Friday,
17th February, 1899

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

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OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA

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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., c. 67, and 55 & 56 Vict., c. 14).

The Council met at Government House, Calcutta, on Friday, the 17th February, 1899.

PRESENT:

His Excellency Baron Curzon of Kedleston, G.M.S.I., G.M.I.E., Viceroy and Governor General of India, *presiding*.

His Honour Sir John Woodburn, K.C.S.I., Lieutenant-Governor of Bengal.

His Excellency General Sir W. S. A. Lockhart, G.C.B., K.C.S.I., Commander-in-Chief in India.

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

The Hon'ble Mr. M. D. Chalmers, C.S.I.

The Hon'ble Major-General Sir E. H. H. Collen, K.C.I.E., C.B.

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

The Hon'ble Mr. C. M. Rivaz, C.S.I.

The Hon'ble M. R. Ry. Panappakkam Ananda Charlu, Vidia Vinodha Avargal, Rai Bahadur, C.I.E.

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

The Hon'ble Mr. J. J. D. LaTouche, C.S.I.

The Hon'ble Rai Bahadur Pandit Suraj Kaul, C.I.E.

The Hon'ble Mr. Gangadhar Rao Madhav Chitnavis, C.I.E.

The Hon'ble Mr. Allan Arthur.

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

The Hon'ble Nawab Mumtaz-ud-daula Muhammad Faiyaz Ali Khan.

The Hon'ble Mr. J. K. Spence, C.S.I.

The Hon'ble Mr. G. Toynbee.

The Hon'ble Mr. D. M. Smeaton, C.S.I.

The Hon'ble Mr. J. D. Rees, C.I.E.

The Hon'ble Maharaja Rameshwara Singh Bahadur of Darbhanga.

INDIAN CONTRACT ACT AMENDMENT BILL.

The Hon'ble MR. CHALMERS moved that the Report of the Select Committee on the Bill to amend the Indian Contract Act, 1872, be taken into consideration. He said:—"On the last occasion when this Bill was before this Council I explained its principles very fully. I do not think it is necessary to repeat

that explanation. Since then we have very carefully considered the Bill in Select Committee. We have not altered its principle, but we have very carefully considered its terms, and I hope it returns to Council improved in language by being made clearer and more precise. In amending the language of the Bill we have been careful to use language which is familiar in English Courts of Equity so as to draw the English decisions to aid the Indian Courts. We have added some illustrations, and in particular we have added one illustration to show that the Act, or the Bill when it becomes an Act, is not intended in any way to apply to, or to affect, *bonâ fide* business transactions. We have tried to make it clear that what we aim at are cases where one man has another more or less under his power and where there are relations existing between them which enable one man to put unfair pressure on another, and that the measure has nothing to do, so to speak, with people coming into communication in the open market.

"I have only one further remark to make at this stage. Various hypothetical cases, I might almost say fanciful cases, have been suggested to us where possibly the discretion given to the Courts by this Bill might be abused and where possible hard cases might arise. I admit that you can, whenever you give a discretion, or wherever you give power to any authority, suggest hypothetical hard cases. It is an essential postulate of all legislation that when you confer powers and when you confer discretion on any authority, that discretion or those powers will be used with a certain amount of reasonableness, with a certain amount of commonsense, and with a certain amount of knowledge of the world. If you do not predicate that, then all beneficial legislation is simply impossible. Take for instance the Penal Code—an Act which has worked well for forty years. I would ask Hon'ble Members is there a single operative section in the Penal Code which would be tolerable for ten minutes unless it was worked with a certain amount of commonsense and fairness? You must in legislation, when you confer a discretion upon a responsible authority, assume that that authority has some discretion—some reasonable amount of commonsense. If you do not admit that, well then I must admit on my part that all legislation of a beneficial character is impossible, and that it were much better that this Council should not exist."

The Hon'ble THE MAHARAJA OF DARBHANGA said:—"My Lord, although I had not the honour of being a member of Your Lordship's Council during the earlier stages of the Bill, I feel that the measure is of such importance that I should not give a silent vote upon it. The broad principle involved is at the same time just and necessary for the equitable decision of a numerous class of cases which come before judicial tribunals, and it

purports to embody the results of the decisions of the English Courts of Equity which the Privy Council have declared applicable to India. How far it has succeeded I leave to the lawyers to judge. The main design of the measure is to protect the weak and simple from the clutches of unscrupulous money-lenders, and I hope it will in part help to solve the problem of land indebtedness, which has long been engaging the attention of Government. The serious thing about the Bill seems to be, as His Honour the Lieutenant-Governor of the Punjab remarks in his letter to Your Excellency's Government on the subject, the dangerously wide discretion which the Bill seeks to confer on the Munsifs and Subordinate Judges in this country. I cannot help fearing that the Bill if passed into law may lead to considerable increase in litigation and to more appeals, and that the only certain gainers will be the unscrupulous legal practitioners in the Mufassal, who will do their very best to foster disputes between the money-lender and the agriculturist and also to apply the law to contracts it was never intended to affect. If, however, the Subordinate Courts will use their authority with proper discretion and with a due regard to equity and commonsense, I trust that the amendment of the Contract Act may be a boon to the agriculturist borrower without unduly affecting the stability of the contracts by which the daily business of the country is carried on. There can be no doubt that the alterations made in Select Committee are in the right direction. My Lord, I think that even the most determined opponents of the Bill will admit that an earnest effort has been made to recast the more objectionable sections in the original draft, and I think that they have to a large extent succeeded. I hope that the placing of the measure upon the Statute Book may be productive of the beneficial results that have been anticipated from it, and that it may not produce the evils which so many fear. Not being a lawyer I am forced to take it a good deal on trust. I feel I am not on a footing of equality with the Hon'ble the Legal Member as regards legal knowledge, and had the Bill been passed in its original form and worked injustice I am not certain that I might not have evaded responsibility by pleading that my consent had been obtained by the exercise of undue influence on his part owing to that want of equality."

The Hon'ble MR. REES said that he would support the Bill, having signed the Report of the Select Committee, and would make his remarks on the principle when moving his amendment.

The Hon'ble MR. SMEATON said:—"I support the Bill as finally amended by the Select Committee, whose modifications appear to me to be judicious

and to remove many of the misgivings to which the Bill in its original form gave rise. I cannot help, however, concurring in some of the remarks made by the Hon'ble Member who has just spoken—the Maharaja of Darbhanga. The risk of the abuse or at least misuse of the very wide discretionary power conferred on subordinate and often inexperienced Courts certainly exists, as has been pointed out in very strong language by His Honour the Lieutenant-Governor of the Punjab. But I think in legislation which is designed to mitigate a widespread and serious evil risks of that description must be run. The relief to be given by an amending Act of this kind to the vast body of agriculturists, who, we are very well aware, are, in certain provinces at least, in the grip of the money-lender—that relief must, I think, be held to outweigh any risks of the kind which have been described by His Honour the Lieutenant-Governor of the Punjab."

The Hon'ble NAWAB FAIYAZ ALI KHAN said:—"My Lord, the Bill to amend the Indian Contract Act of 1872, now before Your Lordship's Council, is one of such intrinsic importance that I beg Your Excellency's permission to offer a few observations in regard to it.

"The object of this measure, my Lord, is, as has been explained in the Statement of Objects and Reasons by His Honour Sir John Woodburn, who introduced it last year, 'not to interfere with the freedom of contract where consent is free.' But it is intended to give the Courts a wider discretion in coming to an equitable decision in certain classes of inequitable contracts, where their power appears to be rather limited. Cases are well known where the Courts have refused to go behind the letter of the contracts however hard and inequitable and induced by undue influence, and this has resulted, as no doubt most of us are aware, in the complete ruin of many old respectable families. Contracts to secure debts have particularly led to such disastrous results.

"My Lord, the British Government is based on sympathy for its subjects, justice and generosity; and instances might be multiplied where Her Majesty's Government has, with that sympathy and generosity, come to the aid of Her subjects and has relieved the weak from the oppressions of the strong. Indeed, I may say that every measure taken by Her Majesty's Government, is characterised by the British sense of justice, the essential element of which is to protect the weak against the strong. It is this sense of justice which has led the Government to introduce some important changes into the present Indian Contract Act, which in some respects has been found to be unsuited to the present state of things.

"In many cases of contract to borrow money, the Courts have, as I have observed above, refused to grant relief to the debtor against the most inequitable and unconscionable conditions obtained by the creditor by the exercise of undue influence. This was, I believe, in a large measure due to the impression that under the existing law the Courts were bound to maintain the integrity of private contracts. The Government could not, however, look with indifference to this process of destruction of the landholders and agriculturists at the hands of the astute usurers and money-lenders—a process that has been going on for many years past to the detriment of the best interests of the country.

"It was of course possible for the Government to provide by law that an exorbitant rate of interest shall not be enforced or that effect shall not be given to an oppressive condition. But such a provision could not go to the root of the evil, which it is the aim of the Bill now before Your Lordship's Council to remedy; for it is a well-known fact that the money-lender in India usually evades every attempt of the law to restrain him from taking an unfair advantage of the position of his debtor, by causing him to execute a bond for the repayment of a larger amount than the amount actually advanced to him. It seems to me, therefore, that the Government has wisely undertaken to eradicate the evil from the root and to amend the law in such a manner as to secure an equitable determination of the rights and liabilities of the parties to a contract. This object could not be fulfilled better than by amending the Indian Contract Act in two important respects, namely, (1) as regards undue influence, and (2) as regards penalties.

"That the existing law in these respects has been largely improved and these two important expressions have been better defined, will be evident from a reading of the Bill itself as amended by the Select Committee, and I do not propose to go into the details of the amendments made by the Select Committee, beyond saying that, lucid and clear as the language of the Bill as it now stands is, the provisions of it cannot but be beneficial and succeed in achieving the objects which the Legislature have in view. I beg, therefore, to submit that I generally approve of the Bill as amended by the Select Committee, and I feel pretty sure that Her Majesty's subjects will hail this measure with delight.

"There is only one point as to which, my Lord, I beg to ask permission to say something. It may possibly be urged that it will be hard on the money-lenders and other persons interested that retrospective effect should be given to the provisions of this Bill. As to this, all I can say is that the object is a

most benevolent one—to remove an existing evil; and the sooner that evil is remedied the better for the interests of the country. There is another point of view from which this objection can be considered. The provisions of the Bill, it seems to me, are based on the assumption that contracts induced by 'undue influence,' as defined in the Bill itself, are, to the extent to which they are so induced, inequitable; and if the correctness of this assumption is admitted,—as I believe it is admitted on all hands,—contracts tainted by such 'undue influence' have no claim to the protection of law; and thus the date of the execution of the bonds representing such contracts is obviously immaterial. I, therefore, most cordially welcome the provisions of sub-section (3) of clause 1 of the Bill.

"With these few observations, my Lord, I beg to support the Bill, as amended by the Select Committee, the principles underlying it, and the provisions by which effect is to be given to those principles."

The Hon'ble MR. MEHTA said:—"My Lord, there is no branch of law or legislation in dealing with which it is so easy to go wrong, and in which mistakes are so fraught with far-reaching consequences, than the branch with which the Bill before the Council proposes to deal. There are men who firmly believe in posing honesty and morality by legislation, as our ancestors believed in enforcing decorum and propriety of manners by sumptuary laws. They think that it is only necessary for the State to fix a particular rate of interest, and usury would be annihilated; to prohibit the sale and alienation of their lands, and agriculturists would be saved from ruining themselves; to make all money-lending transactions liable to discretionary revision and adjustment, and Jews and Marwaris would become reformed characters, and creditors would become philanthropists. Such men take no account of the facts of human nature and the laws of its energy. When their remedies only succeed in driving the disease into another and perhaps a more vital part, they do not blame their own shortsightedness, but the perversity of social forces. On the other hand, there are doctrinaires who carry their fanaticism or superstition for the sanctity of contracts to such a length that they would sanction even murder by contract, like the grave senators of Venice who were prepared to enforce Shylock's bond until woman's wit came to their aid. The Common Law of England embodied nearly as solemn a view of the inviolable nature of contracts, and very nearly justified Shylock's retort to Gratiano,

'Till thou canst rail the seals from off my bond,
'Thou but offendst thy lungs to speak so loud.'

"Even in the English Courts of Equity the rigour with which the sanctity of a seal was enforced was only very gradually relaxed. As pointed out by Lord Campbell, when the foundations of the equitable jurisdiction of the Court of Chancery were first systematically laid by Lord Nottingham, 'the father of Equity,' he made it a guiding rule,—never, in the absence of fraud, to interfere with contracts or with obligations solemnly contracted.

'If a man,' said he, 'will improvidently bind himself up by a voluntary deed, and not reserve a liberty to himself by a power of revocation, this Court will not loose the fetters he hath put upon himself, but he must lie down under his own folly.'

