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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 6th December 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant Governor of Bengal.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
Major General the Hon'ble Sir H. M. Durand, C.B., K.C.S.I.
The Hon'ble E. L. Brandreth.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble C. P. Hobhouse.
The Hon'ble J. Skinner.
The Hon'ble Stewart Gladstone.

INDIAN CONTRACT BILL.

The Right Hon'ble MR. MASSEY introduced the Bill to define and amend the law relating to Contracts, Sale of Moveables, Indemnity and Guarantee, Bailment, Agency and Partnership, and moved that it be referred to a Select Committee with instructions to report in three months. He said that, in the absence of his hon'ble and learned colleague Mr. Maine, the duty had devolved on him of laying this Bill before the Council. The subject had long been under the consideration of the Indian Law Commissioners, and the result of their labours was the Bill which he had now the honour to introduce. That Bill, with one important exception to which he should presently advert, and with a few verbal alterations and the addition of an interpretation-clause and schedules of Acts repealed or saved, was precisely in the state in which it had been sent by the Commissioners. It was a measure embodying the whole Law of Contract, and therefore of a most comprehensive character, inasmuch as matters relating to contract constituted a great mass of law, and involved questions which occupied the time of the Civil Courts to a greater extent than any other description of business. The subject was therefore of the first importance; and when it was considered that the Law of Contract had grown up in England mainly out of judicial decisions, and had been but little indebted to legislation, the responsibility which attached to the legislature in dealing with the subject was greatly enhanced. The Law of

Contract in its present state had been the product of many generations; it had adapted itself to the circumstances and exigencies of the times; it had grown with the growth of prosperity, and had been developed as new relations had arisen between man and man; and although a body of jurisprudence compiled in that way was in some degree encumbered by niceties and refinements, it was, on the whole, well adapted to the circumstances of the country and the dealings of the people. Although the Law of Contract was, as he had said, mainly composed of judicial decisions, its cornerstone had been laid by the legislature in an Act of Parliament which had been justly eulogised as one of the wisest enactments in the Statute-book: he meant of course the Statute of Frauds, which was passed in the reign of Charles the Second. That law was the work of the most eminent lawyers of the day—men who for learning and great judicial capacity had never been surpassed. Every word of that Act had been carefully considered, and it had been described as an Act every word of which was worth a subsidy. Its provisions had been the subject of discussion and interpretation ever since it had been enacted, and the efforts of the Courts had been, not to narrow or depart from its provisions, but to expand and make them applicable to the circumstances of modern society. Before the enactment of the Statute of Frauds, questions relating to personal property were of little account. The feudal law as to the devolution and transfer of land was then in force, for it was only during the reign of Charles the Second that the old law of tenure by knight-service was finally abolished, and though the military tenures and their incidents had been destroyed some seventeen years before the passing of the Statute of Frauds, the spirit and influence of the system which had so long ruled the law of England was still prevalent. The statute of Frauds was the first Act of the legislature which recognized in contracts relating to moveable property that importance which they had since acquired. But the provisions of that law were framed with regard to the circumstances of the time. At that period education had spread but little beyond the higher classes, and the severity of manners enforced during the Commonwealth had been followed by a reaction in the opposite extreme. This was a sufficient reason why any law relating to contracts should be strictly and rigorously defined. The Statute of Frauds was principally directed to the object of preventing frauds, and to the protection of persons entering into contracts from the effects of perjury. The provisions of the Statute first regulated matters connected with land. It provided that no interest in land, except a lease for less than three years, should have greater force than a lease or estate at will, unless it were in writing signed by the parties or their agents. Another provision was that no executor should be required to pay the debt of a testator out of his own estate, unless he had under-

taken to do so in writing: a similar provision was that no person should be liable for the debt of another unless he had agreed in writing signed by himself or his agent to pay it. Every contract for sale of land was also to be evidenced by a written document. And with regard to contracts of a general character, it was enacted that no agreement not to be performed within one year was to be valid unless in writing. Such were the principal provisions of the Statute, which were considered necessary to prevent the institution of false claims supported by perjury. Times, happily, had very much altered since that period; education had extended to all classes of the people; the obligations of religion and morality were respected, and the reasons which induced the legislature to pass those stringent provisions had not the same force now. Considerable modifications had therefore been proposed by the Indian Law Commissioners in the Statute of Frauds in its application to this country. These would, no doubt, be the subject of discussion and consideration before the Bill was passed. It was stated by the Commissioners that many provisions of the Statute were now not of unquestionable expediency in England; but he believed that (except so far as they had been encroached upon by the Court of Chancery) those provisions still remained in full force. About eighty years after the enactment of the Statute of Frauds, a fortunate conjuncture placed at the head of the administration of the civil law one of the most accomplished Judges that ever adorned the Bench—a man who was endowed with a legal understanding of the highest order, and who, besides being a great jurist, was a statesman of the first class and an orator the rival of Chatham. He referred of course to Lord Mansfield, who had at that period become Chief Justice of England. Commerce had then begun to develop itself, and a state of things arose for which no provision had been made by the legislature or by the decisions of the Courts of Justice. It was reserved, therefore, for Lord Mansfield to expound the Law of Contract as applicable to commercial exigencies, and he did so with an eloquence, knowledge and authority which prevailed against the obstacles thrown in his way by ignorance, prejudice and malice. He defined the principles on which insurances should stand; he laid down the law of agencies, partnership, and shipping, and in every department of commercial law it would be easy to show traces of his wisdom and knowledge. Since the time of Lord Mansfield, his learned successors had been chiefly occupied in expounding the principles he laid down and in making them applicable to new circumstances. In this it was only just to say that the Judges had been aided by the legislature. The result was the great and admirable body of jurisprudence now in force. The present Bill comprised ordinary contracts, especially those relating to commerce,

and did not depart in any essential particular from the English law. The English Law of Contracts had hitherto in this country been the ruling law in the presidency towns. In the mofussil a system of so-called equity and good conscience had been nominally pursued, that was to say, the provincial Courts had not been absolutely subject to the rules and principles of the English law as regarded contracts, but practically they had pursued that law. So that, in proposing a scheme applicable to the whole of India, we should not have any material discrepancies of practice to deal with, but might assume that the Law of Contracts was now practically the same in the two countries; and considering the obvious desirability of having the laws of India and England, so far as regarded commercial matters, identical, one of the most important questions which the Council would have to consider, when the Bill was discussed section by section, would be, whether some of the proposed alterations were proper to insert in a law applicable to a country in such intimate commercial relations with England.

