COUNCIL OF THE GOVERNOR GENERAL OF INDIA

VOL 11

Book No. 2

9 April - 31 Dec.

1872

ABSTRACT OF PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

VOL 11

1872

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

The Council met at Government House on Tuesday, the 9th April, 1872.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. T., *presiding.*
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble J. Fitzjames Stephen, Q. C.
The Hon'ble B. H. Ellis.
Major-General the Hon'ble H. W. Norman, C. B.
The Hon'ble J. F. D. Inglis.
The Hon'ble W. Robinson, C. S. I.
The Hon'ble F. S. Chapman.
The Hon'ble R. Stewart.
The Hon'ble J. R. Bullen Smith.

ADMINISTRATOR GENERAL'S ACT AMENDMENT BILL.

The Hon'ble MR. STEPHEN presented the Report of the Select Committee on the Bill to amend Act XXIV of 1867 (the Administrator General's Act).

INDIAN CONTRACT BILL.

The Hon'ble MR. STEPHEN also moved that the Report of the Select Committee on the Bill to define and amend the law relating to Contracts, Sale of Moveables, Indemnity and Guarantee, Bailment, Agency and Partnership, be taken into consideration. He said:—"MY LORD, this Bill has been under the consideration of Government, in various forms, for no less than five years, and I may accordingly give a short account of the discussion which it has undergone before entering upon what I have to say as to its provisions. It was drafted originally by the Indian Law Commissioners, and is still substantially their Bill, though it has been, to a certain extent, altered in substance, and also to a certain extent in form and arrangement. The substantial alterations, however, are of no very great importance, except upon one or two points, to which

I shall have occasion to refer specially. Having been introduced, the Bill was circulated for opinion in the usual manner, and the opinions of the officers consulted, including a considerable body of Native opinion, were obtained in due course. It was adverse to two important provisions only, which were regarded as being unsuitable for India, though the Commissioners considered them as improvements in the existing law of England, upon which, speaking generally, the provisions of the Bill are modelled. Of these I shall speak hereafter.

"There were other differences of opinion between the Council here and the Indian Law Commissioners as to the contents of the Bill, which led to a prolonged discussion, to which I need not refer, between the Government of India and the Secretary of State. The final result was that the Secretary of State left the Government of India to deal with the matters under discussion as they thought proper, but expressed a very decided wish that the Bill should be disposed of as early as possible. The despatch which made this intimation arrived in India about a year ago, just as the Government were about to leave Calcutta. We replied that we did not wish to pass a measure of such general importance at Simla, but that it should be proceeded with as soon as the Government returned to Calcutta. Advantage was taken of the delay which thus arose to subject the Bill to another and a very careful revision. It was compared with the standard text-books on the subject to which it refers, and various alterations were introduced into the arrangement of that part of the Bill which deals with contract in general.

"When the Government returned to Calcutta, it was re-submitted to the Committee, and was by them most carefully re-considered from end to end, and in particular, my hon'ble friends, Messrs. Bullen Smith and Stewart, weighed, I may say, every word of it with a degree of care and minute attention for which I am sure the public ought to feel deeply indebted to them.

"To sum the matter up, the Bill was originally drawn by some of the most distinguished of English lawyers. It has been before all the Loca Governments, and opinions have been expressed upon it by all classes of officers and Judges, European and Native, throughout the Empire. It has been, I may say, before no less than three Committees; for, since it was introduced, the Committee has been changed, as Committees do change in India, at least three times. Its contents have formed the subject of protracted discussion between the Government of India and the Secretary of State. Two Legal Members of Council have had it before them, with the advice and assistance of two Secretaries to the Legislative Department, and it has been scrutinized in every detail, with the most minute care, by several of the most eminent merchants of Calcutta, and, in particular, by my hon'ble friends, Mr. David Cowie,

Mr. Bullen Smith, and Mr. Stewart. Under these circumstances, I hope that I shall not be suspected of any personal vanity if I say that I believe it will be found to constitute a useful and sound addition to the law of India. In order to enable the Council to appreciate its importance and its general position, I may perhaps be permitted to make a few general remarks upon our legislation in India.

"The Bill now before the Council forms part of a scheme which has been under consideration and in process of execution for upwards of forty years—the scheme of passing a code of substantive law for India. I think that but few persons are aware, either of the nature and extent of the scheme itself, or of the extent to which it has been carried into execution. It may therefore be interesting, as it is certainly strictly relevant to the present measure, to say a few words on these topics.

"Legislation, as everybody knows, has been in active progress in this country ever since the year 1793, though I may observe, by the way, that the practice may be carried somewhat further back; but from the year 1793 to the present time, a considerable number, first, of Regulations, and afterwards, of Acts, has been passed in every successive year. I can by this time claim a considerable acquaintance with their contents, and, in order to show the position which this Bill occupies, I may make a few remarks upon them.

"The main subject, both of the Regulations and of the Acts, is procedure and current legislation. With a very few exceptions, they do not deal with substantive law. They establish Courts, civil and criminal; they deal at great length with their modes of proceeding; they lay down in minute detail the manner in which the revenue is to be assessed and collected, and provide for many subjects of minor and occasional interest. As to the laws which the Courts thus established are to administer, they are silent, or, rather, they speak only in very vague and general terms. Thus, they provide that, in certain cases the Muhammadan law, in certain other cases the Hindu law, and in cases not especially provided for the 'law of justice, equity and good conscience,' shall be followed. With regard to criminal law, they assume, though I do not think that they assert in express terms, that the Muhammadan law is in force, with certain modifications which were introduced into it in order to make it harmonize with English conceptions of justice and humanity.

"It was felt long since that this state of things was not satisfactory, and that it was likely to become less and less satisfactory as the administration of justice became more regular, and the spread of education and the growth of

confidence in our system of government led to an increase in the number and activity of lawyers.

"We have heard a good deal lately in this Council of the evils of law and lawyers. I am far from being insensible to the evils of chicanery and quibbling, though I cannot think it wise or dignified to speak in terms of violent and indiscriminate reproach of a profession which always has existed, and which of necessity must exist, in every Government which is not conducted by naked military force. The truth upon the whole subject, I think, is abundantly clear. It is simply this: If it is determined to govern according to law, and not by the arbitrary will of the ruler, the only way of avoiding quibbles, chicanery, and all the evils arising from misplaced and selfish ingenuity, is to make the law which is to be administered so clear, short, precise and comprehensive, as to leave the least possible scope for the exercise of those unamiable qualities. Well-designed legislation is the only possible remedy against quibbles and chicanery. All the evils which are dreaded—and I do not say they are unjustly dreaded—from legal practitioners, can be averted in this manner and in no other. To try to avert them by leaving the law undefined, and by entrusting Judges with a wide discretion, is to try to put out the fire by pouring oil upon it. Leave a Judge with no rule, or with one of those leaden rules which can be twisted in any direction, and you at once open to the advocate every sort of topic by which the discretion of the Judge can be guided. Shut the lawyer's mouth, and you fall into the evils of arbitrary government. The one remedy which is really sufficient lies in the precise and perfectly clear definition of the law. This is the province of legislation; and I do earnestly wish (though I almost despair of doing it) that I could make people understand that laws which make that certain which was previously vague, and which lay down a plain rule where there was previously none, are the only means by which the amount of law and litigation in the country can be reduced to its proper limits. Whatever may be the case in other departments of things, homœopathy is the only system by which the malady of litigation and quibbling can be treated. The real antagonist of the pettifogger is the almost equally unpopular Legislative Department.

"The Government of India have been fully impressed with the soundness of these views for a great number of years, and they have formed the basis of legislation ever since the renewal of the Company's Charter in 1832. The Act which renewed the Charter in that year provided that a fourth Member of Council, who was to be a barrister, should be appointed for the purpose of pro-

viding a body of substantive law for British India, in concert with a Law Commission which was appointed in India under the same Act. I need hardly observe that Lord Macaulay was the first person who held this office, or that the first draft of what is now the Indian Penal Code was the first-fruits of his appointment. The draft prepared by Lord Macaulay and his associates did not become law for nearly twenty-four years after the end of his term of office; but it was the first, and by very much the most important, instalment of the body of substantive law which was intended to be formed. It was afterwards considered that the work thus commenced might be more conveniently carried on by a Commission sitting in England, who might prepare drafts of Bills which could afterwards be enacted as law by this Council. Such a Commission was accordingly appointed in December 1861, and continued its labours till 1870, when it resigned, for reasons into which I need not now enter. The only draft prepared by this body which has as yet passed into law is the Indian Succession Act. If, as I hope will be the case, the present Bill passes, it will form the third instalment of substantive law which has been enacted in consequence of the policy adopted in 1832. It will, I think, interest the Council and the public to know how much more legislation of this character will, in my opinion, be required before the codification of the law of British India can be said to be complete. As the subject is one to which I have given very great attention since I have been in India, and as I shall not trouble them on many future occasions, your Lordship and the Council will perhaps indulge me with a few words on this subject.

"With reference to codification, I would divide the law into three parts:—

1. Current miscellaneous legislation:
2. Procedure:
3. Substantive law.

"Upon the codification of each of these branches of the law a different set of observations arises.

"By current legislation I mean such measures as are necessary to meet particular cases. All financial legislation is of this character. Acts relating to emigration, telegraphs, and many other subjects might also be referred to. All that can be done with a view to codifying matter of this kind, is to have all the Acts which relate to one subject consolidated into a single enactment. The various Consolidation Acts which have recently been passed by, or introduced into, the Council, have very nearly brought about this state of things in the Indian Statute-book. When the following consolidation measures have been passed—

the Pleaders Bill, the Christian Marriage Bill, the Local Extent Bill, and the Inland Customs (Northern India) Bill—the current legislation of British India will be very nearly in a satisfactory state. Upon almost every subject the law will be found in a single Act. The few amending Acts which have been found necessary in the course of the last two years have been so drawn that the amended and the amending Acts might, in every case, be printed as one Act without the smallest difficulty or inconvenience. On this branch of the subject, accordingly, little remains to be done.

"Under the head of Procedure, I include all the laws which regulate the proceedings and powers of Courts of justice, and the assessment and collection of the land-revenue. As to the Courts of justice, the two Codes of Civil and Criminal Procedure, the Evidence Act, and the Limitation Act, each reduce to a single enactment the subject of which they treat. Of the Code of Criminal Procedure I will at present say nothing, as I hope to ask the Council to pass it as revised on Tuesday next. It has been found necessary to amend the Code of Civil Procedure by several Acts, and an enormous number of cases have been decided upon it. I hope that my successor will see his way to re-enacting it. The procedure of the High Courts might also, I think, be greatly improved and simplified by a High Courts' Act.

"One branch of the Law of Civil Procedure has been reduced to a shape, simple indeed, but not so simple as I could wish. The Civil Courts of each province (Madras only excepted) are regulated by the Civil Courts Acts, each of which replaces a great number of isolated and scattered provisions. The Madras Government opposed, and so prevented, the passing of an Act which would have thrown into a single measure some fourteen or fifteen Acts and Regulations. With this single exception, this branch of the law may be said to be codified. I think, however, that when the Code of Civil Procedure is re-enacted, it would not be impossible, and it would certainly be highly desirable, to draw the Code so as to form a general Civil Courts Act, as the revised Code of Criminal Procedure forms a general Criminal Courts Act.

"As to the Revenue Procedure, the following state of things exists:—

"In Bengal, the law is codified as far as it can be, regard being had to the character of the Permanent Settlement.

"In the North-Western Provinces, the law is in a very unsatisfactory state, but the Bill introduced into this Council a week or two ago will, if it is passed, codify it.

"In the Panjáb, the law is completely codified by Act XXXIII of 1871.

"In Bombay, it is codified by Act I of 1865.

"In Oudh, an Act for its codification is under preparation.

"In Madras, the law for the collection of the revenue is codified by Act II of 1864, but the law as to the assessment of the revenue appears to be completely undefined.

"In the Central Provinces, there is, so far as I have been able to discover, no law whatever on the subject, and legislation is urgently required.

"The system of land-revenue in Burma is peculiar to that province, and no legislation upon the subject appears to be required.

"Hence, the only legislation required to put this part of the law into a satisfactory condition, is the North-Western Provinces Bill, and the passing of a Bill for the Central Provinces, which, after legislation for the Panjáb and Oudh, will be no very difficult matter.