"The boundaries of equitable jurisdiction in this behalf continued, however, to be slowly and cautiously enlarged and extended, till while, on the one hand, it was strictly held,

'that every person is entitled to dispose of his property in such manner and upon such terms as he chooses, and whether his bargains are wise or discreet, or profitable or unprofitable or otherwise, are considerations not for Courts of Justice, but for the party himself to deliberate upon;'

and, on the other hand,

'relief was given whenever his peculiar conditions and circumstances placed him under some disability.'

"These principles carefully matured by experience have not been lost sight of in framing the Bill before the Council, and I think the Hon'ble Members who have successively been in charge of it may well be congratulated upon the sober and cautious piece of legislation which they have turned out. They have wisely steered clear of the dangerous rocks which menaced them on either side. Nothing would have been more fraught with mischief than to treat the masses of the agricultural population almost as infants, incapable by their ignorance and weakness from making contracts for themselves with money-lenders, and for whom, therefore, the Courts should be empowered to arrange terms retrospectively. We are familiar with the piteous tales which are told of the helplessness of the raiyat gripped in the claws of the saukar bird of prey. But the picture is not altogether true to nature. The raiyat is no doubt illiterate and uneducated. But those who know him as he really is, and not as he exists in the imagination of people who like to pose as *mà-bàp* to him, know that he possesses a very fair share of shrewdness and intelligence, and can negotiate a bargain with the saukar with a clear comprehension of his interest and position, and even with some degree of cunning. Why he is not able to cope with his creditor is, not because of his ignorance, but in consequence of his

necessitous position. This position, it must not be forgotten, is as largely owing to the pressure of the State landlord as to the grasping rapacity of the money-lender. To speak only of the Bombay Presidency, it was admitted by Sir Theodore Hope, himself a Bombay Revenue-officer, in his speech in this Council in introducing the Dekkhan Agriculturists' Relief Bill, that 'to our revenue system must in candour be ascribed some share in the indebtedness of the raiyat.' The Commission appointed in 1891 to enquire into the working of the Relief Act emphatically reported that—

'there could be no question that the rigidity of the revenue assessment system is one of the main causes which lead the raiyats of the Dekkhan into fresh debt.'

"The proper remedy in such a case is not to treat the symptom simply, but to remove the cause. To take away from the raiyat the power of making binding contracts for himself would be more calculated to aggravate than to alleviate the malady, while it would be unjust to the saukar to have his terms and conditions retrospectively settled by Courts which could neither enter into the intricate complexities of the respective positions of the two parties, nor could have the means of taking into account the element of average risk of a general business which to a certain extent must rightly affect the severity of each individual contract. But while it would be thus both mischievous and unjust to treat raiyats or agriculturists in their relations to saukars as *quasi* infants whose weakness and ignorance required special protection, there is, on the other hand, no reason whatever why contracts between saukars and raiyats should not be treated on the same footing as all other contracts, whenever extraneous circumstances dominate the bargain and enable one party to take advantage of another beyond the adjustment which the circumstances, conditions and necessities affecting the contract in itself would require or warrant. The equitable jurisdiction of the English Courts has slowly but increasingly recognized the right of interference in such cases. In the admirably terse and clear speech in which my Hon'ble friend in charge of the Bill moved to refer it to a Select Committee, he claimed that the new legislation proposed to invest Indian Courts with equitable powers which had long been possessed by English Courts. I am not prepared to say that this statement may not be open to challenge in some degree. If it were quite accurate, the need for the proposed legislation would not be very urgent, for our Courts have already found a way to go somewhat beyond the provisions of the Indian Contract Act in this behalf, which, it must be remembered, 'defines and amends only certain parts of the law relating to contracts,' and to administer relief in most of the cases covered by the equitable doctrines of English law

founded upon the existence or presumption of actual or constructive fraud. It cannot also be denied that English equity has hitherto failed to reach many cases, which it is hoped to reach by the present Bill, or there would have been scarcely any need for the recommendations of the Select Committee on money-lending for the interposition of the legislature to remove the evils attendant on transactions with professional money-lenders. It is true, as pointed out by the Hon'ble Member, that the general principle deduced by text-writers of authority embraces all the variety of relations in which dominion may be exercised by one person over another. But the Hon'ble Member knows that English Courts do not deduce cases from general principles, but that the elasticity and generality of principles are firmly restrained by decided precedents which strictly curb the playfulness of idiosyncracy within known limits. But while the measure before the Council is devised to go further than the existing precedents of equitable jurisdiction in England, the Hon'ble the Legal Member is perfectly right in contending that we are not embarking on an unknown sea. The step in advance which we are taking is in the direction in which experience shows that we can advance with reasonable safety. It will be observed that, under the Bill as amended in Select Committee, it will not be enough for the purpose of bringing a contract under the purview of the new addition to the definition of 'undue influence' that one contracting party is richer, or stronger, or poorer than the other. A party does not come within the section simply because, for example, he lends money to another. Besides and outside the relation created by a particular contract, there must be a relation already subsisting between the parties which places one at an advantage over the other. The dominating relation, so to say, must not be the creation of the particular transaction in question, but must emanate from something already subsisting before and outside it. The amendments in Select Committee have also made important changes as to the way in which the Courts should proceed when the existence of a dominating relation is established. Where such relation arises out of a position of active confidence in which one party stands to the other, the law applicable will be the existing law, as contained in section 111 of the Indian Evidence Act, which is in accordance with a principle long acknowledged and administered in Courts of Equity in England and America, and which is that he who bargains in a matter of advantage with a person who places a confidence in him is bound to show that a proper and reasonable use has been made of that confidence, and the burden of establishing its perfect fairness, adequacy and equity is cast upon the person in whom the confidence is reposed (*Story on Equity Jurisprudence*, pp. 309-322). In cases in which the dominating relation is not coupled with a position of active confidence, there is another

condition to be satisfied, also in accordance with a rule of English equity, before the burden of proof is imposed on the person occupying the dominant position. In such cases the Courts will not interfere till the transaction appears on the face of it or upon evidence given in the case to be unconscionable. The propriety and wisdom of this rule is not in itself disputed. But it is contended that the law will be left in a very vague condition, as no definition of what is unconscionable is provided in the Bill. I confess that this criticism strikes me as being not quite well-informed. There are words which, in law as in everything else, do not require definition and cannot indeed be defined, but which are all the same perfectly well understood. In this respect the word 'unconscionable' is, in law, something like the word 'jingo' in politics. As Mr. Morley said the other day, it is not possible to define a jingo, but he knew him when he saw him. It is the same with the word 'unconscionable.' It is incapable of definition. Even Lord Hardwicke, who reared the superstructure of English equity on the foundations laid by Lord Nottingham, failed in the attempt when, in *Chesterfield v. Jansen* (2 Ves. 155), he tried to indicate in his enumeration of different kinds of frauds that unconscionable bargains were—

'such bargains as no man in his senses and not under delusion would make on the one hand, and no honest and fair man would accept on the other, being inequitable and unconscientious bargains.'

"Mr. Story is not more successful when he says that to make a bargain unconscionable—

'such unconscionableness should be made out as would (to use an expressive phrase) shock the conscience.'

"But, though indefinable in itself, the word is perfectly familiar to equity jurisprudence and is well understood in practice. It can best be interpreted in each particular case in the light of its own particular facts and circumstances. Decided cases show what facts and circumstances make a contract unconscionable, and, what is equally important, when they do not. It must be remembered that our Civil Courts are not ill qualified to deal with the legal questions arising from the use of the word. In the Bombay Presidency at least, they are now manned in the lowest grades by men who have passed through the pretty severe legal training which is enforced by our Universities before conferring the degree of Bachelor of Laws. The Subordinate Judges have all gone through a careful study of the elements of English equity, and are acquainted with its decisions. But if any prepossessions or idiosyncracies have at any time any tendency to betray them into either undue timidity or wild extravagance, the

High Courts are over them to correct and to direct. I think, therefore, that the Bill before the Council may be launched on its voyage without serious misgivings. It is never safe to dogmatize emphatically with regard to legislation affecting the infinite complexities of the common intercourse and business of human life, but it is not presumptuous to hope that this measure will prove to be a sound, cautious and careful piece of legislation which, without breaking out into mischief in unexpected quarters, may be reasonably expected to do some good."

The Hon'ble MR. CHITNAVIS said :—" My Lord, I fully sympathize with the main purpose of the Bill, which I take to be the relief of poor and ignorant persons from the ruinous consequences of such transactions as they might have been induced to enter into under the influence of wily men whose help they had been led to seek at a moment of distress. So far the proposed law seems to be all right in principle, but the question is whether it will secure the desired end. It must never be forgotten that in the present state of our country all artificial restrictions upon lending and borrowing money would make the terms for the borrower harder than ever. It is doubtful whether all the checks that human ingenuity can devise will come to the borrower's help when the saukar makes up his mind to take undue advantage of each opportunity that offers itself to him. There are as many methods by which a lender can harass a helpless borrower as there are for a borrower to harass the helpless lender when repayment of loan has to be made. Of these, no Court in this country can take any cognizance whatever. My honest conviction is that this matter of lending and borrowing money must be allowed to be regulated by the law of supply and demand. No man with a grain of sense will pay a higher rate of interest if he can elsewhere borrow money on more favourable terms. The natural remedy, I think, must come by competition among money-lenders, by the demand there is for money, by the nature of the personal credit which the borrower possesses, by the facilities for recovering money, etc.

" It seems to me that the position of a rural money-lender in India is not well understood by many, and too frequent appeals are made to facts in England to justify a proposed legislation in this country. India, however, is not England. In England and other European countries there are many agricultural and other banks, co-operative societies and many institutions of a philanthropic character which can give the needed relief to the poor of the country. But here, in this country, where, as is stated in certain quarters, '40 per cent. of the population go through life on insufficient food,' the capitalist (*i.e.*, the saukar,) takes the place of all these institutions, and it is to him alone that the raiyat has to look up for his preservation and for the preservation of his family. Nor is the raiyat's confidence

misplaced in a majority of cases. The saukar is generally a man of business, and, as he is also a landholder, he seldom resorts to oppressive measures for the recovery of his dues. In many cases he consents to forego some portion of the stipulated interest when the amount due is paid to him without the necessity of resorting to Law Courts. When the borrower has got sufficient credit and the security is good, the saukar rarely takes more than what is reasonable. In other cases, his terms will have to cover various risks, such as the costs of a law-suit, the trouble and expense he might be put to in his endeavour to recover his dues, as well as the risks attendant on variation of prices, etc. In most cases he is not such a tyrant as he is believed to be. The reason why we hear so much against him in these days is because the tendency now is to bring to light cases where injustice is done to borrowers, but many hundreds of cases where the lender has shown the greatest possible consideration to the borrower never see the light of the day. As the saukar generally happens to be a landholder also, and as he has got to depend upon his raiyat customers for the tillage of his land, he cannot afford to be a Shylock towards them. Whenever a debt becomes ripe for payment, most saukars agree to forego a portion of the accumulated interest. In an agricultural country like India, any legislation which is likely to tell hardly on these men and render their position precarious will, I fear, have the effect of restricting loans and increasing litigation by encouraging borrowers at the instance of lawyers to take advantage of the large discretion left to Courts. No doubt, it is extremely desirable that the poor should be saved from the clutches of the money-lending classes, but at the same time it must never be forgotten that it is the demand on the part of the borrower that brings into existence the lender, and that the money-lending classes have a right to the protection of the law in all honest contracts entered into by them. What I fear is that this protection has not been sufficiently assured in the Act before us. Honest and conscientious money-lenders will henceforth feel frightened to unloose their purse-strings, and leave the field open to unscrupulous and dishonest people.

"Being anxious, however, that a measure conceived in a spirit of fairness and generosity may not in its operation come to defeat its own purposes, I have carefully attended to the details of the Bill as settled by the Select Committee, and as the result of such consideration have decided to move the amendment which stands in my name and which I intend moving later on with Your Excellency's kind permission."

The Hon'ble MR. LATOUCHE said:—"The amendments made by the Select Committee have, I think, removed the objections—some of them of considerable weight—which existed against the Bill as originally drafted Th

definition of undue influence has been much improved, and the burden of proving the existence of undue influence ordinarily rests, as in the general law of evidence, on the person who impeaches a contract. It is only in one class of cases that the person in a position to dominate the will of the other party to a contract is bound to prove the absence of undue influence.

"That class of cases is when the transaction appears on the face of it or on the evidence adduced to be unconscionable. This means that the burden of proof is only shifted if the contract appears to be such as no honest or fair man would allow another person to enter into with him.

"Many of the objections urged against the measure are objections against the conferment on the Courts of a general equitable discretion to set aside contracts which the Courts may consider oppressive, harsh or unreasonable. No such power was or is conferred by the Bill.

"When no relationship exists between the parties such as will enable one of them to dominate the will of the other, the question of undue influence cannot be raised. This I understand to be the meaning of illustration (*d*) to clause 2. When such a relationship is alleged it is for the person who asserts its existence to prove it. Having proved the existence of the dominant relationship, the person who impeaches a contract is further bound (except in the case of an apparent unconscionable contract) to prove that an unfair advantage was taken over him by the other party; that is, that having regard to all the circumstances of the case the advantage actually taken was unfair, and such as could not have been obtained except owing to the existence of the special relationship.

