

*Thursday,  
7th March, 1895*

ABSTRACT OF THE PROCEEDINGS  
OF THE  
Council of the Governor General of India,  
  
**LAWS AND REGULATIONS**

**Vol. XXXIV**

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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,

1895

VOLUME XXXIV



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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 Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).*

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The Council met at Government House on Thursday, the 7th March, 1895.

PRESENT :

His Excellency the Viceroy and Governor General of India, P.C., LL.D., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I.

The Hon'ble Sir A. E. Miller, K.T., Q.C.

The Hon'ble Lieutenant-General Sir H. Brackenbury, K.C.B., R.A.

The Hon'ble Sir C. B. Pritchard, K.C.I.E., C.S.I.

The Hon'ble Sir J. Westland, K.C.S.I.

The Hon'ble Sir A. P. MacDonnell, K.C.S.I.

The Hon'ble Baba Khem Singh Bedi, C.I.E.

The Hon'ble P. M. Mehta, M.A., C.I.E.

The Hon'ble Gangadhar Rao Madhav Chitnavis.

The Hon'ble H. F. Clogstoun, C.S.I.

The Hon'ble P. Playfair.

The Hon'ble Mahārāja Partab Narayan Singh of Ajudhiā.

The Hon'ble Mohiny Mohun Roy.

The Hon'ble Sir G. H. P. Evans, K.C.I.E.

The Hon'ble Sir F. W. R. Fryer, K.C.S.I.

The Hon'ble C. C. Stevens, C.S.I.

The Hon'ble H. E. M. James.

The Hon'ble A. S. Lethbridge, M.D., C.S.I.

QUESTIONS AND ANSWERS.

The Hon'ble MR. MEHTA asked :—

“ I. Is it true that the Government of the North-Western Provinces subscribed to 62 copies of a weekly newspaper called *The Punjab Patriot* after the Punjab Government had declined to give it similar help ? ”

“ II. Is it true that the Commissary General's Office, Western Circle, Rawalpindi, has issued a circular stating that a previous circular directing *The Punjab Patriot* to be used for advertising Commissariat notices had not been fully acted up to, and ordering that *The Punjab Patriot* should take precedence of all other papers of the Native Press published in English ? ”

[*Sir Antony MacDonnell; Lieutenant-General Sir [7TH MARCH, 1895. Henry Brackenbury; Sir James Westland; Sir Alexander Miller.]*

The Hon'ble SIR ANTONY MACDONNELL replied to the first question as follows :—

"This question substantially repeats a question asked in the North-Western Provinces and Oudh Legislative Council on the 21st January, 1895, to which an answer was then given.

"The matter is one in which the discretion rests solely with the Local Government."

The Hon'ble LIEUTENANT-GENERAL SIR HENRY BRACKENBURY replied to the second question as follows :—

"Yes, it is true. The discretion as to the choice of newspapers for advertising for tenders rests with the Commissary General."

#### INDIAN COMPANIES (MEMORANDUM OF ASSOCIATION) BILL.

The Hon'ble SIR JAMES WESTLAND moved that the Bill to give power to Companies to make certain alterations in the Instruments under which they are constituted, and to amend the Indian Companies Act, 1882, be referred to a Select Committee consisting of the Hon'ble Sir Alexander Miller, the Hon'ble Sir Antony MacDonnell, the Hon'ble Mr. Mehta, the Hon'ble Mr. Playfair and the Mover, with instructions to report at the next meeting of the Council. He said :—"I have no remarks to make. The Bill is a non-contentious one. It has been generally approved, and I think it is probable that the Select Committee will find themselves able to dispose of it within the time allowed to them."

The Motion was put and agreed to.

#### EXTRADITION (INDIA) BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill to confer on Presidency Magistrates and District Magistrates certain powers and authorities in relation to the surrender of fugitive criminals be taken into consideration. He said :—"The Bill is a very short one and it has not been thought necessary to refer it to a Select Committee. The facts may be briefly stated as follows. By the Extradition Act, 1870, when extradition from the United Kingdom is demanded of a fugitive criminal, the Secretary of State's warrant is

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issued for his arrest, and then a Police Magistrate investigates into the affair, and, if there is proper evidence against the criminal, he is handed over. Then it is provided that in the extension of the Act to British possessions 'no warrant of a Secretary of State shall be required and all powers vested in or acts authorised or required to be done under the said Act by the Police Magistrate and the Secretary of State or either of them in relation to the surrender of a fugitive criminal may be done by the Governor of the British possession alone.' The result of that in its application to India is that for purposes of extradition under this Act it is necessary for the Governor or Lieutenant-Governor of a province to do himself all the acts which ought to be done by a Police Magistrate; but the Act of Parliament contains a provision that, if any British possession passes a law or ordinance which has the effect of working out the Act, then Her Majesty may by Order in Council suspend the operation of the Act of Parliament and direct that the law or ordinance shall have effect in the British Possession as if it were part of the Act of Parliament. The difficulty I have mentioned having been felt in other provinces—the Colony of Ceylon amongst others—they passed a law some years ago conferring on District Magistrates in those places the power to act in the same manner as the Police Magistrates do under the Act in the United Kingdom, and we have thought it desirable to extend the same class of provisions to India in order that when a fugitive arrives, say, at Bombay, it may not be necessary for the Governor of Bombay personally to take all the steps necessary for his arrest, and to enable a Presidency Magistrate or District Magistrate, as the case may be, to do the ministerial work which falls on a Police Magistrate in England. This Act has been copied from the Singhalese Ordinance which has been found for the last twenty years or so to work very well, and we propose simply to adopt in India the provisions which have worked so satisfactorily in Ceylon."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill be passed.

The Motion was put and agreed to.

#### BURMA BOATS BILL.

The Hon'ble SIR FREDERICK FRYER moved for leave to postpone his Motion that the Bill to provide for the Registration of certain Boats in Lower Burma be referred to a Select Committee consisting of the Hon'ble Sir Alexander Miller, the Hon'ble Sir Antony MacDonnell, the Hon'ble Gangadhar

[*Sir Frederick Fryer; Sir Alexander Miller; Mr. Playfair.*] [7TH MARCH,

Rao Madhav Chitnavis, the Hon'ble Mr. Playfair, the Hon'ble Mr. James and the Mover, with instructions to report at the next meeting of the Council.

The Motion was put and agreed to.

#### INDIAN RAILWAY COMPANIES BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill to provide for the payment by Railway Companies registered under the Indian Companies Act, 1882, of interest out of capital during construction be taken into consideration. He said :—"I explained when asking for leave to introduce this Bill that its sole object is to place Railway Companies registered in India on the same footing as companies registered in England for the construction of Indian railways as regards this matter of the payment of interest out of capital during construction. The Bill is practically copied from the English Act, except that we have left out a provision for retrospective operation which occurs in the English Act. It is provided in the English Act that where interest has already been paid out of capital with the sanction of the Secretary of State, that shall be as valid as if it were paid after the passing of the Act. My only reason for not inserting a similar provision in this Act is that on enquiry I discovered that no such case has arisen in India, and therefore the section, if introduced, would be a dead-letter. In all other respects the provisions of the Act are precisely, as far as the circumstances of the two countries admit, the same as those of, and are directly taken from, the English Act."

