Friday,
3rd March, 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 3rd March, 1899.

PRESENT:

His Excellency Baron Curzon of Kedleston, P.C., 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 BANKRUPTCY BILL.

The Hon'ble MR. CHALMERS moved that the Hon'ble Mr. Rivaz, the Hon'ble Mr. Allan Arthur, the Hon'ble Mr. Mehta and himself be added to the Select Committee on the Bill to amend and consolidate the law of Bankruptcy

and Insolvency in British India. He said:—"Perhaps I may add one word of explanation. We are not of course going to take up the question of the Bankruptcy Bill at this stage of the session; but a Committee has been standing for many years on this Bill. The only surviving member of that Committee is my Hon'ble friend Sir Griffith Evans. He, I presume, does not wish to go on with the consideration of the Bill by himself; at any rate, he has not shown any disposition to do so, and I therefore move to-day that some of my colleagues be joined with him in order that the Committee may consider whether this Bill, which has been pending so long, should be dropped, or whether it should in a future session be proceeded with. I shall ask the Committee to meet and present an interim report stating whether in their opinion the Bill ought to be proceeded with or not."

The motion was put and agreed to.

COURT-FEES ACT (1870) AMENDMENT BILL.

The Hon'ble MR. RIVAZ presented the Report of the Select Committee on the Bill to further amend the Court-fees Act, 1870. He said that he would defer any remarks that he had to make till he moved for taking the Report into consideration, which he hoped to do next week.

ARBITRATION BILL.

The Hon'ble MR. CHALMERS moved that the Report of the Select Committee on the Bill to amend the Law relating to Arbitration be taken into consideration. He said:—"Hon'ble Members are aware that this is a Bill to extend to certain selected areas the provisions of the English Act of 1889. It is an adaptation of that Act to India. In the first instance, we have applied the measure to the Presidency-towns and to Rangoon. It is a measure which we believe from experience in England to be suited to the great mercantile cities in India. Possibly hereafter it may be well to extend it to other large cities in India where the conditions are similar to those in the Presidency-towns, but certainly it is a mode of procedure which would have to be extended with caution, and the Committee have provided that it shall only be extended to other areas by the Local Government with the previous sanction of the Governor General in Council. I think that at this stage I need say no more. I will wait to see what other Hon'ble Members have to say on the subject."

The Hon'ble MR. TOYNBEE said:—"Your Excellency, I support this Bill in its present form, but I desire, at the same time, to express my regret that its

provisions do not go far-enough to extend to the masses the undoubted benefits which it will, if passed into law, confer on the commercial classes. I should have preferred a measure which would have empowered all the Civil and Revenue Courts throughout British India to assist the people to settle their disputes and differences for themselves without resort to the tedious and expensive procedure of those Courts. Some such larger and wiser measure is, in my opinion, called for in the interests both of the Government and of the people:—in the interests of Government, because the continued increase of litigation means a corresponding increase of State expenditure on judicial establishments which is not discounted (at any rate, so far as the general welfare of the country is concerned) by the increased Imperial revenue derived from court-fee stamps:—in the interests of the people, because it would save them much of their present ruinous expenditure on stamps and lawyers' fees.

"The settlement of disputes by arbitration, my Lord, is no novelty in the mufassal; but it has unfortunately fallen into disuse along with the gradual decay and extinction of the village-communities and of the village-panchayats which played such an important part in the daily life of the people one hundred years ago. In most parts of India, too, the age of personal government is past, and the reign of law has taken its place. In the earlier days of the British administration of India the officers of Government—both judicial and executive—settled numerous disputes out of Court merely by their personal influence.

"But in these later days all they can do is to refer those who ask for advice to the regular procedure of the Courts—a procedure which means ruinous delays, and expenditure on a scale which often involves generations of indebtedness.

"I venture therefore to hope, my Lord, that this Bill is only an instalment, or precursor, of a measure of much wider and more far-reaching scope—a measure, in short, which will benefit the great bulk of the population of India (which is concerned chiefly with the land and with disputes arising out of its ownership and cultivation) as this Bill will, when passed into law, benefit the commercial classes in the Presidency and other large and important towns."