With those few preliminary observations, he would proceed to go through the main provisions of the Bill. It would be the function of the Committee to whom the Bill would be referred to examine the details, and it would now be sufficient for him to point out the chief particulars in which the Bill departed from the English law. The scope and objects of the Bill were described in detail in the title, which was "a Bill to define and amend the law relating to Contracts, Sale of Moveables, Indemnity and Guarantee, Bailment, Agency and Partnership." It was hardly possible for any Bill to be more comprehensive in its character than the present Bill; nevertheless it would not take a long time to indicate the leading points in which the proposals of the Indian Law Commissioners differed from the existing law. The first point which he would notice was the deviation from the provisions of the Statute of Frauds. The great principle of that Statute, as he had already stated, was that all the more important contracts should be in writing, and that principle had been extended by Lord Tenterden's Act, which was also now in force in India. Nevertheless, regarding the state of society in India, and the long established practice of the great bulk of the Native population to make contracts orally, the Indian Law Commissioners had decided that the stringent provisions of the Statute were not applicable to this country. They therefore proposed to discard those provisions which required certain contracts to be in writing.

The next important point in which the Commissioners proposed a modification of the English law was with regard to the constitution of a contract. Hon'ble Members were probably aware that the English law regarded contracts

made without consideration to be binding only when expressed in writings under seal—a promise, for instance, made in a letter, would be invalid unless founded on consideration—not an adequate consideration—the Courts did not take into account whether the consideration was sufficient—but they required some consideration, and the Statute of Frauds, as interpreted by the Judges, further required that in certain cases the consideration should be in writing as well as the promise itself. That was the law as regarded simple contracts. But as regarded specialty contracts, or contracts under seal, as contra-distinguished from simple contracts, the law did not require proof of any consideration. The reason for that difference was obvious. Persons who entered lightly into a contract made by word of mouth, or evidenced by mere writing, should show that there was some reason or foundation for doing so, if they required the assistance of the Courts of law to enforce its performance. But when the parties entered into engagements under seal relative to the transfer of land, or into a partnership, or the like, the Courts had justly considered that the transaction was one which the parties must have entered into with due deliberation—that a document framed with legal precision, and executed with legal formalities, accurately expressed their intention; and therefore, as regarded contracts in writing sealed and delivered, the Courts had not required evidence of consideration. Such was the law of England. The Indian Law Commissioners had proposed important modifications. They proposed to assimilate in this respect the law of the presidency towns to that of the mofussil, and to make no distinction between contracts under seal and contracts not under seal. But with regard to promises made without an apparent consideration, the Commissioners, although they did not require such contracts to be under seal, did require them to be expressed in writing, and registered with the permission of the promiser according to the provisions of the law for the registration of assurances.

There was another provision rather of a particular and technical character. By the law now in force, if a creditor promised to give time for the payment of an existing debt, his promise did not bind him unless some new consideration had been given for it. If, for example, one man sold a house or horse to another, the purchase-money to be paid within a given time, and if before the expiration of that period the seller granted time for the payment of the price, it was necessary that some new consideration should pass, as it was supposed that one party would never incur detriment without some corresponding benefit. That seemed to press the principle to an unreasonable extent, and the Commissioners accordingly proposed the abrogation of that requirement. The Bill provided that any person entitled to claim performance

of any engagement, might dispense with or remit performance of it wholly or in part without any new consideration appearing.

The next branch of the Bill related to the sale of moveables. It was a maxim of the law of England that, when a man, not the owner, sold goods to another, the owner retained the ownership: notwithstanding his loss of possession and the subsequent sale. If, however, the goods were sold in what was called market overt, the vendee acquired an indefeasible title in the goods so sold, and in the city of London every shop was comprised within that description. Whoever purchased goods within the city during the usual market hours acquired an indefeasible title, though the seller had stolen or found the property. So that one law prevailed in London, and another elsewhere in the country, except on special days, provided for particular places by charter or prescription. At the time that distinction was introduced, London was the only considerable city in the kingdom; it was the great mart of commerce to which every man resorted who wanted to make a purchase of goods of any magnitude. There were now, however, numerous cities in Englaad where transactions of as much importance occurred, and it was not too much to say that the distinction just referred to was obsolete even in England. The Indian Law Commissioners discussed the question as to whether that state of the law should be altered. The question was, which of two innocent persons should suffer, the real owner of the goods or the purchaser? The Commissioners said that hardship was undoubtedly suffered by an innocent person who was deprived in this way of his right to recover his undoubted property. On the other hand, a *bona fide* purchaser would generally suffer still greater hardship if he were deprived of the property he purchased. The owner was often justly chargeable with negligence in the custody of the property, the latter, *ex hypothesi*, was blameless. On the whole, the Commissioners came to the conclusion that sales of property unattanded by any circumstances of suspicion or fraud should vest the property in the purchaser. They applied similar provisions to the cognate case where goods were sold or pledged by an agent in possession of any documentary title thereto. Purchasers might acquire the ownership of such goods, unless of course the circumstances were such as to raise a presumption that the person in possession had no right to sell or pledge them.

There was another part of of the Law of Contract in which the Indian Law Commissioners proposed an amendment. When a contract was entered into, it was competent to the parties to provide for its due execution by stipulating that, if one of the parties should fail to perform a certain act according to the

terms of the contract, he should pay to the other a specified sum of money; that sum generally being fixed at a large amount: for intance, in the case of a bond, the penalty was always double the amount of the contract-money which it was intended to secure, and the question often arose, what amount the person injured was entitled to? In other words, whether the sum mentioned should be considered as a mere penalty on which he could only obtain such amount of damages as a jury assessed, or as the amount of damages which he should be taken to have really sustained. The question whether, in any particular case, the sum was penalty or liquidated damages, depended on a variety of circumstances, and had given rise to much litigation, which the Commissioners proposed to avoid by abolishing the distinction, and simply enacting that, when a contract had been broken, if a sum was named in the contract itself as the amount to be paid in case of such breach, the amount so named should be taken as the measure of damages agreed upon by the parties, and be paid accordingly.