"With reference to the third branch of the subject, I understand, by substantive law, those branches of the law which relate to and regulate the common relations of life—relations which continue unchanged under all circumstances.

"It is obvious enough that this branch of the law is by far the most important of all, and also that it is the branch in which the greatest differences exist between the laws suitable for different countries. In all countries, so far as I know, what I have called substantive law deals with much the same sort of subjects, and it is obvious that it must do so, because human life is, in all parts of the world, substantially very much the same sort of process; but the differences between the way in which some of these subjects are dealt with in some cases, are as striking as the substantial resemblance between the manner in which they are dealt with in other cases.

"In order to show how far the process of codification upon these subjects has been already carried in India, and how much further it ought to be carried by the British Government, it will be desirable to enumerate shortly the main heads of substantive law. They will be found, I think, to resolve themselves into the following:—

1. Government;

2. Criminal Law;

3. Laws relating to Inheritance;

4. Laws relating to the Relations of Life—husband and wife, parent and child, master and servant, guardian and ward;

5. Laws relating to Contract;

6. Laws relating to Wrongs;

7. Laws relating to the Enjoyment of Land.

"As to government, the law of this country is contained principally in Acts of Parliament, of which the most important are the Government of India Act, the Indian Council's Act, and some others which I need not mention. These Acts might, no doubt, be thrown into a much more convenient shape than their present one, but this, if done at all, must be done by Parliament. However, they form, as it is, a written constitution plain and full enough for all practical purposes.

"The Criminal Law is codified in the Penal Code.

"The laws relating to inheritance are mostly Native laws, which, for obvious reasons, we cannot touch; though I am by no means sure that the Hindús, at all events, would not be thankful for an authoritative statement of their customs on this subject, or, at all events, on certain parts of it.

"In so far as Native law and English law do not extend, the Succession Act, X of 1865, may be regarded as supplying a code on this matter.

"The laws relating to the relations of life—husband and wife, parent and child, master and servant, guardian and ward—are in much the same state as laws relating to inheritance. They are Native customs, supplemented in some cases, and more or less overruled in others, by our legislation. I need hardly remind the Council of our various Marriage Acts of the abolition of slavery, or of the Acts relating to Minors and the Courts of Wards. There is little room here for codification, though the four Acts about the marriages of Christians have been consolidated and might be thrown into one. The others are obviously subjects on which legislation ought to be slow and cautious.

"As to laws relating to contracts, I will reserve what I have to say till I come to observe upon the Bill which has called for this review.

"As to laws relating to wrongs, there is a distinct and very important gap in our legislation. A good law of torts, as English lawyers call them, would, I think,

be a great blessing to this country. It would enable the legislature to curtail very greatly many of the provisions of the Penal Code, which are at present, as I have frequently been informed, called into play on the most trifling occasions to gratify private malice. The provisions on defamation, for instance, clearly ought to belong to the law of wrongs, and not to the law of crimes. I think, indeed, that even as a chapter in the law of wrongs, it is far too broad.

"The laws relating to the land in India are by far the most intricate, as they are probably the most important, branch of the law. I will say but a very words about them. The state of the law of land-revenue, I have already noticed; it either is, or may soon be, put into a satisfactory shape. The law by which the relation between landlord and tenant is regulated is codified, as far as its form goes, though I say nothing as to its substance, by Acts VIII (Bengal Council) of 1869, X of 1859, the Oudh Rent Act, the Panjáb Rent Act, and a Rent Act in Madras (VIII of 1865). The law regulating the rights of holders of land, as between each other, depends mainly upon Native custom, and, though recorded in the settlement papers of Northern India, could probably not be codified at present, though I suspect that, like many other things, the task would be found to be far less difficult than it is commonly supposed to be, if any ane undertook it in earnest.

"The only part of this important branch of the law on which I think we could at present legislate usefully, would be the law relating to easements.

"Finally, there is a branch of law which lies between substantive law and procedure, and which, in England, forms the main part of what, by a strange misnomer, is called equity, as if there was any real or permanent distinction between law and equity. I know of no name in common use for the branch of law in question, but it might perhaps be not quite inappropriately described as the law of Relief. Its principal branches are decrees for specific performance, decrees for the reformation and rescission of contracts, and injunctions against various forms of wrongs. In one sense these things are matters of procedure, but they also partake largely of the nature of substantive law. If, for instance, the question is whether a decree is to be granted for the specific performance of a contract, you must look at the nature of the contract. It would manifestly be absurd to grant specific performance of a contract to marry, or of a contract to paint a picture; and it would be equally absurd not to grant, in case of need, specific performance of a contract to sell land or to grant a lease of a house. Various well-known English equity treatises—*Kerr on Injunctions; Seton on Decrees*, and the like, would supply materials for a most useful Act on this subject.

"If we now review the topics which I have thus shortly run over, it will appear that, in regard to codification, the law of British India stands thus:—

"As regards current legislation it is nearly satisfactory, and may, with a very little trouble, be made quite satisfactory. Whether it continues to be so, will depend upon the question whether the work of consolidation continues to be carried on vigorously, so as to keep pace with the amendments made from time to time in existing Acts.

"As regards procedure, the process of codification is complete, with the following exceptions—the Code of Civil Procedure requires re-enactment; a High Courts' Act is wanted, and the Revenue Procedure in the Central Provinces is undefined. A Bill for consolidating the Revenue Procedure of the North-Western Provinces is before the Council. An Oudh Bill is in preparation.

"As regards substantive law, we shall have as much of it as will be wanted for a length of time, if this Act, a corresponding Act about wrongs, an Act about easements, and an Act upon remedies, such as I have sketched out, are framed and passed into law.

"When all this is done, the Statute-law of India will be, after all, a very small matter. I do not believe that it would fill more than four or five octavo volumes, even if all the Acts of Parliament relating to India, and all the Acts of the subordinate legislatures, were taken into account; and the really essential part of the whole system would be included in some five or six Acts, which any person of moderate industry might acquaint himself with in a year's study. A young man coming out to India, who knew really well the Penal Code, the Succession Act, the Contract Law (assuming it to pass), the two Procedure Codes, the Evidence Act, the Limitation Act, and the Acts of the Province to which he was attached relating to land-revenue, would know more law than nineteen Barristers out of twenty know when they are called to the Bar, and it would all be contained in a moderate sized octavo volume. The most difficult of these Acts, by far,—the Succession Act—he would probably never have occasion to use at all; and by far the greater part of the two Procedure Codes consists of matter as to which he would only want to know to refer to it; the larger part of the Limitation Act is a mere index. There are parts of the contract law of which he need take little notice, and the same remark applies to parts of the Evidence Act. I do not think that, to require a man to acquaint himself fully with the rest of these enactments, is to lay upon him any very heavy burden.

"My Lord, I have trespassed a long time upon your Lordship's attention in relation to this matter, because I am very anxious, before leaving India, to give to the public some general idea of the progress which has been made in a work which has now been in hand for upwards of forty years, and in which, during my short term of office, I have been endeavouring, to the best of my ability, to tread in the steps of my distinguished predecessors, and to carry out what appears to me to have been their design. My successor, I trust, will be able to complete, during his term of office (that is, if he agrees with my view of the subject), the scheme which I have sketched out, and all that will then remain to be done will be the current work of occasional legislation, and the re-enactment, from time to time, of the various codifying Acts which I have mentioned or referred to. Such re-enactments will, in my judgment, be as necessary as repairs are necessary to a railway. I do not think that any Act of importance ought to last more than ten or twelve years. At the end of that time, it should be carefully examined from end to end, and whilst as much as possible of its general framework and arrangement are retained, it should be improved and corrected at every point at which experience has shown that it required improvement and correction. The Penal Code is admirably good as a whole. It is, I think, by far the best system of Criminal Law in the world: but it might be immensely improved and simplified, and I have no doubt at all that the same will be the case with all the other laws on which so much labour has been expended. I would venture to lay down this general rule. If you want your laws to be really good and simple, you must go on re-enacting them as often as such a number of cases are decided upon them as would make it worth the while of a law-bookseller to bring out a new edition of them.

"With this long preface, I come to the contents of the Bill itself. It is not, and does not pretend to be, a complete Code upon the branch of the law to which it relates. It consists of nine chapters, which deal with the following subjects: Contract in General under several heads; the Contract of the Sale of Goods; the Contract of Indemnity and Guarantee; the Contract of Bailment; the Contract of Agency; and the Contract of Partnership. These contracts were chosen to form the subject of the Bill, because they are of the commonest occurrence. If an attempt had been made to include within this Act provisions as to every contract on which legal decisions have been given, the Act would have been of most unwieldy dimensions, and would have contained a good deal of matter which would probably have been of very little practical use to Judges or suitors. The New York Code, on the subject of obligations, has been carefully examined with a view to this Act; and several of its provisions have been adopted. The principal matters contained in the Code which we have omitted are—Shipping

Contracts, Trusteeships, Insurance, Contracts by Carriers, Mortgage, Bills of Exchange, and the whole subject of Relief. Of these matters, we did not think it desirable to deal with Shipping Contracts, because the persons connected with them in India are very few, and it is desirable, for obvious reasons, that their contracts should be regulated by the law of England. We did not deal with Trusteeship, because the English law on that subject is obviously unsuitable to any country except England and countries where the population is of English descent. We omitted the law relating to Bills of Exchange, because a Bill on that subject was framed some years ago by the Law Commissioners, and was laid aside as unsuitable both to English merchants, who naturally wish to follow the law of England, and to Native merchants, who have customs of their own about hundís, which it is not desirable to interfere with. Relief, as I have already said, might, in my judgment, form the subject of a separate Act, and is intermediate between procedure and substantive law. Mortgage is otherwise provided for. As to the Law of Insurance, I have doubts whether it is a matter of much importance out of the Presidency towns, but a Bill on the subject was framed by the Indian Law Commissioners, and can be taken up if it is thought desirable. As to Carriers, it was intended to include the subject in the present Bill; but for the reasons which I stated in Council some time ago, it was thought more desirable that it should be dealt with by a separate Bill, which I hope to introduce when the present matter is disposed of.

"From this it will appear that, though incomplete, the Bill will probably suffice for a considerable time for the wants of the country. I may add, however, that as its deficiencies are discovered, it will be easy to enact supplementary chapters which may be read as part of it.

"Of the provisions of the Bill itself, it is difficult to speak with much particularity or detail, as they are of a somewhat technical character. I will, however, make a few observations upon them. Substantially, the Bill is, as I have already observed, the Bill of the Indian Law Commissioners, though some modifications have been made in it which I will notice immediately. I have of course studied it with great care, and have compared it chapter by chapter with the authorities on which it is founded. I think, therefore, that I am entitled to say that it appears to me to furnish absolutely conclusive proof of the possibility, not to say the ease, of doing what so many lawyers have affirmed to be impossible, namely, reducing bulky volumes, which it is impossible to understand without enormous labour, and which are as difficult to read as dictionaries, to the form of simple, perspicuous and consecutive propositions. In illustration of this, I would ask any one to compare chapter X of this Bill, which consists of fifty-seven short sections, with *Story on Agency*, from which

it has been, so to speak, distilled. I need not say anything of Chief Justice Story's ability, or of the position which he holds amongst lawyers. Most of his works, and especially the one in question, were originally delivered as law lectures at Harvard University. They accordingly are written with more of an eye to literary skill and to general arrangement than most works of the kind; but the difference between such a book and a chapter in a Code like this (I speak of it without vanity, for I am responsible only for the order in which the sections stand, and for one or two additions to them) is like the difference between a lump of sugar in a sugar-basin and a lump of sugar in a cup of tea. I do not mean to say that there is nothing in *Story on Agency* which is not comprised in these fifty-seven sections. There is a great mass of illustration, exposition, history and other matter, with which a professional lawyer ought to acquaint himself if he wishes thoroughly to understand the chapter; but if the object is, either to get a general knowledge of the subject, or to decide a given case in court quickly and with confidence, the chapter of the code is much superior to *Story on Agency*. The habit of counting all manner of collections of different objects would probably give a man great familiarity with the general relations of number, though he might never have heard of the multiplication table; but, both in theory and in practice, the multiplication table is an immense inconvenience, and the multiplication table is simply an unusually successful case of codification. I might draw illustrations of what has been done in this Act from other parts of it, and, in particular, from the chapter on the sale of goods. That chapter represents the English law on the subject, disembarrassed of the inexpressible confusion and intricacy which is thrown over every part of it by the vague language of the Statute of Frauds. I should surprise the Council if I were to give them any idea of the vast mass of matter from which these forty-eight very simple and easy sections have been extracted. In the last edition of *Addison on Contracts*, the matter comprised in them (part of which has been omitted for the sake of simplicity) fills seventy-six large octavo pages, and the matter is returned to over and over again in different parts of the book.