"In practice the operation of the Bill will have effect chiefly in the class of contracts of which an illustration is given in clause 2 (*c*). This illustration has been considerably amended by the Select Committee, and the debtor is not assumed to be an agriculturist as in the original draft. Yet, no doubt, in almost every case of village money-lending the debtor will be an agriculturist. I do not understand the meaning of the illustration to be that whenever a village money-lender makes a loan to a person already in his debt the Courts shall presume the existence of a dominant relationship. But I think that, having regard to the common course of business in village money-lending, the Court may ordinarily presume the existence of a dominant relationship under section 114 of the Evidence Act. It is unquestionably true that an agriculturist who is in debt to the money-lender of his village is not in a position to exercise a free consent in declining to enter into an unconscionable bargain. In the existing state of agricultural economy in the country an agriculturist must, in order to

carry on his cultivation, obtain advances. The village money-lender will never allow him to transfer his custom to another banker. Should the agriculturist attempt to do so, the village money-lender will at once obtain and execute a decree for the total amount of the previous debt.

"I think that the proposed legislation will have some good effect in discouraging creditors from forcing unconscionable contracts on their debtors. I do not believe that it will prevent loans being made as at present or hinder customary transactions between lender and borrower. It will not affect the honest banker who seeks to obtain by his trade a fair and customary advantage commensurate with the risk which he runs, nor will it aid a dishonest debtor to repudiate a reasonable, even though onerous, contract which he has made when he is capable of understanding it and of forming a rational judgment as to its effects upon his interests."

The Hon'ble SIR GRIFFITH EVANS said:—"If this matter had been *res integra* and if we were now discussing the best means of relieving the agriculturist, I do not think I should have attempted to do so by amending the general law of contracts. Though it is perfectly true that the money-lender, or mahajan, is an absolutely necessary part of the agricultural system of India, yet it does not follow that some restrictions might not be placed upon him. We have already placed very large restrictions upon the landlord. We have treated the raiyats in their relation to the landlords as a class of persons who ought to be protected. We have prevented the landlord taking interest on arrears of rent at more than 12 per cent. We have prevented his making an enhancement by private agreement of more than two annas in the rupee. We have provided that in many instances the raiyats should not be allowed to contract themselves out of certain rights which we thought it was essential that they should retain, knowing that they might under pressure be induced to sign a document relinquishing those rights. If then we have gone so far to protect the raiyats against the landlords, I do not see why we should not have taken steps to give a reasonable protection to the raiyat in his dealings with the other person who is a necessary part of the agricultural system, that is to say, the mahajan or money-lender; and it seems to me that it would have been better to pass different Acts for the different provinces which would meet the peculiar conditions and relations between the agriculturist and money-lender in the different local areas where they vary very considerably; but it was decided that this should not be done, and when I came to consider the matter I found that the Government had resolved to give the agriculturist such relief as they could by this means, and not by the other. I was not myself in a position to formulate any Bill for regulating the relations

between the money-lenders and the raiyats which would have produced the desired result. Government alone, aided by the reports of local officers of the different provinces, could have ventured to undertake such a task. I have come to the conclusion that it was better on the whole to accept the present measure.

"Now as regards the measure itself, apart from this question of the agriculturist and money-lender, I should prefer that the Bill should not be carried, and for these reasons. No doubt, as pointed out by the Hon'ble the Legal Member, the Contract Act only deals with some particular classes of the cases in which Courts of Equity set aside or modify contracts, but, owing to the fact that the Contract Act itself is only an Act to define and amend certain portions of the law of contract, it has been held by the Courts, and notably by the Privy Council, that the Contract Act is not exhaustive upon this point. It does not sweep away the broad equitable doctrines upon which Courts of Equity are wont to interfere at home; and when once that had been fairly laid down by the Privy Council and become recognised by the Courts in India, that the Contract Act did not in any way diminish the power which they had before according to the English cases, that they were still at liberty to follow the English cases and to give relief in cases not provided for by the Contract Act, the advance of the Courts was rapid, and you find case after case in which a number of matters have been dealt with, which are not in any way covered by the Contract Act, but which have been dealt with by virtue of the English equitable doctrines. Seeing then that the Courts have gone so far and so successfully in following and applying the English doctrines, I should have preferred to leave them to go on in that course, sooner than attempt anything in the nature of a definition. It is very difficult to define in this particular branch of equity. I am not certain that the Bill covers the whole of the cases or deals with all the considerations which are dealt with in the Courts of Equity. On the other hand, there is ground for fearing that, this being a written Code, the Courts may consider they are entitled in some directions to go further by virtue of the words of the Act than the Courts would have gone in England. It will be found, I think, on analysis that although there may underlie all these cases the idea of a dominating position on the one side or a want of equality in the contract on the other, yet that in some of the cases this is but a small part of the consideration, not the most important part, that governs the Courts of Equity in giving relief. With regard to champertous contracts, although there be no subsisting relation between the borrower and the money-lender at the time when he goes to the money-lender to solicit a loan, yet the Privy Council has laid it down, and the Courts have carried out that view, that they will import the principle which governs the Courts of Equity in dealing

with what they call 'catching bargains' with heirs and reversioners; that is to say, that they will regard this kind of contracts jealously and not enforce them if they are extortionate, although it is very difficult to say that there is any subsisting relation of domination which causes the equity to arise. However, I am glad to think that this Bill will only be an amendment of an Act which defines and amends certain parts of the law of contract, and I think, if we have fallen short in covering all the cases and boiling down, as it were, all the principles that are involved in the administration of relief in the Courts of Equity, that we have not shut the door, that the Courts will still interpret this amending Act in the same way as they have interpreted the old Contract Act; that is, they will say this is not exhaustive. I think the Courts will say that this Act has not had the effect of repealing, as it were, or extinguishing, any principle of equity. There are many parts of law and equity which it is desirable to codify; but when, as here, elasticity is of the essence, as it were, of the equity, it is dangerous to do so. This head of equity deals with exceptional cases, but the written rule may be applied by ill-informed Courts to classes of contracts it was never intended to apply to. The rule was so wide in the original Bill that there was good ground for fearing it would interfere with that stability of contract upon which commerce and the daily business of the country depends. The amendments made in Select Committee have greatly lessened this danger. I trust it will only be applied to the exceptional cases for which it is intended.

"The only part of the portion of the Bill which deals with undue influence which is likely to do much for indebted agriculturists is illustration (*c*) to section 2. I hope that that illustration will have some effect in showing the inferior Courts that they are at liberty in exceptional circumstances of extortionate bargains to give relief—not of course to regulate and interfere with the ordinary rate of interest at which the mahajans are in the habit of lending and which must be determined by the risks of the business.

"Whether it was worth while to amend the general law of contracts to obtain so small a result at so considerable a risk seems doubtful.

"Then I turn to the second branch of the Bill. With regard to this, it is to be observed that, if it were not for the illustrations, it would be unnecessary and useless. The position of affairs stands thus. Section 74 of the old Contract Act dealt simply with this: according to the law in England, the Equity Courts could relieve against all penalties, but there was a distinction between a penalty and what was termed liquidated damages, that is, a sum agreed to be paid on breach of a contract; and where the Courts came to the conclusion that the sum mentioned in the contract was in the nature of liquidated damages, there

they would not interfere in giving any relief; but there was so much difficulty in knowing whether a stipulation was really for liquidated damages or was really a penalty, that it was thought better by the framers of this Act to place all liquidated damages on the same footing as penalties and so to enable them to be relieved against, and only the actual damage given and not the sum named. That was all that this section was intended for, but it was assumed that penalties would always be relieved against, and no one has ever doubted it. The difficulty was to define what was a penalty. Now, the mere putting in these words in section 74, 'or if the contract contains any other stipulation by way of penalty,' was wholly unnecessary, because they were always relieved against, and no Court ever doubted that. But these words, useless in themselves, have been used as a sort of peg to hang certain illustrations on. We have not attempted to give a definition of penalty, but by means of illustrations we have got rid of some of the difficulties, and these illustrations point to the principle that in every case where the question is one of penalty or not it must be a mixed question of law and fact. The Court is not bound by the form of the deed; it must examine the substance of the transaction and judge whether it should be taken to be a stipulation intended to be carried out as part of the contract or a provision to secure performance, and we have indicated that one of the best tests in practice is to see whether the stipulation would be wholly unreasonable if regarded as an integral part of the contract. We have not formulated that proposition, but we have by the illustrations indicated it. Then we have given illustrations which deal with various kinds of penalties which are not penalties according to the form of the bond, but are penalties according to the reality of the transaction. This does not seem to be a very artistic piece of legislation, but I hope it will make up in utility what it lacks in beauty. I have felt it necessary to trouble the Council at some length with my views on this matter, because I wished to explain how I thought the Bill was likely to work and why I am prepared to vote in favour of its being passed though I am not without misgivings as to its successful working."

The Hon'ble MR. CHARLU said:—"Having regard to its very wide scope I have my doubts about this measure. Nothing that has come within my observation suggests the need for a remedy rather sweeping. It is directed at an evil which cannot be eradicated. An undue lenity, as I take this and similar measures to mean, may not, in the long run, benefit those meant to be benefited. It will introduce friction and hardships now unknown, where there is more or less pacific understanding. My acquaintance with the agricultural classes in my Presidency, so far as it has gone, convinces me that they are uniformly

thrifty and very rarely go within the clutches of hard money-lenders. They need no protection, and this Bill may in their case throw in their way a temptation to contest without just cause in many instances, and go into the clutches of fresh lenders, unused to them, and fare worse.

"Now, I would perhaps accept the Bill as substituting a procedure resembling arbitration for strict law, which must needs be harder. But there are Appellate Courts to revise the discretion exercised by the first Courts. It is not always that the Appellate Courts abstain from unduly interfering, nor are verdicts of the first Courts uniformly faultless. These imperfect conditions would often necessitate and in some cases develope the practice and temptation of trying appeals from the judgment of one single man to that of another single man on less tangible grounds than now. There are reasons enough to incline one to disapprove of this measure as a whole.

"But there are as many grounds for it as against it; and I must say that it is safer to allow the experiment, which is influentially and officially supported, as we are not legislating for all time to come. The measure, I hope, may prove an important check on the unscrupulous men who catch expectant heirs and ease them of their fortunes, long before they are taken full possession of. The existing law has been found not to be altogether adequate in many such cases. If this measure will do no more than act as a deterrent on that class of ruinous lenders and their like and strengthens the hands of Courts by legislation of the present case-law, it will be a great blessing. It is as necessary for this purpose as it is unnecessary for many other of the purposes falling within its purview. In this view, I would not oppose the motion before the Council."

The Hon'ble MR. RIVAZ said:—"I agree so entirely with all that the Hon'ble Member in charge of the Bill said the other day in explanation of its necessity that my remarks need be very brief. The enlarged powers with which the Courts are being armed by the proposed amendments in the Contract Act will of course be applicable to contracts and agreements of all kinds, but it is pretty certain that they will chiefly be exercised in cases of dealings between money-lenders and borrowing agriculturists. I am not among those who consider that every money-lender who has any business transactions with a member of the agricultural classes in this country is necessarily an unprincipled extortioner, or that every agricultural borrower is a poor simpleton who is unable to understand whether he has been treated fairly or unfairly. The money-lender, as my Hon'ble friend Sir Griffith Evans has just said, is a very useful and even

an indispensable element in the composition of rural society in this country and I am ready to believe that in the main the money-lending classes are reasonably fair and just in their dealings with their agriculturist clients; but there can be no doubt that the money-lender is often in a position which enables him to take an unfair advantage over the borrower, and it not unfrequently happens that he does avail himself of this advantage. The main object of the provisions which we are considering is to enable the Courts to interfere effectively in such cases, and to apply an equitable remedy, and I confidently hope that they will exercise these most useful powers with judgment and discretion."

The Hon'ble SIR JAMES WESTLAND said:—"I should like to say a word in support of the remarks which have fallen from my Hon'ble friend Mr. Rivaz. I deprecate any idea going abroad that this Bill, so far as my connection with it is involved, is based upon the theory that the village-saukar is a man to be put down. I believe him to be a very necessary element in Indian political economy, and that he exercises a profession which is extremely useful, so far as I am concerned. My revenue comes in punctually mainly because the village-saukar is willing to convert a debt owed by the raiyat to the Government into a debt owed by the raiyat to himself. There have, however, been too many cases in which it has been shown that the village-saukar has improved his position unwarrantably by putting himself into the place of the raiyat as the occupant of the land, and that is a condition of things which does not tend to the benefit of the country either politically or economically. There is also another point on which I wish to make an observation, and that is with regard to the explanation given by my Hon'ble friend Mr. Mehta, who traces back all the difficulties that arise not from the raiyat getting into the hands of the saukar, but into the hands of an unscrupulous Government—that is to say, he attributes these difficulties to the rigidity of the revenue system. I was pleased to observe that when he made that remark the only opinion he could urge in support of it was the opinion of a very distinguished official who retired from India eighteen years ago; and I think my Hon'ble friend Mr. Mehta may take it for granted that a question which has been before Government for the last eighteen years, and which the Government has endeavoured to meet, has been by this time regulated. As a matter of fact, the collection of the revenue has departed for many years from that ancient rigidity that used to characterise it, and I think it may be asserted that neither in Bombay, nor Madras, nor elsewhere, is the raiyat driven to ruin by the Government insisting on the realization of its dues with improper severity."