The motion was put and agreed to.

The Hon'ble SIR GRIFFITH EVANS moved that for the first paragraph of clause 3 of the Bill, as amended by the Select Committee, the following be substituted, namely:—

"The last thirty-seven words of section 21 of the Specific Relief Act, 1877, and sections 523 to 526 of the Code of Civil Procedure shall not apply to any submission or arbitration to which the provisions of this Act for the time being apply."

Exclusion of certain enactments in certain cases where Act applies.

I of 1877.
XIV of 1882.

He said:—"This is really an amendment composed of two parts. The first I am responsible for, that is to say, the provision that the last clause of section 21 of the Specific Relief Act of 1877 should not apply to cases to which this Act applies. The last part of it is really more in the nature of a drafting amendment introduced to meet certain difficulties, and the credit of it is due to my friend the Hon'ble Legal Member. He proposed it in order to meet certain difficulties which he and I felt, and I think it meets them very successfully, but I move the whole amendment because it cannot very well be moved in two parts. The first part is the only part that I shall say anything about. The second part is not, I think, open to any discussion. The first part turns upon this: before this Act was introduced the only bar which prevented persons who had contracted to refer matters to arbitration resorting to Courts instead of going on with the arbitration was the bar contained in the last part of section 21 of the Specific Relief Act. That was a provision that if a person who had contracted to refer a matter to arbitration, afterwards refused to go to arbitration and filed a suit, his refusal, on being proved, should be a bar to a suit, and that is the only bar that there is all over India now. But we have provided another procedure altogether: we have provided that there should be, as there is in England, a power on the part of the Court to stay any suit which has been filed contrary to the terms of a submission to arbitration, if the Court is satisfied that there is no sufficient reason why the matter should not be referred to arbitration. That is a much wider provision. It catches a great many more cases than the section of the Specific Relief Act does, and it ought to meet the demands of justice in every case. It therefore seemed to me not only unnecessary but undesirable to have two checks—one, the check imposed by the power of the Court to stay proceedings, and the other, the somewhat arbitrary check imposed by the section of the Specific Relief Act. There are some cases where a man is perfectly justified in refusing to go to arbitration, where he has learnt by bitter experience that the other man is only playing and does not mean to go on with the arbitration. On the other hand, the section of the Specific Relief Act leaves a great many ways open of defeating an arbitration, which ways are closed by the power given to the Court as to the stay of a suit. I therefore move this amendment in order to provide that where this Act is in operation and the Court has the power of staying the suit if the suit ought not to be instituted, that there the last words of section 21 of the Specific Relief Act shall not have any effect."

The Hon'ble MR. CHALMERS said:—"I accept my Hon'ble friend's amendment. He says it is in part a mere drafting amendment. It is a drafting

amendment to get over this difficulty. As the Bill originally left the Select Committee we were repealing certain sections of the Civil Procedure Code locally and providing for further repeal locally as the Act was further extended. That is a rather awkward proceeding, and it is better to leave the sections of the Civil Procedure Code standing and to provide in terms that so far as this Act is in force in relation to submissions and arbitrations then so far the corresponding provisions of the Civil Procedure Code shall not apply. As regards the point of substance I was not sure for a long time whether it was necessary or advisable to adopt the course suggested by my Hon'ble friend Sir Griffith Evans. He has persuaded me that the power of the Court to stay summarily any suit brought in contravention of an agreement to go to arbitration is sufficient, and that we do not want the additional power that if a suit is not stayed the agreement to go to arbitration may be set up as a substantive defence. The present procedure can be taken at a much earlier stage, and the whole matter can be discussed on its merits on the application for stay."

The motion was put and agreed to.

The Hon'ble SIR GRIFFITH EVANS also moved that after the proviso to clause 3 of the Bill, as amended by the Select Committee, the following proviso be added, namely:—

"Provided, also, that nothing in this Act shall affect the provisions of the Indian Companies Act, 1882, relating to arbitration." VI of 1882.

