shall not commit myself to any opinion as to whether this Act should be repealed or any other enactment in any form is necessary, that is to say, I shall address myself to this special motion and say that there is no necessity for passing it in a hurried fashion. There are two reasons, but two reasons, given in the Statement of Objects and Reasons. The first is that the Act has remained a dead letter; if for thirty years the Act could have been allowed to remain on the statute book and if during these thirty years we have not heard of apprehension or anxiety on the part of Government, I cannot see any possible danger or any serious apprehension in allowing it to stand for some time longer, till at least it is carefully and duly considered by the Select Committee along with the other Bill. The other ground which has been hinted at has now been explained by the Hon'ble Mr. Bliss. From the explanation we have heard from the Hon'ble Mr. Bliss, all that we can gather is the possibility of a recurrence of those outrages in Malabar and Wynaad which we had eighteen months ago and that it is possible that similar outrages might occur. The question is whether the Government is going to yield to the possibility of outrages or whether it will not sustain and maintain its own existing Laws, and carry them out till the Government sees adequate reasons to change them. My Lord I would submit that the hurried carrying out of this Bill would imply a confession of weakness on the part of Government to maintain and carry out its own laws. In the interests of peaceful Government, I would urge that the Government should not give any room whatever for any class of people to think that by a kind of rowdyism they can intimidate Government and get a law passed.

The Hon'ble the Maharaja of Vizianagram.—The Hon'ble Member is using words not necessary, and I therefore rise to a point of order.

His Excellency the President.—I do not think the Hon'ble Member is out of order.

The Hon'ble C. Jambulingam Mudaliyar.—Then again as regards the notice given in the Agenda paper that the Council be asked to suspend the rules, though that proposition has not been formally put, yet from the motion that is now before the Council that the Bill be not referred to Select Committee, I take it, since it has been referred to by my Hon'ble friend on my left, that the motion on the paper for the suspension of the Council rules is practically before us.

His Excellency the President.—We cannot allow any divergence. The question is whether the Bill should be referred to a Select Committee or not.

The Hon'ble C. Jambulingam Mudaliyar.—I touched upon it because my Hon'ble friend had referred to it, without any call of order from your Excellency. However when the particular motion of which notice has been given is made, I shall have my say. For the present I oppose the motion before the Council.

His Excellency the President, after consulting with the members of Government said.—Gentlemen, I beg to say that the Government has carefully considered the various points brought to its notice in the course of this discussion and that it is not prepared at this present moment to refer this Bill to a Select Committee. The fact of the matter lies in a nutshell. Hon'ble Members get up and say glibly enough that they do not see the necessity for this Bill; but I am bound to say on behalf of the Government that it has serious responsibilities on its shoulders which are not attached to Members. Deferring the consideration of this Bill to a future time means simply running very grave and serious risks which the Government is not prepared to take upon itself. I do not know what view the Council takes in the matter. It may be that members are prepared to cast aside the responsibility and allow the chance of

an outbreak in Malabar. Government is bound to state that in its opinion it is not prepared to run that serious risk and that for this particular reason—that the attention of the *janmis*, proprietors and tenants in Malabar has now been called to this question, and, as has been pointed out by the Hon'ble Mr. Bhashyam Aiyangar, the tenants are beginning to be aware of their position. They know that they are not called upon to pay the Government assessment and if they refuse to pay the *janmis*, what will be the result? The *janmis* will set to work and put section 13 of Act VIII of 1865 into force; and then there is the possibility of an outbreak occurring. We know that these outbreaks take place in a most extraordinary, sudden and unaccountable manner. I beg therefore to inform the Council on behalf of the Government that it is not prepared to run these grave and serious risks. Further, I cannot see in what way the Select Committee can modify this Bill which is intended simply for the cancellation of the Rent Recovery Act. It is impossible for me to see how the Select Committee can possibly modify such a Bill as this. There is one other point which I would like to mention now that I am speaking on the subject; and that is, we are asked to believe that except in Ernad and Walavanad taluks, *janmis* are exactly the same as zamindars in other parts of the Presidency. All I wish to say is that zamindars, ordinarily speaking, throughout the Presidency are assignees of Government revenue, while *janmis* are not. The Government is bound to protect in some way the assignees of land revenue and in that respect they differ from the *janmis*. I regret to say that Government considering the serious position that it is placed in, feels itself called upon to ask that this Bill shall not be referred to a Select Committee, feeling as it does that even a delay of a month might result in most serious troubles in the country the administration of which it is responsible for.

The motion was then put to the Council and carried by a majority of 14 to 7, the voting being as follows:—

For	*Against*
His Excellency the Governor.	The Hon'ble C. Sankaran Nayar.
The Hon'ble Colonel J. Pennycuick.	,, C. Vijiaraghava Chariar.
,, Mr. A. T. Arundel.	,, K. Kalyanasundaram Aiyar.
,, ,, J. Sturrock.	,, N. Subba Rao Pantulu.
,, ,, G. L. Chambers.	,, P. Rangayya Nayudu.
,, ,, D. Duncan.	,, C. Jambulingam Mudaliyar.
,, ,, J. F. Price.	,, V. Bhashyam Aiyangar.
,, ,, H. W. Bliss.	
,, ,, J. Grose.	
,, S. Srinivasa Raghavaiyangar.	
,, the Maharaja of Vizianagram.	
,, Ghulam Muhammad Hasan Ali Khan Bahadur.	
,, Mr. C. S. Crole.	
,, ,, E. Gibson.	

The Hon'ble Mr. Crole in voting for the proposition in reply to a question put by His Excellency the President said.—I vote for it in deference to the statement made by your Excellency.

The Hon'ble Mr. Grose.—My Lord, I beg to move that No. 46 of the rules, which requires that the Council shall not proceed to take the Bill into consideration for fifteen clear days, be suspended and the Bill be taken into consideration at once. The Bill was published on the 15th of October, nearly three weeks ago. The danger which will result from action being taken under Act VIII of 1865 is very great and is likely to occur any day. Now an outbreak is all the more likely to occur since, as your Excellency has said, the attention of the *janmis* and the tenants has been called to the fact that Act VIII of 1865 has as much validity in Malabar as in any other district in the Presidency. Hitherto it was wrongly thought by them that it had no such validity but the wrong thought has had the same influence as if it had been a right one.