"In estimating the importance of the work now presented to the Council, it must be remembered that, though 'justice, equity and good conscience, are the law which Indian Judges are bound to administer, they do in point of fact resort to English law-books for their guidance on questions of this sort, and it is impossible that they should do otherwise, unless they are furnished with some such specific rule as this Act will supply them with.

"I wish that those who think it is easy to solve all legal questions by the mere light of nature, and without the guidance of positive rules, could have

heard the discussions which have taken place on various parts of this Bill. I think they would have learnt from them that it is a far more difficult thing than may be supposed at first sight to say what, under given circumstances, just and equitable. I think they would also have arrived at the conclusion that the deliberate opinions of English Courts, formed after elaborate argument, and made with reference to numerous and varied precedents, form about as good a guide on that subject as is to be had, and I am much mistaken if my hon'ble friends, Messrs. Bullen Smith and Stewart, will not confirm what I say.

"I will conclude by saying a few words on the alterations which have been made in the Commissioners' draft. They occur principally in the first part of the Bill, which treats of contracts in general, and they are alterations in form rather than in substance, though I do not by that remark mean to say that I regard them as unimportant. The fact is that, in legislation, there is a constant and natural tendency to undervalue form, and this tendency is one of the main causes of the extreme intricacy and enormous bulk of the law. I attempted to illustrate this in the case of the Evidence Act. I tried to show, in a speech which I made on that subject, how the whole matter had been thrown into confusion by the excessive ambiguity of the fundamental terms employed in stating it, and especially by the ambiguity of the words, 'evidence,' 'fact' and 'hearsay.' This confusion has not arisen to the same extent in regard to the law of contract. But it has occurred to a certain degree, and I think that any one who reads the draft of the present Bill as it was originally published in the Gazette, will find that the fundamental terms of the subject were not defined with complete precision by its learned authors. Thus, one of the first sections of the draft Bill was in these words:—

'A contract is an agreement between parties, whereby a party engages to do a thing or engages not to do a thing. A contract may contain several engagements, and they may be either by the same party or by different parties.'

"I do not think that, in the common use of language, there is much difference between an agreement, an engagement and a contract. Whether, for instance, it was affirmed that two people had agreed to marry, or engaged to marry, or had made a contract that they would marry, most of us would think that the same sense was conveyed, and throughout the Commissioners' draft 'agree,' 'engage' and 'contract' are used indiscriminately. It is therefore natural to ask, what is the use of their definition, and why should it not run—'an agreement is a contract by which people engage,' 'an engagement is an agree-

ment by which people contract,' or 'a contract is an engagement by which people agree,' or 'a contract is a contract by which people contract?'

"I think I could trace the origin of this definition, but to do so would needlessly consume the time of the Council.

"All such definitions conceal the true analysis of the subject, which rests, as all such operations ought to rest, on the broadest and most general facts of human nature. If it is examined in this light, I think that a contract will be found to be composed of the following elements:—

"In the first place, it is obvious that in order that the relation may exist at all, one party must make a proposal. If that proposal is accepted, the parties are so far at one. They each contemplate a common course of conduct. To use the common phrase, they 'agree.' An accepted proposal, therefore, is an agreement. But the proposal may be either a simple one—as if I propose to a man to make him a present of a hundred rupees—or, as is the more common case, it may involve something to be done on his part—as if I propose to give him a hundred rupees for a horse which he is to give to me. In each case we agree; but, in the first case, I only promise, and he accepts my promise. In the second case, each of us makes a promise which the other accepts. I promise him money, and he promises me a horse, and these two promises form the consideration for, or cause, each other. We have thus got clear notions of promises and agreements. A promise is a proposal accepted, and an agreement is a promise, or a set of promises, forming the consideration for each other. Every promise is an agreement, but an agreement may and generally does consist of more promises than one. But what, it may be asked, is the difference between an agreement and a contract? I answer, every contract is an agreement, but every agreement is not a contract, but only those agreements which can be enforced by law. If one man proposes to another to commit a murder for hire, and the other accepts, there is an agreement, and there are mutual promises; but as the agreement is one which the law will not enforce, and which indeed it would severely punish, there is, as I say, no contract. The use of language is always matter of convenience. If any one chooses to use the words agreement and contract indiscriminately, he can of course do so; but I maintain that, by assigning a distinct sense to the different words I have mentioned, which sense corresponds to facts inherent in human nature itself, the whole subject is rendered clear and easy of comprehension and arrangement. I will not weary the Council with a detailed explanation of this, but will content myself with asking any one who doubts it to read and compare together the first chapter

of the present Bill and the first chapter of the original draft. Some further explanations on this subject are given in the report of the Committee, and in a Note which I drew up on the subject for the information of the Committee, and which is recorded in the Legislative Department amongst the papers on the Bill.

"I will conclude by noticing, very shortly, the only points of importance on which we have differed from the Commissioners in substance. The first point is as to the power which they proposed to confer upon every possessor of moveable property to make a good title to a *bonâ fide* purchaser. The following passage from their report gives their reasons for this proposal:—

'With regard to goods sold by a person who has no right to sell them, the general rule of English law is that the owner of the goods retains the ownership notwithstanding his having lost the possession of them and their having been sold to a third person. But from this rule there is an exception in the case of goods sold in open market, an expression which, by the custom of London, applies to every shop within the city.

'It cannot be denied that the subject is difficult. We have to consider, on one hand, the hardship suffered by an innocent person who loses in this way his right to recover what was his undoubted property. But on the other hand, still greater weight appears to us to be due to the hardship which a *bonâ fide* purchaser would suffer were he to be deprived of what he bought. The former is very often justly chargeable with remissness or negligence in the custody of the property. The conduct of the latter has been blameless. The balance of equitable consideration is, therefore, on the side of a rule favourable to the purchaser; and we think that sound policy with respect to the interests of commerce points to the same conclusion

'We have, therefore, provided that the ownership of goods may be acquired by buying them from any person who is in possession of them, if the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession has no right to sell them.'"

"'Our reasons for the opposite view were as follows:—

'The first question is whether the law ought to proceed upon the assumption that a person whose property had been stolen is negligent.

'Thefts are commonly effected in one of three ways, by force, by fraud, or by a breach of confidence. It appears to us that, in each of these cases, it would be improper to speak of the person who lost the property as negligent.

'A man is stripped of all his property by robbers, and nearly murdered for defending himself. Is he negligent? A gang of thieves enter a house unperceived, by digging through the wall at night, and carry off the property contained in it. Are the owners of the house negligent? A servant steals

plate under his charge. Cattle left by night on an open pasture, or crops not specially watched by night, are stolen. Are the owners in these cases negligent? These are typical instances of the commonest forms of theft; and it appeared to us that, in comparison with them, the cases in which an owner is really negligent—as, for instance, where a man leaves valuable property unwatched in a public place—are of very rare occurrence. We therefore regarded innocence on the part of the owner as the rule, and negligence as the exception.

'Assuming, then, that the common case is that in which both the owner and the purchaser of the stolen goods are innocent, upon whom ought the loss to fall? We thought it ought to fall upon the purchaser for the following reasons:—

'1*st*.—The only argument offered in support of the suggestion that it should fall upon the original owner, assumes that every man is negligent who depends upon the protection afforded by law to his property, even when it is in his personal custody, and can be taken from him only by personal violence. We thought, on the contrary, that people have a right to expect the law to protect them against superior force and also against fraud so gross as to amount to crime. Against fraud which amounts only to a civil injury—as in the case of selling an article to which the vendor has no title—prudent men may be expected to protect themselves. The proposed section reversed this. It would protect a man who has been overreached in a bargain, at the expense of another whom it regards as negligent, because he has been robbed on the highway.

'2*nd*.—A person who has been robbed by force or fraud suffers a greater injury than a person who has been overreached in a bargain. It follows that, if an innocent purchaser is obliged to return stolen goods, he will in most cases suffer less than the innocent owner would suffer if the purchaser were allowed to retain them.

'3*rd*.—To give thieves the legal power of effecting a change in property against the will of the true owner, recognizes and favours crime. We thought that no one should be permitted to derive any benefit from a crime, even if he was mixed up with it innocently and accidentally, and that, when such a transaction was brought in any form under the notice of the law, things should be restored as far as possible to the condition in which they would have been, if the crime had not been committed. The *bonâ fide* purchaser of stolen goods would derive an advantage from theft, if the suggestion of the Commissioners were adopted. Their proposal would enable a thief, whose object was revenge, to carry out his purpose by the express warrant of law.

'*4th.*—The proposed change would favour receivers of stolen goods. Such persons are often in outward appearance respectable. Under the proposed section, the thief would not indeed be able to confer a good title upon the receiver, but the receiver would be able to confer a good title upon his customers.

'*5th.*—If the *bonâ fides* of the purchaser is to be the test of the validity of the transfer, it will become necessary to decide, as a fact, in each particular case, whether the purchaser acted in good faith or not. We considered it undesirable to enter upon this inquiry.

'The Commissioners' draft left open the question whether, upon the principle that the law presumes innocence, the owner is to prove the purchaser's bad faith, or whether, upon the principle that a man is bound to prove facts within his knowledge, the purchaser is to prove his own good faith. The adoption of either branch of the alternative would, we thought, be mischievous.

'If the original owner was to prove the purchaser's bad faith, receivers of stolen goods would be practically secure. How could a man whose goods had been stolen prove the circumstances under which the thief sold them? How, except by accident, could he ever be able to prove matters connected with the sale which ought to have roused the buyer's suspicions? How, in short, could he give proof of what did actually pass, or even of what ought to have passed, in another man's mind upon an occasion as to which his information must be incomplete?

'If, on the other hand, the purchaser was put to prove his good faith, how was he to do so? The common case would be, that he knew nothing of the seller except that he offered the goods for sale at a moderate price. If this was enough, every receiver of stolen goods would escape. If it was not enough, honest purchasers would, in most cases, be regarded as receivers of stolen goods. They would have to return the property which it was the object of this section to secure to them, and, in doing so, they would lose their characters as well as their money.

'In short, it was essential to the proposed section that, for the purpose of proving a doubtful matter of fact, we should choose between two rules of evidence, of which one would discourage honesty and the other favour crime. This difficulty might be altogether avoided by preferring the true owner, who must have a good title, to the purchaser, who might be an undetected receiver of stolen goods.

'*6th.*—The proposed enactment would remove one of the greatest of the existing motives for the detection of crime. If a man who had lost his property by theft was not to recover it, unless he could prove bad faith on the part of the purchaser, he would not care to prosecute the thief. In many parts of India, cattle are the most important kind of property, and cattle-stealing is the commonest of offences. As matters now stand, stolen cattle are systematically tracked sometimes for hundreds of miles, and for weeks or months together. When discovered, the owner retakes them. So well is this system established, that there are persons who make it their profession to track stolen cattle, and that buyers take security from sellers to indemnify them if the cattle should have to be given up to their true owners. This constitutes a considerable security against cattle-thefts, but the whole system would come to an end if the owner could not recover his cattle without proving bad faith in the purchaser.

'*7th.*—The universal practice of India is that the loss in case of theft should fall on the purchaser. This, the Committee were informed, is the law of all the independent Native States, both within and on the border of our territories. If our law were different, British territory would become an asylum for cattle-stealers; and all the Native States would feel themselves deeply injured.