Another subject comprised in this Bill was guarantee—an engagement with a creditor to fulfil the liability of a third person in case of his default. The corresponding provisions on this head formed a complicated and lengthy chapter of English law. Much of the difficulty referred to arose from recognising a power, on the part of a creditor making a composition with or agreeing to give time to or not to sue his principal, to reserve, at the same time, his rights and remedies against the surety. The Commissioners proposed to simplify all this law, by enacting that, if a creditor compounded with or gave time to his principal debtor, the surety for him should be discharged from liability, even though the creditor endeavoured to reserve his rights and remedies against the surety. That seemed reasonable enough, because the position of a surety should be ascertained, and no liability should be imposed on a person responsible for the performance of the engagement of another beyond what the former himself had undertaken. It might make a great difference to a surety whether the debtor should be allowed time or not; many circumstances might arise which might prevent the debtor from performing his engagement, and any creditor who relied on a substantial surety for his guarantee would be under the temptation to be very lax in exacting performance from the principal debtor. It was therefore wisely proposed that if a creditor gave time to his debtor, the surety should be discharged from liability. But where there were two or more co-sureties, and one was released by the creditor, that release would not discharge the others, nor free the released surety from responsibility to the other sureties. According to the law of England, where one surety was released, that release enured also to the benefit of his colleague. The Indian Law Commissioners were, however, of opinion that a

creditor was entitled to the full protection stipulaled for, and if he chose to give up one portion of his security, he should still retain the other. In like manner they held that the release of a joint surety without the consent of his co-sureties should not, as between themselves, operate as a release.

The next head of the Bill was the Law of Bailment. The Courts in England had been astute in defining the degrees of responsibility which attached to persons who took charge of property, whether as borrowers, hirers, carriers, depositaries or otherwise, and the system of gradation was now so complicated that it was difficult for a layman becoming a bailee to know what amount of care he was to exercise and what responsibility he incurred. The Indian Law Commissioners, who appeared to be men of great vigour and decision, had proposed to solve that difficulty by discarding all those degrees of responsibility, and merely requiring, in all cases of bailment, such an amount of care of the goods bailed as a man of ordinary prudence would take of his own goods—the rule laid down in the English books in the common case of a bailment for hire. The wording of the clause as it stood in the draft sent out by the Commissioners was not, he thought, sufficiently precise. The defect, however, was remedied in the Bill as published in the *Gazette*. Another question which sometimes arose under the Law of Bailment was, when goods entrusted to another had been so carelessly kept that they had been mixed up with the goods of the bailee. The law of England considered the bailee's carelessness a penal dereliction of trust, and provided that the whole property so mixed up should go indiscriminately to the bailor. The Commissioners had, however, adopted the more reasonable rule of merely requiring that the person whose goods had been so dealt with should receive compensation for the loss he had actually sustained.

Another question arose as to continuing guarantees given by, for, or to firms. The law in England and (under Act V of 1866) in India was, that a guarantee to or for a firm should, except in special cases, cease on a change in the firm. But this had been found inexpedient. Mercantile firms in this country, even more than in England, constantly underwent change. To discharge the guarantor whenever an old partner retired, or a new one joined the firm, was not only in most cases opposed to the intention of the parties, but sometimes led to serious inconvenience. The Commissioners proposed that a continuing guarantee, given either to a firm or to a third person, in respect of the transactions of a firm, should not be revoked as to future transactions by any change of the members of the partnership. That, he thought, was a reasonable alteration, and one which would recommend itself to the approval of gentlemen engaged in commerce.

The next portion of the Bill embraced the great and extensive question of Agency, the fertile source of more litigation, as regarded contracts, than perhaps any other branch of the law. The Commissioners' provisions in regard to Agency were numerous. The principal points in which alterations of the present law were proposed were these. As the law stood, if a man, assuming the character of an agent, entered into a contract with another person who contracted with him in that character, and it turned out that the man was not contracting in the character of an agent, but as a principal, and also that the name of the assumed principal was used as an inducement to the bargain, which would not otherwise have been entered into, the Courts would not enforce the contract. But the Commissioners went further, and laid down that, whether the principal's name was used as an inducement or not, performance should not be enforced in a case where the party claiming it was in reality acting, not as agent, but on his own account. Mr. MASSEY thought that was a sensible simplification of the law. There was also a modification introduced into the liability of a master for his servant's misconduct. Although it might be laid down generally that a master was liable for the wrongful acts of his servant, if those acts were done in the course of his employment, particular cases might easily be put, in which the master's responsibility could not justly be extended so far. The Commissioners proposed to make the master's responsibility cease as soon as the servant's misconduct assumed the character of intentional wrong-doing. This surely was reasonable, for the master's liability depended on an implied authorization, and the law should not assume that he had ordered his servant to do a wilfully illegal act.

Then came the very important subject of Partnership. He would only refer to one or two of the proposed modifications of the present law. The rule adopted by the English Courts with regard to the property of an insolvent firm was this, that where there was partnership-property, the separate property of any partner was in the first instance appropriated to the payment of his separate debts, the surplus (if any) being devoted to the discharge of the liabilities of the firm; but where there was no partnership-property, the creditors of the firm and the private creditors of the partner came in and shared alike the property. The Commissioners thought that distinction unreasonable, and that the more equitable rule was the first; they provided therefore that, whether there was partnership-property or not, the separate creditors should have the prior claim. That seemed to MR. MASSEY reasonable, because the private creditors of a partner looked to his sufficiency, and not to the property of the firm with which he was connected. There was another point on which he should like to hear the opinion of the two Hon'ble Mem-

bers engaged in commerce. The Commissioners proposed that all incoming partners should be liable in common with the rest of the partners to the obligations incurred by the firm before he was introduced. This was contrary to the present law, according to which an incoming partner was not liable for contracts previously made—the reason given being that he never authorized them. But the change seemed to MR. MASSEY not unreasonable: every incoming partner knew that ultimately he would be responsible for the existing liabilities of the firm, whether incurred before or after his introduction, and it was equitable that he should be responsible for contracts from which he received benefit if they turned out to be beneficial. Then there was another provision which the Council would no doubt adopt; it was proposed to incorporate the Act passed last year for relieving persons sharing the profits of a trading partnership from being liable to third parties as if they were partners.

Those were the main provisions of the Bill. A portion of the draft of the Indian Law Commissioners was, as he had before said, omitted. That omission had been made by Mr. Maine in exercise of the discretion which was vested in him as having charge of the Bill. The clauses thus removed from the draft related to the specific performance of contracts. Mr. Maine was of opinion that those clauses were not framed in a sufficiently liberal spirit, and he also thought that they properly belonged to a code of procedure rather than a code of substantive law; he believed, moreover, that it was desirable to leave the new Law of Contract to its operation for some little time before the question of remedies in case of breach of contract, which had been so long and so hotly disputed in India, was brought forward anew for discussion. MR. MASSEY concurred in the propriety of the course pursued; but it would be quite competent to any Hon'ble Member to move in Committee for the insertion of thoses clauses, or to move their insertion when the Bill was next before the Council.