He said:—"After we had finished our labours in the Select Committee it occurred to me that there were a large number of provisions in the Companies Act relating to arbitration in Companies. I consulted the Hon'ble Legal Member on the matter, and we both came to the conclusion that it was not desirable at present to interfere with those provisions, and this section is introduced in order to make it quite clear that this Act shall not affect the provisions of the Indian Companies Act. Whether that is absolutely necessary or not is, perhaps, a moot point, but a good deal of argument upon the subject will be stopped by the insertion of this section. It might also have been held that an alternative procedure was created."

The Hon'ble MR. CHALMERS said:—"I accept my Hon'ble friend's amendment. As he says, it is not clear that it is necessary, but it is safer on the whole. We were not prepared in Committee to overhaul the Companies Act. The Companies Act contains two very special arbitration procedures. I am not sure that in future the procedure under this Act might not be applied, but that will be

a labour outside the work of this particular Committee, and it must be undertaken with special reference to the Companies Act."

The motion was put and agreed to.

The Hon'ble RAI BAHADUR P. ANANDA CHARLU said:—"I propose to move the following amendment only in case another amendment I have brought forward is accepted. I do not know if Your Excellency will permit me to withhold this till then:—

that the following sub-section be added to clause 10 of the Bill, as amended by the Select Committee, namely:—

'(2) Every proceeding before an arbitrator or arbitrators under this Act shall be deemed to be a judicial proceeding within the meaning of the Indian Penal Code.'"

His Excellency THE PRESIDENT:—"I have no objection if the amendment is a consequential one."

The Hon'ble SIR GRIFFITH EVANS moved that after clause 18 of the Bill, as amended by the Select Committee, the following clause be added as clause 19 (the remaining clauses being consequentially re-numbered), namely:—

"19. Where any party to a submission to which this Act applies, or any person claiming under him, commences any legal proceedings against any other party to the submission or any person claiming under him in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time after appearance and before filing a written statement or taking any other steps in the proceedings, apply to the Court to stay the proceedings, and the Court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings."

Power to stay proceedings where there is a submission.

He said:—"I move what is practically that the section of the English Act, which enables Courts to stay proceedings in suits and providing circumstances under which they should stay proceedings, should be inserted in this Act. As the Bill was settled by the Select Committee, there was a provision that the High Court might make rules for staying proceedings, but there were no definite instructions given to them, nor were they told when they could stay proceedings or under what circumstances. As there was this section in the English Act which could be made available in the present Act with

a very few small verbal alterations, and as that has been construed in the Courts in England and there are a number of valuable cases indicating how the discretion of the Court ought to be exercised and when, I thought it would be desirable to have a substantive section in, and not leave it to the various High Courts to make such rules as they might be advised."

The Hon'ble MR. CHALMERS:—"I accept my Hon'ble friend's amendment. It may be convenient as we have eleven Courts in India with powers of High Courts to give them a lead by enacting the provisions of the English section. As regards the application of that section, rules might still be required, but in inserting the English section we give a general line which is to be followed in staying suits when there is a submission to arbitration."

The motion was put and agreed to.

The Hon'ble RAI BAHADUR P. ANANDA CHARLU moved that in clause 19 of the Bill, as amended by the Select Committee, the following sub-clause be inserted after sub-clause (*b*) (the remaining sub-clauses being consequentially re-lettered), namely:—

> "(*c*) compelling the attendance of witnesses and the production of documents before arbitrators and umpires."

He said:—"A distinction does exist between trials in regularly constituted Courts of law and enquiries held by arbitration. That distinction is sound, so far as the decisions of the latter are final and subject to no appeal, so far as the observance of strict rules for admission of evidence is not insisted on, and so far as you need not wait for your turn in a long list of pending cases. The distinction may also be pushed so far as to take away the powers of Courts to set aside awards of arbitrators and umpires except in instances of flagrant injustice. The plain reason at the bottom of all this relaxation of the rules, laid down for Courts to go upon, is that when parties choose to erect a tribunal of their own, which they were not primarily bound to do, they eschew the rigid rules of Courts just as they eschew the Courts themselves. All this I freely admit. To admit as much is one thing, and it is quite another to subscribe to what seems to me a violation of natural justice and the first principles of administering it, *viz.*, the debarring one's birth-right to appeal to Law Courts, without providing that one shall be helped, if one personally is powerless, to bring before the arbitrators all the materials one relies upon, in the shape of witnesses and documents. When relations between two persons become strained, it is inevitably the case that each wishes to take the other at a disadvantage. That sin does