The Hon'ble MR. PLAYFAIR said :—"My Lord, I congratulate Your Excellency's Government upon the introduction of a measure adapted from the latest advance in England in legislative economics and intended to develop and extend the construction of the railway system in this country, by offering inducement to investors and the public to subscribe capital under conditions that will avoid delay in their receiving a return of interest upon their investment. The effect of enabling railways whilst under construction to pay interest out of capital must be to make this class of investment more popular without materially adding to the cost of a line. It should also be a means, as I strongly hope it will be, of encouraging capitalists in this country to subscribe in silver currency towards the construction of railways, and especially of light railways of short distance, including feeder lines. These are much wanted as a means of connecting the interior with the great railway arteries which have already done so much to further the commercial and the administrative wants of the Empire. I believe I am correct in associating with this Bill the name of the Hon'ble Member who

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[*Mr. Playfair.*]

presides over the Public Works Department of Your Excellency's Government. If so, it may be a satisfaction to Sir Charles Pritchard to know that the mercantile community accord their approval to the Bill. I hail also with satisfaction the evident desire on the part of Government to entrust the management of railways to companies, for it is reasonable to expect that the management by direction, possessing a special acquaintance with commercial methods and requirements and having special sympathy with the varying conditions and demand of trade, will adapt itself more readily to mercantile wants than departments administered by the State. In other words, the fault of the system of official management is inelasticity; the merit of commercial management is adaptability to requirements as they arise. The distinction between a light railway and a provincial tramway is not to my mind very clear, but I hope that both will come under the definition of 'railway' set forth in section 2 of the Bill. I look to a system of light tramways as being a suitable method of connecting town with town and each with the main lines of railway, or with the great rivers, especially in certain districts that have come under my notice in Bengal and Assam. I think that the construction of such tramways or light railways deserves every encouragement. It is quite possible that, if liberal inducement is offered by Government in the matter of conceding roadways, land and timber from Government reserves, local effort may be called forth for the construction of serviceable lines of communication to the increased convenience of passengers and also to the increase of facilities in the transport of produce. I would suggest that Government might not only make a general appeal for the promotion of companies in India, and through Indian agency to undertake the construction of railways and tramways, but might also, with great advantage to the whole community, place before the public, from time to time, a schedule of routes or lines of communication which appear to be required and which Government consider might be suitably undertaken by private enterprise. I hope Government has not finally decided to withhold a guarantee of interest by subsidy to Railway Companies, for although it may be to the advantage of the State that the entire onus of profit and loss associated with such undertakings should rest with investors, it must not be forgotten that there are large sums of Trust Funds seeking employment which can only be invested in undertakings having Government guarantees. One serious hindrance to the promotion of companies for the construction of lines of railway and provincial tramways in India—to which I desire to direct special attention—has been the excessive delay that occurs in obtaining the sanction of the Government to proposals put forward by promoters. Inasmuch as alterations occurring in the money market cause investors to appear and

disappear, it has happened that, without anything having arisen to detract from the merits of a scheme, subscribers have withdrawn for the reason that capital is intolerant of delay or idleness. In other words, if the opportunity of obtaining subscriptions of capital is not availed of when it offers, it may, if not entirely, at all events be lost for a long period, promoters and their supporters in the meantime having turned their attention to other undertakings. I therefore submit, my Lord, that it would be convenient were the Government of India to publicly notify the systems of railways and tramways which in their view are desirable and those which might be undertaken by public enterprise, and also to give a prompt answer to applications that may be from time to time made by persons prepared to undertake the formation of companies. In either case I assume that Government will continue to conduct the survey of projects on its own account and also at the request of promoters. It is difficult for surveyors from home to prospect a tract of country in the thorough manner undertaken by the Department. I trust that in addition Government will, so far as it lies in its power, lend the superior officers of the Public Works Department to assist companies in the construction work of lines of railway. While it must be recognized that Government cannot be expected to educate and retain a staff of engineers on the off-chance of their being employed by companies, experience has shown the benefit to be derived from a knowledge of the country, the language, and customs of the people such as engineers in the Government service possess and which it must be of advantage to private enterprise to obtain. With these remarks, my Lord, I desire to support the passing of the Bill now before Your Excellency's Council."

The Hon'ble SIR CHARLES PRITCHARD said:—"My Lord, I am glad to learn from my hon'ble friend, the President of the Bengal Chamber of Commerce, that this Bill meets with the approval of the mercantile community.

"Mr. Playfair has dealt with a number of important questions of railway policy, some of which do not immediately arise on the Bill under consideration. I do not propose, at the present moment, to state definitely the opinion of the Government of India upon each of those questions. But I am glad of the opportunity which my hon'ble friend has given me of explaining some of the points which he has mentioned, on which I think that a certain amount of misconception exists, and of indicating my own views upon others.

"The first subject that my hon'ble friend has dealt with is as to the relative advantages of company management and State management of railways. In this matter I do not venture to say more, on behalf of the Government of



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India, than that the advantages he claims for company management are recognised to a certain extent, and that the question of transferring to companies the management of some of the State railways is now occupying our attention.

“ Considering the enormous extent of the State railway system, there have been singularly few specific complaints from the trade, or from the public, of shortcomings on the part of its management. The fact that the administrative and traffic establishments of many of the companies' lines in India are almost exclusively officered by Government servants who have been trained on the State railways is, I take it, proof conclusive of the efficiency of our State railway officers as a class, and of the soundness of the system under which they receive their training. The demands made by companies on the Department for experienced officers to fill the chief posts on their railways have increased of late ; and compliance with this growing demand, which deprives us of many of our best officers at the time when their services have become of the greatest value to us, tends to place State railway management at a disadvantage.

“ As regards the rank and file of railway servants in all branches, the balance of advantage is, I am inclined to think, on the side of companies' management. The rules which regulate pay and promotion and leave and pension and the general conditions of service in the several Civil Departments of the Government must necessarily be uniform and rigid, and from that and other circumstances our Civil Service Regulations are not in some respects well suited to the requirements of a commercial service, such as that of railways. There are again evident advantages in interposing between the executive head of a railway administration and the Government control some authority which possesses special acquaintance with commercial methods and is in immediate contact and sympathy with the requirements of the trading communities and the travelling public. It is also expedient, whenever a conflict of interests arises, as must often happen, between two or more railway administrations, on which the Government is called on to decide, that the case and the interests of each of the lines concerned should be represented by some authority independent of the Government. When State railways are implicated in such conflicts, the Government is a party to the dispute, as well as judge, and it has not unfrequently happened that the Government has found itself compelled by the mere force of that circumstance to surrender points which a Company's Board of Directors would have maintained. For these and other reasons, and speaking for myself alone, I say that I shall be glad to see the Public Works Department recede

gradually from the direct management of railways, and confine its attention to engineering and to those duties of general and equal control over all the railway administrations in India which, as my hon'ble friend has justly remarked, the Government must continue to exercise in the public interests.