The Hon'ble Mr. Price seconded the proposition which when put to the Council was carried by a majority 14 to 7.

The Hon'ble Mr. Bliss.—My Lord, now that the Bill is to be taken into consideration, there is a small verbal amendment that I would ask your Excellency's permission to put before the Council. The Rent Recovery Act is described as having been amended by Madras Act II of 1871 and III of 1890; but it has been brought to my notice that these are not the only Acts which amend the Rent Recovery Act VIII of 1865. Unfortunately I have not been able to give notice of the amendment and as it is a mere formal matter, I hope the Council will excuse me. If the Council will look at the wording of Act VIII of 1865, it will be found that two sections were repealed by Act XII of 1873. There is also another Act which amended Act VIII of 1865, namely Act VI of 1886. It amended section 48 of Act VIII of 1865. This was discovered by accident at the last moment and I therefore propose to omit the words "Madras Acts II of 1871 and III of 1890" in order to insert the words "subsequent enactments."

The Hon'ble V. Bhashyam Aiyangar seconded the motion.

The motion was put to the Council and agreed to.

The Hon'ble Mr. Grose.—My Lord, I now move that the Bill as amended be passed into Law.

The Hon'ble Mr. Price seconded the motion.

On the motion being put to the vote, there were—

For	...	...	16
Against	...	...	4
Majority for	...	...	12

A BILL TO AMEND THE MADRAS GENERAL CLAUSES ACT I OF 1891.

His Excellency the President.—We now come to the Bill to amend the General Clauses Act I of 1891.

The Hon'ble Mr. Bliss.—It is not for me to say very much on the motion that I have to make, namely, that the Bill be read in Council. The Bill is based on the opinion of the Government of India which is to the effect that in the legislation of Local Governments the words "the Local Government" shall be used to indicate the Government of Fort St. George in Council, that is to say, the word "Government" shall be used to indicate only the Government of India. This is merely a formal Bill and I trust that no opposition will be made to my subsequent motions that there should be no Select Committee and that rule 46 be suspended in order that it may be passed at once.

The Hon'ble V. Bhashyam Aiyangar seconded the motion which when put to the Council was carried unanimously.

His Excellency the President.—The Secretary will now read the title of the Bill.

The Secretary thereupon read the title of the Bill.

The Hon'ble Mr. Bliss.—I move that the Bill be not referred to a Select Committee.

The Hon'ble Mr. J. F. Price seconded the motion which when put to the Council was carried unanimously.

The Hon'ble Mr. Bliss.—I move that rule 46 be suspended and that the Bill be taken into consideration at once.

The Hon'ble V. Bhashyam Aiyangar seconded the motion which when put to the Council was carried unanimously.

The Hon'ble Mr. Bliss.—I move that the Bill be passed into Law.

The Hon'ble Mr. Price seconded the motion which when put to the Council was carried unanimously.

THE MALABAR MARRIAGE BILL.

His Excellency the President.—We now come to the Bill to provide a form of marriage for persons following the Marumakkatayam and Aliyasantana Laws.

Form of Marriage Registration.

The Hon'ble C. Sankaran Nayar.—My Lord, When I asked for leave to introduce this Bill I have described the various forms of marriage which are recognized by Marumakkatayam Hindus, as creating the relation of husband and wife in their society. In a marriage regularly performed, the horoscopes of the bride and bridegroom are examined by an astrologer and a day is fixed. Formal leave is obtained by the bridegroom from his elders, and on the appointed day he is taken in procession to the bride's house, the auspicious hour is then announced by the astrologer, certain ceremonies are gone through, and the marriage is consummated. It may be that all these formalities are not always gone through. There is very great difference of opinion among the witnesses examined by the Commissioners as to what formalities are essential to the formation of the marriage relation. Some witnesses even go so far to say that there is no ceremony or form that is essential, that mutual consent alone is necessary; according to a few others, cohabitation and subsequent acknowledgment of the relation is enough. In some parts of the district the Brahmins and the Rajas marry their Nayar wives with certain ceremonies; in other parts no formality is, as a rule, observed. According to some, the same distinction is observed in some parts of the district between marriages of Nayars of equal class and of superior and inferior classes. Rama Varma, Raja of Parapanad, one of the Commissioners, states in his report: "As taluks differ, so do the forms of marriage. In some taluks there are two or three forms of marriage. In the same form of marriage the ceremonies observed and the formalities gone through vary as amsoms or desoms do. In some places of Malabar there is no form of marriage even in its simplest sense." If we consider all the formalities essential, a good number of those sexual connections which are considered honourable may have to be regarded as simply concubinages, while some witnesses who hold no formality is essential would practically obliterate the distinction between marriage and concubinage. Naturally, therefore, the result of this uncertainty must be to lower the general moral tone, obscure the distinction between marriage and concubinage, and afford facilities for passing off concubinage as marriage. Accepting the view that marriage is essentially a civil contract, the Royal Commission on the laws of marriage of 1868 observe: "Society is entitled to insist that persons who are about to marry should celebrate the most important engagement in an open and unequivocal manner after due compliance with certain simple and uniform ceremonies. The Law makes clear and full provision for contracts effecting the sale of houses and land, horses and dogs, and goods and chattels of every description, and why marriage, the most important of all human contracts, should not be as anxiously defined and provided for, and thus placed beyond the reach of fraud and doubt, appears to be one of the greatest anomalies in the law of a Christian country." It is useful to bear these observations in mind. One of the great objects of legislation being, therefore, to place marriage beyond the reach of fraud and doubt, to give such security to a marriage union that, a certain formality being complied with, it should afterwards be open to challenge, if at all, only on grounds which are certain and specified, I adopted the form of solemnizing marriages before a Registrar which had already obtained the sanction of Government (Act III of 1872). My reasons were that no particular form of marriage has been accepted by a majority of people in Malabar, and few people were agreed as to what were essential to form a marriage union, and, as long as these forms and ceremonies are considered essential to the validity of a marriage, doubts may often arise as to their validity, and persons interested will attempt to set aside these marriages on the ground that they were irregularly and not duly performed. This Bill abandons these provisions and it drops the statutory form of marriage. Legislation which deals with the Law of marriage which must influence the moral condition of the people, must have their sympathy and support. They have now adopted various forms of marriage which prevail in various parts of the district, and they do not therefore want a statutory form. Further, it is certain that statutory form will not be generally adopted for some time to come, and it does not enable parents to legitimize their children born previously to marriage before the Registrar. It is impossible, therefore, to adopt a