The Hon'ble MR. CHALMERS said:—"I propose to reply very briefly to the remarks that have been made by Hon'ble Members. The course of

the discussion is, I am glad to see, on the whole favourable to the Bill, and in attempting to reply to the various difficulties that have been raised, my task is lessened by the fact that to some extent difficulties raised on one side of the table have been answered by the difficulties raised on the other side of the table. I may explain what I mean. I think the Hon'ble Maharaja of Darbhanga felt a doubt or difficulty on this ground: this Bill, which is framed somewhat in the words of English equity, will have to be administered by Munsifs and Subordinate Judges. Well, I think my Hon'ble friend Mr. Mehta has kindly answered that for Bombay. He says that in Bombay the Subordinate Judges and Munsifs are well-trained men, and, moreover, in all cases of course there is an appeal. But the real answer I think comes from the doubts felt by my Hon'ble friend Sir Griffith Evans. He has pointed out that the Contract Act is not exhaustive. He has further pointed out a case where the High Court of Calcutta, I think, held in terms that the Courts were not bound by the narrow restrictions laid down by the existing Contract Act, but that they were free to roam over English equity, and English equity of course not binding them, but only pointing the way to what they happen to consider to be justice, equity and good conscience. English equity does not bind the Courts here. The Courts here only follow English equity or English decisions where there is no binding rule of Indian law, and where they are administering the law according to justice, equity and good conscience. That I think answers my Hon'ble friend the Maharaja of Darbhanga's difficulty. Surely it is better for us to lay down a line to indicate the lines on which these lower Courts are to act than to leave them free to wander over all the decisions of English equity, or to quote from the work quoted by the Hon'ble Mr. Mehta—*Story's Equity Jurisprudence*—which is an American book—it is much safer to indicate to these lower Courts the general lines on which they are to proceed than to leave them free to wander at will over all English and American jurisprudence.

"Then another point was made. It was suggested that there was some objection to this Bill in so far as it gave retrospective effect to the new provisions. There again we are in point of fact merely limiting the discretion of the Courts, and indicating on what lines perfectly unfettered discretion is to be exercised, and of course the Bill will only apply to suits brought after the commencement of the Act. It will have nothing to do with pending suits.

"There is one other point that my Hon'ble friend Sir Griffith Evans has called attention to, and which I am glad he did call attention to, and that is the use of the words 'subsisting relations.' That I think was necessary. It was

necessary to point out that at the moment that the contract is entered into there must be something external to the contract itself which puts one party in the power of the other. The mere fact that one man has money and another man wants it does not give rise to an unconscionable contract. There must be at the moment of the contract—the relations may have sprung into existence almost contemporaneously—some relations which give one party an unfair pull over the other.

"Then my Hon'ble friend Sir Griffith Evans also pointed out that there may be certain cases of inequitable contracts quite outside this Act. As regards those contracts the powers of the Courts still remain, but the object of this Act is partly to direct the lower Courts as to the lines on which they should move, and partly to call the attention of the Courts to the fact that they have powers further and other than those already given by the Indian Contract Act. It is quite true that that doctrine has been recognised here, but it has not been recognised generally all over India. The Courts have held themselves bound to the particular words of the Act, and have refused to look into inequitable bargains because they were bound by the terms of the Act and could not go behind them. We have to remind the Courts that they can go behind them, and at the same time we have laid down the lines on which they can go behind them. There was one other point raised by my Hon'ble friend Sir Griffith Evans, and I think my Hon'ble friend Mr. Rivaz gave the answer to it. My Hon'ble friend would rather that we had legislated directly with regard to the relations of money-lender and agriculturist. As my Hon'ble friend Mr. Rivaz says, we recognise that the money-lender is an essential factor in Indian society as at present constituted. We do recognise—and gladly recognise—that the great mass of transactions between the money-lenders and agriculturists are fair and reasonable transactions. We do not want to legislate against money-lenders, but we want to legislate against unconscionable bargains. We are not now legislating against a class, but we are legislating against unconscionable bargains—bargains which offend the conscience of humanity, and that is the scope and aim of this Bill."

The motion was put and agreed to.

The Hon'ble MR. CHITNAVIS moved that for sub-section (3) of section 16 of the Indian Contract Act, 1872, as proposed by clause 2 of the Bill, as amended, the following be substituted, namely :—

"(3) Where a person who is in a position to dominate the will of another, but who does not stand to him in a position of active confidence, enters into an agreement with

him, the burden of proving that such agreement was induced by undue influence shall lie upon the person who seeks to have the agreement set aside on the ground of undue influence."

He said:—"I must say that I move this amendment with considerable diffidence, as the amending Act has been shaped by the combined wisdom of many Hon'ble gentlemen learned in the law. But I think it is in accordance with general principles that a person seeking to avoid liability for his own actions and setting up a special circumstance as a defence has to discharge the burden of making good his defence. Where a person charged with having committed a murder pleads in his own defence insanity or accident or the right of private defence, the burden of proof would lie on him for making out such a defence. In Civil Courts, where a person repudiates an obligation under a document which he has signed, and alleges that he signed it under a mistake or in consequence of fraud practised on him, the burden of proof would be on him to make out such a defence. I therefore submit, my Lord, that where a debtor seeks on the alleged ground of undue influence to avoid an agreement which he has entered into, it should be for him to prove the undue influence on which he relies for the repudiation of his obligations.

"I quite appreciate, my Lord, the purpose of sub-section (3) as it now stands. It gives to Courts the power of raising the defence of 'undue influence' where it is not raised by the defendant himself. It seems to me, however, that the power here proposed to be given to Courts is much too large. The word 'unconscionable' has not been defined in the Bill, and I am not sure that it is possible to define it in a way free from objection. If, then, Courts are permitted to presume 'undue influence' where they consider a transaction to be 'on the face of it' unconscionable, the discretion so vested in them may often be exercised in a way which may, I fear, cause dissatisfaction among large classes of people, uncertainty as to the state of the law, and a panic among money-lenders. Where, 'on the evidence adduced,' the transaction appears to be unconscionable, Courts will no doubt have better reason for placing the burden of proof as the sub-section directs, but, then, which is the party that adduced the evidence? The person who dominates the will of the other party will not give evidence against himself, and if the evidence which shows a transaction to be unconscionable has been adduced by the party seeking to set it aside, then in substance this part of the sub-section is very largely the same as my amendment, which, however, has this advantage, that it gets rid of the notion and the word 'unconscionable,' and assimilates the provision to the general law of the country instead of making it a new departure.

"I speak with diffidence on a technical point of law, and, even if I was able, I should be as unwilling as the Hon'ble Law Member to inflict on the Council 'a disquisition on English law.' I beg leave, however, to refer to one or two principles which appear to be undisputed alike in England and India. With regard to voluntary donations, the principle invariably recognised by English Courts of Equity seems to be that, except in cases where certain specified intimate relations exist between the donor and the donee, undue influence must be *proved* against the donee in order that the gift may be set aside.

"The law in regard to the burden of proof on the subject of undue influence is thus summarised by Sir Frederick Pollock in a recent work :—

'Parties in an independent position are masters of the terms they choose to make; but when the terms made between parties in confidential relations are such as, judged by the reasonable and ordinary practice in affairs of the same kind, appear unconscionable, it is an almost necessary inference that the confidence of the client has been abused and undue influence exerted. On the other hand, the Courts will not easily give credit to mere surmises and suggestions of undue influence where there is no relation between the parties naturally producing general authority on one side and general deference on the other, and where it is not proved that their habitual conduct was of this kind.'

"I find that the passage quoted by the Hon'ble Law Member in his speech begins with this remark :

'Agreements between persons in certain relative positions are treated in equity as presumptively made under an undue influence of one party upon the will of the other.'

"I take the effect of these authorities to be that in agreements between persons standing in certain special, intimate or confidential relations to each other, the presumption of undue influence will arise, having the effect of placing the burden of proof on the party claiming the benefit of the agreement. Where those relations do not exist, the ordinary rule must prevail, and the party repudiating the transaction must prove that he was induced to enter into it by undue influence. That seems to be the principle recognised alike in England and India, and, if it is not a presumption to say so, it is a rule founded upon considerations of fairness and justice. I see no reason why it should be departed from in the Act we now propose to pass. It does not appear that even the House of Commons Committee, to which the Hon'ble Law Member made reference, has made any recommendation (in regard to the law of the burden of proof in cases of undue influence) similar in point of principle to sub-section (*3*) of this Bill. The law as to the burden of proof, 'where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence,' is laid down in section 111 of the Indian Evidence Act. The law

as to the burden of proof in all other cases of undue influence should, I am humbly of opinion, be put in the form which I am now suggesting as a substitute for sub-section (*3*) of the Bill before us."

The Hon'ble MR. CHALMERS said :—"I am sorry to say I must oppose a direct negative to my Hon'ble friend's amendment. It would cut the life out of this clause if accepted. It would alter the burden of proof and make the party who has entered into an unconscionable bargain prove his case the whole way through. We have modified the Bill as it originally stood, and we have provided that, first of all, the party must show the nature of the existing relations. He must give some evidence to show that he was subject to the party who dominated him, and we have provided that some evidence must be given that the contract was unconscionable, and that then, and then only, the burden of proof should be shifted. That is going as far as we can in the way of concession, and it is going further than the English law. According to English law, as soon as the suspected relationship is established, the burden of proof shifts, and it lies on the other side—on the dominating party—to show that the contract was in point of fact fair, just and reasonable."

The Hon'ble MR. REES said :—"My Lord, I oppose this amendment. If it were accepted, it would be useless to go on with the Bill, the most important change in which is the shifting of the burden of proof in cases when the contract is on the face of it or on the evidence unconscionable. The latter all-important proviso, added in Select Committee, makes the Bill a fair effort to relieve the unduly influenced without prejudicing the parties in ordinary contract cases, and its maintenance is vital to the measure as it stands. I cannot help referring to the Hon'ble Mover's statement that 40 per cent. of the people go through life on insufficient food. I tried to meet this statement in a budget debate three years ago, and this is not the occasion for repeating the effort. I will only say that I believe this statement to be untrue of any years in India—good, bad, or average. It is not now true even of famine years. It appears to me to be a grave exaggeration."

The Hon'ble MR. SMEATON said :—"I entirely agree with the argument of the Hon'ble the Legal Member in opposing this amendment. It seems to me that, if that clause of the Bill is so amended as to shift the burden of proof in the way described, it would be taking away a principle which is vital to the Bill; it would, in fact, emasculate the Bill and leave the law practically as it stands at present. Under those circumstances I oppose the amendment."

The Hon'ble SIR GRIFFITH EVANS said:—"I also oppose this amendment. It is, as the Hon'ble Mr. Rees has remarked, tantamount to asking the Council to vote against the Bill. The Bill would not be worth the paper it is printed on if this amendment were carried. It comes to the same thing as omitting the section for which this substitute is proposed. For the substituted section simply leaves things as they were before. That section is the pivot upon which the Bill hinges and is the operative part of it, and if it is omitted the Bill should be dropped."

The motion was put and negatived.

The Hon'ble MR. CHITNAVIS said that, as his first amendment was lost, he now asked leave to withdraw the second amendment which stood in his name, as it was only a consequential amendment.

The amendment was accordingly withdrawn.

The Hon'ble MR. REES said:—"My Lord, I have already said I approve the Bill as amended, and now I beg leave to move that in *illustration* (*b*) of clause 3 of the Bill the words 'an agriculturist' be omitted.

"These words originally were found also in *illustration* (*c*) to clause 2, but were expunged in Select Committee.

"When His Honour the Lieutenant-Governor, then a member of Lord Elgin's Government, introduced this Bill, he expressly stated that in an amendment of the substantive law of contract the Government decided to seek a remedy for the indebted condition of the agricultural community, an ignorant peasantry, generally alleged to be at the mercy of the more astute money-lender in its monetary dealings; and His Honour reviewed various other suggestions, which the Government determined to reject.

"Then the Hon'ble Legal Member of Your Excellency's Government, in moving this session for reference to a Select Committee, referred to one of these suggestions, *viz.*, the enactment of a general law framed on the lines of the Dekkhan Agriculturists' Relief Act, and I hope I rightly understood him to say that this suggestion had been abandoned. If it has proved a success in the Dekkhan,—and a study of the report of the Commissioners of 1891-92 leaves this in doubt,—it is not well adapted, so far as I can judge, for application to Southern India. And he went on to say that the provisions of the Contract Act of 1872 had been found wanting to meet the case of the agriculturist and the money-lender, that it was none the less proposed to make no new departure, but to arm the Courts with power in such cases to go behind the bond.