"My hon'ble friend has expressed regret that tramways have not been included among the undertakings that will be affected by this Bill. I may explain that all steam tramways which are classed as railways and are worked under the Railway Act will be included. In this respect the Bill follows the Act of Parliament passed last year, and its object, as already mentioned by Sir Alexander Miller, is simply to extend the provisions of the English Act to railway undertakings registered in India. I do not think that there is occasion for going further at present.

"As regards guarantees, I cannot do better than refer Mr. Playfair to the answer given by the Secretary of State for India to a similar question asked in the House of Commons last month. Mr. Fowler then declared that the Government did not see their way to giving an Imperial guarantee for interest on railways in India.

"The next point noticed by my hon'ble friend is as to the attitude of the Government with regard to railway construction by private enterprise in India.

"He will, I am sure, accept my assurance that the desire of the Government of India to encourage genuine private enterprise in the construction of railways is sincere. But he must pardon me when I say that private enterprise in the work of constructing railways in India has hitherto been something quite different from the private enterprise which has created the railways of England.

"I am glad to say that some signs of improvement in that respect are now visible, especially in connection with schemes that depend on rupee subscriptions, but I must remind my hon'ble friend that all the proposals for railway extension that have come before this Government in my time have involved the grant of substantial assistance in some shape or other from the State funds, which my hon'ble colleague Sir James Westland guards so carefully in the interests of the tax-payer of India.

"I may say that, if any well-founded and well-considered scheme for a new railway were to be proposed upon the basis of a company's taking upon itself the possible risks as well as the possible profits of the undertaking, it would be a simple matter to give the assent of Government without any of the delay of which my hon'ble friend complains.

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"The delay has in the main arisen from the inclusion in the schemes of demands for subsidies for which the State is to make itself responsible, in whole or part, as well as from the circumstance that promoters usually come to the Government without having themselves made the thorough examination of their projects sufficient to convince other people of their soundness, and before they have obtained reliable information regarding the cost of executing the undertakings they propose and the amount of the probable earnings of those undertakings when carried to completion.

"It is the sense of the responsibilities of the Government of India to the Indian tax-payer which entails upon us the enquiries, surveys, estimates of cost of construction and working, and estimates of traffic prospects which must all be made in communication with Local Governments and with parent companies before a promoter's scheme can be admitted as one which this Government can recommend to the Secretary of State as suitable for a concession. When this stage has been reached, there will still remain the negotiations with the Secretary of State, and in the majority of cases also with the parent company which owns the main line, for the settlement of the detailed terms of the contract under which the projected line is to be constructed and worked. In my observation, the longest delays have occurred at this stage, as the main line companies are generally reluctant to admit to their systems independent branch line companies. The existing companies, whether they be guaranteed or assisted companies, have not shown themselves anxious, as a rule, for the intrusion of outsiders; they would prefer, not unnaturally, that Government should place them in a position to make on their own account, but more or less at the expense or risk of the State, such branches and extensions of their systems as are likely to prove of benefit to themselves, and they are striving to attain that object.

"Most of the applications which we receive from promoters are for lines connected with companies' systems. Firm applications within the published terms have been made in four instances only during the last two and a half years for the grant of concessions for branches or extensions of railways under State management, which have been considered likely to pay their way and to be such as might properly be entrusted to private enterprise. There was no delay whatever on the part of the Government of India in disposing of any of those applications. One of them was for a large extension to the North-Western State Railway by the construction of a line from Delhi, through Bhatinda, to Samasata. Our despatch recommending the grant of a concession for that line was forwarded to the Secretary of State in November, 1893. Two others were for branches of the Rajputana-Malwa system. Those we recommended to the

Secretary of State in October and November, 1894. The last is for an unsurveyed branch of the Tirhoot State Railway, which is now leased to the Bengal and North-Western Company. That is still undisposed of and awaiting the result of negotiations which the promoter has been permitted to make direct with the agent of the working company.

"The Hon'ble Mr. Playfair asks that the Government of India will publicly notify the systems of railways which they consider might suitably be undertaken by private enterprise.

"A few weeks ago the Bengal Chamber of Commerce made a similar suggestion to us. The subject had already received attention at the hands of Lord Lansdowne as well as of Your Excellency and myself. In October last we forwarded to the Secretary of State a list of certain projects, numbering 23 in all, and embracing a total length of about 3,700 miles of line, which we consider suitable for execution by private enterprise, if proper terms can be arranged. We await the permission of the Secretary of State to publish that list, with any modifications or reservations that may commend themselves to his judgment.

"But when we are at liberty to announce this list for general information we can only do so with the reservation to the Government of the right to determine the time at which and the order in which the several projects are to be put in hand.

"I may mention that these projects are separate from the Assam-Bengal Railway (740 miles) and from the railways, aggregating about 2,500 miles in length, mentioned in the list which the Secretary of State recently placed at the disposal of Sir James Kitson, which this Government proposes to construct by the direct agency of the State.

"It is scarcely necessary to say that we do not and cannot contemplate the simultaneous prosecution of all these lines of railway. If the entire programme of construction by State and by companies' agency which we have already placed before the Secretary of State is carried out, we expect that the aggregate expenditure on railway construction and maintenance in India will amount to about 700 lakhs in the year 1895-96 and to about 1,000 lakhs in 1896-97. The work involved is probably about as much as the staff of Engineers of matured Indian experience can undertake.

"The extension of the East Coast State Railway from Cuttack to Calcutta, with a branch connecting the extension, *via* Midnapur, with the Bengal-Nagpur Railway, and giving that railway an access to Calcutta and to the docks

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at Kidderpur independent of the East Indian Railway, holds the first place among the projects which we recommended to the Secretary of State in October last as being suitable for execution by company's agency. Negotiations for the construction of those lines are in active progress, and I confidently hope to see work begun upon them at an early date.

"In connection with the remarks I have just made, I would add that it appears to me that the Chambers of Commerce established at the large trade centres of India may perform a very useful function by keeping constantly in view those schemes of railway extension which in their opinion are likely to prove most conducive to the benefit of general trade and of the travelling public, and by pressing from time to time for their early construction in preference to the construction of lines which, though desirable in the interests of companies and their shareholders, will only meet in a less degree the wants of the public community. I am glad to take this opportunity of acknowledging a valuable communication from the Chamber of Commerce regarding the railway extensions most needed by Calcutta and Bengal, which has reached the Government of India during the last few days.

"I would renew the assurance which I have already given of the earnest desire of this Government to maintain a continuous policy of State railway construction so long as this course does not add to the burden of taxation in India.

"That policy has, with the approval of the Secretary of State and with the authority of the Parliamentary Committee of 1884, been consistently followed, and the Government of India may fairly claim that it has secured substantial progress, if not all that the most earnest advocates of railway extension would desire.