He had now gone cursorily through those clauses of the Bill, of which, if it passed into law, he would say with Mr. Maine that "India would be in possession of a body of Contract Law which left nothing to be desired in point of simplicity and comprehensiveness, in respect of the essential equity of its provisions, and in respect of the perspicuity with which those provisions were set forth." He would further add that, if this great Code of law were successful here, it must sooner or later re-act upon England herself and all her dependencies. In the remarks that he had made, the Council would have observed that, although he could not expect that Hon'ble Members would accept the Bill in its integrity, he hoped that no material alteration would be

made in its provisions, which had been carefully considered by the Commissioners. He proposed to refer the Bill to a Select Committee, to keep that Committee open for such period as would admit of careful consideration, and to afford every opportunity to Hon'ble Members to discuss the details of the measure; and he trusted that Mr. Maine, who would return within that time, would then resume charge of the Bill.

The Hon'ble MR. STEWART GLADSTONE had no opposition to offer to the Bill. The principal of the measure was very admirable, and any objections which might be taken to the details could to be discussed in Committee. It was unnecessary, therefore, that he should now notice those objections, and take up the time of the Council by any detailed remarks. Mr. Massey had asked from the mercantile members an expression of opinion respecting the proposed alteration of the law as to the liability of incoming partners. MR. GLADSTONE had no hesitation in saying that he thought it quite proper that incoming partners should be saddled, equally with those who continued in the partnership, with the pre-existing liabilities of the firm which they joined.

The Hon'ble MR. SKINNER said that whatever might be the opinion as to the details of the Bill—and there was room enough for a considerable difference of opinion—all, he thought, must be agreed in the principles on which it was founded. The want had been generally felt, especially in the mofussil, of some uniform and written law, clear, compact, and well defined, which should no longer leave questions of contract to be decided by he vague and uncertain process of interpretation according to what Zila Judges and Munsifs might consider principles of "justice, equity, and good conscience." It was, he believed, the rule that remarks made at the present stage should be confined to the discussion of matters of principle; he did not therefore propose at present to consider any of the provisions of the Bill in detail. The different sections of the Bill would, no doubt, require considerable discussion, and those which had reference particularly to partnership called for careful handling. But with regard to section 256, as to the liability of incoming partners for the prior debts of the firm, he agreed with his hon'ble colleague (Mr. Gladstone) as to the reasonableness of the terms of that section. He could not understand how a partnership could exist on any other footing than that which was maintained in that section. Whether or not incoming partners should be liable for obligations incurred prior to their introduction into the partnership was purely a matter of agreement between themselves; but as far as payments were concerned, he thought it fair and just that they should be responsible for all the engagements of the partnership, whether before or after their introduction.

The Hon'ble Mr. Hobhouse had not had time to go through all the provisions of the Bill, which, it must be remembered, was to apply not only to Europeans in this country, but also to the Natives. The first thing, therefore, to be considered was whether the provisions of the Bill were in accordance with the law, or to what extent they were in accordance with the law or decisions of the Courts, as applied to those persons who formed the immense majority of the inhabitants of this country, namely, Hindus and Muhammadans. As he said before, he had not had time to consider carefully all the provisions of the Bill, nor to consider as fully as he should like those that he had examined: that he proposed hereafter to do. But those principal provisions that he had examined seemed to him to be curiously and carefully in accordance with the law both as declared by Hindu and Muhammadan jurists, and also as propounded by the Courts in this country. He would notice some of the principal provisions mentioned by Mr. Massey. The first point which he had taken up was in regard to that part of the Bill which provided that contracts need not be in writing. On that point the rule laid down was and always had been identical with the rule of both Muhammadan and Hindu jurists; and not only was that so, but, in the case of certain contracts, it was expressly declared that they need not be in writing. If, therefore, the Bill were to declare that all or any contracts must be in writing, it seemed to him that it would interfere much more than we had any right to interfere with the customs and habits of the country. It had, he was told, been supposed by some persons, that because the Code permitted contracts to be either oral or written, the Courts were in future to give a credit to oral evidence which they did not now give. Nothing could be more erroneous. In that respect the law would be untouched. In the numerous cases where, owing to the absence of a writing, the Courts gave no credit to witnesses deposing to a verbal contract, they would, and ought, to continue to disbelieve those witnesses, whether the Bill was passed or not.

Then, as to the subject of the constitution of contracts and the necessity of the contract expressing consideration on the face of it. On that point the Courts in India had, he thought, been coming to the decision that it was not necessary, on whatever matter the contract might be, to express consideration for it. That was the tendency of the decisions of the Courts at the present moment, and the argument was, that where a person had deliberately put his name to a contract, the presumption was that he had received consideration.

The next point was on the subject of sales, and the principle laid down was that, whether the vendor had a title or not, the *bonâ fide* purchaser for valuable consideration should be protected. That also was, he thought, the

doctrine to which the decisions of the Courts had of late been tending, and to which a recent decision of the Judicial Committee of the Privy Council seemed to point.

As to suretyship, it seemed that the rules of the Bill followed very much the decisions of the Courts, and those decisions seemed to say, and so did the law, that a surety should only be responsible to the extent to which he knowingly and deliberately made himself responsible.

In the Commissioners' provisions as to bailment there was such a curious and near approximation to the law which obtained among Hindús and Muhammadans, but specially amongst Hindús, from time immemorial, and even in the wording of the clauses of which Mr. Massey had spoken, that he thought it necessary to refer to them. In section 144, the rule laid down was that the bailee should take as much care of the goods intrusted to his charge as a man of ordinary prudence would take of his own property. That was exactly the rule laid down in this country from time immemorial, the basis being the care that every prudent man took of his own property. And again, by section 145, the bailee, in the absence of any agreement to the contrary, was not responsible for the loss; destruction or deterioration of the thing bailed, if not caused by his own fault. The law in this country was that, if the bailee was not in fault, he was not responsible. Again, in regard to section 147, if the bailee made any use of the goods bailed which was not according to the conditions of the bailment, he was liable to make compensation to the bailor for any damage arising. Here again the Hindú and Muhammadan law said distinctly that such user constituted a penal offence. These seemed to MR. HOBHOUSE to be very curious coincidences, and showed strongly that the Bill did in reality follow strictly the law obtaining amongst the majority of the inhabitants of this country. But there were as close analogies in other parts of the Bill. In section 5 it was laid down who had capacity to contract, and it was there shortly declared that every person who was a minor or of unsound mind, or who from drunkenness, illness or other cause did not know what he was about, was incapable of entering into a contract; and in an explanation it was stated that an insane person might contract during a lucid moment. That was almost word for word the law as laid down by Manu centuries ago. He said that minors, insane persons, and those incapable of knowing what they were doing from drunkenness, extreme illness, or old age were incapable of contracting. So again as regarded sections 8 and 10. The principle of those sections seemed to be that there should be real assent on the part of the contracting parties, and so it was provided that, in the case of a person who was induced by deceit or coercion, or

by such influence as impeded volition, or who engaged in any contract under a mistake in an essential matter of fact, the contract should be either voidable or void. On that subject the Hindú law went a little further, and provided that where a person had been induced by force or fraud to enter into a contract, or where he had entered into it under a mistake, the contract should be absolutely void.