"The Hon'ble Member showed that much more drastic proposals were made by the recent money-lending Committee of the House of Commons, but he said that the Government of India recognized that the money-lender is the capitalist of Indian agriculture—an essential factor of a system the abuses and excesses of which alone the Government wished to curb.

"It was in this spirit that the Hon'ble Member met his Select Committee, and his readiness to accept suggestions based on experience of the country, and even as to drafting, a technical art of which he is an acknowledged master, has only increased the regret all additional Members feel—I am sure as I do—that they will so soon be deprived of his kindly and capable guidance.

"Yet looking to the origin of the Bill I must say that in my opinion the circumstances of the South Indian agriculturist are not such as to call for any amendment in his favour of the general Contract Law of the country. I speak for myself of course. The Government of Madras 'considered the proposed measure would effect a desirable improvement in the law relating to contract.' It suggested, however, the omission of the word 'agriculturist' from the illustrations, so as to remove all doubts as to the general application of the law; and the Officiating Chief Justice—Mr. Justice Shephard—from whom, and from Mr. Justice Subramanya Iyer, proceeded the suggestion which the Madras Government adopted, thought 'it a serious objection that the retention of the word suggested the idea that agriculturists as a class are to be regarded as privileged persons in their relations with money-lenders.'

"A law which is of general application may, however, need amendment, and the powers it confers on the Courts may call for extension, for express and explicit extension, in the general interests of the country, or of a greater or lesser part thereof, although in particular portions the exact conditions which suggested the amendment may not exist. It would be altogether wrong to stretch the all Indian raiyat on the bed of the Punjabi Procrustes, but the Madrassi raiyat in his turn should not grudge to others, perhaps less fortunately situaetd, a protection which he himself may not need. In fact, he will probably not be much affected by this Act, unless prophecies that it will increase the difficulty of borrowing come true, which I hope will not prove the case, though I entertain much apprehension on this score if the agriculturist of the illustration holds his ground.

"A long and elaborate argument to illustrate the position and circumstances of the South Indian agriculturist is not required from a Member who votes for the Bill, and only wishes to explain, when moving his amendment,

that he does not think that the Madras raiyat is one of those in whose interests it is required. But the question is one of such importance that I will ask Your Excellency's leave to refer to a few authorities on the position I take up.

"In 1872, when the Contract Act was before this Council, the then Lieutenant-Governor, Sir George Campbell, wished to introduce an illustration in which 'a rich and powerful zamindar' and 'his poor and ignorant raiyats' figured. Sir James Stephen strongly and successfully opposed the proposal, which was lost, though the Lieutenant-Governor, by way of compensation, obtained the excision of the illustrations from English practice which are now restored as (*a*) and (*b*) beneath clause 3 of this Bill. On that occasion my predecessor, Sir William Robinson, opposed the amendment with such warmth as called forth certain observations on the part of the Lieutenant-Governor, which are not reported, though Sir James Stephen refers to them, and may be presumed to have been by way of rebuke. In this respect I trust that history will not repeat itself, but Sir William Robinson's contentions are as true of the south of the Peninsula to-day as they were twenty-seven years ago, when he made them. 'In respect to Southern India,' he said, 'I have no hesitation in saying that there is no ground for apprehension or for exceptional legislation, and I know that the cultivators have, on the whole, a very fair time of it.'

"The Madras Government in its opinion of last year, to which I have just referred, deals only with the legal question. While its Board of Revenue approved, the judicial officers consulted gave guarded answers. Mr. Justice Subramanya Iyer, of the High Court, thought the amendments improvements, but pointed out 'that the condition of agriculturists in South India is not generally such as to warrant that class being treated as a privileged class entitled to special protection, and the illustrations which refer to them and imply that they are such a class are, therefore, out of place in a law applicable to all India.'

"But no authority stands higher on this subject than that of my Hon'ble friend and predecessor, Mr. Nicholson, who has devoted equal time and talent to the study of the condition of the agricultural classes. Circumstances only allow of passing reference to a report which is already a standard work in the hands of all interested in this subject. Mr. Nicholson urges that agricultural indebtedness in the South, while sufficiently serious, must not be exaggerated, the mass of raiyats not being deeply indebted, the mortgage-debt especially being moderate and not aggregating in any given year one-half of the value of the annual crops. Mr. Nicholson goes on to show that in addition to the value of soil, stock, crops and buildings, there are considerable hoards awaiting the development of a suitable banking system, and that great numbers of the cultivators are intelligent men.

In this I thoroughly agree, and would repudiate the assumption that the average cultivator is incapable of understanding a contract and forming a rational judgment as to its effect upon his interests. He understands very well what he is about in making engagements, and that he strives honourably to fulfil them is the opinion of those who best know him. He can no more be described as naturally feeble-minded than he can be called idle and wanting in energy, the description given in the report of the Dekkhan Agriculturist Commission. Indeed, experts from other countries have told me they believe no other man could make a living off the land the poorer raiyats till.

"Again and again Mr. Nicholson points out that nine loans out of ten in the South are made by raiyat to raiyat, by whom two-thirds of all the mortgage, and a slightly higher percentage of other, loans are granted; that to national and social and economic conditions, and not to the existence of the money-lender, is due the indebtedness of the raiyat; that the mortgage-rate of interest, as appeared from an examination of 76,000 loans, runs from 9 to 18 per cent.; and that it is certain from the tabulation of an immense number of cases that interest is fairly moderate where security is good, and that there is no gross usury such as that which came before the House of Commons Committee, on whose report, which dealt with cases quite dissimilar from those of this country, no action has, it is believed, been taken; that a gross agricultural debt of 45 crores against annual rural produce worth 60 crores is moderate compared with similar debts on the continent of Europe, as is a rural mortgage debt of 20 on land worth 220 crores; that peasants must borrow freely, annually and continuously; that three fourths of them are bound to borrow for cultivation purposes, and that the whole process is in fact the mere mobilization of capital; that the money-lender, usually a local raiyat, does not enter as a dominant factor into the daily life of the general population, as in the Dekkhan, and no doubt to some extent in the Dekkhan districts of the Madras Presidency.

"It will probably be considered unnecessary to quote more to this effect from the same source or from other authorities. It seems pretty clear that the condition of the Madras raiyat is not such as to warrant that class being treated as privileged and entitled to special protection, though Mr. Nicholson thought the Courts should have the power of adjusting contracts, where the lender possessed an undue advantage over the borrower.

"That this conclusion is, however, not sufficient ground for the rejection of this measure will be evident when the opinions of Local Governments are considered. It is approved generally by the Administrations of Bengal, North-West Provinces,

Burma, Bombay and the Central Provinces, though a by no means unanimous voice comes from the Courts, bodies and officers consulted by these Governments. The Administration of Assam condemns it; and in Bombay, while the Commissioner in Sind, lately a Member of this Council, is, as we all knew while he was here, a stalwart supporter of the measure and more than the measure, the Karachi Chamber of Commerce, the Judges and even the Sind raiyats—if their petition can be taken indeed as really representative—disapproved lock, stock and barrel of the Bill as a weapon of defence and protection for the agricultural community.

"These conflicting opinions—and any number might be instanced—only serve to indicate how widely opinions and circumstances vary, and how little the dictum of the learned High Court Judge in *Lalli v. Ram Prasad* can be accepted, to the effect that 'the conditions of peasant-proprietors are sufficiently homogeneous over all India to make the same treatment universally applicable.'

"Not the least remarkable fact is that a disapproval of the most important portion, the undue influence section, of the Bill, comes from the Government of the Punjab, which apparently for some years past has entertained apprehensions lest, as Sir Mackworth Young puts it, 'under the restrictions and disabilities which are accumulating against his interest, the position of the money-lender should become untenable.' The Lieutenant-Governor, and his predecessor Sir Dennis Fitzpatrick, agreed that even in the Punjab it would not do to assume that the money-lender was always the offender, and clause 2 of the Bill has now undergone in Select Committee the all-important change, that before the burden of proof is shifted in favour of the borrower, the contract must appear unconscionable on the face, or on the evidence.

"I think it is sufficiently established that in Southern India no such exceptional agricultural conditions exist such as call for a change in the general contract law, that opinions are widely divided as to the existence of such circumstances in other parts of India and as to the effect which will be produced by a change in the general law of contract admittedly made in favour of one, and that the agricultural, class, but equally affecting all classes.

"It is then evidently a matter of the first importance whether the agriculturist is retained in the illustrations, and as he disappeared in Select Committee from clause 2 (*c*) why is he retained in clause 3 (*b*), and will not the Courts, knowing the origin of the Bill, seeing the much modified, but still great, change in the law as regards the burden of proof, hold under the Act, with this illustration retained, that almost every money-lender is in a position to dominate his agricultural debtor, so that the lender will lose upon his bond, so that the partner with the capital

may become more difficult of access to the partner who is bound to borrow? Illustrations of course are not law. The Law Commissioners, when forwarding the draft Penal Code to the Governor General in Council in 1837, said—

'The definitions and enacting clauses contain the whole law. The illustrations make nothing law which would not be law without them. They only exhibit the law in full action, and show what its effects will be on the events in common life.'

"But in fact the Courts, particularly those belonging to what one may call the lower legal orders, cling to the illustrations, and feeling, as I have myself, what comfort resides in concrete cases, and believing that the lower Courts work the illustrations for all they can afford, it is with satisfaction I see that the Law Commission of 1863, consisting of the Master of the Rolls, Sir William Erle, Lord Sherbroke and other eminent lawyers, when presenting the draft of the Succession Act, made the following observations:—

'The decision contained in any illustration is not to be questioned in the administration of the law. The illustrations are not merely examples of the law in operation, but are the law itself, showing by examples what it is. The statements that the definitions and enacting clauses contain the whole law, and that illustrations make nothing law which would not be law without them, are correct if understood as merely importing that, in the view of the legislature, the illustrations determine nothing otherwise than what, without them, would have been determined by a right application of the rules to which they are annexed. As, however, much law has been made by judicial decisions, which determine questions respecting the application of written rules of law, so law may, without impropriety, be said to be made by the illustrations, in the numerous cases in which they determine points about which, without their guidance, there would be room for difference of opinion even among learned and able Judges.'

"In short, it is difficult to over-estimate the importance which attaches—which is by Indian Courts attached—to illustrations—Sir Griffith Evans has just owned that in clause 4 only the illustrations avail to introduce new law: it is as great at the present moment as when they were warmly debated in this Council Chamber, when the Act was passed which is now being amended. If the general law of contract is to be amended in the interest of the agriculturist—and it must be admitted that there is perhaps a preponderance of opinion in favour of such action—at least let him get the benefit without being so ear-marked in the illustrations as to prejudice his capitalist partner in agricultural operations—a partner indispensable, whether or not unreasonable, against whose interest or interests a powerful weapon is forged in the Bill by the wider definition of undue influence and by the shifting of the burden of proof. If other illustrations referred to soldiers, sailors or persons following other callings, the reference to the

agriculturist would be less marked, but no one is likely to dispute the fact that especial significance attaches to his retention in this illustration, and the only question is whether or not he should be retained. I hope he will be cut out in what I believe to be his true interests, and in consideration of the fact that the Bill, when it becomes law, will become law for all parts of India, and for all classes in the Empire."

The Hon'ble MR. CHALMERS said:—"This point which is raised by my Hon'ble friend Mr. Rees was considered in Committee, and the Committee came to the conclusion that on the whole it would be better to keep this illustration as it stood. There is no question that in the greater part of India contracts which are unconscionable and contracts for which we wish to provide do arise between money-lenders and agriculturists, and therefore the illustration points to that fact. It is a fact which we cannot deny. We do wish the Courts to set aside unconscionable bargains between ignorant agriculturists and those money-lenders who are unscrupulous. In a Madras Act we should not perhaps put in that illustration, but as we are now legislating for the whole of India we cannot say that this legislation should not apply to Madras, nor can we say that it applies to a class of agriculturist who does not reside in Madras, and I think on the whole that the Committee were right in deciding that this illustration should stand as originally framed."

The Hon'ble MR. SPENCE said:—"I wish to say a few words in support of the motion that has been made by my Hon'ble friend Mr. Rees. I acknowledge that this point was debated in the Select Committee and we came to the conclusion that the words 'an agriculturist' should be left in this amendment, but I think that it was more as a matter of indifference as no principle was involved. This legislation is not meant to cover any particular class. It is not to apply to the agriculturist alone but to all classes, and the point that has not been noticed appears to me to be that if you put in this illustration there is no doubt that the Courts will act on it as if it were a sort of declared law. Therefore they will protect the agriculturist, but in the case of an artisan or of persons who belong to another class they will not be inclined to interfere. An artisan has just as much right to be protected against an unconscionable contract as an agriculturist. If you mention the word 'agriculturist' the Courts will at once protect him and not men of other classes. As no principle was involved in the illustration I assented to it in the Select Committee, but I have been induced by the arguments which have been brought forward by Mr. Rees to vote in favour of the amendment, and I hope the words 'an agriculturist' will be cut out."