"It remains only for me to notice my hon'ble friend's remarks about surveys. Our expenditure on surveys in each of the years since 1890 has been—

	Rs.
In 1891-92 (actual)	6,05,460
In 1892-93 ( " )	5,73,410
In 1893-94 ( " )	8,03,780
In 1894-95 (estimated)	8,25,400
<b>TOTAL</b>	<b>28,08,050</b>

"The surveys and re-surveys executed during this period have extended over several thousand miles of line. The Government of India have utilized every

[*Sir Charles Pritchard ; Sir James Westland.*] [7TH MARCH,

available man and have expended this very considerable sum in examining schemes which have been suggested either by Railway Administrations or by Chambers of Commerce, or by promoters, as well as other projects which have been accepted as likely to be required in the early future.

"It is not possible for me to promise more, or to make any general undertaking to survey all projected schemes ; but promoters may feel satisfied that any project which gives promise of meeting a real want and which has reasonable prospects of proving remunerative will not be left without a survey, the cost of which will, in the event of construction being sanctioned, be put to the debit of the capital cost of the line.

"Surveys which appear to be called for on public grounds will be undertaken by the Government either on their own motion, or at the request of Local Governments, Chambers of Commerce, or other bodies representing public interests. Surveys will also be undertaken at the instance of promoters, so far as staff is available for the purpose, on their depositing funds to meet the estimated cost. All these surveys will be made on the same understanding, namely, that their cost will be added to the capital cost of the line concerned, in the event of its being sanctioned for construction. Particulars regarding each survey undertaken are published from time to time in the Gazette of India, and the plans and papers of all surveys made of lines which are considered suitable for execution by private enterprise may be seen on application at the Public Works Secretariat."

The Hon'ble SIR JAMES WESTLAND said :—"With Your Excellency's permission I should like to make a few remarks on one subject to which my hon'ble friend Mr. Playfair alluded in the course of his speech ; that is, the delay which is said to occur on the part of Government in respect to giving a reply to proposals for projects of railway construction placed before them by promoters. I venture to think that the speech of the Hon'ble Member gives a very full explanation of the reason and nature of these delays. He has told us that the promoters for the most part look to Government for the surveys of the railways which they themselves propose, and he also expressed a hope that the Public Works Department will be ready to lend its officers for the purpose of their construction ; in other words, his statement practically is that the promoters make their proposals in such a form that they must expect to have to wait for the survey of the line and the arrangements which Government can make for its subsequent construction. If the whole burden both of the examination of the project and of its subsequent construction is laid upon Government, it is not

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unnatural that considerable delay should take place in giving an answer to the projects put forward. My hon'ble colleague Sir Charles Pritchard has indicated, and indicated truly, that the delays which have arisen in the consideration of these projects are attributable in part to the necessity of their being closely scrutinised by the Government of India on the purely financial side. It is obvious that, if the promoters take no risk upon themselves, and throw the whole risk upon the Government, it is necessary for me, as representing the purely financial side of the Government and the interest of the tax-payer, to closely scrutinise the prospects of a railway before I can advise the Government to take it up as a project of which it has to bear the risk. My hon'ble colleague Sir Charles Pritchard has justly said that, if promoters would come forward on purely private-enterprise principles, they would receive all the encouragement possible on the part of the Government. I have no doubt that that is perfectly true, only we have not yet had an opportunity of proving it to be true. It seems to me that promoters are too much inclined to look at these matters purely from the side of the investor. What they have in mind is an investment for money, and not the construction of a railway. One project—which is at present, I can hardly say, before us, for I think it has been declined—was a proposal to the Government by certain promoters, that they should take over certain lines, that the Government should guarantee them a sterling rate of interest of  $3\frac{1}{4}$  per cent., and, moreover, should every fifteen years be prepared to return to them the whole of the capital, *plus* 5 per cent. If this is reckoned up, it will be found that the interest which the Government would have to pay would be over 4 per cent. per annum. To make a proposal like this to a Government which can borrow in sterling at 3 per cent. seems clearly unreasonable, and yet I have no doubt that that company has been added to the chorus of those who denounce the delays on the part of the Government, declare that the Government is unwilling to receive railway proposals, and lay the blame of delay in construction at its doors. Personally I cannot say that I expect promoters and investors to come forward for the construction of railways in this country upon terms upon which they undertake the risk themselves; experience has shown that any such hope is likely to be disappointed; but I am prepared to welcome any proposals for engaging in the construction of railways which in my estimation do not throw upon the Government a greater risk than it would have to bear in the case of construction by itself. But I make it a condition that the railway is one which is required in the interest of the Government and the country, and not merely in the interest of the investor. To ask the Government at present, for example, for a  $3\frac{1}{2}$  per cent. guarantee—and I do not know a single case in which a smaller guarantee has been asked,

[*Sir James Westland; the Lieutenant-Governor.*]. [7TH MARCH,

though I am not prepared to say that there are none—would be, it seems to me, to ask Government for more than it can reasonably be expected to give, especially as a share of profits in addition to the guarantee is an almost necessary condition of company management. I would therefore ask the Council to believe that, if delays take place in giving an answer to schemes laid before them by companies, they are not altogether due to the fault of the Government, but are mostly attributable to the promoters expecting more favourable terms than those which it seems to me reasonable for Government to concede. I would not wish it to be understood that in making these remarks I desire in any way to set myself against the promotion of railways by companies in India. I am anxious—though perhaps not quite so much so as my hon'ble colleague Sir Charles Pritchard—to see a certain number of railways constructed in this country, and I quite admit that construction and management by companies is the only way in which many of the projects which I believe to be necessary for the development of India can be carried out."

HIS HONOUR THE LIEUTENANT-GOVERNOR said :—"As this has become a somewhat informal conversation I trust I may be excused if I ask for information on one point which I think has not been clearly brought out in the speeches of either of the Hon'ble Members who have just addressed the Council. The Hon'ble Mr. Playfair referred to the delays which occur in accepting the proposals of promoters of railways, and the Hon'ble Financial Member has mentioned that in many cases the proposals of the promoters are unreasonable and cannot be accepted because they ask the Government to undertake larger responsibility than it would undertake if it executed these railways itself. But I was surprised to notice that he has not referred to the principal and leading case of concessions for the construction of railways—that in which the proposal comes under the terms notified in September, 1893, as the terms on which feeder railways could be constructed by private parties, that they should supply the capital for construction and the railway to which the feeder is added should carry out the management on terms which are generally expressed as the home rate of working. There was also a provision for giving a rebate to the feeder lines up to a certain limit on account of the traffic which they brought to the main line. In these cases the State runs no risk whatever, the whole risk being borne by the constructors.

"Now, nothing has been said as to the reason why any delay should occur in the acceptance of proposals which come within the limits of these conditions. It seems to me that, there should in such cases be very little or no delay, and yet, as a matter of fact, I believe it is the case that there is a considerable delay even



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now, and I think it would be useful if either the Hon'ble Financial Member or the Hon'ble Public Works Member would let the public know more exactly what the cause of that delay is, what faults or omissions are committed by the promoters in the cases of the kind I refer to, and how those who attempt to comply with the stipulations of the rules of September, 1893, can obtain an answer to their applications more quickly than has generally been the case."