'*8th.*—The effect of the section upon the position of bailees would be very singular, and we thought undesirable. It would invest every bailee, for whatever purpose, with the purpose of selling the goods bailed, as he would be able to make a good title to them, and if he offered to account for the price to the true owner, it seemed to us very doubtful whether he would be punishable for criminal breach of trust. A lodger sells the furniture of his lodgings for an inadequate sum and pays the money to the landlord. The landlord under the proposed section would lose his property absolutely, and have no remedy at all, unless the transaction were regarded as a 'dishonest misappropriation,' which seems rather an abuse of terms. The case was not perhaps likely to happen; but if dishonest persons were once made aware of the existence of such a law, we feared that it would be extensively used for the perpetration of frauds, which it would be very difficult to detect.'

"The only other matter of importance on which we have differed with the Commissioners is the question of liquidated damages. The law of England on the question whether, when a man promises in a certain event to pay a specified sum, he is bound or not to pay it in full, is rather intricate; and, in order to avoid that intricacy, the Commissioner proposed to enact that, in all cases, such penalties should be treated as liquidated damages. We agreed that the

intricacy should be removed, but, for the reasons assigned in our report, thought that it should be removed by the converse operation of turning all liquidated damages into penalties. This we proposed to qualify by an exception, which, as it stands in the Bill, is not very neat, and which I propose to amend. It applies to the case of bail-bonds, recognizances, and the like, and to persons who, under the orders of Government, give bonds for the due performance of public duties.

"With these remarks, My Lord, I have the honour to move that the Bill be taken into consideration."

The Hon'ble MR. BULLEN SMITH said:—"MY LORD, I very readily respond to the hon'ble and learned Member's request that I should state to the Council my view of the treatment the Bill has received at the hands of the Committee to which it was entrusted. I believe the Committee undertook their work with a full appreciation of the great importance of the measure, and fully alive to the responsibilities connected with legislation tending in degree to affect the daily conduct of affairs all over the country. Since I have had the honour of a seat in this Council, I have never known a Bill carried through the Committee with greater care or more mature deliberation. There has been an earnest wish to produce a measure which should be sound in principle and useful in its practical working, and I do consider that the Bill now before the Council is, on the whole, a good one. It would be wrong in me did I not thankfully acknowledge the large amount of personal attention which the hon'ble and learned Member in charge has given to this Bill; and I should also add that, in respect of that bailee question to which he has alluded, as well as on various other points, the Hon'ble Member has not hesitated to give up his own view, although legally and technically correct, in deference to practical considerations which have been urged upon him by other members of the Committee"

The Hon'ble MR. STEWART said:—"MY LORD,—I am unwilling to remain silent in a discussion on a Bill in which the mercantile members of this Council may reasonably be supposed to have taken a somewhat special interest. I regard this Bill as one of extreme gravity and importance; as one, indeed, the importance of which it is almost impossible to over-rate, for it embraces the great majority of the transactions of the every-day life of a very large class of the community, and a considerable proportion of the transactions of all, and it is probably not too much to say that there is no adult person in this great Empire who will not come within its scope, or who may not be affected more or less by its provisions. In these circumstances, it is a Bill which has required the most careful, anxious and patient consideration and attention of the com-

mittee to whom it was referred, and I think I may, as a member of that Committee, hold myself fully justified in absolutely confirming the statement of my honourable friend, that it has not failed to receive such attention and consideration. I wish to add that, though the special experience of individual members of the Committee has been fully utilised, and though, doubtless, we owe the framework of the measure to the Law Commissioners, the Bill, as it now stands, in its re-arrangement and re-construction, and in some of the principles which it asserts, is not the work of the Commissioners or of the Committee, but of the hon'ble and learned member in charge of it, whose candour and impartiality in receiving and considering all suggestions and objections, and earnest desire to arrive at the best and soundest conclusions, call for full acknowledgment on the part of those who have had the honour of serving with him on the Committee. The scope of the Bill, as I understand it, is to bring the Indian Law of Contract, as far as may be, into harmony with the English law on the same subject, as established by recognised practice, by Statute, and by the latest and best judicial decisions; and I think that, if that object has been attained, much has been done. Subject to some remarks which I shall offer presently, I consider this Bill a sound and good Bill, likely to prove valuable to the community, and particularly to that section of the community to which I belong, for it renders certain, clear and easily accessible much that hitherto has been doubtful, obscure and practically inaccessible; and, to persons engaged in mercantile pursuits, it is hardly possible to conceive any greater advantage than certainty and intelligibility in the law which governs their transactions. I go further and say that, to mercantile persons, a code of law, comparatively imperfect in the abstract, is, so long as it is fairly reasonable and equitable, and at the same time clear and accessible, more valuable than a system, in itself more perfect, but devoid of the two qualifications last named. Whatever the imperfections of this Bill may be, it has at least the merit of being very clear—so clear that, in great part, 'he who runs may read,' and that, as I have said, is a great point gained. It is not for me to estimate the value of such a Bill as this to those 'learned in the law;' but even to them, I should think its value will be considerable; for it will at least save them the necessity of the tedious and repeated references and investigations with which they have now to lay their account. I have spoken of the advantages of the Bill to mercantile persons and to those who may be called upon to advise regarding disputed matters of contract, but there is another class to whom it will also, I think, prove of great value—I mean the administrators of the law; for it places before them in an accurate and compendious form much information with which it is highly expedient, and, indeed, absolutely necessary that they should be acquainted. The present Bill, as my hon'ble friend has told us, is by no means

a complete law of contract, for there are many matters in connection with that vast subject with which it has been impossible, and with which it does not profess, to deal; and I fully approve of the clause by which provision has been made that special customs and incidents of individual branches of trade shall not be affected by this measure, so long as these customs and incidents are not opposed to the provisions of the Bill. I think that it is not desirable to override, but that it is, on the contrary, expedient to recognise, the law of custom when it is, reasonable law, as it will generally be found to be, and when it does not conflict with the well considered written law embodied in our statutes. But, my Lord, I do not wish it to be understood that I commit myself to an unreserved agreement in all the provisions of this Bill. On certain points I entertain my own opinion—an opinion different from that to which the Bill will give effect; and although, in deference to better information and judgment, or to the precedent of previous legislation in England and elsewhere, I have not thought it right to insist on my own views, I think it well to mention this matter here. It is unnecessary that I should trouble the Council with any lengthened remarks regarding the details of the Bill, but I would say a word regarding one or two of its provisions. It deals firmly with the subject of arbitration in cases of dispute, and I give my unqualified approval to the provision which states that, when a person shall have solemnly and deliberately agreed to arbitrate, it shall be in the power of the Courts to enforce that agreement. I am aware of, and can understand, the jealousy with which the law regards any attempt to oust its own jurisdiction, and I do not think that a casual agreement to arbitrate should be enforced; but I see no reason why a deliberate contract of that nature should not be, and I can see much injustice in holding that under no circumstances is an agreement to arbitrate a contract at all. The partnership clauses are less to my mind. I am one of those who think that the good old rule, or what was understood to be the good old rule, that he who shares in the profits shall likewise share in the losses of an undertaking, is the safest and best rule for general application; but here, I admit, I am behind the age, and it would of course be neither useful nor becoming that I should question the great and important modifications which Parliament as well as this Council have seen fit to make in the law on this subject. My hon'ble friend thinks, I believe, that I take too strict a view of the nature of a contract, and he is doubtless right in saying that it is not always desirable to insist on the fulfilment of such engagements with absolute exactness; but, speaking generally, I do think that the more firmly we insist on the fulfilment of contracts the better; that the leaning of the law, if it is to have a leaning at all, should be in favour of the party against whom the breach has been com-

mitted, and my remark is certainly not less, though it may be more, applicable in this country than elsewhere, for the natural habit of the people is in favour of a rather loose way of regarding the matter of contract, and this is a tendency which, I am clear, it should be the object of the law, not to encourage, but to check. In making this remark, I desire distinctly to except the better class of Native merchants, whose fidelity to their engagements, and generally honourable conduct of their affairs, are second to those of no class with which I am acquainted. I entirely agree with my hon'ble friend in considering it right and prudent to defer, in the meantime, any legislation regarding the Carrier's law; for, especially in view of the great and sweeping changes which have been recommended, and the enormous interests which will be affected, it cannot be well to deal with the matter until we shall be in possession of all that can fairly be urged by those interested in the question. I think it is a question on which it is far better not to legislate at all, than to legislate hurriedly, with the probability, if not certainty, of a necessity for speedy revision of our legislation before us. My Lord, I am opposed to unnecessary legislation, and I am very strongly opposed to unnecessary legislation when it touches mercantile subjects; but the Bill we are considering does not come within this description. It seems to me, as I have said, a good Bill; not perfect, but, on the whole, worthy of the approval of the Council, and worthy of the great reputation of my hon'ble friend, Mr. Stephen, and I shall record my vote in favour of his motion that it be passed into law with pleasure and satisfaction."

His Honour THE LIEUTENANT-GOVERNOR wished to express his full and entire concurrence in the view taken by the hon'ble and learned Member in charge of the Bill, of the extreme advantage of a clear and codified law: if we must have law, if we must have lawyers, he did believe that it was an enormous advantage that the law should be made so clear that, to a certain extent, every man might be his own lawyer. He was aware of the proverb that "a man who is his own lawyer has a fool for his client;" but he believed that that proverb was the invention of lawyers, and he dissented from it entirely. He believed that it would be an enormous advantage if the principles of the law were made so clear that every intelligent man should, with a little trouble, be able to understand them. He was led to believe that the importance of the Code Napoleon, and other well-known Codes, was due not so much to their merits or demerits, but to the fact that they laid down the law in a clear and precise form; and he had been told by an eminent jurist who formerly sat in this Council that it was in a great degree owing to the law having been reduced to a simple and codified shape that the French and Swiss, and other

continental people, understood the law so well. That being so, HIS HONOUR thought that, in respect of the codification of this immense subject, we were in a very great degree indebted to those who had dealt with the matter and especially to the hon'ble and learned Member. He felt that his hon'ble friend had rightly expressed the feeling of the Council, when he said that we were under great obligations to the mercantile members who had given us the benefit of their great attention and complete experience. HIS HONOUR felt that this was a subject on which all must agree, namely, the enormous advantage of having in the Council men possessing the qualifications and particular knowledge of the subjects embraced in this Bill. He felt that on no occasion had members of the mercantile profession sat in this Council who were more fitted to represent the mercantile and non-official communities in general, and that they had laid the country under very great obligations to them. HIS HONOUR was, however, inclined to think that his hon'ble friend, Mr. Stephen, had taken a somewhat sanguine view of the extent to which the codification of the substantive law in general had proceeded. It appeared to HIS HONOUR that there were a good many subjects on which his hon'ble friend had dwelt, which he was hardly prepared to say had been codified so far as the hon'ble Member thought. On the contrary, there were one or two subjects which the hon'ble Member had mentioned, as to which it appeared to HIS HONOUR there was greater need for codification than had been supposed. He might instance the law of Trustees. It was quite true that the English law of Trustees did not extend to this country. On the other hand, it was well known that a great and vile system, to which had been given the name of trusteeship, had sprung up all over Bengal; he alluded to the *benámí* system, which it was well known had resulted in an enormous amount of abuse; and HIS HONOUR thought that the country would be greatly indebted to any legislator who would take that matter in hand and deal with it successfully.

HIS HONOUR had not had the opportunity of going carefully through the Bill as it now stood, so as to enable him to deal with the particular subjects to which allusion had been made by the Hon'ble Member in charge of the Bill; but he had no doubt that the subject had been wisely dealt with by the Committee. As regards the provisions relating to Contracts of Sale, he thought that the owner of stolen property sold in open market should be entitled to recover his property from the purchaser; but he had some doubt whether a man who lent his horse to another should be entitled to recover it, if that other person fraudulently disposed of it in breach of the trust reposed in him. These, however, were minor matters, and HIS HONOUR would not therefore trouble the Council further on those subjects at present. He would

only now say that, subject to the amendments he had put upon the paper, he believed that the codification of the Law of Contract would effect a great improvement, and had been performed in a very careful manner.

As to the provisions of section 74 of the Bill, on the subject of liquidated damages, HIS HONOUR would say that he believed the Committee had done great service in putting it into a shape which, although in some respects opposed to the English law, appeared to be fair and equitable.