not belong to one side only. One of the usual dodges resorted to, even without active dishonesty, is to ignore the hardships of the opposing litigant. Even the very best are not free from this failing. Where the contest is unequal, in the sense of one party being influential and rich, while the other is not, there is, I am sorry to say, too often an inclination on the part of common friends to keep aloof, aiding neither side if they can help it. To evade being got at or to plead lame excuses is the too frequent practice. This attitude, not unoften, develops in many into a positive disinclination to incur the blame of voluntarily assisting one side as against the other, particularly when that other is an influential one or one with whom they may have other business relations and whose unruffled good-will they lay much store by. In such cases, except partizan witnesses, others, who could give valuable evidence, would usually decline to come forward at the beck and call of the weaker litigant. It is a matter of every-day experience that partizan witnesses are as a matter of course disbelieved, while the others, if they feel inclined to go, too often wish to be served with processes of Courts to have a plausible excuse for seeming to favour one side more than another. Without imputing any motives to the members of influential firms carrying on large and varied business, I cannot help feeling that many a witness having business relations with them will prefer to be well in with them rather than voluntarily speak even truth in favour of persons that have displeased them, be it rightly or be it wrongly. To my mind these are not merely imaginary or suppositious cases. I regard them as likely events of every day, particularly if it becomes well known—as it is soon bound to become known—that, if a witness does not choose, he may safely stay away. I need hardly have dwelt at such length on what my colleagues in the Select Committee admitted to be an undoubted hardship: but then they called it a lesser evil than the chances of a party to an arbitration taking into his head to be obstructive and name a host of witnesses, whom he may not point out to the serving officer, in case he could take the safe position of one who might continually ask for adjournments on the ground that his witnesses have not been served and that it was no fault of his that they were not served. This latter conduct, which is the crux of the objection, seems to me extremely improbable. He can still play the obstruction game by producing a host of witnesses. He can still take oath or make affidavits that he exercised the utmost diligence to produce his witnesses and ask for adjournments. I am not at all sure that in such cases the award made without the evidence of such witnesses would not be set aside or directed to be re-considered. Where fresh evidence was discovered after the award was made, it was held in *Eardley v. Otley*, 2 Chit. 42, that it would be a good ground for a re-consideration of the award, provided it was made out that such evidence was not

procurable by the exercise of reasonable diligence. I should like to know what essential difference there is between that case and those I have supposed. The test is the exercise of reasonable diligence. In that decided case, one effect of that diligence will be an application for the Court's process for the production of witnesses and documents. If such an application is not made, the party must fail. In the case I have supposed, it is nothing less than the helpless situation of the Tantalus of old; for he is diligent, he has made the discovery, but he cannot get his witnesses to go with him. Apprehensions of abuse for purposes of obstruction ought indeed to be reckoned with, but only to lead to the laying down of effectual safeguards to the contrary—not to the utter denial of all right to use what is proper. Even on the opposite alternative, *viz.*, on the ground that in the circumstances supposed the award would not be set aside, my position is just as strong; for in that case the party is irretrievably condemned. One hypothesis would defeat the object of this Bill and the other would defeat justice irremediably. A sort of impression exists in certain quarters that there is some difference between mercantile arbitrations and legal arbitrations. In truth, there is no such difference, as Lord Langdale as Master of the Rolls clearly pointed out in *Harvey v. Shelton*, 7 Beav. 455:

> 'I wholly deny,' he said, 'the difference which is alleged to exist between mercantile arbitrations and legal arbitrations. In every case in which matters are litigated, you must attend to the representations made on both sides, and you must not, in the administration of justice, in whatever form, whether in the regularly constituted Courts or in arbitrations, whether before lawyers or merchants, permit one side to use means of influencing the decision, which means are not known to the other.'