The Hon'ble MR. MEHTA said:—"My Lord,- I am not in favour of this amendment. The use of the word 'agriculturist' was open to misconstruction in any illustration to the proposed new section 16. The Select Committee therefore unanimously agreed to omit it from illustration (*c*) to that section. But the case is quite different as regards the illustration from which my Hon'ble friend Mr. Rees now proposes to discard it. I think he has not quite kept in mind the purport of the section to which the illustration in question is appended, and has forgotten that that section dealt with cases in which the fact of undue influence was already established. The illustration itself says that the bond is obtained by undue influence. The Madras agriculturist seems to be a very different person from an agriculturist in other parts of India, but surely my Hon'ble friend does not mean to say that if a contract is obtained by undue influence from a Madras agriculturist, he is not entitled to the protection of the Act like any other person from whom a contract is obtained by undue influence. He may be a very flourishing gentleman as my Hon'ble friend says, but under those circumstances he requires protection just as much as his less fortunate brethren elsewhere. It must be remembered that an illustration is something more than the enumeration of a general principle. The section lays down the general law; the illustration clothes the skeleton with flesh and blood. I quite admit that the illustration might have taken an artisan for an example. But as a large body in which cases of undue influence may not be infrequent, an agriculturist was equally, if not more, appropriate. I confess I am for retaining the word in this illustration just as I was in favour of omitting it in the section defining undue influence."

The Hon'ble MR. LATOUCHE:—"As far as any principle is concerned I am in favour of the amendment, but I do not think it goes far enough. If the words 'an agriculturist' are omitted, the words 'a money-lender' should also be expunged. The illustration would then read as follows:—

'(*b*) A advances Rs. 100 to B, and, by undue influence, induces B to execute a bond for Rs. 200 with interest at 12 per cent. per month. The Court may set the bond aside, ordering B to repay the Rs. 100 with such interest as may seem just.'

"We are not here concerned with an illustration of the classes who are apt to exercise, or liable to be subjected to, undue influence. It is immaterial whether A is a professional money-lender or not. In the case supposed undue influence has been proved, and the illustration is concerned with indicating what the Court will do under section 19A, and how it will exercise an equitable discretion in relieving from the contract the person who has been subjected to undue influence."

The Hon'ble SIR GRIFFITH EVANS said:—"The speech made by my Hon'ble friend Mr. Rees is the strongest indication of what I said when we were considering the Bill, that it would have been better to have passed separate Bills for the different Provinces so far as the raiyats were concerned. The Hon'ble Mr. Rivaz said he had no doubt that the Bill would be useful to the raiyats. His Honour the Lieutenant-Governor, when originally introducing the Bill, said it was necessitated on account of the difficulties in connection with agricultural indebtedness, and so too it appears by the speech of my Hon'ble friend Mr. Chalmers that that was what was mainly aimed at. Now we find that Madras is a blessed Arcadia where all peasants are prosperous and all money-lenders merciful. My Hon'ble friend is alarmed at the very idea of its being supposed that a Madras raiyat could ever want protection from the clutches of a money-lender. I do not feel that same terror of having the name 'agriculturist' mentioned in the Bill, because if they are intended to be relieved it cannot be any great harm to mention them.

"All those who have discussed this illustration have forgotten apparently that the section which it illustrates deals not with the question when relief should be given but how it is to be given. The section runs thus—

'19A. Where a contract is induced by undue influence, it may be set aside either absolutely or upon such terms and conditions as to the Court may seem just.'

"The illustration is—

'(*b*) A, a money-lender, advances Rs. 100 to B, an agriculturist, and by undue influence induces B to execute a bond for Rs. 200 with interest at 12 per cent. per month. The Court may set the bond aside, but may order B to repay the Rs. 100 with such interest as may seem just.'

"Now in this case it is found positively under the previous section that undue influence has been used, and therefore as a matter of fact the word 'agriculturist' and the word 'money-lender' could both come out. They are not essential to the section, but it was thought that inasmuch as this Act was intended to benefit the agriculturist we might mention him as being one of the persons who might possibly receive benefit under this Act. As was pointed out by the Hon'ble Mr. Mehta, whether the person who received the money was an agriculturist or not, still if undue influence was proved this result would follow, but it was thought that as there was no mention of agriculturist anywhere else in the Act, we might put him in, and thus indicate that he might obtain relief even though he lived in Madras. It merely says if an agriculturist has been induced by undue influence to do a certain thing, then relief should be given him in a certain way."

The Hon'ble RAI BAHADUR P. ANANDA CHARLU :—"It has been pointed out, and rightly pointed out, that the section 19A relates not to the *persons* to whom relief is meant, but to the *methods of relief* intended to be provided. That being so, why retain the word 'agriculturist' in the illustration? Judicially viewed, there will be little room for mistakes. But let us remember that a large number of these cases will be brought in the Small Cause Courts, and that it is the inevitable practice of these Courts to gallop through the case with a rapidity which forbids much judicial care. There will thus be a great risk of people fancying to read between the lines and act as though the agriculturist has been specialised for relief above everybody else. If the remarks made to-day by certain of the members are read, the chances of such an error will be greatly enhanced, inasmuch as it is emphasised that, although special legislation or rather legislation for a special class is not *professed*, yet such is the intention to some extent. It is very undesirable that this sort of notion should get hold of the lower grades of judiciary and lead to results which are ostensibly disclaimed as intended. This risk of widespread error should be avoided, and it can only be done by adopting the amendment of my Hon'ble friend Mr. Rees."

The Hon'ble MR. RIVAZ :—"As the Hon'ble Mr. Chalmers has said, we carefully considered this point in Select Committee, and we decided to retain this word in this illustration, while we excised it from the illustration in the preceding section. I do not think it is a matter of great importance whether it is kept in or not; but I am of opinion that, for the reasons my Hon'ble friend Sir Griffith Evans has given, it is desirable to keep it in."

The Hon'ble SIR ARTHUR TREVOR :—"The reasons which my Hon'ble friend Sir Griffith Evans has given seem to me to tell as much in favour of striking out the word 'agriculturist' as of keeping it in. I am disposed to agree with the Hon'ble Mr. LaTouche that both 'a money-lender' and 'an agriculturist' should be omitted. They seem to add nothing to the meaning of that illustration and *might* mislead."

The Hon'ble SIR JAMES WESTLAND :—"I cannot see why the difference lies between putting in and leaving out the word 'agriculturist.' The illustration has the same effect either way. It does not mean to cover the whole of the cases that may arise under the law. It is merely a case that may arise. I remember, for example, an illustration given in the Penal Code regarding the manner in which homicide may take place without an offence occurring. It describes an individual engaged in the commonplace operation of cutting a log with an axe. The

head of the axe flies off and it injures some person to his death, and it is declared under these circumstances that the homicide is not culpable homicide. It seems to me quite impossible for any person engaged in a trial for homicide to argue that the person who committed the act was not cutting wood, and therefore the illustration cannot apply to him, or to allege that because the instrument which in the particular case under consideration was not an axe, therefore the homicide must be a culpable one. You must in the case of an illustration state your facts, and the act of stating particular facts in the illustration does not exclude other similar facts from the application of the section. So in this case when you state that the individual concerned is an agriculturist, he is only taken as one particular individual to whom the facts may apply, and I cannot see where the harm is in leaving him in. The Courts sometimes do foolish things, but I cannot imagine any Court, such as my Hon'ble friend Mr. Charlu refers to, finding that under the circumstances stated in illustration (*b*) no person but an agriculturist could receive the benefit of the section.

"It seems to me that the most natural thing for a Court to say is, that the fact of a person being an agriculturist was not in the least degree essential to the application of the law. The illustration indicates a state of things to which the law may apply, whether a person is an agriculturist or not. It seems to me perfectly indifferent whether the word remains in or out of it, and Iam disposed, therefore, to accept the decision of the Select Committee that it should remain in."

The Hon'ble MR. CHALMERS :—"May I with Your Excellency's permission add one word of explanation. I forgot when speaking that Hon'ble Members of Council generally were not present in the Select Committee. I ought to have reminded them of the particular point which we were discussing in Select Committee when this question came up. We were discussing the question of the remedy when a contract has undoubtedly been obtained by undue influence. As the law stands at present, when a contract is obtained by undue influence, it stands on the same footing as a contract obtained by fraud; that is to say, the Court sets it aside absolutely. We were discussing the point that you ought to draw a distinction between a contract obtained by fraud which is set aside absolutely and a contract obtained by undue influence, which in many cases should only be set aside on terms.

"The case of the agriculturist perhaps illustrates that better than any other, and for this reason—it is essential that the agriculturist should have advances. He has to go to the money-lender, and it is essential that, if the contract is a fair and reasonable one, he should keep his contract and repay his advances. But

suppose the contract is an unconscionable one: suppose that the agriculturist requires an advance to cultivate his crops and gets one, but that it is advanced on unconscionable terms? Then what I want to point out is this. The contract is not set aside absolutely, but the Court has to reform it; the Court has to set aside the unconscionable part of the bargain, but we wish to point out that an agriculturist who has received the benefit of the contract and has received his money must repay that money and with a reasonable interest. We thought the illustration was apt in the case of an agriculturist because otherwise money-lenders might be afraid of advancing to the agriculturist. It is important to point out that even if you come to the conclusion that the contract is unconscionable, still the agriculturist who has entered into an unfair bargain won't be allowed simply to go away with the other man's money in his pocket, but that he will have to do justice himself; otherwise there might be a difficulty in agricultural tenants getting loans from money-lenders, and it was particularly to guard against that that we kept the words 'an agriculturist' in this section. The section does not deal with what is undue influence and what is not undue influence, but with what is to be done by the Court in order to work out complete justice between the parties when an unconscionable bargain comes before it and has to be reformed. I ought to have explained that before."

The Council divided:—

Ayes—7.	*Noes—13.*
The Hon'ble Mr. Rees.	The Hon'ble Maharaja Bahadur of Darbhanga.
The Hon'ble Mr. Toynbee.	The Hon'ble Mr. Smeaton.
The Hon'ble Mr. Spence.	The Hon'ble Mr. Mehta.
The Hon'ble Nawab Faiyaz Ali Khan.	The Hon'ble Mr. Allan Arthur.
The Hon'ble Mr. Chitnavis.	The Hon'ble Pandit Suraj Kaul.
The Hon'ble Mr. LaTouche.	The Hon'ble Sir Griffith Evans.
The Hon'ble Rai Bahadur P. Ananda Charlu.	The Hon'ble Mr. Rivaz.
	The Hon'ble Sir Arthur Trevor.
	The Hon'ble Major-General Sir Edwin Collen.
	The Hon'ble Mr. Chalmers.
	The Hon'ble Sir James Westland.
	His Excellency the Commander-in-Chief.
	His Honour the Lieutenant-Governor.

So the motion was negatived.

His Honour the LIEUTENANT-GOVERNOR moved that in illustration (*b*) to the new section 19A proposed by clause 3 of the Bill, as amended by the Select Committee, for the figure "12" the figure "6" be substituted. He said:—"I was myself a party at an earlier stage of this measure to the illustration introduced in its present form, but on further consideration I should have moved, had I been in the Select Committee, the amendment which stands to-day in my name. My reasons are these: the illustration means, in shorter language, that a contract to pay interest at a rate of 288 per cent. per annum executed under undue influence is an unconscionable contract which the Courts may call upon a creditor to justify. That such a contract is unconscionable nobody will dispute, but I think it is not necessary for the assistance of the Courts to give them so obvious an example of outrageous and unconscionable contracts. The illustration is intended to be from its etymology a light in darkness or a guide in circumstances of some doubt and difficulty. When a traveller, for example, enters Italy, he may, if he is not very wide awake, be in some doubt when he reaches Turin whether he has crossed the frontier or not, but there is no such excuse for him at Naples; and similarly I think the illustration to be effective and useful in the elucidation of the business of the Courts ought to be more on the border-land of actual facts. We have all of us heard of the rapacity and extortion of the money-lenders—in some cases at all events—among the ignorant and timid rustics. I have not myself come across any such violent examples of these transactions as is embodied in this illustration, and I think it would suffice for our purpose, and more than that it will be better for our purpose, to substitute in this illustration the figure 6 for the figure 12. That will result in giving an illustration of a contract at the unconscionable rate of 144 per cent. per annum. I am glad to say that cases in which the rate is so excessive and extortionate are rare in my own experience of money-lenders in India, but such cases have occurred, and I think it would be for the assistance and benefit of the Courts if we were to give them an indication of those more common cases in which a contract is on the face of it unconscionable. For these reasons I beg to move the amendment which stands in my name."

The Hon'ble MR. CHALMERS:—"I accept His Honour the Lieutenant-Governor's suggestion. Perhaps the illustration we gave was too exaggerated an illustration, but of course I must point out that we are not laying down in this section what constitutes an unconscionable bargain, but what the Court has got to do when an unconscionable bargain comes before it. This illustration assumes an unconscionable bargain and then deals with what the Court has to do in administering justice between the parties; but I quite agree that we may give

a less exaggerated illustration than we have given, and I am glad to hear from the Lieutenant-Governor that such extreme cases are almost unknown in India. I have had hundreds of worse cases myself at home. I have had to deal with scores or hundreds of cases where the interest charged had ranged from 200 to 1,200 per cent., and I am glad to hear that Indian money-lenders are more moderate than English money-lenders."