Law which requires solemnization before a Marriage Registrar as essential to its validity, and thus create a difference between the status of children born previously to and subsequent to registration, though the marriage connection itself may have been formed according to custom. It will prevent this measure from attaining any considerable degree of success. We have therefore to give up the statutory form of marriage as repugnant to the feeling of the people, and proceed to legalize under certain conditions the social marriages now existing. But the Bill is only permissive. We cannot therefore declare that all social marriages shall be considered marriages in the eye of our Law, as many people might prefer the continuance of their present sexual relations, which remain unrecognized by Law. We have therefore provided in the Bill that those who wish their social marriages to be recognized by Law, or for rights to flow from that relation, may register the same as evidence of its legal recognition. It is only such unions as are recognized as marriages by society that are allowed to be registered under the proposed Act. Registration will also materially serve the purpose with which the statutory form of marriage was advocated and remedy the evils intended to be provided against by the statutory form. By registration and declaring (Section 12) that the marriage certificate shall be evidence of the truth of the statements therein contained, we secure contemporary and unimpeachable evidence of the fact of marriage. The Bill of course provides for service of notice on the guardians or karnavans of the tarwad of the parties of the application to register the marriage, and a period of three months is allowed, within which any person interested might sue in the Civil Court for a declaration that the marriage ought not to be registered, as it contravenes one or more conditions of a valid marriage. The consent of the guardian should have been obtained if the parties are below the age of 21.

Caste—Section 7 (*c*).

The main object of registration being, as stated in the Proceedings of Government, to provide unimpeachable evidence of a *customary* marriage, it is necessary to secure, if possible, that no marriages which do not conform to usage are registered. Every facility has been therefore given to the relations of either of the parties to take the necessary steps to prevent registration of marriages opposed to custom. It is therefore necessary that the marriage to be registered should not be contrary to caste and recognized custom. The policy adopted in this Bill is to respect, and not to oppose, any caste or social usage of the people. We have to see on the one hand that this legislation is not availed of by men to set at defiance the usages of the caste they belong to. At the same time it is necessary to provide against empowering by this legislation caste or any class as a body to place restrictions on the liberty of action which may have been hitherto possessed by any member. It is also necessary to guard against stereotyping usage by legislation, but room must be left for development and change of custom. These principles have been kept in view in drafting this Bill. Any member of the tarwad of either of the parties or any other individual who is interested in the matter may record his objection before the Registrar. Then the marriage shall not be registered for a certain period during which time he may bring a suit to declare that the marriage is obnoxious to the usages of the caste; and in case of his success in the suit, the marriage shall not, of course, be registered; otherwise it may be. But if the marriage is registered with the consent of the members of the tarwad, or of the caste, then certain civil rights which I shall presently refer to flow from the relation unless the marriage is null and void on the ground of bigamy or as being within certain prohibited degrees. As the marriage of any person below the age of 21 could be registered only with the consent of his guardian, and females are almost invariably married before that age, there is no reason to apprehend any hasty union, no reason to fear any violation by young persons of social or caste usage; as marriages could be registered only after notice to the karnavan of the tarwad, as the tarwad and the caste are empowered to protest against registration, it is scarcely likely that there will be any violation of family or social usage. When the responsible guardians consent to the union, believing there is no obstacle to the marriage, when the tarwads of the parties celebrate the marriage with the usual ceremonies, and the members of the castes of the parties sanction it by their attendance and taking part in the ceremonies and festivities that accompany the consummation of the marriage, and when the tarwad after notice to them and the caste people allow the marriage to be registered and the guardians give

pre-supposes the paternal family as the social institution, we shall have to modify the [illegible] maintenance and guardianship. We shall have to alter the law

their consent to such registration as if no impediment to the union existed, it may be safely assumed that the marriage has been in strict conformity to custom and it should not afterwards be impeached on that ground. "If reasonable time for bringing forward objection to the registration of a marriage is given it appears just and proper that registration should be final."—*Government Order, 30th October* 1894. I entirely agree in this view. Where the parties do not belong to any particular caste, these observations, of course, do not apply.

Consanguinity.

Again, if the relation of the parties be such that marriage between them is prohibited by their usage, then the Registrar shall not register the marriage if objected to. According to our custom, the rule as founded on consanguinity is that persons descended in the female line from a common female ancestor are not allowed to marry one another. With reference to forbidden affinity, there is a difference of opinion. It seems to be admitted that prohibition extends to such relations as stand in the position of parent and children. Whether it extends further and how far it extends I am unable to say as the inquiry showed a conflict of opinion on this point. It appears to be clear, however, that the rule of prohibition as regards affinity is not the same as the rule respecting consanguinity. We have therefore provided, as I have already stated, that the Registrar shall not register marriages when objection is raised to the same as being obnoxious to the customary law, but even a registered marriage if opposed to custom will be void if the parties are related to each other within the fourth degree.

Bigamy.

A marriage is also void notwithstanding registration if either of the parties has previously registered a marriage which is still subsisting. As to polyandry it has died out, and as to polygamy it is acknowledged to prevail but seldom, and as freedom of divorce is allowed this prohibition cannot be objected to as effecting a material change in the habits of the people. As pointed out in the Proceedings of the Government of Madras, dated 30th October 1894, "such a prohibition is necessary to prevent those difficulties as to the right to maintenance and the devolution of property which will certainly otherwise arise." It is also remarkable that in Natal polygamous marriages of Indians are prohibited though such marriages contracted in India are recognized there. I may state that the Commissioners were unanimous in holding that polygamy and polyandry ought not to be recognized by the proposed Act.

Having dealt with registration, I now proceed to the civil rights that are attached to registered marriages.

First as to maintenance and guardianship.

According to the theory of the law, the members of a tarwad all tracing their descent from a common female ancestor in the female line live together under the guidance and superintendence generally of the senior male called the karnavan.