He had mentioned those points because it seemed to him that if any of the provisions of the Bill were clearly at variance with the law as it had been applied to the inhabitants of this country—in matters in which that law was reasonable and proper—there could be no good reason why those provisions should be enacted. He thought that in those cases the law of the country should not be altered. But as far as he had gone, the Bill appeared strictly in accordance with the law as applied by the Courts here, and as laid down by Native jurists centuries ago, and was therefore likely to be at least as acceptable to the Native community as the law to which they had been accustomed. He would only add that he heartily concurred with his Right Hon'ble friend (Mr. Massey) in hoping that no material alterations would be made in the Bill. So far as legal principles were concerned (except, of course, when they might bear upon Indian politics), it seemed undesireable to open purely juridical questions which had been anxiously discursed and decided by the Commissioners, whose unpaid services the Government could not expect to retain if their work was to be considered a mere draft for the Indian legislature to begin upon.

The Hon'ble MR. BRANDRETH wished to say a few words with reference to the Bill, and more particularly with reference to the principles on which it had been framed. Those principles evidently were that the proposed law should be made as prefect in theory and reason as was consistent with its being also approved by the general experience of the most highly civilized Natives. In carrying out their purposes, the Commissioners had not only consulted the law of England, but had referred also to the French, German, and Italian Codes, and had adopted some of the provisions of those Codes. No allusion whatever had been made to the customary law of India; but what the people of this country would probably be most bent on considering was, whether it would be for their advantage that the usages by which they had been hitherto guided should in any respects be superseded by the laws of other countries. Of course he did not presume for a moment to question the ability and skill of the learned Commissioners who had framed the Bill, or the theoretical perfection of the Bill itself: if there were any defects on this head

they would doubtless be pointed out by those who had more skill in law than he could pretend to. He did not therefore propose now to speak of the Bill with reference to its theoretical fitness, but with reference to the extent to which it would be likely to interfere with the present laws and customs of the people; and from this point of view, it seemed to him that some of the provisions of the Bill were open to very serious objections. There were one or two provisions even which in his opinion would probably cause an increase of crime, especially of fraud and theft. It was a serious question whether the existing law of a country, if clear and definite, and not repugnant to morality, ought to be set aside on theoretical grounds, not merely because it was the existing law, though that in itself was a very strong reason for maintaining it, but because it would very likely be found in the end better suited to the peculiarities of the people, being what their experience had taught them to be for their advantage, than any law that could be substituted for it on grounds of abstract equity.

As a description of the present state of the law in India, the Commissioners remarked that, beyond the limits of the presidency towns, the Judge was to a great extent without the guidance of any positive law beyond the rule that his decisions should be such as he deemed to be in accordance with justice, equity, and good conscience; but surely the Commissioners did not mean that the extensive transactions of the Native merchants and traders were regulated by no common law; that no principles of commercial law were to be gathered from the decisions during a long course of years of the learned Judges who had presided over the High Courts. At all events, he ventured to say that this description was not applicable to the Punjab. They had already a Code of Civil Law in the Punjab—a Code which, if he was not misinformed, had been recognized as law by decisions of the Privy Council. No doubt this Code had not been prepared with the skill of a practised conveyancer; its strength lay not in the exactness of its wording, but in its being based on the customs of the country. They were told in the preface to the Code that it was "framed with a regard to the known peculiarities of the country," and that "special enquiries were made with reference to the commercial portions of it from the heads of the mercantile community at Lahore and Amritsar." Now he believed he should be able to satisfy the Council that the existing law of the Punjab, of which alone he had had any experience, differed in some very material and important respects from the law which the Commissioners proposed to enact. If he could show this, there would undoubtedly be reason for supposing that there might be similar differences between the existing and proposed law in other portions of the Indian Empire besides the Punjab. The English law might not have been followed to the extent supposed by his Right Hon'ble friend Mr. Massey. That portion of the English law which required that certain

contracts should be in writing certainly had not been followed anywhere out of the presidency towns; it was possible that other portions of English law might have been no less disregarded. His Hon'ble friend Mr. Hobhouse had, no doubt, traced some remarkable resemblances between Hindu and Muhammadan law and the law of this Bill; but the same resemblances might not extend to those parts of the Bill which he had not had leisure to examine, or the law of the Hindu law-books in commercial matters might have been entirely superseded by local usages, as it undoubtedly had been in many parts of the country in regard to the law of inheritance. It would certainly be incumbent on them carefully to examine what the differences were between the existing and proposed law before they consented to pass the Bill in its entirety.

To show some of the differences between the law of the Punjab and the proposed law, he would first ask the Council to turn to section 75 of the Bill, where it was laid down that "the ownership of goods might be acquired by buying them from any person who was in possession of them;" but according to the section on sales in the Punjab Code, if the property should have been purchased by private sale, the purchaser could not acquire a valid title from the seller who had not ownership. The most common crime over a great part of India was cattle theft; the stolen cattle, if recovered, were often not recovered so much by the exertions of the Police as by the continued and anxious search of the owners, by a search sometimes continued for months and even years, and during which a good deal of money was often paid to informers; but if the inducement given to such searching by the existing law was taken away, the owners of stolen property would undoubtedly relax their efforts. The information hitherto so constantly given to the Police by wary purchasers would no longer be given; the security so often insisted on under the present law by the purchaser to protect himself from loss would no longer be necessary; the tendency of the proposed law would be unquestionably to increase theft in general, and especially cattle theft. He would ask any Member of the Council who had ever sat on the magisterial bench in this country, what he thought would be the opinion of the neighbours when they heard, for instance, that a man finding his stolen cow, after all the anxiety and expense to which he (Mr. Brandreth) had adverted, was told that by the new law the cow was no longer his, because another man had bought it. He had no hesitation in saying that the alleged equity of such a law would be utterly incomprehensible to them. It was true that, by the same section to which he had already referred, it was provided that the buyer acted in good faith, and under circumstances which were not such as to raise a reasonable presumption that the person in

possession had no right to sell: but grazing rights were almost as common to the Indian portion of mankind as air and water were to mankind in general. The consequence was that almost every man in India possessed some kind of four-footed grazing animal, and thus it could hardly be presumed regarding any one who wanted to sell such an animal, if stolen, that he had not the right to sell. It was worthy of remark also that the English law on the subject of the ownership of stolen goods was much to the same effect as the Indian Law ; it was the principle, not only of the law of India, but of the law of England also, which the Commissioners proposed to set aside on account of alleged want of equity. The Commissioners did not even state that they had found a confirmation of their views in the law of any country. He did not himself in the least see the force of the arguments used by the Commissioners on this subject, which had been quoted in the Statement of Objects and Reasons. That however was a question of a theoretical character into which he said before that he had no intention of entering.