The Hon'ble SIR CHARLES PRITCHARD said :—"The remarks which I made a few minutes ago relate to concessions under what are known as the branch line terms, which were notified in September, 1893, as well as to concessions for larger railway undertakings on special terms. His Honour is quite correct in saying that no delay should occur in the disposal of cases in which the applications submitted by promoters satisfy the requirements of the published branch line terms. I can only repeat the statement, which I have already made, that I am not aware of a single instance in which there has been any delay on the part of the Government of India in disposing of an application when the concessions asked for have been within the limits of the published terms, and have related to projects for which surveys and estimates were ready to hand. But the great majority of the proposals which we have received do not fall within that category. The generality of the proposals made have been for the construction of lines of railway for which neither surveys nor estimates nor traffic statistics had been previously prepared, and they have besides included demands for larger State subsidies than those which the Government of India had declared their willingness to grant. In such cases the whole work of examining the schemes and of ascertaining whether they are likely to prove remunerative or not is thrown on the Government establishments. The surveys and inquiries that have to be undertaken cost time as well as money, and the promoters of undigested and speculative schemes cannot reasonably expect to receive favourable answers to their proposals without considerable delay. The best advice which I can offer to promoters is that they should put themselves in possession of reliable surveys and estimates and traffic statistics and digest their projects thoroughly before they come to Government with applications for concessions which involve the grant of subsidies from the State treasury."

His Excellency THE PRESIDENT said :—"With reference to the discussion which has just taken place, I should like to remind the Council that the subject before it is limited to the subject of the Bill, the Bill being a Bill to enable the Government of India to allow the payment of interest out of capital during the construction of railways, in the same way as is done in England.

[*The President; Sir Alexander Miller; Babu Mohiny* [7TH MARCH,  
*Mohun Roy.*]

The debate which has ensued on the Bill has travelled over a good many points which are not exactly perhaps within the subject-matter of the Bill; but, knowing the great interest that is taken in railway matters both here and at home, I did not think that it was necessary for me to interpose on any point of strict order. The discussion which has taken place has given the Hon'ble Member who initiated it the opportunity of asking certain questions, and the Hon'ble Member of the Government of giving replies which will place before the public certain information; but these replies are not intended to initiate any fresh policy of the Government which would of course be brought up in a more formal and regular manner. I think that what has passed, and the statements made by my hon'ble colleagues, will satisfy the Hon'ble Member, Mr. Playfair, and those who are, like him, interested in this subject, that there is nothing in which the Government takes a greater interest than the promotion of railways in India, and, so far as I can judge, the general principles which he endeavoured to lay down in his speech are those which meet with very favourable consideration from the Government. At the same time it will be evident from the discussion that there are certain questions which have arisen as to the particular manner in which it is most desirable to invite the co-operation of private enterprise in the construction of railways in India, on which the Government is not in a position to do more than give the information which has been offered, and I feel it desirable that I should make it quite clear that in the statements made by my hon'ble colleagues and in the information they have given, they do not desire to lay before the public any fresh line of policy on these subjects. The Bill, as I have said, is a Bill with a limited application. It gives an opportunity for the investor in India to take advantage of the same methods which are now open to investors in England, and I should hope that money will be induced to come forward to aid the Government in the construction of railways in this country. Further than that I do not think it is necessary on this occasion to go."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill be passed.

The Motion was put and agreed to.

#### AWARD OF INTEREST BILL.

The Hon'ble MOHINY MOHUN ROY moved for leave to introduce a Bill to regulate the award of interest in suits for simple money-debts and mortgage-debts. He said :—"May it please Your Excellency, at present there is an

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[Babu Mohiny Mohun Roy.]

anomaly in our Courts in the matter of awarding interest, and there is no limit to the amount up to which interest may be awarded.

"In the town of Calcutta and in the province of Bombay, the rule of Hindu law, known as the rule of *damdupat*, is in force. It prohibits the award of interest exceeding in amount the principal. It has been settled by a long series of decisions of the Calcutta and Bombay High Courts that all transactions between Hindus in the town of Calcutta and in the province of Bombay were subject to, and governed by, this rule. Among the rulings I may note the following :—

"(1) I. L. R. 5 Cal. 867, *Ram Kanayee Adhicary v. Johur Lal Dutt*. (2) I. L. R. 14 Cal. 781, *Nobin Chandra Banerjee v. Romesh Chandra Ghose*. (3) I. L. R. 21 Cal. 840, *Ram Kanayee Adhicary v. Cali Churn Dey*. (4) 1 Bom. H. C. R. 47, *Dhundu Jagannath v. Narayan Ram Chundra*. (5) I. L. R. 1 Bom. 577, *Ram Chandra Mankeshwar v. Rhim Rav Ravji*. (6) I. L. R. 3 Bom. 312, *Ganpat Pandurang v. Adharji Dadabhai*.

"In the case in I. L. R. 14 Cal. a question was raised that this rule was inconsistent with Act XXVIII of 1855 which repealed the Usury Laws. The learned Judges (Prinsep, Wilson and Norris, J. J.) say with reference to this point—

'But we think there is nothing in that Act (which deals exclusively with the rate of interest which may be allowed) inconsistent with the rule now in question. The authorities are unanimous in favour of that view. To this effect are the decisions of Sausse, C.J., and Forbes and Newton, J. J., in 1 Bom. H. C. R. 47; of Couch, C. J., and Westropp, J., in 3 Bom. H. C. R. 23. The same law was laid down by Westropp, C. J., and Nanabhai Haridas, J., in 10 Bom. H. C. R. 382 and 385, and re-affirmed by Westropp, C. J., and Melville, J., in I. L. R. 1 Bom. 577, and by Westropp, C. J., and Green J., in I. L. R. 3 Bom. 312.'

"In another part of the judgment the learned Judges say as follows :—

'It is well settled that in this province, outside the presidency-town, no rule limiting the amount of interest to a sum equal to the principal prevails. This has been held in *Deen Doyal Pramanick v. Koylas Chandra Pal Chowdhury* (I. L. R. 1. Cal. 92); *Surjya Narayan Singh v. Sardhari Lal* (I. L. R. 9 Cal. 825); *Het Narayan Singh v. Ram Deen Singh* (I. L. R. 9 Cal. 871) and in other cases; and it is no doubt an anomaly that there should be one rule in Calcutta and another outside it.'

"The anomaly of the present state of the law, if it is to be removed, can only be removed by the Legislature. The learned Judges are not strictly accurate in saying, 'that in this province, outside the presidency-town, no

rule limiting the interest to a sum equal to the principal prevails.' In the district of the Sonthal Parganas a similar rule is in force under section 6, Regulation III of 1872.