He is constituted the legal guardian of all the children in the tarwad, both during the mother's lifetime and after her death, and the father has by law no right to their custody. In the words of the High Court, "by the principles of the law in Malabar, the mother herself while alive and her children too are under the guardianship of the head of the family—the karnavan. Their position is precisely analogous to that of the members of a Roman family under Patria Potestas. The karnavan is as much the guardian and representative for all purposes of property of every member within the tarwad as the Roman father or grandfather. Moreover, the relation between husband and wife does not in Malabar disturb their condition. These children have no right whatever upon the property of their father but their rights are entirely in the karnavan's family. There is no doubt at all that he was during the father's lifetime, and continues to be after his death, the legitimate guardian of the children, and the father has by positive la[illegible] not the smallest right to their custody." But the guardianship does not carry with it any personal obligation to support any member of his tarwad by his own labour and from his own self-acquisition. He is only responsible if the family possesses ancestral property and to the extent of that property.

He is entitled to the possession of such property which is impartible and is absolute in its management. "The junior members have only a right to residence and maintenance in the family house. Outside the tarwad home they are not entitled to claim such maintenance. He is not accountable to any of the members of the tarwad for the income of it, nor can a suit be maintained for an account of the tarwad property in the absence of fraud on his part nor claim any specific share of the income. An absolute discretion in these respects is vested in the manager. His management may not be as prudent or as beneficial as that of another manager would be, but unless he acts *mala fide* or with recklessness or with incompetency, he cannot be removed from such management; almost the only restraint on him in such management is that he cannot alienate the lands of the tarwad except for tarwad purposes." Thus, according to the theory of the law, the mother and children live with the other members under the guardianship of the karnavan of their tarwad in their tarwad house and are maintained by him out of the income of the tarwad. The female members and their children therefore depend upon the karnavan according to the law. Yet taking the districts of Canara and Malabar as a whole, the practice now is otherwise. In Canara the Collector of the district tells us that after marriage the wife leaves her own family house and resides with her husband. In his own words, "Till the death of the husband the wife and children live with him and join in the work of cultivating the fields of his family estate like the other members of his family and are maintained out of it by him. In many cases she and her children serve him in a house occupied by them alone. In fact a Native Judge goes so far as to say that the derivation of the word 'Boodelthee' (wife) shows that the wife was considered as the mistress of the house."

In North Malabar also so strong is the patriarchal family life that the tarwad property intended for the members of the tarwad is now mainly enjoyed by the wife and children of the members of the tarwad. The theory of the law is—and that is also the general feeling—that the property is held in trust for the females and their descendants. "In North Malabar it has become the general recognized custom for the women to leave their tarwad house on marriage and reside with their husbands." "So well established is the custom that the High Court has held that the maintenance of the wives and children of the junior members (residing with their husband in their husbands' tarwad) is a charge which the karnavan is bound to meet. The High Court allows that the ruling would seem inconsistent with the principles of the Marumakkatayam law, but the answers to the interrogatories and the evidence taken by the Commission show that the ruling is really and truly in accordance with existing usage."

Thus in North Malabar every girl quits the tarwad house as soon as she is married, "while all the males, uncles, brothers, nephews, cousins and second cousins remain and bring their wives to live with them. Thus the tarwad income is consumed by the males, their wives and their descendants, while to the females their tarwad becomes an ultimate place of refuge into which they and their families are unwillingly received when their husbands die or discard them. Though the karnavan of their tarwad is the guardian of the males he is not in the same position as regards their wives and children. These latter remain in law under the guardianship of the karnavans of the tarwads to which the wives belong and the husbands have not the slightest authority over them." Sir Muthusami Aiyar also refers in his report to the general practice in North Malabar for the wife to live with her husband, not only when the latter has self-acquired property, but also with the permission of his karnavan when he has no such property.

As to South Malabar he considers that the practice has grown up "among the respectable classes to imitate North Malabar generally in the case of karnavans and occasionally in the case of anandravans." The fact is that those junior members who have any self-acquisition live with their wives often apart from the tarwad.

We find therefore that though according to law it is the karnavan of a tarwad who is bound to maintain the female members, yet in a large and increasing number of cases they are actually maintained by their husbands. The children also naturally are maintained by their father. The karnavan was bound to give them the education usually given to members of their class, but in the cases above referred to the father educates them. The rule is certainly not, as the report points out, for the

karnavan to educate the junior members out of the tarwad income. Either the father educates them, though in law his guardianship is not recognized, or a near relative like a brother or uncle furnishes funds for such education. As the children live with the father he naturally feels greater interest in their education than anyone else, and if the position of the karnavan is considered it is not surprising that the national consciousness has now begun to consider the father responsible for the maintenance and education of his children. The karnavan's relationship with some of the children of an ordinary tarwad consisting of many members in the female line is often remote, and, as the High Court have rightly observed, "a karnavan's duty is in habitual conflict with his private affections and interests." It is only natural, therefore, that in spite of the theory of the law, the home of the father is being recognized the home of the children and their mother, and so long as the State does not undertake the guardianship of the children it seems necessary that such guardianship should be vested in those who are naturally interested in the proper discharge of their duties and who now practically discharge them. The proposal is to bring the law in conformity to such practice. The Bill which I obtained leave to introduce in 1890 vested the guardianship of the wife and children in the husband. This suggestion ignored those numerous instances—found particularly in South Malabar—where the wife and children live in their own tarwad house and under their karnavan's control. The rule in Canara and North Malabar is no doubt, as I have already stated, for the wife and children to live with the husband and father, and the tendency in South Malabar is the same. But it is impossible to ignore the other class of cases where the rule is likely to bring the father into collision with the karnavan and result in discord and litigation. This Bill accordingly recognizes his guardianship only in those cases where the husband or his tarwad maintains the wife and children, where, of course, they would not be under the control of their karnavan. Though according to the incidents of a legal marriage a man ought to be recognized as the guardian of his wife and children, yet the existing state of affairs already referred to by me warrants a departure only to the extent indicated in the Bill—a departure from the existing law which vests the guardianship completely in the karnavan.