The Hon'ble MR. STEPHEN would say only one word in reference to what had fallen from his hon'ble friends as to his work in reference to this Bill, and that was to thank them for the very flattering way in which they had spoken. His Honour the Lieutenant-Governor had, however, made one or two remarks on which he should like to offer some observations. His Honour had quoted a saying of Sir Henry Maine's in reference to the Code Napoleon, about the great quantity of popular information concerning the law which had been diffused by it. With reference to that, MR. STEPHEN could not refrain from remarking that both the Code Napoleon and the French Code Penal, although very useful as popular abstracts of the law, were very loose in their terms, and he thought they stood in much need of revision and re-enactment. The Code Napoleon itself was contained in but a few pages; but with the judicial decisions appended to it, the book ran to an innumerable number of octavo pages, in small type and double columns, compared to which the decisions on a similar quantity of English law were almost thrown into the shade. He had no doubt that, looking to all these drawbacks and the enormous intricacies of those decisions, the propriety of the decennial revisions which he had suggested would become quite apparent: the two things compared together would show the advantage of having codes of law drawn in as simple and concise a form as possible.

With regard to the observations that had been made as to what were called "benámí" transactions, MR. STEPHEN was well aware of the importance of the subject. About a year ago, a voluminous mass of papers on this subject was sent up to the Legislative Department, and he had examined them and read the opinions of many officers; it seemed to him that the difficulties of dealing with the subject were so great as to make the duty altogether beyond his power at present; he thought it was far too difficult a subject for him to grapple with now. It appeared to him that it was pre-eminently a subject upon which His Honour and His Honour's advisers were in a position to make valuable suggestions, and he had no doubt that, with such aid, his successor would see his way to deal with the subject.

The Motion was put and agreed to.

His Honour THE LIEUTENANT-GOVERNOR would now submit the amendments of which he had given notice. He had already stated that, amidst other avocations, he had not had the opportunity of studying the Bill in all its details; and believing that the Hon'ble Members who formed the Committee were far better qualified to deal with the subject than he was, he should not have attempted to place on the paper amendments relating to matters of even secondary importance. But he felt constrained by the duty he owed to the people of the country, amongst whom he had spent the greater portion of his life, to move for the amendment of the Bill in respect of certain provisions which seemed to him to affect its very essence and substance in its practical working in this country. The Council would, he hoped, bear with him whilst he made a few general observations on the amendments of which he had given notice, and which he was obliged to refer to before submitting his first amendment to the Council. He had said that he felt himself precluded from submitting for the consideration of the Council anything that was not of vital and primary importance.

The Council were aware, as the hon'ble and learned Member in charge of the Bill had just explained, that in this country some subjects were governed by exact law; and in respect to other things the only rule was the rule of justice, equity, and good conscience. His Honour might say broadly that, with regard to the whole subject of contracts, the only law in this country had been the law of justice, equity, and good conscience. He was free to admit that the law which had hitherto been administered in that way must gradually take regular shape, but he would not admit that that shape should be the English law. He thought that there had been in many things far too great a tendency to drift into the English law, but he did not know that it had been so with regard to the law of contracts. It appeared to him that there were many peculiarities in the English law of contract; and he was glad to think that the Courts had refused to admit English law in such cases, and had substituted for it what they considered to be a broader and safer and better law. He had been asked what he meant by "equity." He would answer that question by first saying that he did not mean equity in the sense in which it was now received in England. In England, equity law was distinct from the common law; but was just as much fixed law as any other law. What he meant by equity was the primary sense of the word. If he was asked what he meant by that, he would say that, in strict law, there were fixed and rigid rules, whereby justice was done in nine cases, and injustice in perhaps the tenth. There was an English proverb which had recognized this fact—"Hard cases make bad law;" the meaning of which was that, if you dealt equitably with substantially hard cases, you made bad law because you break through the rule. The law

was rigid, and applied equally to all cases, and did not look to exceptional circumstances, so that in some cases there must be injustice if rigid rules of law were applied. On the other hand, equity was a rule which left the Court free to say, in a case where the ordinary rule of law would apply harshly—"We will not in this case administer the ordinary rules of law; we will take an equitable view of the case; we will make an exception in this particular case." That being so, if the law had now arrived at the stage at which justice, equity, and good conscience must cease to be the sole rule, we must be very careful what we substituted. We all admitted that this was a very important change, and that we must take care that, in making that change, while we made clear to the people what was the law of the country, we did not introduce any great and essential change likely to be injurious to them. The provision of the law to which, to some extent, he took exception was the simple and radical doctrine of this new law that whatever a man promised that he must perform. He gathered from the Report of the Select Committee that that simple proposition was not in the original draft. Be that as it may, the question which he submitted to the Council was, whether we were to maintain, in all its integrity and all its rigidity, the proposition that whatever a man had promised that he must perform. That was the broad and very important question which he asked the Council to decide. He was quite free to admit that it was a perfectly logical proposition; but he submitted that it was a proposition which could only be equitable in all cases if you supposed that all men and all women were equal; that they were equally clear in their heads; that they were equally foreseeing; that they were equally provident; that one man was not in a position to take advantage of the innocence or improvidence of another. But seeing that men were not equal either socially, morally, or intellectually; that they were not equally foreseeing or equally provident; that some were poor savages and others accute men of business; that there were vast differences between them, His Honour thought that a law which positively laid down such a broad proposition was likely to lead to great abuse and great injustice. It appeared to him that it would amount to this, that, however ignorant and low in the scale a man might be, if he once made a promise, he must perform it to the last drop of his blood and to the last day of his life. Although the original proposition might seem simple and harmless in reference to the majority of contracts, the practical effect of it would be that it would work very serious harm and very serious injustice in some cases. He was quite free to admit that, ordinarily, the rule was a good one, and that we could not take into consideration minute differences of intelligence and position between the parties to a contract. But when

those differences were extreme, it appeared to HIS HONOUR that we must make exceptions, and that it was proper to give the Courts power to make such exceptions. It was in that view that he put these amendments on the paper. He was bound to say that the law of contract as laid down in the Bill, was altogether a very hard law, not only in the proposition that whatever a man had promised he must perform, but it was also specifically laid down that a mistake of law on the part of one of the parties would in no degree excuse the performance of the contract: that a mistake of fact so made would in no degree excuse its performance: if both parties to the contract made a mistake, it would excuse the performance; but if one of the parties made a mistake of fact, however widely such mistake might affect the contract, however completely he might be in ignorance of the fact or the law, it would in no degree vitiate the contract. The law laid down that ignorance on a question of fact or law did not vitiate the contract. The law being a hard law—being a law which put the ignorant and inexperienced into the hands of the clever and experienced—the question was, should there be exceptions to this general rule? HIS HONOUR'S belief was that in all countries there would be found considerable exceptions made to the general rule. In England, there certainly were very considerable exceptions, which were well known to the Equity Courts, and were the subject of well-known chapters of Equity Law. England was a mercantile country, in which the people were of an independent character, who, by habit and the practice of hundreds of years, were independent and well able to look after their own interests. Yet, not only did exceptions in regard to certain cases exist there, but he wished to point out that, in the administration of English law, there was an enormous engine of equity which overruled the law—he meant trial by jury. Although we made a distinction between a Court of Law and a Court of Equity, real equity was found in the system of trial by jury under the Common Law. Every jury might and frequently did take upon itself the functions of a Court of Equity; it refused to carry out a contract to its logical end; it refused to give damages which by law a Court might be bound to give. He would suggest a case in point—the case of a good-looking swindler, who traded upon his looks and his rascality, and induced a girl with £100,000 to make a promise to marry him. If that girl broke her promise, no jury in England would give damages to the extent of £100,000, though no doubt the man lost that amount of money. In such a case the law would be equitably modified; for no jury would be found to give those logical damages. HIS HONOUR would remark, also, that there was a well-known and common verdict of a farthing damages, which did not mean that the contract was invalid, but sometimes said, in effect, "serve him right; the law is in his favour,

but we will give him the least possible damages that we can." He admitted that a very large proportion of small cases was not tried by jury; but he thought that the practice of the jury system permeated down to the county Courts. From the decision of those Courts there was no appeal, and a system of very rough justice was administered in some of those Courts. If, then, the strict and rigid rules of law were overridden to some extent in England, he thought that they ought not to be enforced in this country so rigidly as was proposed by the Bill. It was a country of great extremes, where there were men very great and powerful, and men very poor and ignorant: the people of this country, although they were sometimes well up to a bargain, and generally were marvelously faithful in the performance of bargains, were at other times quite ready to put their hands to anything if they were subjected to a certain pressure. HIS HONOUR would ask Hon'ble Members who had large experience if that were not so. He believed that there were many cases in which poor and ignorant men would put their names to documents without regard to the future consequences of their acts when a certain pressure was brought to bear on them. If, therefore, in England, there were exceptions to the rigid rules of law as to contracts, in a country like this, there ought to be much larger exceptions. It frequently happened in this country that a man made a bargain, the results of which he did not foresee: he might accept an inadequate consideration in order to get out of some pressing difficulty. He might bind himself for all time. He might yield to a certain pressure, to something which was not positive fraud or duress, but undue pressure: and having done so, the effect of his act would be that he bound himself to perform the contract to the last drop of his blood. HIS HONOUR was free to admit that, in practice, he very often did not so perform it; that he was induced to meet force by fraud; he signed his name to the contract, but his hope was that, when the time for performance came he would escape its performance. That was an unwholesome state of things. No doubt the argument cut two ways. He thought there was a great deal of truth in what was said by his hon'ble friend, Mr. Stewart, that people should not be loose in making contracts and in fulfilling them; and that they must be made to understand that, when they signed a contract, they were bound to fulfil it. In answer to that, HIS HONOUR would say that you must teach them gradually; you must not break them in too suddenly: you must not suddenly impose upon them this rigid law in direct opposition and contradiction to the habits and feelings of the mass of the people of the country. It was on these grounds that he hoped the Council would pause before they thought fit to affirm the principle of this rigid, this dangerous law in this country.

HIS HONOUR admitted that there were evils in the state of the law as it now stood; but it appeared to HIS HONOUR that there were great difficulties in a more rigid law also. He admitted that it might be said—"Why go on with a loose and undefined law?" But the question was, which was the greater evil. Was it a greater evil to allow the Courts, the Judges of which were appointed and chosen for their sagacity and learning, to decide these matters, or a greater evil to give them no discretion at all? Certainly, the discretion would amount to this, that the Judge might say, "this was not a just or a fair bargain, and I cannot enforce it in all its logical severity." That was the question which HIS HONOUR submitted to the Council. He should like to propose an equitable clause to the effect that, if the Court considered that the bargain was a hard and one-sided one, it should be able to mitigate the damages to any extent to which it thought fit. But he felt that if he did so, he might alarm the Council, and that they might think he proposed to do too much. Therefore, he did not attempt to go the length of that simple proposition, but he had put upon the paper a series of amendments which, without infringing the principle that a contract made must be performed, at the same time gave to the Court a certain power of mitigating the practical operation of the contract, and he had no doubt that the effect of the amendments which he proposed would go far to mitigate the severity of the law in contracts of a hard and one-sided character. This was a matter which intimately concerned the mass of the people of this country; and whether he should obtain the support of the Council or not, he felt it to be his duty to put his views forward by means of the amendments which he ventured to suggest as calculated to mitigate the severity of the law as it stood in the Bill.

Well, then, he came to the particular amendments he was about to submit to the Council. The first amendment was nothing more than an illustration which he proposed to add to section 16, which defined what was called "undue influence." He need not say anything about contracts induced by actual fraud, or actual duress, because they were not contracts and would not therefore be enforced. The further exceptions given in the Bill were very well known in English law as contracts made under undue influence: under that head of undue influence were grouped the exceptions which the Equity Courts of England had generally accepted. That being the case, there was a section in the Bill providing for cases of undue influence which, in its scope, was wide enough. The section ran thus:

"When a person in whom confidence is reposed by another, or who holds a real or apparent authority over that other, makes use of such confidence or authority for the purpose of obtaining an advantage over that other, which, but for such confidence or authority, he could not have obtained, then the contract would be void."