"That was a case in which an arbitrator sought an explanation of a figure in an account book during the absence of one of the parties to the litigation. But the cases I have supposed are, if anything, much stronger. They are manifestly cases in which the parties know how to meet the case made by the opposite side, but can invoke no power on earth to help them in meeting it, and this for no fault of theirs. In plain English, the drawback I am complaining of amounts to turning arbitrations into engines for arbitrary acts. It will prove a fraud on power in the name of speedy justice. It is only next door to another preposterous demand made on behalf of the mercantile community and refused by the Select Committee, *viz.*, that if *bodies* of that community had rules of their own that all disputes between them and their customers should be determined by arbitration, this Act should apply, even although the contracts themselves contain no agreement to go to arbitration. The last thing which I wish pointedly to refer to is that, in the English Arbitration Act of 1889, on which this Bill is

modelled, a distinct provision exists, more effective and more direct than my amendment amounts to. It is section 8 of the Act, and it lays down that any party to a submission may sue out a writ of subpœna to witnesses to give evidence or to produce documents. I am not aware that all the litigants elsewhere are angels and all here are the opposite of angels."

The Hon'ble MR. CHALMERS said:—"I must oppose this amendment for the reasons which I gave in the Select Committee. When we were discussing this question in the Select Committee my first impression was that we ought to insert the provision which my Hon'ble friend now moves by way of amendment. That provision corresponds, as he has pointed out, to a provision in the English Act—a provision with which I am familiar and which works well in England; but on the Committee were various Hon'ble Members who have had much experience of arbitration in India. I have had no such experience. According to their experience and according to their opinion a provision of this kind would be used in India for purposes of delay, for the purpose of increasing expenditure, and for purposes of vexation. In a matter of that kind where there is a fair doubt I think the best thing is not to introduce a new provision into the law. As the law stands at present in India, there is no power to compel the attendance of witnesses before an arbitrator, but as my Hon'ble friends Sir Griffith Evans and Mr. Allan Arthur pointed out—and they have had large experience of arbitrations—the people who go to arbitration are people who really want to get their suits settled, and no practical difficulty arises in getting the necessary evidence produced before an arbitrator. If that is so, it is clearly better not to introduce this provision at once. If, after a longer experience of the working of the Act, we find such a provision necessary, well then it is an easy thing to insert a small amendment, and, if I may say so, I think my Hon'ble friend's amendment is in the form which would meet the occasion. For the present, however, and in the present Bill, for the reasons I have given, I must oppose the amendment."

The Hon'ble MR. ALLAN ARTHUR said:—"I have had a good deal of experience of mercantile arbitrations both in Bombay and Calcutta during the last twenty years, and I can recollect only one occasion on which witnesses were called in. On that occasion I had no difficulty in getting the witnesses. I may say that on this point I consulted the Secretary to the Bengal Chamber of Commerce, and he says that during the last ten years there has not been a single occasion on which witnesses were called in cases of surveys by the Chamber of Commerce, and I may say that the Chamber undertakes a great many surveys

every year. The Secretary of the Bengal Chamber of Commerce has had 29 years' experience of Calcutta, and he recollects only one occasion on which witnesses were called in an arbitration; and I think, in the light of this experience, to give arbitrators the power to call witnesses is unnecessary, first, because it has been found in practice that they are seldom called in, and, secondly, if they are wanted to be called, there is no difficulty in getting them. I not only think it unnecessary, but I also think it undesirable. I take it that the object of arbitration is to provide what might be called a rough and ready means of settling disputes, and if you give to an arbitration all the machinery of a Law Court I think you defeat the very object for which this Bill has been introduced. I further think that the arbitrators have to be considered. For instance, as a busy man I would have very great objection to sit in an arbitration if I knew that my co-arbitrator would call in a dozen witnesses and unduly prolong a case. I think this is the view that most merchants would take, and I am of opinion that if this amendment is passed you will probably not get the proper kind of man to sit on an arbitration. For these reasons I will vote against the amendment proposed by the Hon'ble Rai Bahadur Ananda Charlu."