He now referred to section 145 of the Bill, regarding Bailment, for his next comparison between existing and proposed law. This section provided as follows: "The bailee, in the absence of any agreement to the contrary, is not responsible for the loss, destruction or deterioration of the thing bailed if not caused by his fault," but by the section on Bailment in the Punjab Code, in the case of a pledge, "the pawnor on loss of pledge could not ordinarily be compelled to pay a debt for which he had already given satisfaction." He would with the permission of the Council read an extract from the commentary on the section, appended to the Punjab Civil Code. If the article pawned should be lost without any fault of the pawnee, "by the Muhammadan Law," they were told, "the pawnee is responsible. It is held that *amissio pignoris liberat debitorem*: that the loss extinguishes the debt; and that, moreover, if the value of the lost pledge exceeded the amount of the debt, the pawnee must reimburse the pawnor accordingly. This rule Sir W. Jones stigmatizes as contrary to reason and justice and to the prevailing tendency of other Codes; but Sir W. Macnaghten strenuously defends it in his preface to the Principles of Muhammadan Law" * * * "Sir W. Macnaghten's sentiments appear to be applicable to Indian society and not destitue of justice. In India deposited goods are not unfrequently tampered with and concealed or made away with under a false pretence of theft; simulated burglaries are not unfrequent, and, notoriously, the first question that obtrudes itself on a police authority is not so much who is the criminal, but whether the crime was committed at all? Such cases may be rare in Europe, but in this country suspicion hangs over the loss of a pledge alleged to have happened without any fault of the pawnee. Special enquiry has been

made as to the custom and feeling on this subject in the Punjab; without doubt the pawnee is considered responsible for the loss or injury of the pledge, whether he be in fault or not."

He would confidently appeal to the experience of any member of that Council who had acted as a Magistrate in India to confirm the truth of the remarks which he had just read. He felt certain that after the experiences he must necessarily have had of the many false statements put forward regarding deposits and pledges by those to whom they had been entrusted, he would hold it to be very impolitic to weaken in any way the responsibility which attached to pawnbrokers or pawnees of whatever kind by the existing law.

The next reference he would make was to the proposed Law of Partnership. Section 245 of the Bill provided that every partner was liable for all debts and obligations incurred by, or on behalf of, the partnership. But by the Punjab Code each partner was ordinarily liable for his share and no more in the absence of an express agreement to the contrary.

"The limitation," it is remarked in the commentary on the section on Partnership in the Punjab Code, "is but just to those who engage in partnership on this universally implied condition. It certainly cannot be unjust to those who deal with and give credit to firms on this invariable understanding," and further on they were told that this principle was "deemed a vital one to the commerce of the province." Now, take the case of a man of substance who had, say, an anna share only in some concern, with other persons who held the remaining fifteen annas, but whose guarantee for their engagements was not worth much; money had consequently been borrowed at a very high rate of interest; the business did not succeed; the firm was not able to meet its engagements: if the proposed law was passed, the creditors might then be able to bring ruin on the wealthy partner by demanding payment of the whole of a debt for which he had no reason for supposing himself responsible, while the creditors themselves would gain a security for the payment of their money, which they were not the least aware of possessing at the time that they lent their money. It seemed to him that such a change in the law would be highly injurious and inequitable.

Another difference MR. BRANDRETH saw had been pointed out by the Assistant Secretary in the Legislative Department in a Note of his on this Bill, a copy of which he (MR. BRANDRETH) had recently seen. It appeared that under the Bill the full amount of dower stipulated for at a Muhammadan marriage must be decreed on the claim of the wife in case of divorce, and that

the discretion with which the Courts were invested by the Punjab Code, of reducing the amount, would no longerbe left to them. Muhammadans as a safeguard against capricious divorces often stipulated for an amount of dower far beyond the means of the bridegroom ; but it was not only in case of divorce that the dower was claimable by the wife—she might claim it at any time either during her husband's life or after his death, and in either case the Courts, by the Punjab Code, had the power of reducing the amount contracted to be paid, if excessive. He was not sure that they would be left with any such equitable power under this Bill.

He did not pretend, however, to have as yet instituted a complete and exhaustive comparison between this Bill and the existing law of the Punjab. There were differences also in regard to the question of consideration in contracts, the warranty of the goodness of things sold, the dissolution of partnerships, and other matters, which he would not further trouble the Council by entering into, but what he had stated would be sufficient to show to the Council, he thought, that there were very important and material differences. He was decidedly of opinion that this Bill ought not to be passed into law without carefully comparing its provisions with those provisions of the existing law throughout India which would be superseded by the proposed law, and this was a task to which he hoped the Select Committee to which he saw Mr. Massey proposed that the Bill should be referred, would devote itself. Many of the provisions of this Bill were, no doubt, most admirable, and would make clear and definite numerous points which had not hitherto rested on any certain basis; but when the existing law on particular points was already clear and definite and suited to the known peculiarities of the country in his opinion it ought not to be altered and set aside merely because the provisions of this Bill on those points appeared to be theoretically more perfect.

His Excellency the President thought there was a good deal in what had fallen from Mr. Brandereth well worthy of consideration, especially with respect to the provisions regarding the acquisition of property by purchase in market overt, and to the clauses relating to bailment. The President was quite in accord with Mr. Brandereth in thinking that any change of the Law of Sale, such as that which the Commissioners proposed, would give great encouragement to thieves in general, and more particularly to cattle-stealers.

It was a mistake to suppose that the law regarding the acquisition of property by purchase, which had been referred to, was limited to the Punjab.

His own belief was that the law all over this side of India, with the exception of the presidency towns, and certainly that of the North-Western Provinces, was the same as it was in the Punjab. In the North-Western Provinces it was notorious to every Magistrate that cattle-stealing and the stealing of all kinds of animals was very prevalent, and he believed it would be greatly encouraged by any change of the law whereby the property became indefeasibly vested in the purchaser. Many parts of the North-Western Provinces as well as of the Punjab were conterminous with foreign territory, where theft of all kinds prevailed; and it was well known that the great security against cattle-stealing was the desire of the owner to get back his property. He pursued and traced it, and assisted the police in ascertaining who were the thieves and receivers, and, as Mr. Brandereth had explained, if that incentive were removed by a change in the law, the principal means whereby the offence was kept down would be lost. He (THE PRESIDENT) could call to mind many cases in which valuable cattle—cows, camels, horses, brood-mares, and the like—had been stolen and carried away hundreds of miles, and been traced from place to place by the owners, assisted by their friends, and eventually the offenders had been brought to justice. He thought that the state of the law well suited to the state of the country, and any change was to be deprecated.