"The Koran of the Muhammadans prohibits altogether the taking of usury. Although it has been held by the Calcutta High Court that the prohibition of the Koran was no part of the law of the country, and a Muhammadan might take interest as any other person (14 W. R. 308), the Muhammadans as a class would gladly accept a rule of limitation for this reason, if for no other, that there were very few money-lenders among them.

"It seems to be clear, therefore, that in the matter of awarding interest there is an anomaly 'which can only be removed by the Legislature.' To the removal of this anomaly by adopting the limitation contained in the rule of Hindu law, the Hindus can have no reasonable objection. It is part of their own law which is still in force in the town of Calcutta and in the province of Bombay. The Muhammadans, as shewn above, will welcome any rule of limitation in regard to interest. Now, the Hindus and Muhammadans constitute the people of India and form 92 per cent. of the population. The aboriginal tribes number above 2½ per cent. of the population, and like their brethren, the Sonthals of Bengal, require to be similarly protected against claims for exorbitant usury. So that it may be taken that for 95 per cent. of the population there can be no reasonable objection to prescribing a rule for limiting the amount of interest to a sum equal to the principal.

"The next point for consideration is whether there ought to be any limit to the amount which may be awarded as interest. A rupee borrowed at 6 per cent. compound interest with yearly rests would amount in twenty years to upwards of a lakh. One thousand rupees borrowed at 50 per cent. compound interest with yearly rests would swell to a lakh in eleven years and a half. It would be very strange if our Courts were bound to decree such enormous amounts as interest. Yet how could they do otherwise, in the absence of any definite rule of limitation? The Courts of Equity in England refused to give effect to such hard bargains, because they were hard bargains. In the case of *Kamini Sundary Chowdhurain v. Kali Prasanna Ghose*, reported in L. L. R. 12 Cal. 225, P. C., the Judicial Committee of the Privy Council say :—

'The doctrine of equity on this subject was laid down by the Master of the Rolls in *Beynon v. Cook*, and this judgment was affirmed by the Court of Appeal. Rhys Beynon was a reversioner or remainder man. Cook was a money-lender who took from him a promissory note for 100*l.*, for which he was charged 15*l.* discount for six months, and a mortgage of his reversionary interest, with interest at the rate of 5 per cent. per month.

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[Babu Mohiny Mohun Roy.]

The Master of the Rolls made a decree for redemption, on payment of the amount advanced, at simple interest at 5 per cent. per annum. He observed, "the point to be considered is was that a hard bargain? The doctrine has nothing to do with fraud. It has been laid down in case after case that the Court, wherever there is a dealing of this kind, looks at the reasonableness of the bargain, and, if it is what is called a hard bargain, sets it aside. It was obviously a very hard bargain indeed, and one which cannot be treated as being within the rule of reasonableness which has been laid down by so many Judges."

"Following the above ruling, the High Court at Allahabad (Oldfield and Tyrrell, J.J.,) considerably reduced the amount of interest claimed on a mortgage-bond in the case of *Madhu Singh v. Kasi Ram*, reported in I. L. R. 9 All. 228. The suit was to recover a sum of Rs. 679 due on a mortgage-bond. The principal sum lent was Rs. 99 with compound interest at 24 per cent. per annum with yearly rests. After stating the above facts, the judgment goes on to say:—

'Under the terms of the bond, the plaintiff had power to enforce the bond at any time by bringing to sale the mortgaged property. Instead of doing so, he has wilfully allowed the debt to remain unsatisfied in order that compound interest at the high rate should accumulate. The bargain seems to us a hard and unconscionable bargain which, under all the circumstances, it would be unreasonable and inequitable for a Court of Justice to give full effect to. That a power lies in the Court to refuse to give effect to such transactions is undoubted and rests on authority, and we may refer to the case of *Kamini Sundary Chowdhurain v. Kali Prasanna Ghose*, decided by the Privy Council. We modify the decree of the Courts below and decree the principal sum of Rs. 99 with simple interest at 24 per cent. per annum.'

"A more aggravated case of hard bargain came on in the Calcutta High Court before Sir Comer Petheram, Kt., C.J., and Rampini, J., in June, 1894. The case is not reported. It was an appeal from Original Decree No. 108 of 1893, *Ananda Moyi Gupta v. Ambica Charan Guha and others*. The principal sum borrowed on mortgage of landed property in September, 1881, was Rs. 1,500 at 33 per cent. compound interest with yearly rests. The loan was repayable in three months, but there was a stipulation to pay compound interest at the same rate until payment in full. Three months and 21 days after the loan a sum of Rs. 1,300 was paid in January, 1882. The effect of this payment was to reduce the principal to Rs. 352-14 after paying up the interest (Rs. 152-14) which had accrued up to that date. Ten years afterwards the mortgagee brought a suit to recover Rs. 6,137, being  $17\frac{1}{2}$  times Rs. 352-14, to which the principal had been reduced by the payment in January, 1882. The first Court made a decree for this enormous amount. On appeal, it was contended that this was a hard bar-

gain, to which full effect should not be given, and the cases of *Kamini Sundary Chowdhurain* and *Madhu Singh*, noted above, were quoted in support of this contention. But the learned Judges affirmed the decree of the first Court for Rs. 6,137 and disposed of this point as follows:—

‘It has been said in the course of argument that the rate of interest stipulated for is a high one, and that it should not be allowed on the ground of the bargain being an unconscionable one. But there appears to be no ground on which this could be held. It has not been shown nor even alleged that the executant was a minor or that any advantage was taken of him at the time of the making of the bargain. He was not a *pardahnashin* female, or a poor and ignorant person; and it is not said, far less proved, that he did not enter into the bargain in question with his eyes open. We, therefore, can see no grounds on which he can now be relieved from the bargain which he knowingly entered into. See the cases of *Surjya Narayan Singh v. Jogendra Narayan Ray Chowdhuri*, I. L. R. 20 Cal. 360, and *Magriram Marwari v. Rajpati Koeri*, I. L. R. 20 Cal. 366. Further, this plea was not raised in the Lower Court, nor is it taken in the grounds of appeal to this Court and the rate of interest is not higher than has been allowed in other cases.’

“Now, I can tolerate a straightforward usurer who, having driven a hard bargain, shows no indulgence to his debtor, but proceeds to realise his money by suit as soon as it becomes payable. He is bad enough. But a money-lender, who having driven a hard bargain, waits till his tens become hundreds and hundreds become thousands, is a great deal worse. It is a characteristic of compound interest which should be borne in mind, that it increases in geometric ratio, and its growth is far more rapid in the latter half than in the first half of the period. It is said that ‘the tender mercies of the wicked are cruel.’ But I consider the seeming forbearance of a money-lender, who has secured a high rate of compound interest, is the cruelest thing in the world. Each year’s forbearance means one coil more of the boa constrictor round his victim. Will the Legislature quietly look on and allow the calculating usurer to run untrammelled his course of rapacity?