The Hon'ble Mr. REES said:—"My Lord, I understand the unconscionable portion of the bargain in the illustration to be not the bond for Rs. 200 in return for an advance of Rs. 100, but the interest at 12 per cent. per mensem. It is to that point at any rate that His Honour has addressed himself, and on that point alone that he has proposed an amendment. I venture to think that rate preferable to 6 per cent. per mensem, just because it is so unconscionable as to be unmistakeably such as may be relieved against, beyond the possibility of being taken as a point around about which interest ceases to be unconscionable and begins to be reasonable. No Court would see a lead on this behalf in a case of 144 per cent. interest. But 6 per cent. per mensem is so much nearer the point at which interest has been allowed by the Courts, that, if it stands, it seems possible some Courts may hold 5 per cent. not unconscionable, and thus the illustration, which is intended to prevent such a result, might conceivably lead to decisions that 50 per cent., the rate against which English Courts relieved in the well known cases of *Aylesford v. Morris* and *Benyon v. Cook*, was not an unconscionable rate."

The Hon'ble MR. SMEATON:—"I would support the amendment of His Honour the Lieutenant-Governor. I differ from the view of the Hon'ble Member who has just spoken in regard to the effect of the illustration on the minds of that large body of subordinate Judges who will have to administer the new law. These Judges are apt to look upon a rate of interest quoted in an illustration as the *minimum* rate which should be held to be unconscionable: and some of them might possibly think themselves bound to consider 11 per cent. per month justified by the illustration. The reduction of the rate in the illustration from 12 to 6 per cent. will at least prevent the subordinate Courts from falling into this serious error; and I think therefore that the Lieutenant-Governor's amendment is most necessary."

The Hon'ble MR. MEHTA said:—"What has fallen from the Hon'ble Mr. Rees convinces me that His Honour's amendment is a very useful and necessary one. Mr. Rees admits that interest at the rate of 144 per cent. on double the amount lent is undoubtedly unconscionable. But he seems to hesitate whether

72 per cent. per annum on double the amount is so or not. I feel no hesitation in thinking that it is most unconscionable. It is safer, therefore, as His Honour has well pointed out, to avoid putting too extreme a case of unconscionableness."

The Hon'ble SIR GRIFFITH EVANS:—"It matters very little whether the alteration is made or not seeing that the principal is only Rs. 100 and the bond for double that amount: the 6 per cent. on that Rs. 200 would be not 72 per cent. but 144 per cent. on the money actually got, and we must all admit that that is certainly an unconscionable bargain. But it must be remembered, as I have before pointed out, that the object of the illustration is not to show when relief should be given, but how it is to be given."

The Hon'ble RAI BAHADUR P. ANANDA CHARLU:—"I strongly support the amendment of His Honour the Lieutenant-Governor. My reasons are precisely those which I urged in support of the amendment of my Hon'ble friend Mr. Rees to delete the word 'agriculturist.' Though those reasons failed on that occasion, I trust they will now carry weight."

The motion was put and agreed to.

The Hon'ble SIR GRIFFITH EVANS moved that the following illustration be added after *illustration* (*f*) to section 74 as proposed by clause 4 (*a*) of the Bill, as amended, namely:—

"(*g*) A borrows Rs. 100 from B and gives him a bond for Rs. 200 payable by five yearly instalments of Rs. 40, with a stipulation that in default of payment of any instalment the whole shall become due. This is a stipulation by way of penalty."

He said:—"I propose the insertion of a new illustration to section 74. The object is to illustrate what is a penalty. There is an illustration showing that a stipulation that in default of payment of any instalment of a loan the whole amount shall become due is not a penalty. I now propose an illustration to show that a stipulation similar in form may be treated as a penalty under certain circumstances. The instance I have given is one where a loan of Rs. 100 at 20 per cent. for five years repayable in yearly instalments contains a stipulation that on one default not only the original principal but the whole five years' interest shall become due. This, though in form it is a part of the contract, ought from its character to be treated as a penalty. It appeared by the opinions we received that it was feared the first illustration would be extended to a case of this kind unless or expressly provided for."

[*Mr. Chalmers; Pandit Suraj Kaul; Rai Bahadur P. Ananda Charlu; Sir James Westland.*] [17TH FEBRUARY,

The Hon'ble MR. CHALMERS:—"I accept my Hon'ble friend's amendment. In Committee we considered this point and found a difficulty in framing an apt illustration."

The Hon'ble PANDIT SURAJ KAUL said:—"My Lord, I quite agree with the report of the Select Committee on the Indian Contract Act (1872) Amendment Bill, which was presented after the Bill had been fully considered in all its bearings. But, my Lord, I am also in favour of the Hon'ble Sir Griffith Evans' motion regarding the addition of a new *illustration* (*g*) after *illustration (f)* to section 74 proposed by clause 4 of the Bill as amended. The proposed *illustration* (*g*) is, beyond doubt, a stipulation by way of penalty. I had, indeed, brought forward the same proposal before the Select Committee, and was told that it would be taken into consideration, if possible. I am glad that the Hon'ble Member, also a Member of the Select Committee, has taken the matter into his own hands, and his proposal, in my opinion, is worthy of adoption by Your Excellency's Council. If an illustration like this be not introduced in the Bill as amended, there is much reason to fear that the protection afforded to agriculturists, etc., under section 19A, *illustration* (*b*), in order to guard them against transactions involving penalty, will lose its effect; because clever money-lenders will endeavour to avoid that protection by making their contracts payable by instalments. The underlying principle of the Bill is to protect agriculturists, etc., from the enforcement of contracts entailing penalty, and therefore, my Lord, with these few words I beg to support the Hon'ble Sir Griffith Evans' motion."

The Hon'ble RAI BAHÀDUR P. ANANDA CHARLU:—"I would strongly support this amendment."

The motion was put and agreed to.

The Hon'ble MR. CHALMERS moved that the Bill, as now amended, be passed.

The motion was put and agreed to.

INLAND STEAM-VESSELS ACT (1884) AMENDMENT BILL.

The Hon'ble SIR JAMES WESTLAND moved that the Report of the Select Committee on the Bill to further amend the Inland Steam-vessels Act, 1884, be taken into consideration.

The motion was put and agreed to.

The Hon'ble SIR JAMES WESTLAND moved that the Bill, as amended, be passed.

The motion was put and agreed to.

ARBITRATION BILL.

The Hon'ble MR. CHALMERS presented the Report of the Select Committee on the Bill to amend the law relating to Arbitration. He said that he would have to move that the Bill be taken into consideration on that day fortnight.

CARRIERS BILL.

The Hon'ble MR. CHALMERS presented the Report of the Select Committee on the Bill to amend the law relating to Carriers. He intimated that this Bill would also be taken into consideration on that day fortnight.

PETROLEUM BILL.

The Hon'ble MR. RIVAZ moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to the importation, possession and transport of petroleum and other substances be taken into consideration. He said:—"The Bill, as I said in introducing it, is, in the main, a consolidating enactment, but opportunity has been taken to alter the present Petroleum Act on two or three points: the most important provision is that power is taken to extend the present Act to illuminant or inflammatory substances, other than petroleum, as for instance carbide of calcium. The Select Committee have not proposed to make any alterations in the Bill as introduced."

The Hon'ble MR. SMEATON said:—"My Lord, as a member of the Select Committee, I desire, with Your Excellency's permission, to make an explanation, with a reservation, in regard to this Bill. With the exception of the one important amendment, bringing other inflammable substances under the operation of the law, and widening the power of testing, the Bill now before the Council is practically a reproduction of the Act of 1886. That Act was intended primarily, if not entirely, to refer to imported petroleum. In 1886, there was very little petroleum produced in India, and the Act sufficiently met the requirements of the time. Upper Burma had just been annexed, its mineral oil-fields were but little known, and the very disturbed condition of the province, to my personal knowledge, prevented any important development of the industry for three or four years. In 1890-91, however, oil-winning in Upper Burma commenced in earnest

with the establishment of law and order, and Burma is now a large producer and exporter, as well as importer, of petroleum. It would not, therefore, be surprising, my Lord, if, under the very materially altered conditions of 1898, compared with 1886, the Act, which has been reproduced in the Bill now before the Council, should be found to be in some respects obsolete and inadequate. In Select Committee I indicated some of the points on which the law appears to be defective, but as the real object of the Bill is to bring under regulation other inflammable substances, and as this object is important, I refrained from proposing any amendments, because these would have necessitated references to Local Governments, and would have postponed the passage of the Bill into law for at least a year. Representations since received from Burma have confirmed the opinions I expressed in Select Committee, and suggestions have been made for certain reforms in the law, to meet the requirements of a large producing and exporting Province. When I mention, my Lord, that the capital invested in the Burma petroleum industry amounts to over one hundred lakhs of rupees, or rather more than three-quarters of a million sterling, that the output of oil last year was 19 million gallons, or nearly a hundred times more than the production of the whole of the rest of India, and bulked a good deal more than half of the total quantity of oil brought into the interior of India; when I add, that the refined oil is exported in hundreds of thousands of gallons to the Indian ports, and that ten to twenty thousand tons of useful bye-products are annually exported to the United Kingdom; and when I point out that the revenue of the State, from the royalty alone, amounts to over two and a half lakhs of rupees, against only Rs. 6,000 from the whole of the rest of India; when, my Lord, I mention all these facts, I think I may respectfully urge that any representations from Burma are entitled, at least, to very careful consideration. There are two points in particular, on which skilled local opinion suggests that the law is susceptible of improvement in the interest of the Burma producer.

"I invite Your Excellency's attention to sections 2 and 3 of the Bill. These sections define and deal with import and transport of petroleum. To import means to bring into British India, by sea or land, presumably from some place outside British India. To transport means to remove from one place in British India to another place in British India; therefore, petroleum sent from Rangoon to an Indian port, say Madras, is transported. Section 9 of the Bill (which is identical with the existing law) empowers Local Governments to make rules for sampling and testing imported petroleum, and for the levy of fees for such testing. Sub-section (2) (*b*) of clause 3 authorizes Local Governments, with the previous sanction of the Governor General in Council, to declare that petroleum transported

into their territories from any place in British India shall be deemed to be imported. I am informed (but I have been unable to verify this from official sources) that certain Local Governments on the Indian seaboard have acted on this authority, and have declared that petroleum transported from Burma into their territories shall be deemed to be imported; and that, at any rate, Burma petroleum is so treated at all Indian ports. The consequence is that the Burma oil is doubly, sometimes trebly, burdened. It is periodically tested by the Chemical Examiner in Burma; when a shipment is to be made it is again sampled, tested, and a fee charged; and notwithstanding this, when the oil arrives at the Indian port, it is again tested and again charged with a fee. The Burma producer thus finds his oil delayed in transit, and taxed at least twice. He urges—and I submit, my Lord, with some show of reason—that the law should not put it in the power of any Local Government or local authority, even with the sanction of the Governor General in Council, to impede the trade in Burma petroleum and weight it with what amounts to an import-tax. As Your Excellency is well aware, petroleum, from the enormous supply thrown on the market, is cheap, and cannot bear much handling or many charges. The Burma producer claims that the inspection and testing made in Burma should be sufficient warranty for the free entry of his oil into any Indian port. Your Excellency is aware that rice, the principal staple of Burma, is subject to an export-duty if exported to a foreign port; it seems unfortunate that petroleum, which promises to be the next important staple product, should be hampered by fees on entry into an Indian port. I do not say that there may not perhaps be reasons for the exercise, by Local Governments or local authorities, of the power vested in them by section 3, but I cannot help thinking that a good case may be made out for at least an examination of the law, to see if the impediments which I have just described may not reasonably be removed.

"The next matter, my Lord, to which I invite the attention of the Council is, sections 5, 6 and 7 of the Bill, which are identical with the existing law. In respect of dangerous petroleum stringent restrictions are wisely imposed upon its possession and transport, but these sections were obviously designed to affect only the imported article, and are quite unsuitable in respect of petroleum locally produced. You cannot reasonably compel a man, who is winning oil under a lease granted by Government, to take out a license with heavy fees attached for the possession of dangerous petroleum which is daily pumped up in hundreds of gallons from the bowels of the earth; and yet these oil-winners are technically liable to penalties under the Act. Oil-winning in Upper Burma is carried on under leases, and royalty is charged at 2½ pies per gallon at the

mouth of the well, irrespective of the character of the oil. In one of the oil-fields 25 per cent. of all petroleum pumped up is a light spirit, called naphtha, with a low flashing point, and is, under the law, dangerous. This has to be immediately destroyed, because possession or transport of it is forbidden except under a license with prohibitive fees. So that the Burma producer not only pays royalty on one-fourth part of his output which he has to destroy, but he loses the naphtha, which under different conditions of possession and transport, he could sell locally, or export with profit.