If that clause stood alone, if it were left to the Courts to put their own construction on that section, and to evolve out of it equitable rules, such as those evolved out of the law by the Courts of Equity in England, HIS HONOUR was not sure that he should wish to submit the amendment he had drawn, and which he was now about to propose. But his objection was that the illustrations given in the Bill were taken exclusively from the particular cases decided in England. Every one of the illustrations given was an English illustration: each of them was simply the essence of a well-known chapter of English equity law. HIS HONOUR'S apprehension was that there would be a drifting into English law; his fear was that, if this section was to go forth to the world with these English illustrations only, the effect would be that the Courts would consider themselves restricted to the English law as it was presented to them by the illustrations given, and they would not exercise that wise power of extending the effect of the section, which they ought to be entitled to exercise. If the Council were to adopt the system of illustration in the Bill, he thought it was almost cowardly to refuse to adopt an illustration known to the country and to take illustrations from English law only. In fact, throughout the Bill, the drift of the illustrations was too much to show the English rules of law, and not the application which should be made of the provisions of the Bill to the circumstances of this country. Therefore, in the first instance, HIS HONOUR would ask the Council to accept a simple Indian illustration of what was called "undue influence." He asked the Council to say that the case given in the illustration he proposed was a case of undue influence. In order that there might be no mistake, and that it might not be supposed that he asked too much, he would read the illustration:—

"A, a rich and powerful zamíndár, induces B, C and D, poor and ignorant ryots holding under him, to engage to grow certain produce and to deliver it to him for a term of twenty years, in consideration of an inadequate price for which no independent ryot would have so engaged. A employs undue influence over B, C and D."

HIS HONOUR would put it to the common sense of the Hon'ble Members of the Committee to say whether this was not a fair illustration of a case of undue influence. He by no means desired to point unjustly to a particular class, for in taking for his illustration the case of a rich and powerful zamíndár using undue influence over a poor and ignorant ryot, it seemed to him that he was merely taking a case which in this country might occur: and, in doing so, he no more libelled the whole class of zamíndárs than those illustrations taken from the English law libelled the whole class of fathers, lawyers and doctors. He did not understand that either fathers or lawyers or doctors

would consider themselves aggrieved by the introduction of those illustrations; and he trusted that the zamíndárs and other holders of land would agree that to put into the Code a simple Indian illustration would not libel the whole class. His Honour was sure that, although the mercantile members of the Council might naturally inclined to a strictly business point of view, although straightforwardness of character commended itself to them, he might appeal to them to say whether abuses did not exist in India as elsewhere, and whether they did not agree that the illustration was a fair example of undue influence. He had not attempted to define what were the cases in which undue influence might be said to occur. He had put an extreme case in order that no one might be able to deny that the illustration given was a clear case of undue influence. He had included in the illustration several elements from which undue influence might be inferred: first, the zamíndár, dealing with the ryot his inferior over whom he exercised influence, induced him to make a contract by his influence: again the price was supposed to be inadequate, it was assumed that it was not fair; it was a consideration such as an independent ryot would not accept: and, thirdly, there was an extreme case of excess of time. His Honour had supposed that the zamíndár bound this man down for the long space of twenty years. If the Council were willing to put an illustration of that kind; if they were not to refuse to introduce an Indian illustration, then he ventured to say that the case he had put was a fair one, and he hoped the Council would add that illustration to the illustrations attached to section 16, if the present illustrations were to stand there at all.

His Honour concluded by moving that the above illustration be added to section 16.

The Hon'ble Mr. Bullen Smith said:—"My Lord, in proportion as I attach great importance to this Bill, and consider it fitted to supply a great and felt want, would it have been to me matter of satisfaction to have seen it pass with the unanimous consent of this Council, and I the more regret disapproval of any of its provisions, when that disapproval emanates from so high an authority as His Honour the Lieutenant-Governor of Bengal. It is not my intention to follow His Honour in his criticism upon the Bill generally, although I think it too severe, as the hon'ble and learned Member in charge will, no doubt, in the course of his reply, take up His Honour's objections, and be able to show that the Bill is not altogether such a blood-thirsty measure as His Honour seems to fear. In reference, however, to His Honour's general complaint that the Bill is a hard one, I would merely say that a Contract Law must, from its very nature, be cast in a somewhat hard mould, and that any

attempt to eliminate this eliment of hardness from it, will certainly tend to mar its usefulness, and render it a weak, ineffective measure. Turning to the substantive amendment which His Honour has just proposed, I regret much that I cannot support it, and I earnestly hope that the Council will not permit any such illustration to appear in the Bill. When I first saw the List of business for to-day, I was disposed to think that I could concur in that one of His Honour's proposed amendments which would strike out altogether the illustrations to section sixteen; but it has been represented to me by a judicial officer to whose opinion I attach great weight, that well-chosen, clear illustrations to such a section have, in this country, a peculiar value, and that, without them, there is apt to grow up a mass of what lawyers call Court-made law, consisting of decisions given all over the country, differing in part from, and perhaps actually opposed to, each other. I therefore would now like to see at least some of the illustrations to section sixteen retained, and would not perhaps object to see His Honour's illustration placed beside them, if greatly modified. As that illustration now stands, I must, however, oppose it in the strongest manner, as it appears to me couched in language of extreme exaggeration, indeed—if His Honour will forgive me for saying so—almost sensational in its character, and if we bear in mind the relative positions and circumstances of the parties to the large class of agricultural contracts which such an illustration would affect, and which His Honour probably had in view, the illustration seems eminently calculated to bias the Court and lead up, so to speak, to a foregone conclusion. It appears to me, also, that the practical application of such an illustration would be matter of extreme difficulty and uncertainty. Look at the numerous elements introduced, the degree of each and all of which is to be weighed and estimated by the deciding party; and this brings me to the point where I consider lies the main difference between His Honour and myself. Throughout His Honour's remarks, there runs the idea, more or less strongly implied, that this new illustration will come into the Bill as a kind of special provision to meet exceptional cases; but I cannot think that its practical working would partake of this character, at least on this side of India. The conditions set forth by the illustration, namely, power and wealth on the one hand, ignorance and poverty on the other, are not in my opinion to be found only in the exceptional cases to which it might be supposed primarily to apply. On the contrary, these conditions attach in degree to almost all the relations of zamíndár and ryot: indeed, they depict what may perhaps not incorrectly, however unfortunately, be termed the normal state of things. I consider the admission of this illustration would constitute quite a blot upon the Bill, which is intended to be a law of contract, defining what a contract legally is, the parties to it, the breaches thereof, and other matters. If I understand the object of the Bill

rightly, it is intended to be an authoritative guide to those who may have to adjudicate upon contracts; but admit into it such a very leading and suggestive illustration as that proposed, and then half its good effect will be lost in respect of a vast mass of contracts, and the adjudicating party thereon will be very much left to become a law unto himself. I speak in the interest of no particular class, but in the interests of the Bill itself. If, as the wording of the proposed illustration would almost imply, His Honour is of opinion that there are classes of agricultural contracts which require special legislation, let them, after due enquiry and proved necessity, be dealt with separately, as has been done in the case of labour contracts for the tea districts. Such legislation might even hereafter come in as one of the chapters which have to be added to this Bill, but do not let us now hastily and prematurely put in anything which will tend—as to my mind this illustration inevitably would—greatly to curtail and weaken the usefulness of a measure, which is perhaps as imperatively called for as any which has of late years been presented to the Council."

The Hon'ble MR. STEWART said:—"MY LORD, it is with regret that I differ at any time from the Lieutenant-Governor, and I particularly regret that, on the present occasion, I differ from him widely and must vote against his amendments. I think that the Bill, as presented by the Select Committee, states plainly and correctly what does and ought to constitute a contract. I think also that it surrounds, and, if the amendments which stand in the name of the Hon'ble Mr. Stephen should be accepted, will still more effectually surround, its definition with all the safe-guards necessary or expedient in a Bill of general application; and it seems to me that it is for those who deem these safe-guards iusufficient, and believe that practical injustice may result from the working of the Bill as it now stands, to establish that position by the clearest, fullest and most conclusive evidence, before asking the Council to depart from the clear and definite principles of the measure—principles which seem to me the only reasonable basis on which the legislation we are now considering can proceed. For my own part, I should require a very clear case of necessity to be proved, a very clear practical injustice to be shown, before I should be satisfied that it is the duty of the legislature to instruct the Courts to assume, as a fact, that hard bargains are bargains made under undue influence, or before I should be willing to say that the simple fact that a bargain is a hard bargain is a consideration which should be taken into account in determining the compensation for its breach."

The Hon'ble MR. CHAPMAN objected to the illustration proposed to be introduced by His Honour, as he considered it was specially directed against a particular class and a particular interest. It indicated, as plainly as a finger-

post, that, in cases where a zamíndár and ryot were concerned, undue influence on the part of the former must be presumed. If His Honour would study the provisions of the Bill, he would see that the sections regarding coercion, undue influence, misrepresentation, and mistakes, &c., afforded ample protection against injustice and fraud. It seemed to him (MR. CHAPMAN) that if, as a rule, people did not know that they were liable to be compelled to perform that which they had pledged themselves to, then the sooner they were taught that they were bound to fulfil their obligations the better.

It was probable that, in Bengal, as in other parts of India, there were races which required special protection. For example, the wild and ignorant Sonthals were perhaps entitled to such protection. There might be other races and interests which required to be specially guarded. If there were, then he (MR. CHAPMAN) was of opinion that His Honour ought, after due and adequate enquiry, to legislate for such races and interests in his own Council, by (for example) directing that particular contracts should be ratified before officials, who should be obliged to see that the contracts were fair and reasonable.

He (MR. CHAPMAN) did most strongly object to such an illustration as was proposed, and directed against a particular class, being introduced into a broad and general Bill of this kind.

The Hon'ble MR. ROBINSON said :—" My Lord,—I shall vote unhesitatingly for the rejection of all the amendments proposed by His Honour the Lieutenant-Governor—except that for the omission of clause 1 of section 25; and that the Bill be passed as reported by the Select Committee, subject to the amendment put on the list of business by the Hon'ble Mr. Stephen.

" I earnestly trust that those Members who have not had an opportunity of mastering the measure now under discussion as a whole, and of observing the care, impartiality and ability bestowed on its every detail by the hon'ble and learned Member, will not lightly admit casual and partial amendments, specious and benevolent though they may at first sight appear. For I truly believe that His Honour's amendments contain just enough of a spirit of error to leaven with partiality, if not to corrupt, the whole measure. They will introduce great confusion and seriously detract from the usefulness of the Bill.

" The Bill is, in the main, what was transmitted from England, but it has been modified and vastly improved under the able and singularly lucid arrangement of the hon'ble and learned Member, and by the suggestions of those who have from time to time had their attention and powers concentrated on it.

"Adaptations have been introduced into the Bill, some of which are in the direction of mitigating undue stringency in the Law of Contract as applied to this country; and I am quite satisfied that we have gone as far as we possibly can go in a general law, with safety and without compromising the spirit and administration of this important branch of justice.

"Indeed, I believe that when this Bill, as it stands, becomes law, it will be found that in some of its provisions it is less rigorous than the law which is actually administered at the present moment in our Courts of justice.

"I hope His Honour will acquit me of any intentional misapprehension of his views of what the policy of law and the spirit of its administration in this country should be. But I must admit, judging from the casual but frequent glimpses which he gives us of his mind in this respect, that my impression is that he would sometimes almost prefer to have no written law at all—prefer to leave all judicial administration very much to what he thinks is equity and good conscience, rather than enact precise and certain general laws, with clear and really stringent legal penalties for their infraction.

"This, I think, is precisely the spirit which pervades the amendments before the Council, and their object is to introduce uncertainty and open contention in respect to matters which admit of being laid down with precision by law; and I feel sure that the certain effect of these amendments will be to facilitate—possibly suggest—unjustifiable disputes and dishonest evasion, if not downright fraud.

"I think that what I must term 'loose-law making' is especially out of time and out of place at present in India, where good faith is often short-lived between parties to contracts; and our Judges are not as a rule jurists.

"In no country do trade and the well-being of society suffer more from laxity of principle and practice as respects obligations and their fulfilment, than they do in this country. Here, then, if anywhere, the policy of the law should be certain and unequivocal, and the provisions for its enforcement impartially stringent. And more, the general effect of legislation on such a subject as this, should be educational. I believe the spirit of all the amendments to be absolutely the reverse of these objects.