“It may be said that the Indian Limitation Act in regard to the institution of suits operates as a check upon the inordinate growth of interest. But practically it does not so operate. The limitations for a suit on a registered bond without mortgage is six years, and that for a suit on a mortgage-bond is twelve years. In less than that time, with a moderately high rate of compound interest, the debt would run up from tens to hundreds and hundreds to thousands as shewn above. Then it should be borne in mind that a rupee or two paid in part-payment of interest would give the creditor a new period of limitation, which might, in this way, be indefinitely extended. A rule of not giving full

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effect to a hard bargain would equally fail to operate as a salutary or efficient check. The words would be understood in different senses by different Courts and would give rise to a large diversity of opinion. I have given an instance of such diversity of opinion between the Calcutta and Allahabad High Courts. Such a rule would, besides, be inconsistent with Act XXVIII of 1855, which repealed the usury laws. It would practically invalidate a contract to pay a high rate of interest, and would usher in again the laws against usury with a large element of uncertainty and indefiniteness which would render the rule practically unworkable in any satisfactory manner.

"The rule which it is proposed to make law 'has not anything to do with the legality or otherwise of a contract, but is simply a rule of limitation.' It has been so held by Justice Wilson in *Ram Kanayee Adhicary v. Johar Lal Dutt* (I. L. R. 5 Cal. 867). It does not prevent the creditor from stipulating for any rate of simple or compound interest how high soever, but simply prevents him from playing the waiting game and accumulating the interest on his money beyond a reasonable limit.

"I may add that the high usury of the village money-lender is sometimes tempered by Lynch law. It is not applied in the same manner as in America. The man is not hanged, but his house is gutted or burnt down.

"In the case of *Ananda Moyee Gupta* referred to above, the growth of interest in ten years was  $17\frac{1}{2}$  times, or on an average 175 per cent. per annum. If the creditor had waited two years more, the accumulation would have been 30 times the principal, or on an average 250 per cent. per annum. The creditor did not think fit to wait two years more, because the aggregate value of the entire property and resources of the debtor did not amount to more than  $17\frac{1}{2}$  times the principal. That is now practically the only limit to the growth of interest, namely, to a point which would cover all the properties and resources of the debtor and cause his absolute ruin.

"If the rate of interest was not unreasonably high, not exceeding 12 per cent. simple, or 9 per cent. compound, it might not be necessary to fix a limit to the growth of interest. Because in those cases the interest charged per annum would not be unreasonable and extortionate compensation for the use of the creditor's money. As this is a matter of general importance, I have no doubt suggestions will pour in from all quarters. The object of this Bill is simply to place a limit upon the inordinate growth of interest at a rate unreasonably high. I consider it best to start with a rough-hewn Bill of one section and leave it to the Select Committee, our 'Divinity', to 'shape our ends' with the aid of the suggestions that will come in.

[*Babu Mohiny Mohun Roy ; Baba Khem Sing Bedi ; Sir Alexander Miller.*] [7TH MARCH.]

"I wish to make one more remark with reference to this Bill. It applies only to money-debts and mortgage-debts, and not to dealings or transactions in grain. Grain is generally lent at a season when it is dearest and becomes repayable at harvest time when it is cheapest. Difference in price of grain in the seasons of loan and repayment is such as to fully cover the high rate of increment charged in grain transactions. It is usual for a borrower of grain to pay in grain 50 per cent. as increment or profit at harvest time. It is often no more than the difference of price in the two seasons."

The Hon'ble BABA KHEM SING BEDI expressed his concurrence in the remarks of the Hon'ble Mohiny Mohun Roy.

The Hon'ble SIR ALEXANDER MILLER said:—"There is no reason why the Government should offer any opposition to the introduction of this Bill. At the same time it must not be understood that by allowing the Bill to be introduced without opposition the Government is at all committed to its provisions. The object of restraining hard and unconscionable bargains is a very desirable one; but I am afraid I must admit that it is one that the Court of Chancery has been endeavouring to give effect to for something like 300 years, with very varying success. It is practically found that, unless provisions in restraint of bargains between money-lenders and their debtors are very carefully worded indeed, they always tend to the injury of the debtor. The debtor must have the money, and it does not in the least matter how hard the terms may be which are imposed, he is ready to accept them, and the more legislative difficulties are put in the way of the creditor making what terms he pleases, the more likely he is to make harder terms which the debtor will accept. I saw a great deal of that with respect to some of the old debts incurred before the usury laws were repealed in England. There were most elaborate provisions preventing annuities being secured on real estate in cases where more than a very reasonable amount was reserved by way of interest on the debt advanced; but the practical effect was that in the majority of cases the creditor succeeded in imposing such terms as to collateral securities, as to insurances, as to acceptance of part of the loan in kind which was afterwards repurchased at a great sacrifice, that practically the unfortunate borrower on annuities paid probably 60 or 70 per cent. for money which he might have got but for the law introduced for his protection at 30 or 40 per cent. I may say that shortly after I came out to India I set myself to the best of my ability to frame a clause which I could ask the Government to pass for the purpose of enabling the Courts to interfere with hard bargains of the kind mentioned by the Hon'ble



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[Sir Alexander Miller ; Mr. James.]

Member : but I have not yet got it into a shape entirely satisfactory to myself, and I cannot think it would be satisfactory to anyone else. At the same time I quite admit that the object of the Bill is a very desirable one, and without at all pledging myself or anyone else to support it as it stands I may say that I am glad that it has been introduced and that the subject is one which is well worthy of consideration."

The Hon'ble MR. JAMES said :—" I venture to hope that the Bill which the Hon'ble Mohiny Mohun Roy has asked for leave to introduce will come forward in a form which the Government can accept, and that I may see it passed into law. The fact is, as the Hon'ble Mohiny Mohun Roy has pointed out, the question of the amount of interest that may be recovered in British Courts of law has never been settled by those Courts. All the Courts of law in India have at different times and under different circumstances passed a different set of decisions. The other day the Sadr Court of Sind had a case before it, in which, besides the ordinary interest stated in the bond, a large amount of penal interest was claimed. The Court went into the question very carefully, much as the Hon'ble Mohiny Mohun Roy has done, it compared the different decisions of the different High Courts, and eventually, though with some slight doubt, came to the conclusion that an enormous rate of penal interest should not be enforced by a Court ; but this decision only adds to the conflict of authority.

"Now, as regards the total amount that can be recovered on a bond, the law is, as the Hon'ble Mohiny Mohun Roy has pointed out, unfair upon different classes of the community. Theoretically the law of *damdupat*, that is to say, that the interest may never exceed the principal, applies as amongst Hindus. Even then, as my hon'ble friend has pointed out, it is not always practicable for the Courts to enforce this. In fact, on the records of Your Excellency's Government a case is mentioned in which a raiyat having borrowed Rs. 10 and having paid Rs. 110 on account of the original debt of Rs. 10 found himself after ten years still encumbered with a debt of Rs. 220 ; to such lengths does our existing law and procedure lead us. That is as between two Hindus ; and as between a Hindu and a non-Hindu the case is worse, because the Courts hold that, the *damdupat* not being part of the sacred or ancient law of anybody but the Hindus, the Indian Courts may admit not once the principal as interest but a hundred times the principal ; and I can quote a very similar case to that which the Hon'ble Mohiny Mohun Roy has mentioned that occurred in Bombay, and which I am aware has been quoted by many subordinate Courts in the Bombay Presidency as a reason for giving unconscionable interest. An ignorant person gave a very foolish bond requiring him to pay what an ordinary

human being would have thought an unconscionable amount of interest, and the District Judge of one of the mufassal Courts in the Bombay Presidency decided that it was unconscionable. An appeal was made to the High Court of Bombay, and the High Court declared that there was a contract. There was the paper with the man's signature at the bottom and the stamp at the top, and there could not be anything unconscionable.