Mr. Brandreth's remarks as to the law of bailment and as to dower were worthy of consideration. Not only were excessive dowers contracted for with a view to prevent frequent divorces, but also on the ground of *izzat* (family honour) men stipulated for an amount of dower which it was never intended should be paid. The Select Committee to whom the Bill would be referred would do very right in considering carefully the observations which had fallen from Mr. Brandreth.

Major General the Hon'ble SIR H. M. DURAND concurred generally with the remarks which had fallen from Mr. Brandreth and His Excellency on the application of section 75 of this Bill to cattle-lifting. It would only be necessary on his own part to call attention to the fact that the practice of the recovery of stolen cattle by the original owners prevailed as law and custom, not only in our British provinces in India, but in every Native State. It was in fact the common law of India throughout its length and breadth. Wherever our borders were conterminous with Native States, or the frontiers of the latter interlaced with each other and ourselves, there was no frequent cause of reference to our residents and Political Agents, as well as to our civil authorities, than the recovery of stolen cattle, and he was

convinced that departure from the principle hitherto pursued in the adjudication of such cases would cause great discontent; for, being contrary to immemorial usage and to the sense of the people, the institution of the new principle in favour of the purchaser would not be understood. It would come into conflict with all precedent and practice, both in our own territory and in a multitude of inter-jurisdictional cases, in which, from our relations with Native States, our Residents and Political Agents were and had been perpetually the referees. The sudden passage from their old and universally accepted principle of law to a new one would certainly not be acceptable, or indeed comprehended.

His own experience fully bore out what Mr. Brandreth had advanced in objection to the provisions of the particular section on Bailment which he had quoted from the Draft Act. An alleged robbery of goods bailed was the commonest form of expedient for endeavouring to elude a bailee's responsibility, and, in the majority of cases, had not the smallest foundation in fact.

He would not touch upon the point of Dower Contracts to which Mr. Brandreth had adverted—a large and complicated subject, and an important one—nor indeed would he allude to other points which would be found to conflict with the existing laws and practice of various parts of the empire. They were numerous, and would demand very careful scrutiny and consideration. In the main he concurred with the general principles embodied in the draft Contract Law now before them; but the detailed application of these principles, where they came into marked conflict, as they would be found to do, with the common law and usage of India, would demand the utmost attention, if not limitation and modification.

The Hon'ble MR. TAYLOR said that as his hon'ble friend Mr. Brandreth had appealed to the experience of Members of Council who had ever exercised magisterial functions in India in support of his objections to several of the provisions of this Bill, he (MR. TAYLOR) desired to say two or three words on the subject of the sale of goods in open market, one of the points to which his hon'ble friend had specially referred. He wished to express his general concurrence in the remarks which had fallen from His Excellency the President and Sir H. Durand; they were applicable, not only to the Punjáb and to border countries generally, but to every part of India with which he was acquainted. No doubt, the danger was great of any sudden or complete reversion of the existing law or custom, under which stolen property, although bought in open market, was usually restored to the owner. But it seemed to him that the change contemplated in the Bill was not so radical as His Excellency and

the other Members of Council supposed; nor was it altogether opposed to the spirit of Hindú law or to local practice in some parts of India. He would refer to the remarks of the Indian Law Commissioners which had accompanied their draft Bill, and to which considerable weight was due. They admitted the difficulty of the subject, but after balancing the hardship of denying to the owner the right of recovering his undoubted property against the hardship to a *bonâ fide* purchaser in open market of being deprived of what he had bought, they considered that, both on grounds of equity and in the interest of commerce generally, the greater weight was on the side of a rule favourable to the purchaser. But in so deciding, they were careful to provide that the buyer must be understood to act in strict good faith, and that there must be a reasonable presumption, from the circumstances of the case, that the person in possession of the goods had a right to sell them. Guarded in this way, he did not think that this section of the Bill was open to the strong objections urged by Mr. Brandreth, or that it would be productive of the evils apprehended by His Excellency. Even in the case of cattle-stealing—a common offence all over India—the considerations which he had stated would apply. The attendant circumstances at the time of purchase would be the Magistrate's guide in each case, whether they were or were not such as to raise a reasonable presumption that the person in possession had no right to sell. If they were, he would restore the cattle to the real owner; if they were not, and it was clear that the buyer had acted in good faith, the latter would be allowed to retain what he had fairly bought. In forming a judgment as to the reasonableness of a presumption either way, a good deal would of course depend upon the distance of the place of purchase from the place where the theft was comitted, and upon the general repute and known habits of the seller. Then, as regarded the supposed novelty of the rule laid down by the Commissioners, he (MR. TAYLOR) would read to the Council a passage in the Note of the Assistant Secretary in the Legislative Department, which had perhaps escaped Mr. Brandreth's attention. Speaking of section 65, "the rule here laid down as to sale in market overt," says Mr. Stokes, "will not be so novel in India as the Commissioners appear to suppose. I am informed by Mr. Fitzpatrick (a Deputy Commissioner in the Punjab) that the Punjab Code extends the rule of market overt to every bazaar in the province, without however much benefit to the public. The Hindú Law has a curious and by no means inequitable rule on the subject. The real owner can always recover the goods from the purchaser, who again can recover the price from the seller. But when the purchaser has bought *bonâ fide* in open market and cannot produce the seller, the owner can only recover on payment of half the value." 'To purchase a thing,' says Vrihaspati, 'from an unknown seller is one fault; negligence in

keeping the thing is another; and these two causes are to be considered as just causes of loss to each.' This would seem to show that the ancient Hindú lawgivers had as keen an appreciation of the difficulty of the subject and of the injustice of throwing the whole loss on a blameless purchaser as the Indian Law Commissioners. Whether this or a somewhat similar rule could be adopted, or any modification be introduced into this section as drawn by the Commissioners, would be for the Select Committee to determine. He (MR. TAYLOR) fully owned that it was a point of great importance, and that it deserved very careful codsideration.

Major General the Hon'ble SIR H. DURAND, with the permission of the President, said that the precautionary and remedial measures suggested by Mr. Taylor as feasible were not provisions of the Bill, and on the distinction drawn between market overt and private sale, he (SIR H. DURAND) must be permitted to add that, in the matter of the sale of stolen cattle, the distinction was in this country a delusive one; practically there was as little security in the one as in the other mode of transfer for the original owner from whom the cattle had been stolen.