"Now, I must not be misunderstood here. I have listened with great pain to opinions of a general and sweeping character expressed here in the heat of debate, in respect to the truthfulness and integrity of our Native fellow-subjects. I have no sympathy with—I repudiate as wrong—every and any general

imputation against them on these scores. I affirm without hesitation that, while the ethnical condition of the people is naturally somewhat different from our own—perhaps, not always intelligible to our alien understanding and sympathies—yet the country and its people are full of that mutual truth and integrity which are essential to social and commercial life. And I think that the truth and faith which are met with, even amongst the lower orders of those who come before our Courts of justice—always a deceptive theatre from which to draw our impressions of the real drama of life of a country like this—bear comparison very fairly with what we meet with, under similar circumstances, in many European countries. But we are not dealing with general propositions, but specific legislation; and I believe that the intelligent, educated and respectable Natives of India are the very last to seek, in behalf of any class of their countrymen, for any derogatory immunity from the stringent moral and legal sanctions which, in other lands and amongst other civilized people, cover obligations of the kind which will be governed by this Bill.

"I do not wish to trouble the Council with any special remarks on the individual amendments proposed by His Honour and their probable and derogating effects on the usefulness and certainty of this law. I doubt not that the hon'ble and learned Member will deal with them from a legal point of view when he takes up the debate. But I cannot pass over the first, namely, the illustration which His Honour wishes to add to section 16 of the Bill, as an example of 'undue influence' which shall render a transaction voidable. All the reasonable protection which His Honour seeks to provide against improper contracts, is, I believe, fully secured by the spirit and letter of the law as the Bill now stands, without holding up any special industry or any individual class as objects of legal suspicion, or any kind of contract as exceptionally open to dispute and cavil.

"His Honour evidently has in view contracts entered into between landed proprietors and their tenants, between agriculturists and those who advance on their crops, and between the capitalists who own indigo, sugar and jute factories and those who grow the raw material. In fact, his amendment would affect almost all the ordinary agricultural contracts of the country. And I gather that he thinks that the law should deal with these with a more or less partial eye and in the interest of the agriculturist and labourer. This is, I think, the object of the sensational, extra-judicial sketch which His Honour would introduce amongst the leading adjudicated cases which are cited in section 16 to illustrate the principle of this law.

"I do not sympathize with those who think English illustrations are out of place in a *lex loci* for India. I think, on the contrary, that it is far

better to employ illustrations untainted by a local or fanciful spirit, taken from the authoritative case-law of England, than to use uncertain India case-law, or, still worse, to invent illustrations whose facts have never been judicially sifted, and whose principle has never been legally defined.

"His Honour's illustration is, I think, objectionable from every point of view that can be imagined. And I would ask His Honour to endeavour to realise to his own mind the slough of uncertainty and contention, and of contradictory decisions, which must be waded through, both by parties to contested agricultural contracts, and by Judges, before anything like legal certainty and precision can be imparted to his comprehensive and contentious adjectives.

"But I think that there are two sides to this matter, and that, on the whole, the country and its poorer classes have by no means the worst of it in these things. The country, and more especially the cultivators who grow the raw material and lay out their labour on the cultivation of the land, benefit vastly by the outlay of capital on such industries as indigo factories in the provinces and by the readiness with which capital is advanced on their crops.

"Now, I believe that, not only the multiplication, but the very existence, of such centres of industry, and the ready supply of money for agricultural purposes, depend on the mutual good faith and on the certainty of obligations as between parties who are dependent on each other in such matters; and I am satisfied that these conditions can only be brought about by an efficient and absolutely impartial Law of Contract and its vigorous and certain administration. I am likewise satisfied that one of the great obstacles to the beneficial employment of capital is the prevalence of carelessness—if not of actual fraud—on the side of the lower orders of parties to transactions of the character which this Bill is intended both to enforce and relieve, if protection be needed. I would therefore, far rather see an occasional hard bargain—for I do not believe that they are by any means as many as is sometimes alleged by mere philanthropists—enforced, than tolerate uncertainty and encourage disputes by loose and discretional law, such as I believe would be the consequence of meeting the views of His Honour the Lieutenant-Governor.

"Now, I speak with diffidence as respects Bengal and the North-Western Provinces—though I believe that, even here, over-reaching is far from being the rule, and that the agriculturist has many compensating advantages, which may be set off against some apparent and occasional stringency in contracts to supply raw material, such as indigo and the like, for the use of factories.

"But in respect to Southern India, I have no hesitation in saying that there is no ground whatever for apprehension on this score, or for exceptional legislation. And I know that the cultivators, &c., have, on the whole, a very fair time of it. I am sure your Lordship will bear me out in this testimony to the general integrity which rules these matters in the Presidency you have so long and benevolently administered.

"In Ireland, and especially on the Continent of Europe, hard bargains as between tenants and their land-owners, and capitalists and labourers, are met with quite as frequently as they are in Southern India. Yet, no one would think of altering the general policy of the law to meet these exceptionable cases. And I believe that even greater disadvantages will arise in India by framing the contract law in such a manner as not to enjoin caution and firmly to discourage dishonesty and evasion.

"If there be any special industry in Bengal or elsewhere, the parties to which require exceptional treatment and protection, the right way to meet the case is to legislate specially on their behalf, and not to import an uncertain sound into the general legislation on the subject of contract.

"One other point only I would notice. It is amendment 8: I would only ask this Council, what right have we to dictate to the people of all India the period beyond which every running contract shall be deemed excessive in the eye of the law?

"I wish, my Lord, to add, in the most cordial and emphatic manner I can, my feeble testimony to what has fallen from the Hon'ble Members who have already borne witness to our hon'ble and learned colleague's good work on the Bill before the Council. I believe he has given to India the most lucid, simple, sound and workable law of contract, so far as it goes, which exists in any country and in any tongue. We shall long thankfully remember him by it, and I shall vote with great confidence that the Bill pass."

Major-General the Hon'ble H. W. NORMAN thought that the amendment before the Council should not be accepted, for he believed that the 16th section of the Bill was in itself sufficient to prevent the exercise of undue influence in the making of contracts even by zamíndárs over ryots. He also agreed that the wording of the amendment was likely to do harm, by inducing the belief that the ryots were to be protected against the zamíndárs in contracts entered into between them to an extent which no one in the Council could contemplate.

The Hon'ble MR. STEPHEN was very decidedly opposed, not only to this amendment, but to all the amendments of which notice had been given by his Honour the Lieutenant-Governor; and he expressed that opinion in spite of the observation which had been addressed by His Honour to the Hon'ble Mr. Robinson. It was quite clear that all the amendments proposed by His Honour hung together and were substantially one amendment, which, if put into plain language, would be nothing else than that, if the Court thought a contract was a hard bargain, it should have power to disallow it. His Honour would have proposed that, if he dared to propose it, or, as he said, if he dared to hope that the Council would accept it. As it was, this amendment was cut up into eight amendments, so as to enable His Honour to make eight speeches. That was the general observation which MR. STEPHEN had to make on the whole of the amendments of which His Honour had given notice, and he would add that he did earnestly hope that no substantive amendment would be made which would affect the Bill as a whole. When a Bill like this had been settled by the Select Committee after the most careful consideration; when it had been discussed and re-discussed word by word, it was like a finished picture; and a member proposing an amendment at the present stage of the measure was in the position of a man who came into the room where the picture had been painted, and said, after a most cursory view of it, 'there should be more light here,' or 'there should be more shade there.' But surely the painter, who had studied the subject over and over again, was the better judge of the two. MR. STEPHEN submitted that the proposed illustration, and in fact every one of the amendments of which His Honour had given notice, would change the whole character of the Bill from top to bottom. The position which His Honour had taken up was—"do not, in the name of equity, hold a man to a hard bargain." That meant nothing less than that the Council should put it in the power of every Munsif, every Subordinate Judge, every Tahsíldár in some parts of the country, and every Small Cause Court Judge, to give vent to his momentary feelings of compassion or sympathy by cancelling a bargain after it had been made. MR. STEPHEN could not imagine anything more unwise. He could not imagine anything more calculated to shake the whole system of law. The whole object of the Bill was to provide that people must perform bargains which they had made, with certain exceptions; and the amendments would override that law. Suppose a man came before a Judge and said—"I shall be ruined if I am held to this bargain; I made a mistake; I never meant to make this bargain." If the Judge were to enter into this, what probability was there that he would arrive at anything

like a sound conclusion? it would, in fact, be a system of giving judgment by sympathy. In framing the illustration which His Honour had proposed, he overlooked the possibility that the rich and powerful zamíndár might have advanced a large amount of capital to his ryots; and that it might be a matter of vital importance to him that the contract should be performed, because the performance of a whole series of contracts might depend upon the decision given in the case. If place were given to these considerations, all contracts would depend upon mere passion and sympathy. The law as it now stood provided all that was necessary in the way of exceptions to the rule that contracts must be performed. It distilled the decisions of the Courts of Equity into specific propositions. Agreements were not to be kept unless the persons entering into the contract were of sound mind, unless they had attained their majority, and unless they were entered into with free consent. The exception of majority operated in a large class of cases. Sound mind was defined by the Bill to be a state of mind in which a person at the time of making a contract is capable of understanding it and of forming a rational judgment as to its effect upon his interests. Free consent was consent not caused by coercion, undue influence, fraud, misrepresentation, or mistake. It was not to be caused by undue influence, which was defined to be—

"(1.) When a person in whom confidence is reposed by another, or who holds a real or apparent authority over that other, makes use of such confidence or authority for the purpose of obtaining an advantage over that other, which, but for such confidence or authority, he could not have obtained.

"(2.) When a person whose mind is enfeebled by old age, illness, or mental or bodily distress, is so treated as to make him consent to that to which, but for such treatment, he would not have consented, although such treatment may not amount to coercion."

In all these cases the contract was voidable. "Fraud," again, was widely defined; "misrepresentation" was widely defined. The rule as to "mistake" was perfectly just. If an agreement was set aside because a man said he had made a mistake, there would be an end to all certainty in contracts. A man contracted to deliver a particular quantity of jute: when the time for the fulfilment of the contract arrived, he might say "I made a mistake; I thought I could get the jute at a particular price: I now find that the price has risen: I cannot fulfil the contract." If it were said that the man should not be bound by the contract, because it was not a prudent one, how was the Judge to know whether the contract was a prudent contract or not at the time when it was made? The Council had heard a great deal about equity; and they were told that "hard cases made bad law." But His Honour stopped

short at that proverb: he had not perhaps heard of another proverb, the converse of the proverb quoted. It was this—"bad law made hard cases." His Honour said that there was an extremely stringent rule which was maintained by Courts of Law, and that there was another rule which was administered by Courts of Equity; and he then said that the rule which was called equity was the just rule. But MR. STEPHEN would submit that the rational way to proceed was to qualify the rule which was called "Law" by the rule which was called "Equity;" and when that was done, there would be no hard cases. Let us look at the chapter on Equity. If the Council would call to mind the amendment in section 25, of which he had given notice, they would find there a statement of the English equitable rule with regard to damages for breach of contracts, the real rule which His Honour ought to ask for. The amendment proposed was as follows:—

"*Explanation* 2.—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given."

That explanation spoke for itself. It was obviously nothing harsh to say that, if a man made a bad bargain, he ought to stand by it, in the same manner as he would stand by a fair and just one. That brought MR. STEPHEN to the particular illustration which was before the Council. He agreed so entirely with what had been said by the Hon'ble Members who had preceded him, that it was hardly necessary for him to say much on the subject. It appeared to him that an illustration was never good when it could not be framed without the use of adjectives; and it was much worse when the whole illustration was contained in the force of the adjectives. The whole gist of the illustration put by His Honour was contained in the words "rich and powerful," "poor and ignorant." If those words were left out, the illustration would read thus:—

"A, a zamíndár, induces B, C and D, ryots holding under him, to engage to grow certain produce for him in consideration of an inadequate price. The contract is voidable."

MR. STEPHEN was sure that His Honour would not be offended if he suggested an illustration in lieu of that which His Honour proposed. Suppose it was in these words:—

"C, a rich and powerful Lieutenant-Governor, of remarkable force of character, induces S, a Member of Council of feeble intellect, to sell him a horse for a totally inadequate price. C employs undue influence."