The Hon'ble SIR GRIFFITH EVANS said :—" When I heard the glowing speech of my Hon'ble friend next to me (Rai Bahadur Ananda Charlu) I began to wonder how we had got on all these years. There has been private arbitration going on ever since I have been in the country, that is, 31 years, and private arbitrators not appointed by an order of reference have never had these powers, and awards have been filed and the people never demanded this ' birth-right ' which my Hon'ble friend Rai Bahadur Ananda Charlu refers to. I imagine that with regard to that birth-right of appeal to the Law Courts, in arbitration cases most of them would be very glad to barter it for a mess of pottage and would be well advised in doing so. A submission to arbitration is in effect a contract not to resort to the Law Courts as regards a particular matter. The demand for this Bill arose from certain small difficulties connected with submissions to arbitration. One was with regard to a clause for arbitration including future disputes which is not provided for under the Civil Procedure Code—at least it was held by many of the Courts not to be provided for. The other was that a submission could not be enforced unless the arbitrators were named in it, or there was a provision that the Court should appoint them. It was mainly for those considerations that this Bill was introduced. But then how did it stand under the former law ? If a man had contracted to go to arbitration, the result was that if he refused to go to arbitration his refusal was a bar to a suit. Therefore he was barred from recourse to the Courts, and he had to go on with the arbitration, and the arbitrators had no power to summon

witnesses. There he was writhing with the loss of his 'birth-right' and never knew anything about it and never discovered it till the present moment. The next thing is this: we all know that in the mufassal applications for summonses for witnesses, and if they do not attend applications or warrants to seize their goods, are daily used as machinery for delaying a case. It seems to be a very unwise thing to go and alter the character of private arbitrations as they exist at present in India and turn them into miniature Courts of Justice. If it should be found that such a step is necessary, there will be time enough to do it afterwards. But it is this desire to provide for all possible cases of hardship and injustice which has led us in so many of our Indian laws to go into too elaborate a procedure which has turned out to be too expensive for the people and not worked well. I fear there would be a very great probability, having regard to the way that litigation is worked in this country, of this provision being used for vexatious purposes: a man could come forward and ask for summonses for witnesses and delay the arbitration. If the arbitrators said to him that it was quite useless, and would not summon the witnesses, then no doubt an application would be made to set aside the award. That there may be cases of hardship is very possible, but Courts in India can only enforce the attendance of witnesses if they live within a certain distance from the court-house. So that, unless we also provided all the elaborate machinery of taking evidence on commission, there might still be hardship. Under the circumstances one would sooner run the risk of cases of hardship arising, and it must be remembered that the provisions that we have here for stay of execution leave it in the discretion of the Court to allow a man to institute a suit and to go on with it if it appears to the Court that there is a sufficient reason for not proceeding to arbitration. Then, there is another provision, that a submission may be revoked with the leave of the Court. This must meet a case when it could be shown that, owing to the circumstances of the case and the want of power in the arbitrators, justice could only be done by a Court of Law. I strongly desire to preserve the rough and ready character of private arbitrations. I cannot recall any instance when a difficulty has arisen as to witnesses and would strongly oppose this amendment."

The Hon'ble RAI BAHADUR P. ANANDA CHARLU said:—"In defending my amendment against the hostile remarks of my Hon'ble colleague Sir Griffith Evans, I do not desire to imitate either his method or his style. He has appealed to his experience, though I know little of the length or the nature of that experience. I, too, speak on the basis of an experience of over 28 years. He says he knows no instance of the difficulties I have referred to. I say, for my part, that I have come across not a few. He has found corroboration in a