The right to claim maintenance is also conceded to the wife and children. The Bill provides that she would not be entitled to receive maintenance if she is disentitled under section 488 of the Criminal Procedure Code. Accordingly, if she is living in adultery, or if without any sufficient reason she refuses to live with her husband or if they are living separately by mutual consent, she cannot claim maintenance. It is also provided, adopting Sir Muthusami Aiyar's view, that whatever defence is available to the husband under the Hindu law may be pleaded under the Act. His reason was this—the Malayalis are Hindus and the rule of Hindu law on the subject is likely to prove more acceptable. Sir Muthusami Aiyar is right. The tendency on the part of the masses and of the aristocracy who have not received an English training is to look to the Hindu sages for guidance, and if any of the members take the trouble to go through the mass of evidence taken by the Commission it will be found that Hindu texts are frequently appealed to in support of [illegible]ws as obligatory on the followers of Marumakkatayam law.

To this provision in the Bill regarding maintenance I do not presume any serious objection can be raised. It is already recognized as a moral obligation; once marriage is legalized it seems to follow that a man's liability to maintain his wife and children should be declared. The law of every nation imposes upon the parent the obligation to maintain his children and a text of Manu is often cited as meaning that a virtuous wife and infant son must be maintained even by crime.

The alteration proposed by the law does not materially affect the usage of the country. The karnavan will continue to be the guardian except in those cases where he has virtually renounced his rights and obligations by allowing the wife and children to become a part of the husband's family and the husband now *de facto* guardian. The change effected in the usage thus is *nil*.

Divorce—Sections 16, 17 and 18.

After Maintenance and Guardianship, the Bill deals with Divorce. Sir Muthusami Aiyar thus describes the present situation:—

"Among Marumakkatayam Hindus, marriage has yet to be legalized; polyandry has ceased but recently, and no religious sanction sustains the notion that one man is

united in wedlock to one woman all his life for better or for worse. The basis on which the duration of the marital relation rests is that the couple should do their best to get on together well and that, if they fail, it must cease. Hence the husband or the wife may in theory divorce the other at will. But in practice neither does so except for a cause which commends itself to his or her family and to the society in which they move. Arbitrary divorces appear to be rare, much more so in North than in South Malabar. In most cases the anandravans are too poor to support a family and have no self-acquired property, and they work for their tarwads and marry or put away their wives only with the consent of the karnavan, who allows them to bring their wives into the tarwad house and maintains them out of tarwad income together with other tarwad relations. This is the general practice in respectable tarwads in North Malabar when there is cordiality and harmony in the family. What grounds of divorce are considered reasonable in Marumakkatayam society and whether any formality is observed when marriage is dissolved are matters concerning which I have taken evidence. But the evidence is discrepant and conflicting and conveys the impression that, save adultery, no other determinate cause is recognized and no specific form is observed in Malabar or even in the same part of the district. Adultery, cruelty, mutual desertion, disobedience on the part of the husband, incurable or infectious disease, impotency, barrenness, stealing the husband's property, levity of conduct and incompatibility of temper are among the causes enumerated by one or other of the witnesses. It is stated by several witnesses that the wife is at liberty to take a second husband if the first discontinues matrimonial intercourse for one year and omits to send to her the customary presents during the two principal feasts of the year, viz., those of Vishu and Onam. It is also observed by some witnesses that in parts of the district, when the husband desires to divorce the wife, he takes one or more cloths to her tarwad house and, leaving them there, announces to her karnavan that he divorces her. These causes and forms do not, however, appear to be so general or uniform as to render it safe to accept them as containing the elements of a customary law. What scheme of divorce is then best adapted to Marumakkatayam Hindus?"

In the Bill which I asked leave in 1890 to introduce into the Council the provisions of the Indian Divorce Act and the Parsi Marriage Act were incorporated. But, as Sir Muthusami Aiyar has pointed out, the strong opposition which the Bill has evoked is in the main due to them. One objection to that scheme is that they constitute an elaborate system of judicial divorce devised to support a high standard of matrimonial sanctity not unfrequently found impracticable even in societies in which marriage has been a religious as well as a legal institution for centuries and in which lapse of time and strength of religious sentiment have carried it beyond the stubborn exigencies of married life. Further, the provisions in those Acts are complex, and suits for nullity of marriages, for judicial separation and for divorce, accompanied as they are with public revelations of the frailty of domestic life, are obnoxious and repulsive to the people of Malabar as elsewhere.

On account of the strong feeling of opposition against introducing the provisions of the Divorce Act or the Parsi Marriage Act they had to be dropped. Another scheme which was considered was to declare, as just grounds for divorce, adultery, cruelty, desertion and certain others, and direct that if either party repudiates the marital relation without a just cause, the guilty person shall forfeit one-fourth of his or her self-acquired property, if any, to the other, and that if there are children the ownership shall vest in them, the usufruct alone vesting in the innocent wife or husband during his or her life. The principle of compensation was adopted from the civil law and the Smriti of Yajnavalkya. After full consideration by the Commissioners, the Governments of Madras and India, this scheme also has been dropped and the right of free divorce by judicial process has been recognized. The main reasons for rejecting this proposal are that it would open a door for all the evils of the first scheme and would render the new law obnoxious and prevent it from attaining to that measure of success which may otherwise be anticipated. The Bill as now drafted empowers the husband or wife to present a petition to the Court of District Munsif praying that the marriage may be dissolved, and the munsif shall, after a certain interval of time, pass a decree dissolving such marriage. The Bill proceeds on the existing usage, and freedom of divorce is recognized by such usage. It has not been shown that this right of divorce is much abused and it is therefore unnecessary to legislate in opposition to the wishes of the people. If without recognizing freedom of divorce we introduce a scheme which

pre-supposes the paternal family as the social institution, we shall have to modify the provisions respecting maintenance and guardianship. We shall have to alter the law of inheritance in its entirety, which is, of course, now impracticable. It cannot be denied that, by requiring a probationary period, the Bill imposes upon divorce a restriction which does not exist at present, and it will not be a difficult matter to legislate on the subject hereafter if experience proves that restrictions upon divorce are necessary for the further protection of those who have registered marriages under this proposed Act. For these reasons it has been finally decided not to introduce any provisions into the proposed Act which would not find their justification in existing usage.

Succession—Sections 19 to 22.