"In regard to refineries legislation may very probably be required. Native refineries are springing up under the stimulus of the low price at which crude oil can now be obtained. These refineries are likely to increase in number, and they are believed to be a source of danger. Their structure and skilled supervision will require attention. It is possible also that transport of petroleum over long distances in pipes may require regulation.

"I have made these remarks and suggestions, my Lord, chiefly in order to guard against the impression that in signing the report of the Select Committee I subscribe to the belief that the present Bill adequately deals with the matter in hand; and in the hope that the Bill may be passed without prejudice to any reasonable claim for reform of the law which may hereafter be made by the Burma producer."

The Hon'ble MR. RIVAZ said:—"I need only explain very briefly, with reference to what my Hon'ble friend Mr. Smeaton has said, that the object has been to make this almost entirely a consolidating Act, and, on this account, any opinions on, or any general alterations in, the Bill have not been invited, and have not been considered. As regards the first point discussed by my Hon'ble friend Mr. Smeaton, and which he mentioned to us in Select Committee, I think it will be found that the Act, as it stands, is sufficient, and that if petroleum, which is transported from Burma into India by sea, is treated as imported petroleum and is subject, as such, to any undue restrictions, the Government has power, by the Act as it stands, to remove such restrictions and to treat such petroleum as transported and not imported.

"The other points which have been discussed by the Hon'ble Mr. Smeaton are absolutely new to me, and I had not heard of them before. If the Burma traders in petroleum have any general representations to make regarding the inadequacy of the present Act, I have no doubt that they will be forwarded in due course to the Government of India by the Burma Government and will be carefully considered."

The Hon'ble SIR JAMES WESTLAND said:—"I was not a member of the Select Committee on this Bill, and the points brought forward by my Hon'ble friend Mr. Smeaton are entirely new to me. Of course, I am aware that petroleum is produced in large quantities in Burma, and I observed that my Hon'ble friend Mr. Smeaton fixed me with his eagle eye when he talked of the fees charged in respect to that petroleum. I plead not guilty, my Lord. I have nothing whatever to do with them; I am not responsible for the fixing of royalties and fees. But there is one consideration with which I have great sympathy, and that is that, at the present moment, we are running great risk of permitting one Province to tax the products of another Province. These are questions which will no doubt in due course receive the attention of the Government, and I think my Hon'ble friend Mr. Smeaton makes a reasonable claim in stating that we ought to take care that the petroleum industry be not hampered and the petroleum exported from Burma shall not be subjected to any special tax in other parts of British India. I think that there is so much in the statement made by my Hon'ble friend Mr. Smeaton that deserves attention before the Legislature proceeds further with this Bill, that I would suggest to Your Excellency that when we come to consider the motion that the Bill, as amended, be passed, it may be adjourned for a short time so as to enable us to take up the points suggested by Mr. Smeaton, so that the Bill may come before the Legislative Council as one which the Government of India can recommend to be passed."

The motion was put and agreed to.

The Hon'ble MR. TOYNBEE moved that in clause 2 (*g*) (*h*) of the Bill, for the words "a body of port commissioners or other like body" the words "any local authority" be substituted. He said:—"Your Excellency, my object in moving the two amendments which stand in my name is to make it quite clear that clauses 9 (*a*) (*h*) and 23 of the Bill extend both to Municipalities and also to other local authorities such as Port Commissioners. It is, I think, doubtful if the words 'a body of Port Commissioners or other like body' used in clause 9 (*a*) (*h*) of the Bill could be construed as including a Municipality. If they cannot, then Municipalities are placed in a worse position than Port Commissioners or bodies like them. It seems advisable therefore that the term 'local authority' as defined in section 3, sub-section (*28*), of the General Clauses Act, X of 1897, should be used in both the above clauses. The definition of 'local authority' in the General Clauses Act runs thus:

'(28) "local authority" shall mean a Municipal Committee, District Board, body of Port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund.'

"It is thus comprehensive enough to include all local bodies whatsoever. The Port Commissioners of Calcutta levy fees on the storage of petroleum in their Budge Budge warehouses under section 103 of the Calcutta Port Act, III (B. C.) of 1890; and the mufassal Municipalities in Bengal levy fees for its storage as a dangerous trade, under section 261, Act III (B.C.) of 1884 [as amended by Act I (B.C.) of 1893]. Assuming that the intention of the Government of India in enacting clause 23 of the Bill (which is reproduced word for word from section 24 of Act XII of 1886) is to reserve to itself, for financial or other reasons, the power to limit, or put a stop to, the levy, by any local authority, of fees for storing petroleum, then clause 23 of the Bill should be so worded as not to be open to misconstruction. If, however, clause 23 of the Bill be intended to apply *only to Municipalities* and clause 9 (*2*) (*h*) *only to bodies like Port Commissioners, i.e.*, bodies dealing, as I read the words, only with a port, then the proposed amendments are unnecessary."

The Honb'le MR. RIVAZ said:—"The words which my Hon'ble friend wishes to alter were part of the Act of 1886, and as they have stood since without any objection being made to them, the Select Committee did not consider the point. We had not my Hon'ble friend's assistance on the Committee, but I see no objection to the wording being altered, and I am willing to accept the amendment."

The motion was put and agreed to.

The Hon'ble MR. TOYNBEE also moved that in clause 23 of the Bill, for the word "municipalities" the words "local authorities", and for the word "municipality" the words "local authority", be substituted.

The Hon'ble MR. RIVAZ:—"I am willing to accept this amendment also. I understand that it will chiefly affect the Port Commissioners of Calcutta, of whom my Hon'ble friend is the Chairman, and he is the best authority on the point."

The motion was put and agreed to.

The Hon'ble MR. RIVAZ moved that to the first schedule to the Bill, before the Table for correction of Flashing Points the following be added, namely:—

"*IV.—Directions for determining the flashing point of petroleum which is not fluid at ordinary temperatures.*

1. *Nature of the test-apparatus.*—The instrument employed is the Abel-Pensky petroleum-testing apparatus, fitted with an additional thermometer to indicate the

temperature of the oil in close proximity to the walls of the cup. This thermometer has a cylindrical bulb, $\frac{3}{8}$ inch in length and $\frac{3}{16}$ inch in diameter. It is scaled from 45° to 165° Fahrenheit, ten degrees on the scale occupying $\frac{3}{8}$ inch. The thermometer is held vertically in a socket attached to the cover of the oil-cup in such a position that the bulb is $\frac{1}{16}$ inch from the side of the cup.

(The thermometer can be removed and the orifice which is provided for it closed by means of an india-rubber plug, if the apparatus is required for testing petroleum in the ordinary way.)

2. *Directions for preparing the sample for testing.*—About ten fluid ounces of the oil are placed in a pint flask, the mouth of which is then closed with an india-rubber stopper, and the sample is liquefied by placing the flask in a water-bath, the temperature of which is only raised sufficiently high to liquefy the oil.

3. *Directions for preparing and using the test-apparatus.*—The water-bath and test-lamp are to be prepared in the manner prescribed in Part III of this schedule. The oil-cup is to be filled with the liquefied oil, and the cover (into which both thermometers are to be previously inserted) placed on it, care being taken that the bulb of the additional thermometer is not brought into contact with the bracket gauge fixed inside the cup. The oil-cup is then to be placed in a refrigerator, or plunged up to the projecting collar in water maintained at sufficiently low temperature until both thermometers indicate the temperature at which the testing of petroleum is directed in Part III of this schedule to be commenced. The oil-cup is then to be removed, wiped dry and placed in the water-bath, and the testing effected in the manner prescribed in Part III of this schedule, the temperature indicated by the additional (vertical) thermometer alone being noted, and the average of three determinations, duly corrected for atmospheric pressure, being recorded as the flashing point of the sample, provided that no greater difference than 4° Fahrenheit exists between any two of such results."

He said:—"These directions have been issued since the Bill was drafted, and as we wish to make the new Act complete, up to date, it is desirable to add them to the schedule."

The motion was put and agreed to.

The Hon'ble MR. RIVAZ moved that the Bill, as amended, be passed. He said:—"With reference to what my Hon'ble friend Sir James Westland just now said, I think it is desirable that the Bill should be passed. It is intended to be mainly a consolidating measure, but there is one alteration in it, namely, the enabling power to extend the provisions of the Bill to other substances than petroleum and its liquid compounds. As regards the taxation on imported petroleum from Burma to any other part of India, I think that that can be dealt

with under the present Act, which, if I recollect right, provides for this. It says in the Bill that—

'Notwithstanding anything in the definitions of 'import' and 'transport,' the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, declare—

(*a*) that petroleum imported into the Province from any part of British India by sea or across intervening territory not being part of British India shall, for all or any of the purposes of this Act, be deemed to be transported.'

"I think that will meet the point which has been raised. It is only a question of treating certain petroleum as transported instead of treating it as imported. It is perfectly clear that any Local Government may so deal with it."

The Hon'ble MR. SMEATON :—"It is the *power* to impose taxation on local products passing between two Provinces in British India that is objectionable."

The Hon'ble MR. RIVAZ :—"I should think if there was any dispute between two Local Governments, the Government of India might be left to deal with the matter fairly."

The Hon'ble MR. CHALMERS :—"May I point out about this Bill this much, that it is a Bill intended to consolidate and amend the law relating to petroleum and other illuminants. That law has already been amended several times. We wanted on this occasion to make one specific amendment, namely, to deal with the case of acetylene, and to provide for other substances which may hereafter be invented and which at present are not provided for. When we were applying the law to a new substance, namely, acetylene, we took the opportunity to consolidate the old Acts, because at present the law is contained in several different enactments. The provisions complained of by Mr. Smeaton have been in force for many years, and we have never heard a suggestion from Burma that the existing law was inconvenient or required changing. We hear it now for the first time. A consolidation of the Statute Book is almost impossible if, when the Consolidation Bill comes up, the whole matter has to be thrown into the melting pot again. On the other hand, if the existing law—not the law in the Bill, because the Bill only reproduces the existing law—but if the existing law is absolutely wrong, then we had better postpone matters in order to bring in an amending Act dealing only with acetylene. I do not know why if the existing law is absolutely wrong Burma has not addressed us on the subject before, because it has been in force for a good many years."

The Hon'ble Mr. SMEATON:—"The Hon'ble Mr. Chalmers has just said that the law has been in force for several years. So it has, but I may point out that the harm done by both those parts of the law to which I have adverted has been as yet on a comparatively small scale. The enterprise in Burma oil has grown by enormous leaps and bounds, and I think that men whose capital is sunk in an enterprise which grows in importance in this way feel themselves pinched as its proportions grow and as competition increases. I admit that they have jogged on in a way, but now the shoe is pinching and they have come forward. They have had no opportunity of examining this Bill, and they have telegraphed regarding the points on which they think the law requires amendment. Unless there is good reason (of which we are at present ignorant) for imposing this extra testing and these extra fees, I think they should be withdrawn. There is no reason, so far as I can see, why these extra fees should be imposed. They are tantamount to an import-tax which may in the end operate most unfavourably on the trade in oil between two Provinces of the same Empire; and the Burma people ask that the *power* under which that taxation is imposed shall be withdrawn. That is the point which they raise. As regards the Bill, I should be very sorry to impede its passing, seeing that it concerns another very important matter, and I understand that the Hon'ble Member in charge considers that the Bill in so far as that matter is concerned should be passed into law. It was in fact on that ground that I abstained from making any suggestions for amendment in the Select Committee. I am perfectly willing to waive any suggestion for amendment at present on the understanding that if the Burma producer is able to make out a good case, it will be considered, and that it will not be said against him, that because he did not take advantage of the consolidation law to make his amendments, these amendments were not necessary."

The Hon'ble MR. RIVAZ:—"I think I may give the assurance that if any good ground is made out for any radical alteration of the present law, it will certainly be considered, but as the matter will take a long time and the other point is of some importance, and as we wish to amend the present Act on that one point, it surely seems well to consolidate the previous Acts up to date. I do not see that it ties the hands of the Government of India in the smallest way in dealing with the question in future."

The Hon'ble SIR JAMES WESTLAND:—"I quite accept the assurance given by the Hon'ble MR. RIVAZ, and I am quite willing to accept the Bill as it now stands. My feeling was that considering the state of this industry and the promise there is of its development, we should be careful lest we do anything

that might strangle it. Any new productive industry in India is of extreme value, and I should be very sorry to take any action here that would have any effect in encumbering such an industry or preventing the attraction of capital to it. It was for that reason that I thought it might be well to postpone the passing of the Bill for a short time to give an opportunity of looking up the points to which my Hon'ble friend Mr. Smeaton has drawn attention, but as the Hon'ble Mr. Rivaz has expressed his willingness to look into the matter when it is laid before him in his official capacity, I do not think there is any objection to our passing the Bill as it now stands, and thus improving the law by consolidating the existing Statutes."

His Excellency THE PRESIDENT:—"I think we may pass the Bill in its present form, on the understanding that if any representations are made to us from Burma they will receive full consideration, and that if an amending Act is finally required, the Department concerned will undertake it."

The motion was put and agreed to.

The Council adjourned to Friday, the 24th February, 1899.

H. W. C. CARNDUFF,
Offg. Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 17th February, 1899.

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