The Hon'ble MR. HOBHOUSE, with the permission of His Excellency, wished to say a few words on the subject of section 75 which had been so much discussed. The question seemed to him to resolve itself into this, whether the innocent purchaser or the innocent loser should be the person to suffer. He did not mean to say that there might not be good reason shown for making an exception as regarded any part of India; on the contrary, he thought that, where necessary, exceptions ought to be made. But on the question of principle he did not think there could be much doubt. An innocent purchaser was in no way responsible for the loss suffered by the owner. He went to a market to which, to take the case under discussion, cattle were ordinarily brought for sale; he went to a cattle-stall, paid a fair price for what he bought, and went away. But the proposed law required that he must act in good faith, and under circumstances which ought not to excite a reasonable suspicion as to the vendor's right to sell. Now, as regarded the innocent loser, there were two means of protection afforde dhim. First, there was the criminal law which might be brought to bear on the person who stole and on his abettors. Then the section only protected the purchaser of the stolen property when the circumstances were not such as to raise a reasonable presumption that the person in possession had no right to sell. MR. HOBHOUSE therefore thought that under the law as it stood and as proposed more protection was given to an innocent loser than to an innocent purchaser.

The Right Hon'ble MR. MASSEY said he gathered from the discussion that had taken place that there was a general assent in the expediency of some such measure as the present, and that the sense of the Council was not adverse to the principles on which the Bill had been constructed. His hon'ble friend Mr. Brandreth, in discussiug the Bill in a somewhat critical spirit, admitted that it contained many admirable provisions, and MR. MASSEY hoped, notwithstanding the objections he had urged, that he should have his hon'ble friend's co-operation in passing it. Mr. Brandreth seemed to censure the Indian Law Commissioners because they had consulted the Codes of foreign countries, but MR. MASSEY thought the Commissioners would rather have deserved censure if they had failed to inform themselves of the modes in which all civilized countries had practically dealt with the great question of codification. The Hon'ble Member also complained that the effect of the Bill would be to interfere with the law in force in the Punjab, but MR. MASSEY must remind him that the law now proposed was a considerable departure from that in force in the presidency towns, and the same objections might be made by the High Courts on their original sides. He thought that, if any alteration were made, the law should be uniform throughout the country; no province should be isolated, especially in such a matter as the law relating to mercantile contracts; but if any special circustances existed which rendered any portions of the law inapplicable to the Punjab or any other province, that province might be especially saved, at least for a time, from its operation. His hon'ble and learned friend Mr. Hobhouse had, on the other hand, shown that the Indian Law Commissioners had not been unmindful of the peculiarities of the country in framing the clauses of the Bill. He had pointed out what he termed coincidences between the Hindú law and the provisions of the Bill, but he would probably have been more correct if he had said that the Native laws on the subject had been carefully examined by the Commissioners, with the view of maintaining, as far as possible, a harmony between ancient customs and the new law. Mr. Brandreth had also objected to section 75, and seemed to apprehend that the Bill would degenerate into a Cattle-stealers' Bill, in consequence of the extension of the law of market overt, which, if enacted in its present form, it would effect. In objecting to the provision, MR. MASSEY was inclined to agree with him, not so much from considerations of abstract equity as from those of political expediency. The law on the subject was certainly in an unsatisfactory state; there was nothing like it in any civilized country but England and her colonies; the State of New York had, he believed, recently rejected it from their system, and if Mr. Brandreth succeeded in satisfying the Committee that the proposed change would encourage theft, any modification which he might propose would be carefully considered and possibly adopted. But if Mr. Brandreth tried to persuade the

Committee that it was expedient that there should be one Law of Contract for the Punjab and another for the rest of the country, MR. MASSEY could not congratulate him on his prospects of success.

Other observations relating to the details of the Bill had been made; they came before the Council with great weight, and would doubtless receive due consideration in Committee. On the whole, he thought that the promoters of the Bill had reason to be satisfied with the mode in which the measure had been received; and he believed that the result would be a measure calculated to meet all the circumstances of the country; that it would be found a great boon to all engaged in business in the mofussil, and that the success of this first attempt at codifying the rules of the Law of Contract would affect in the happiest manner the legislation of Great Britain and the British colonies.

The Motion was put and agreed to.

INDIAN NEGOTIABLE INSTRUMENTS BILL.

The Right Hon'ble MR. MASSEY asked leave to postpone the motion which stood next on the List of Business to introduce the Bill to define and amend the law relating to Promissory Notes, Bills of Exchange, and Cheques, and to move that it be referrad to a Select Committee with instructions to report in three months.

Leave was granted.

MUNICIPAL COMMITTEES (N.-W. P.) BILL.

The Hon'ble MR. BRANDRETH, in moving for leave to introduce a Bill to make better provision for the appointment of Municipal Committees in towns in the North-West Provinces and for other purposes, said that the Bill was brought forward at the request of the Lieutenant-Governor, North-Western Provinces; it was proposed to frame it in a great measure in accordance with the provisions of Act XV of 1867, an Act passed during the last Session, for the improvement of municipal administration in the Punjab. The existing Municipal Act XXVI of 1850 had been found in the North-Western Provinces to be deficient, as regarded many of the requirements of the present time, in the same way in which it was found to be deficient in the Punjab. It was requisite that the Lieutenant-Governor should have the power of appointing Municipal Committees in such towns as he might think proper, and of directing the Committees to provide in the first place out of the funds for the maintenance of the police establishments. It was desirbale to enlarge the description of the

objects to which, after providing for the police force, the funds of the Municipality might be devoted, to make provision for the support of educational, charitable, and other similar institutions. It was also proposed to authorize the Committees to borrow money for the construction of works of permanent utility, to enable them to deal in a more satisfactory manner than hitherto with nuisances, and in general to put the municipal administration on a better footing.

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART moved that the Hon'ble Mr. Stewart Gladstone be added to the Select Committee on the Bill to consolidate and amend the law relating to Merchant Ships, Seamen, and Passengers by Sea.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE moved that His Honour the Lieutenant-Governor of Bengal be added to the Select Committee on the Bill to consolidate and amend the law relating to Principal Sadr Amíns, Sadr Amíns, and Munsifs, and for other purposes.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to define and amend the law relating to Contracts, Sale of Moveables, Indemnity and Guarantee, Bailment, Agency and Partnerships—Major General the Hon'ble Sir H. M. Durand, the Hon'ble Messrs. Brandreth, Shaw Stewart, Hobhouse, Skinner, and Stewart Gladstone, and the mover.

The Council adjourned till the 13th December 1867.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

CALCUTTA,
The 6th December 1867.

G. C. Press, Simla.——No. 214 L. D.—21-8-94.—50.