The Council is aware that according to our law a man's interest in his tarwad property as well as his self-acquisition lapses to the other members of his tarwad on his death. The Bill does not touch his interest in the joint family property. As heretofore, on his death the other members take it. He is entitled to deal with his self-acquired property in any way he pleases during his lifetime. It was therefore suggested by me that the entire self-acquisition ought to go to his wife and children, the members of the tarwad succeeding to his interest in the tarwad property. As the power to dispose of self-acquired property by will is to be conferred or declared by the Bill which I believe will soon be introduced, no one can complain that he is compelled by law to leave his property to those whom he does not want to take it. That suggestion was made in the belief that this marriage law will be generally availed of by those who have adopted the paternal family life, and that the wife and children would keenly feel the breaking-up of the home on the death of the husband and father which till then they had regarded as their own and the recognition of a comparative stranger as successor. There was also the practical inconvenience of a division of property which might lead to litigation. Personally I remain of that opinion still, but the Bill adopts the suggestion made by Sir Muthusami Aiyar and accepted by the Governments of India and Madras. That view is justified upon the ground that the paternal family life has not been so generally adopted by the races who are now governed by the Marumakkatayam law, and the feeling that the wife and children ought to inherit the property is not at present so strong as to warrant a departure to the extent suggested by me. Considering the practice in the district, Sir Muthusami Aiyar suggested—and that suggestion has been adopted—an equal division of the self-acquired properties between the tarwad and the wife and children. I may add that in Tangásseri and Anjengo the right of the children to succeed to half such property is recognized and the properties are thus equally divided on a man's death.

I have thus briefly reviewed the provisions of the Bill. The registration of his marriage under certain conditions enables a man to contract a marriage which would be recognized in Courts of law, the fact of a valid customary marriage is placed beyond doubt, the wife and children's right of maintenance is recognized, the father is constituted the guardian of the children, the stability of the matrimonial union, hitherto precarious and unsettled and very often dependent for its duration on the will of others, has been in some degree secured by the provisions as to divorce and inheritance. No change is really introduced. The provisions of the Bill dealing with rights and duties only carry out the practice of the majority of the people. Registration is permissive, is only required as evidence; the provisions as to guardianship and maintenance are based on existing usage. The provision as to inheritance also is in conformity to usage, and it appears to me that we must recognize the right of children to at least half the property, as in some parts of the country such right is recognized almost as a legal right and the children invariably take that share. The chief reason for resorting to legislation is undoubtedly the necessity of giving effect to what is recognized as a marriage in society.

Among the other reasons for legislation given by the Commissioners is the desirability of removing from injured husbands the temptation to take the law into their hands. Sir Muthusami Aiyar says: "The proposed Act will, on the one hand, elevate and ennoble the precarious social marriage into a legal institution, whilst the strong arm of public law will, on the other, protect the domestic circle against the incursion of irregular passions and thereby remove one cause of acute suffering in that circle and a strong temptation to the commission of crime." According to the Collector of Canara, who favoured us with his views, "symptoms of revolt are every-

to point out that such a Bill would not affect the religion or religious rites and usages of any class, but at the same time I am directed to ask the Government of India for permission for the withdrawal of the present Bill and the introduction of the proposed measure." If the operation of this Bill is confined to a male or a female neither of whom has a personal law of marriage, and if the Bill extends only to those who follow the Marumakkatayam or Aliyasantana law, then both the parties to the marriage are under the operation of that law and the statement made by this Government "that this Bill does not affect the religion or the religious rights of any class" would be perfectly correct. I do not at all think that in the case of those who follow the Marumakkatayam or Aliyasantana law and who have not got an institution of marriage, the passing of a Bill like this, providing a form of civil marriage that will be recognized as such by the courts, will in any way interfere with the religious rites or usages of any class of people; but the moment you apply this Bill to any Brahman or to any other person who has a personal law of marriage and who is not governed by the Marumakkatayam or Aliyasantana law, then I emphatically say that this Bill, within the meaning of clause 5 of section 43 of the Indian Councils Act of 1861, very seriously affects the religion or religious rites and usages of a class of Her Majesty's subjects in India. To make myself clear, if the operation of the Bill is confined only to Marumakkatayam or Aliyasantana subjects, there is no interference with their religious rites and usages; but the moment you apply the provisions of the Bill to a male or a female, who does not follow the Marumakkatayam or Aliyasantana Law but has a personal law of marriage, then I submit that the Bill at once affects the religion and religious rites of that class. Now it is well-known that under Hindu Law, quite unlike the English Law and quite unlike the conception of marriage which pervades this Bill, a marriage is a sacrament; it is purely a religious act from which no doubt civil consequences flow. As observed by Sir James Fitzstephen, in his memorable speech on the occasion of the introduction of the Bill generally referred to as the Brahmo Somaj Marriage Bill which was eventually passed as Act III of 1872, Hindu Law and Hindu Religion are two names for one and the same thing in respect of marriage; marriage under Hindu Law is essentially a religious act and the Hindu Law and Hindu Religion on the subject of marriage are one and the same thing. I do not think that anybody will deny for one moment that according to the conception of marriage under the Hindu Law—that is, among those classes of Her Majesty's subjects who have an institution of marriage under the Hindu Law--marriage is a sacrament and is attended by religious rites. The question which the particular feature of the Bill I am referring to raises is this: Is the legislature now prepared to provide or has any necessity been shown for providing a form of marriage, not for Marumakkatayam or Alayasantana subjects who justly enough represent to Government that they have got no form of marriage at all—but to alter the present law of marriage of the Brahmans, whether they be Nambudris or persons living on the East Coast in Southern India? It might be all very well to say that it is simply an enabling provision; but that is the very thing that those who are particular about the basis of marriage under the Hindu Law, and those who are particular that the marriage institution should stand on a religious basis, would object to. They would object to the legislature unnecessarily providing a form of marriage which would enable persons who still profess to be Hindus, not to observe the Hindu Law of marriage but to contract a form of marriage altogether outside the scope of Hindu Law—a form of marriage which would be regarded as valid by Courts of Law and therefore attended by all the legal consequences resulting from a marriage under Hindu Law. So far as this Bill is concerned, if this is deliberately intended to be one of the principles underlying the Bill, it would be perfectly open to any Brahman youth on the East Coast to go to the West Coast and consort with a Nayar lady and register a marriage under this Act. If the law declares that it is a marriage under this law, then the offspring would be legitimate; and, under section 21 of the Bill, he would not be simply entitled to the one-half of the self-acquired property which is to be all the consequence of marriage in the case of the Marumakkatayam subjects. According to section 21, the offspring by marriage of a Brahman of Southern India with a Nayar lady, is to inherit the whole of the property, whether ancestral or self-acquired, of his Hindu father. Whether he will be admitted as a member of the family or not is a matter which the legislature cannot decide. Of course he will not be admitted as a member of the family. Yet the offspring, and for the matter of that, even a wife, if she survives the husband, who dies without a male issue, will be entitled to inherit property. The principle of the Bill is this: You legalize a marriage between