representative of the Chamber of Commerce. But as no other is here with an acquaintance of the state of things in parts I come from, I must say, I suppose, that they are the majority. It may be that theirs is the experience of Calcutta, which is, in a great many respects, an English city; but I come from an Indian city, and I have lived and moved among the people with my eyes open to their difficulties and hardships. Though I have no support from a local colleague, there is a little matter of considerable significance to which I can appeal, as forcibly telling in my favour, but which has evidently escaped the keen eye of my learned colleague. He has gone through the pains of going over the enumeration of the difficulties, from a wish to cure which, he says, this Bill has had its origin. He has also enlarged on the established consciousness about the serious injury of giving arbitrators the power of compelling the attendance of witnesses and the production of documents. If there had been such a widespread conviction of the horrors of enabling parties to evoke that power of arbitrators, how comes it that, in the Bill as it was introduced, there is a clear provision to let in all that horror? How comes it, I again ask, that no doubt was expressed of its propriety in circulating the Bill for opinion, and no opinion has been called for on that point? I ask again, how comes it that, in giving opinions on the Bill, there is not a howl of horror against that provision from every part of the country? From these circumstances, it is pretty clear, I think, that the right I claim, for the parties who are unable to produce their witnesses, is by no means so outrageous as my Hon'ble friend would make out. My Hon'ble colleague has triumphantly asked how all these years arbitrations have gone on without such a power and without any complaint on that score. The answer is perfectly simple. The arbitrators were repeatedly moved by their own consciences to grant adjournments of the enquiry, over and over again, when the difficulties were brought home to them. In that way, arbitrations, instead of leading to speedy termination of the proceedings before them, had to be prolonged in the interests of justice. The present Bill curtails the powers of arbitrators to a great extent, and hence it is that I expect hardships hitherto not experienced."

The Hon'ble MR. REES said:—"I believe that the wide difference of opinion between my Hon'ble friend Rai Bahadur Ananda Charlu and the Hon'ble Members who have just spoken may be due, to some extent, to the fact that my Hon'ble friend, the Member for Madras, has in mind the Madras mufassal, and the extremely large suburban area which is included in the extensive city of Madras, and the picture he has drawn of litigants in the South, and the description he gave of them, I think, cannot be described as other than accurate. But as I

understand the Hon'ble Member in charge of the Bill to say that if in practice it is found, after the measure has been in working, that it is desirable to introduce such an amendment as my Hon'ble friend has brought forward, it can then be introduced, in which case, since the Bill at present only refers to four or five great cities in India, there would seem to be no great harm in proceeding with it without prejudice to the considerations he has brought forward."

The motion was put and negatived.

The Hon'ble RAI BAHADUR P. ANANDA CHARLU then withdrew his first amendment.

The Hon'ble MR. CHALMERS moved that for sub-section (2) of clause 22 of the Bill, as amended by the Select Committee, the following be substituted, namely :—

"(2) For the purposes of this Act, the local limits aforesaid shall be deemed to be a Presidency-town and the Recorder of Rangoon shall have all the powers of a High Court."

He said this was purely a verbal amendment.

The motion was put and agreed to.

The Hon'ble MR. CHALMERS moved that the Bill, as now amended, be passed. He said :—"In making this motion I have only one word to say. My Hon'ble friend Mr. Toynbee has called attention to a subject of great importance, namely, the possibility of extending arbitration proceedings to the mufassal and to proceedings in Revenue Courts as well as in Civil Courts. I quite admit the importance of his suggestion. I quite admit that it is a subject to which every attention ought to be given, but I think, if he examines this Bill carefully, he will see that its machinery will be absolutely inapplicable to cases of that kind. The whole subject will have to be considered not with reference to what may be called mercantile arbitrations, but with reference to the practice and procedure of panchayats in different parts of the country. However desirable such a measure may be, it would be impossible to overweight this Bill with it, and it would have been impossible in following the English Act to apply its provisions to cases of the kind mentioned by my Hon'ble friend."

The motion was put and agreed to.

CURRENCY-NOTES FORGERY BILL.