"The Act of 1855 strictly says that all usury laws are abolished, and that ordinary equitable interest should be awarded, save when there has been a contract, and in that case the interest agreed upon shall be awarded by the Court. I do not know whether my hon'ble friend in charge of the Bill proposes to alter that, but it seems to me that, as long as that stands, the introduction of a simple section, such as he proposes, will scarcely be of much good. However, I have no doubt that many suggestions will come in. When the Courts of law themselves in all parts of the country differ on so very simple a matter as to what is unconscionable interest, and whether unconscionable interest (if put into a contract paper), should be enforced or not, or as to the amount of compound interest which may be awarded, it certainly seems a case in which the Legislature should interfere; and therefore I for one am very pleased that a Bill with this object should be introduced."

The Hon'ble SIR FREDERICK FRYER said :—"I think I may say that, with reference to the discontent which is caused by the high rate of interest sometimes decreed in the Punjab, the Bill which the Hon'ble Mohiny Mohun Roy asks leave to introduce appears to me to be a move in the right direction.

"I remember a case in the Punjab in which an unfortunate man borrowed Rs. 50,000; when the case came before me, he had paid the full sum in interest, and yet he still owed the original Rs. 50,000.

"The rule of *damdapat* in force in the town of Calcutta and in the province of Bombay, by which the award of interest exceeding the principal is prohibited, is, in my opinion, a wholesome one, and the extension of this rule to all suits for money-debts or mortgages instituted after the proposed Bill becomes law seems to me advisable.

"I did not know till yesterday that my hon'ble friend meant to ask leave to introduce this Bill to-day, so I have not had time carefully to consider it, and I am consequently not prepared to say whether the Bill should be passed in its present shape. All I wish to say now is that the general object of the Bill has my complete sympathy."

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The Hon'ble SIR GRIFFITH EVANS said :—" That the evil is a very great one there is no doubt ; that it is desirable that the matter should be discussed there is also no doubt. I take the same view of it as my hon'ble friend Sir Alexander Miller. Without in any way arriving at the conclusion that the present proposal will give a solution of the difficulty, it is no doubt very desirable that suggestions should be invited, and that, if possible, some check should be placed upon what is a very great evil. The people of this country—particularly the uneducated classes—do not very often realise the frightful rapidity with which compound interest accumulates. Although they have, as a matter of fact, agreed to the contract with their eyes open, they have not really grasped the extremely fearful result which would take place after two or three years had passed. This is really a branch of the wider question alluded to by my hon'ble friend Sir Frederick Fryer as arising in the Punjab. It goes further there because there is a grave question concerned not only that the rates of interest are so high, but that the peasantry are being divorced from the land. If they are allowed to till their ancestral holdings at all, it is as serfs of the money-lenders. In the old days the usurer could only take the crop and not the land. Under our laws both are taken.

" It matters little to these men, if they lose their land, whether we or somebody else governs them. For their lands the peasantry have always been ready to fight and die. We are ousting the warrior peasant by our laws and Courts to put in the usurer. We shall want our army some day to keep him in. It is one of the grave political dangers of the future. It can only be averted by timely action. I welcome anything that may lead to a discussion, however partial, of this evil."

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS said that he welcomed any legislation which would save the people from being bound by really and hard and unconscionable bargains. He would support the motion and reserve his further remarks till a later stage.

The Motion was put and agreed to.

The Hon'ble MOHINY MOHUN ROY also introduced the Bill.

The Hon'ble MOHINY MOHUN ROY also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

## VALIDATION OF PROCEEDINGS (PEGU AND TENASSERIM) BILL.

The Hon'ble SIR FREDERICK FRYER moved that the Bill to remove certain doubts as to the validity of certain proceedings and acts of certain officers of the Pegu and Tenasserim Divisions in Lower Burma and to prevent their being raised in the future be taken into consideration. He said:—"My Lord, as I said in moving the introduction of this Bill, it is an entirely non-contentious one and its object is merely to remove any doubts which may exist as to the validity of the acts of certain officers of the Pegu and Tenasserim Divisions of Lower Burma by reason of these acts having been done out of the jurisdiction of these officers.

"The Chief Commissioner of Burma has approved of the provisions of the Bill as they stand, and I do not think it is necessary for me to say anything more about it. Some slight amendments are proposed to the Bill, which I will explain when moving the amendment of the Bill."

The Motion was put and agreed to.

The Hon'ble SIR FREDERICK FRYER also moved that the words "or Sessions Judge" be inserted after the word "Commissioner" and the words "Magistrates or" after the words "Deputy Commissioner and other" in clauses (a) and (b) of section 1 of the Bill. He said:—"My Lord, these amendments have been introduced to meet the objection raised by the Judicial Commissioner of Lower Burma to this Bill. He says that judicial officers should be designated by the names of their judicial offices in the Bill and not only by their administrative title. So far as concerns their offices as Sessions Judge and Magistrate the Judicial Commissioner's objection seems to be correct; so the words 'or Sessions Judge' is proposed to be inserted after 'Commissioner' and the words 'Magistrate or' after 'Deputy Commissioner and other' in clauses (a) and (b) of section 1 of the Bill. By section 2 (13) of the General Clauses Act, 1867, the word 'Magistrate' includes all persons exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure. So it is not necessary to mention the different classes of Magistrates. It is also unnecessary to mention the judicial title of officers exercising civil powers, as under section 5 of the Lower Burma Courts Act the titles of the six grades of Courts in Lower Burma are the same as the administrative titles by which the officers in question are designated. The Deputy Commissioner, for instance, is the District Judge for the purposes of the Act, and the Commissioner is so styled in the Act."

[*Sir Alexander Miller ; Sir Frederick Fryer.*]

The Hon'ble SIR ALEXANDER MILLER said :—"I have only to say that I have looked at the provisions of the Lower Burma Courts Act, and I think my hon'ble friend is right in saying that the proper titles of the Judges of the Civil Courts there are 'Commissioner' and 'Deputy Commissioner,' and not the titles to be found in the Civil Procedure Code."

The Motion was put and agreed to.

The Hon'ble SIR FREDERICK FRYER also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 14th March, 1895.

CALCUTTA ;  
The 13th March, 1895. }

J. M. MACPHERSON,  
*Offg. Secy. to the Govt. of India,*  
*Legislative Department.*