a Brahman and a Nayar lady but not other Sudra ladies. If the marriage between a Brahman and a Nayar lady is declared valid. then under Hindu law—if necessary I may invoke Act XXI of 1850 which removes all disabilities for inheritance arising from loss of caste, &c.,—the consequence will be that the wife of the Brahman who registers marriage under this Act will inherit the whole of the separate property of her husband, and the children will inherit the whole of the property of the father. Clause (*b*) of section 13 of this Bill says: "A marriage shall be null and void if either party has another husband or wife living, whose marriage connection with such party has been registered as a marriage under this Act." That is to say, a Brahman who has married a Brahman lady may also contract another marriage under this Act—or in other words, polygamy is to be sanctioned by this law. So far as you restrict it to persons who follow the Marumakkatayam or the Aliyasantana Law of Inheritance, that anomaly does not arise, because a person, who follows the Aliyasantana or the Marumakkatayam Law, has no recognized form of marriage hitherto, and he can contract a marriage only by registering it under this Act. Therefore as you provide that, in the case of persons who register marriages under this Act, they cannot marry again, you prevent polygamy. But in the case of Brahmans, the legislature is to allow them, though they are married under the Hindu Law, to contract another marriage with a Nayar lady, and there is nothing in this Act to prevent the registration of that marriage. A Brahman may marry a Nayar lady under this Act and afterwards may marry a Brahman lady according to the Brahman rituals. In the case of Nambudris and Pattars, who are Brahmans residing in the West Coast, I wish to explain how their case stands. Hitherto I have illustrated the operation of this feature of the Bill in regard to Brahmans or, for the matter of that it may be, other classes who are not technically known as Pattars or Nambudris, but who are ordinary natives of India governed by the ordinary Hindu Law. But the case of Nambudris and Pattars, in regard to whom probably this provision of the Bill is contemplated as likely to become operative stands thus: Nambudris are Brahmans of Brahmans; the Brahmanical spirit is strongest among them; they are governed by the Hindu Law of marriage, and they are much stricter in regard to ceremonial law and observance of religious ceremonies than the Brahmans of the Eastern Coast. A Nambudri family is constructed on the same basis as a family in Southern India, namely, it is a Makkatayam family. The only important difference between a Nambudri family and a Brahman family in the rest of Southern India is this: That, in the East Coast, in an undivided Hindu family, any member of the family may at his will and pleasure enforce partition, and thus become separated from his family, become a separate owner of his share, and become the head of a separate family; but a Nambudri remains in the primitive state in which the Hindus elsewhere remained before the right of partition was engrafted upon the Hindu Law. So that the only difference is that in the case of a Nambudri his family is undivided, and his family property is indivisible; all the members of the family must remain together and be maintained and fed at the expense of the family, and nobody can claim a share of the property and become separate. So far as Pattars are concerned, they are recent immigrants from the East Coast. Pattars are also Brahmans, but they have migrated into Palghat and surrounding places, comparatively recently, long after Nambudris had settled there. There is not the slightest difference between Pattars and Brahmans of the East Coast. They have the right of partition, they are governed in all respects by the law which governs the Hindus of the East Coast, every member of the family marries, and the Hindu Law of Inheritance strictly applies. But in the case of Nambudris, on account of the family being undivided—there being no means of splitting the family—a custom has grown up by which, as a general rule, the eldest member of the family only marries. He could marry only a Nambudri girl. The other members do not as a general rule marry. This, however, is not a custom having the force of law, but it is simply a practice. I know certain Nambudri families in which all the members marry. There are Nambudri families, the members of which have certain rights in connection with certain temples, and as according to the Brahmanical Law it is only married men that can perform those ceremonies, there are certain families in which all the members marry. There are other Nambudri families in which some of the junior members marry, while others do not marry at all. What happens is this: when a junior member wishes to consort with a Nayar lady, as a rule, he goes to the house of that lady. It is not the lady that comes and lives with the husband, but the Nambudri Brahman goes and lives in the Tarwad with the Nayar lady. When I say he lives, perhaps, I would be making an erroneous impression on the minds of Europeans. If he touches any Nayar lady or a male, or even if he

touches his own offspring, he would bathe; he would not take meals prepared by Nayars; he would not take even water which is given him by a Nayar lady or by a servant who is a Nayar. In other terms, he will observe all the strict rules of Brahmanism. The only thing is that he will have no objection to take his bed in the house of a Nayar lady and take the meals prepared by himself or by a Brahman cook in a detached compartment of her house. If he touches even the Nayar lady with whom he consorts or his son or daughter, he will be polluted. That is the so-called *sambandham* which exists between Nambudris and Nayar ladies. The same kind of relationship is contracted by Pattars, who are completely under the operation of the Hindu law, and all the members of whose families marry. I understand that the tendency even among the Nambudris is for junior members also to marry, and that is partly due to the fact that a Nambudri girl can only marry a Nambudri and cannot marry a Nayar or anybody else. As there are girls unmarried among the Nambudris, the tendency is, as one might expect, that junior members marry. Nambudris and Pattars, like Brahmans of the East Coast, have a very strict law of marriage. They do not want the aid of the legislature to enable them to contract a marriage; at least I am not aware of any application or suggestion made to this Government or the Government of India to provide an additional form of marriage to subjects who are already governed by the Hindu Law of marriage, which, as I have already stated, views marriages as a sacrament. This question, I may state, was discussed at great length by the Government of India in connection with the Bill which was introduced by Sir Henry Maine, but which was subsequently abandoned by Sir James Fitzstephen as being revolutionary. The latter introduced a Bill which was passed as Act III of 1872. Marriages may be celebrated under that Act between persons neither of whom professes to be a Christian or Jew or Muhammadan or Hindu or Parsee or Buddhist or Sikh or Jain. Your Lordship will observe that under that Act, which is generally referred to as the Brahmo Somaj Marriage Act, a marriage can be performed between any two persons provided a declaration is made by both of them to the effect that they do not belong to any of the above-mentioned religions. The debate on this question will be found in the supplements to the *Gazette of India* of 27th January 1872, from pages 57 to 93, and also of 6th of April 1872. The policy of British legislation, in being very careful and not in any way to interfere with the existing laws of marriage, is there very clearly expounded. I do not say that it is not competent for this legislature, with the sanction of the Government of India, to abrogate the Hindu Law of marriage even in regard to Brahmans and others for whom there is a personal law of marriage. Though it is perfectly competent for the legislature to do so, yet the British Government has been from the very beginning anxious not to interfere, unless there be an unavoidable necessity, with any portion of the Hindu Law which is founded upon religion; and I really know no branch of Hindu law which is imbedded more upon religion than marriage; even the law of inheritance, though in one sense based upon religion, is not so essentially involved with religion, as marriage is. From the very beginning in the statutes of British Parliaments, in the statutes of the Governor-General, and in Madras Act III of 1873, section 16, Hindu Law of Marriage is prescribed as the law by which Courts of Law ought to decide in regard to marriage among Hindus. If there is a section of Hindus which has not a form of marriage, their case stands altogether on a different principle. I submit that Brahmans, including Nambudris and Pattars, have a form of marriage which is as ancient as Brahmanism itself; and no necessity has been shown for a legal provision to enable Brahmans or, for the matter of that, anybody other than the followers of the Marumakkatayam or Aliyasantana Law, to contract a civil marriage under this Act. In all these cases, when you want to enact a new law, the enactment must be in favour of persons neither of whom has a personal law of marriage. I make these observations only for the purpose of drawing the attention of the Council to this feature of the Bill, in order that it may be considered, but I do not oppose the motion before the council.