The Hon'ble SIR JAMES WESTLAND presented the Report of the Select Committee on the Bill to amend the law relating to the forgery of currency-notes and bank-notes. He said:—"Hon'ble Members will no doubt be surprised to find that in the re-draft of the Bill which has been sent up by the Select Committee the whole Bill is printed in italics, that is to say, every single word of it has been altered. The real reason of that is that instead of following the English law on the subject we have thought proper to adopt rather the phraseology and form of the Indian Penal Code. I observe that in many opinions that were sent up to us the gentlemen expressing opinions were rather taken aback by the clause which indicates that under certain circumstances the burden of proof was to lie upon the individual accused. I do not know whether there is really much harm in that. It seems to me that if a person is found in possession of a Rs. 1,000 forged note, and if he refuses to give an account of it when asked to do so, the circumstance of his refusing to give an account of it would be strong evidence of his guilt. It was out of a case like that that the provision practically arose, that is to say, a man having a plainly forged Rs. 1,000 note presented it at the Currency Office for encashment; it was at once discovered there, and he was arrested and called upon to account for his possession of the note; he refused to say a single word about it. Now it is quite obvious that he had not honestly come by that note, and it was also quite obvious that if he had honestly come by that note he would have been willing to say where it had come from. It is also equally clear that in the case of small notes of Rs. 10, which people receive continually without examination, it would be rather dangerous to put upon the person receiving them the burden of proving that he has honestly come by them, and it was with reference to these small cases chiefly that the gentlemen who made an objection to the burden of proof being cast upon the accused person founded their remarks. There was also a difficulty as to the extent of knowledge or reason to believe which should form part of the evidence of proof of the offence. In examining this we looked at the provisions of the Penal Code with reference to the cognate offence of forgery of stamps, and our draft of the Bill as now laid before the Council is for the most part based upon, and follows the provision of, the Penal Code with reference to counterfeit of stamps. I apprehend therefore that, although as I say the whole Bill has been recast by the Select Committee, it will be found that the change is not a substantial one. It is only one of form, and the Select Committee accordingly in making their report have indicated that the Bill has not been so altered as to require republication and recommend that it should be passed in the form in which it now stands. I have no other remark to make upon the Bill, but I hope we shall be able to pass it before the close of the session."

CARRIERS ACT AMENDMENT BILL.

The Hon'ble MR. CHALMERS moved that the Report of the Select Committee on the Bill to amend the Law relating to Carriers be taken into consideration. He said :—"I think the amendments in Committee are very small, and they are sufficiently explained in the Report of the Select Committee. I will reserve any remarks I have to make until I hear what other Hon'ble Members have to say on the subject."

The Hon'ble SIR GRIFFITH EVANS said :—"I have no objection to the passing of this Bill. It is a redress of one of the grievances and one of the smaller complaints by the Steamer Companies. Their most important grievance, however, remains unredressed. It will undoubtedly, I think, have to be remedied some day, and that is this : that they are handicapped in their competition with the railways by having an entirely different liability cast upon them. Railways have got the initial liability of a mere bailee for hire, that is to say, that they are bound to take the same care of goods as a man of ordinary prudence would of his own goods. On the other hand, the Insurance Companies have by law the initial liability of being absolute insurers against everything except the act of God or the Queen's enemies, and have therefore to bear the whole of the brunt. There are also other things with regard to which a Railway Company has an advantage. There are easier means provided for their entering into a contract to lessen that already smaller liability than are provided by the Steamer Companies. I am not going to weary the Council with this matter. I only wish to have, as it were, my protest recorded that the Steamer Companies have not got full justice or fair play in this matter. I have set out the whole position of the Steamer Companies in the debate on the amendment of the Indian Railways Act, 1890, which debate was on the 5th of March, 1896, and therefore I will not weary the Council by going over the same ground again. One reason why the Government of India would not place them on an equality with the railways was that they had the monopoly on the Brahmaputra for tea. Now that the Assam and Bengal Railway has gone up there, there is severe competition with the railway. It simply comes to this that the railway capital is either the capital of Government or is guaranteed by Government in nine cases out of ten. The capital which works the steam traffic on the great rivers which are the natural highways of India is entirely brought in by private enterprise, and that is handicapped, and I do not think that handicap can be continued. I desire therefore to place this on record, that more will in my opinion have to be done before long in the way of amending the Carriers Act."

The Hon'ble MR. CHALMERS said :—"I am not prepared at the present moment to discuss the question which the Hon'ble Member has raised. The

debate which he refers to took place before I joined the Government of India, and I am not prepared to express any opinion on the subject. This Bill, as he says, is a concession, and I am glad that he is prepared to accept it on the principle that half a loaf is better than no bread."

The motion was put and agreed to.

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

The motion was put and agreed to.

The Council adjourned to Friday, the 10th March, 1899.

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

CALCUTTA;
The 3rd March, 1899.

NOTE.—The Meeting of Council which was fixed for the 24th February, 1899, was subsequently postponed to the 3rd March, 1899.

Government of India Central Printing Office.—No. 668 L. D.—11-3-99.—320.—E H.