The Hon'ble C. Sankaran Nayar.—My Lord, as my Honourable friend does not oppose the motion, it is unnecessary to consider his arguments; but it occurs to me, that I may just make some reference to one or two statements he has made. I only wish to point out that my friend is not right in saying that this matter does not appear to have been considered before. The matter came before the Commission and the late Sir T. Muthuswami Aiyar fully considered it and the Council will find his opinion where he states "that they are marriages which are already recognized." He had to consider it when he had to write a dissenting minute against the report of the majority of the Commission, and there again he insists that their marriages are such as are recognized. That is found in page 53 of the report. I do not wish to discuss the matter, but I simply wish to point out that the matter is one which Sir T. Muthuswami Aiyar considered; and it is with reference to this that the Government of India said that all these should be legalized. It is found in G.O., No. 42, dated 1st March 1894. This matter did attract the attention of the Commission. When Nambudri witnesses were examined questions were put to them by Sir T. Muthuswami Aiyar, and their opinions were recorded. The other matter that we had to consider was this: there were good number of castes in Malabar—Tiyyans and others, who follow indifferently both the Marumakkatayam and Aliyasantana Law of Inheritance, under which sons succeed the father. It is impossible to prohibit marriages between those belonging to the same caste and to prohibit intermarriages. The matter that we were concerned about was only to legalize those marriages which were in accordance with the custom in that part of the country, that is between Nambudris and the lower castes, some of whom follow the Marumakkatayam Law or Makkatayam Law. We were not anxious to bring in all those Brahmans outside the district of Malabar so far as the marriage between them and the followers of the Marumakkatayam Law was concerned. The question that my friend has now raised is based mainly upon section 21 which gives the right of inheritance to children born of that marriage. That section was inserted at the istance of the Executive Government to supply a defect that it was thought the first Bill was open to. The Courts hold that the children of the Marumakkatayam mother are entitled to succeed to the property of the father and the Bill did not want to take away that right. If it goes beyond the scope of what was intended by Government, this may be considered by the Select Committee.

His Excellency the President.—The question is that this Bill be now read in Council.

The motion was put to the council and carried unanimously.

His Excellency the President.—The Secretary will now read the title of the Bill.

The Secretary thereupon read the title.

The Hon'ble C. Sankaran Nayar.—My Lord, the Bill having been now read in Council, I move that it be referred to a Select Committee. There are many questions to be considered in the draft Bill and it is advisable to refer it to a Select Committee.

The Hon'ble N. Subba Rao Pantulu seconded the motion which when put to Council was carried unanimously.

The Hon'ble C. Sankaran Nayar.—I move that the Select Committee consist of the following gentlemen:—The Hon'ble the Advocate-General, the Hon'ble Mr. J. Sturrock, the Hon'ble V. Bhashyam Aiyangar, the Hon'ble C. Vijiaraghavachariar, the Hon'ble P. Rangayya Nayudu, the Hon'ble C. Jambulingam Mudaliyar and the mover.

The Hon'ble N. Subba Rao Pantulu seconded the motion which when put to the council was carried unanimously.

The Secretary.—Your Excellency, there is no further business before the Council.

His Excellency the President.—I declare that this meeting is now dissolved.

(By order.)

L. DAVIDSON,
Secretary to the Council.

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[G. 53]
3,000—15-8-95.

Legislative Department.

CHIEF SECRETARIAT, MADRAS.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

READ the following paper:—

Proceedings of a meeting of the Legislative Council held on the 4th November 1895.

—

Order:- by 9th December 1895, No 134.
communicated to the Public Works Department for necessary action with reference to the answer given to question No VII

2. Attention is also invited to paragraph 3 of the answer to question No IV.

/True Extract/

Lionel Davidson
11.12
ag. Under Secretary,
for Chief Secretary.

To

The Public Works Dept
(with a copy of the Proceedings)

Gly

PUBLIC WORKS DEPARTMENT.

No. 3187 W. dt 13th December 1895

PROCEEDINGS OF THE MADRAS GOVERNMENT.

READ the following

Proceedings of Govt. in the Legislative Dept. No. 134 dated 9th Decr. 95.

As regards question VII, the required statement will be furnished to the Legislative Department.

2. Para 3 of the answer to question IV will be kept in view by the Chief Engineer for Irrigation.

DESPATCHED
13 DEC. 95

To

The Legislative Dept. with statement.*

,, Chief Engineer for Irrigation.

* vide Statement with Memo. No. 3483 dt 14th Dec 95

(40—4,000—2-11-95.)

No 3187 W/J 13 Dec 1895

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