MR. STEPHEN would ask whether His Honour's proposed illustration would not be read by every Judge, as asserting that all zamíndárs are rich and powerful, and all ryots poor and ignorant, so that, if a zamíndár entered into a contract with his ryots for the cultivation of certain produce, he must have used undue influence.

The fact was, that the illustration really pointed, not to the question of undue influence, but, by implication, to the relative positions of zamíndárs and ryots.

MR. STEPHEN would now offer one or two observations in reference to His Honour's remarks about juries and Courts of Equity. His Honour said that Courts of Equity entered into the question of the adequacy of the consideration for a contract. MR. STEPHEN begged to differ from His Honour. He maintained that the rule laid down in the Bill was the rule of equity. The adequacy of the consideration was one of the elements to be taken into account in deciding whether or no a contract had been freely made, but was no ground in itself for setting a contract aside. As to the verdict of juries, and their taking an equitable view as to damages, that was a matter upon which he was entitled, he thought, to speak with some authority. Juries did, in some cases, give damages according to their view of justice. But those were exclusively cases of wrong. In cases in which one man slandered another, or seduced another man's daughter, or committed an assault, the widest possible latitude was left to the jury, who took a great variety of matters into account, such as the conduct of the parties, and their social position. But in cases of contract, they did not do so. Breach of promise of marriage was an anomalous case. Damages were given in such cases for wounded feelings and the person injured, and for other matters which cannot be precisely measured; but in common cases of contract, the jury are bound to give damages according to law, and not according to their own fancy. If in such a case the jury gave too small an amount of damages, it would be a cause for a new trial.

MR. STEPHEN had said everything that he had to say on the whole of the amendments which His Honour had proposed, and which, as he had said before, were all connected: some of them gave the Court power to use their discretion as to the adequacy of the consideration for a contract; another related to the duration of contracts. He could hardly imagine anything more dangerous than putting anything like such provisions in a Bill of this kind. He entirely agreed that, on particular subjects and in particular cases, there might be special legislation. But he would entreat the Council not to put into this Code provisions suitable to particular circumstances, merely because His Honour

the Lieutenant-Governor was struck with particular cases of inequality between contracting parties. If there was a necessity for special legislation for such cases, there should be most careful enquiry into the matter. Merchants, zamíndárs, and all classes interested in such legislation should be consulted; but if such cases were to be provided for in this Bill, it would be indefinitely postponed. Any suggestion put forward by any one, however high his station, that a contract extending beyond a term of three years was excessive, was a sweeping proposition which could on no account be entertained. His Honour, it was true, did except leases of immoveable property. Would it be said that a contract of partnership extending beyond three years was excessive and ought to be declared void; or that a contract for the construction of a work which lasted for more than three years was to be another exception; or that a contract for apprenticeship for more than three years should be void? MR. STEPHEN had given three instances of contracts extending over three years which occurred to him at the moment. Again, was it to be laid down that a contract not to practise as a physician, when the person sold his good-will, was to be void. MR. STEPHEN would repeat to His Honour what he had said before—"If ground for special legislation can be shown, legislate by all means; but do not ask the Council to include such provisions in a Bill of this nature."

The Hon'ble SIR RICHARD TEMPLE said that, as the amendment before the Council seemed likely to be lost, he did not feel disposed to enter into the question, although he concurred with what had fallen from his hon'ble colleague Mr. Stephen. But he must at the same time say that he did not think full justice had been done to the object which His Honour the Lieutenant-Governor had in view. That object was not confined to local or exceptional cases. SIR RICHARD TEMPLE happened to know that the evil sought to be dealt with had been greatly felt in many Provinces of the Empire: he presumed that the proposed illustration would affect some sixty or seventy millions of people. Two Hon'ble Members had spoken as if it was a question relating only to certain districts in the neighbourhood of Calcutta, and not to several Provinces of the Empire. Nevertheless, SIR RICHARD TEMPLE would venture to assure those Hon'ble Members that there were other Provinces besides Bengal which were similarly situated in respect to the question involved.

Although he had not had the good fortune to be a Bengal officer, yet he had once had the good fortune to serve under the Bengal Government as a member of the Indigo Commission, and the papers printed with the Report of that Commission showed that contracts of a kind similar to that pictured in the illustration were extremely common in many districts of Bengal. He hoped they were not so now. When the Commission sat in 1860, that class of contracts had

existed for many years unchecked by legislation and the administration of the law, and had brought about one of the severest disturbances ever known in Bengal. He mentioned this in justice to His Honour the Lieutenant-Governor and with reference to what might be considered the unsatisfactory replies given to His Honour's objections by several of his colleagues on the left. Now, it certainly appeared to him that the Select Committee had so carefully and comprehensively worded section 16 of the Bill, that they must have had in mind the very cases which His Honour contemplated when drawing up the illustration he had proposed; and that they must also have intended to meet such cases by the provision in section 23, which rendered void all contracts opposed to public policy. Now SIR RICHARD TEMPLE should not himself have much hesitation in including under section 16 some well-considered illustration of the nature of that which had been proposed; but at the same time he thought that any illustration was hardly necessary if the wording of the section was considered. The section said—

"When a person in whom confidence is reposed by another, or who holds a real or apparent authority over that other, makes use of such confidence or authority for the purpose of obtaining an advantage over that other, which, but for such confidence or authority, he could not have obtained."

He might say that most of the bad Indigo contracts which existed in those days would fall within the terms of that section. There were, no doubt, some unexceptionable contracts, but there were at the same time a great many bad ones. That such was the fact, would be clear from the report of the Indigo Commission of which he had the honour to be a member. Well, those bad indigo contracts no doubt would have been hit by the provision of section 16 to which he had referred; and he thought that the Committee, when drafting that clause, must have had that report in their hands. What the zamíndárs did was to exercise their influence over the ryots to induce them to grow indigo on the best possible lands—lands on which the ryot did not wish to grow indigo—and that, moreover, at prices which did not then pay the ryots, although they might have been fair originally years and years previously: this went on from year to year for a long period of time, until at last many parts of the indigo-growing districts burst into flames. He thought that provisions of section 16 were sufficient to meet such cases, and he thought it might be possible to adopt the illustration proposed by His Honour after purging out the objectionable adjectives. But if his hon'ble colleague, Mr. Stephen, still objected to the illustration, SIR RICHARD TEMPLE would not be prepared to vote for it, because it was a dangerous practice in legislation to introduce such important amendments at almost the last moment. On that ground, he was

hardly prepared to give his support to His Honour the Lieutenant-Governor in the face of the remonstrance made by his hon'ble friend, Mr. Stephen, although he deemed it necessary to place on record his concurrence in the valuable and important observations made by His Honour.

His Honour THE LIEUTENANT-GOVERNOR said that he should not detain the Council long as regards the general question under discussion. He entirely denied the proposition set forth by his hon'ble friend, Mr. Stephen, that "equity," in the sense in which HIS HONOUR put it before the Council, was simply the passion of the Judge. Equity, as HIS HONOUR put it, did not mean passion, but the deliberate opinion of a competent Judge. He thought that the superior Judges in the country might be regarded as reasonable and just men. The inferior Judges, too, were good in their way, and if they made mistakes, the law in this country had provided a system of appeal by means of which matters of that kind could at once be set right. It was not a question of fact, but of law, whether, in a certain case, a contract ought to be enforced or not: he said that, in such cases, we had a perfectly efficient means of setting right any mistake that might be made. Although English equity had now come to be a system of fixed law, it was originally simply the equity, in our Indian sense, of which the Council had heard so much. He believed that, in early days, the Court of Chancery was assumed to be the fountain of equity, and was not, as now, under the dominion of rigid rules of law. The people of England in those days in effect said—"We will not submit to be under the unmitigated dominion of these lawyers; we shall not give effect to hard law; we will allow certain great officers to interfere when they think that the law of the lawyers operates harshly and unjustly." That HIS HONOUR believed to be the origin of English equitable jurisdiction. Then, as regards the practice of juries, he had for a considerable period been daily engaged in taking the verdicts of juries in the most important cases decided in England, and he ventured to state his belief that the general rule whereby juries estimated damages was not the two and a half years' income rule to which the Hon'ble Member had referred. The practice, he rather thought, was for each juriman to estimate the damages to which he thought the plaintiff was entitled; these sums were added together and the total divided by twelve; that was the measure of damages awarded.

The Hon'ble Member had said that the upshot and object of the amendments before the Council was simply to give the Court power to absolve a person from performing a hard bargain. HIS HONOUR had opened his heart to the Council, and had explained to them the proposition which he would, if he had

dared, have asked them to accept; but he had by no means asked the Council to accept an amendment so broad in its terms as that which had been described by the Hon'ble Member, but had confined himself to certain specified cases. They were all agreed that there must be certain exceptions to the general rule; and the only question to be decided was, how those exceptions were to be defined. The discussion had gone far abroad from the proposal which he now submitted; he could not complain that it had been so, for he himself had entered on the general subject, but he would remind Hon'ble Members what was now the proposition before them. The question for the consideration of the Council was simply whether a certain illustration should be added to the illustrations appended to section 16 of the Bill. He was perfectly willing to admit, with his hon'ble friend Sir Richard Temple—whose testimony was very gratifying to HIS HONOUR on this occasion—that the illustration was meant to point to cases which might really occur and which certainly had occurred. He felt that the section of the Bill itself was large and roomy enough for the administration of broad and equitable justice; but, after what he had heard, he might say that he still had the greatest fear, that the effect of the section with the illustrations at present appended to it would be to limit the application of the section to the particular cases recognized by the English law. The Hon'ble Member in charge of the Bill had told the Council that the illustrations were taken from the English law, and HIS HONOUR'S great fear was that if section 16 went forth with illustrations which were in fact an embodiment of the cases which the English law recognized as instances of undue influence, there would surely be the greatest danger that, with the constant tendency to drift into English law which was so palpable, the effect would be that the Courts would accept those classes of cases, and no others, as cases of undue influence. Therefore he said that those illustrations being purely English illustrations, and not so much explanatory, as limiting illustrations, the Council should add one or two reasonable illustrations taken from Indian practice; and he submitted that the illustration which he proposed for the consideration of the Council was a reasonable illustration. He had not been convinced that it was unreasonable. On the contrary, some of the observations which had fallen from Hon'ble Members had led him to the belief that the illustration was a practical illustration. His hon'ble friend, Sir Richard Temple, had told the Council that such cases were not only known, but were of common occurrence at no very remote period: he had told the Council that he had known of hundreds and thousands of such cases. There might not be many such cases in Benga proper now-a-days, it was true; matters had much improved; but such cases might any day occur, and he therefore thought he might reasonably ask the Council to include such an illustration amongst those under section 16. If it

were objected that the illustration pointed to a particular class, he would say that it was not reasonable that it should be rejected on that account any more than English illustrations pointing to particular classes.

Then, his hon'ble friend, Mr. Bullen Smith, went further than that. He told the Council, not only that such cases might occur, but that undue influence was the normal relation between zamíndár and ryot. HIS HONOUR was quite sure that no man had greater experience regarding the tenure of land than his hon'ble friend, and when he told the Council that undue influence was the normal condition under which ryots lived, HIS HONOUR was surely entitled to give great weight to the statement.

[The Hon'ble MR. BULLEN SMITH explained that he had said "influence," not *undue* influence.]

His Honour THE LIEUTENANT-GOVERNOR continued—he thanked the Hon'ble Member for the correction; he accepted it at once. The Hon'ble Member was perfectly right; all zamíndárs did not use their power improperly; then he would say "influence." The influence which a father, or a guardian, or a doctor, or a lawyer exercised over a young man or an old and feeble man, or over a young woman, was not generally "undueth" influence; but as they exercised influence, the law said that if it found that the bargain which they made was a hard one, then it would hold that the influence which was exercised was "undue influence." When there were two parties, and one had great influence over the other, the law would assume undue influence when the bargain made was a hard one. That seemed to HIS HONOUR to be the principle of the English law, and that was what he desired to place before the Council in the illustration which he had submitted for their consideration.

His Excellency THE PRESIDENT said that he would avail himself of this occasion to express his cordial concurrence in the greater part of the observations which had fallen from His Honour the Lieutenant-Governor, and in the general scope of the illustration which he had proposed. HIS EXCELLENCY agreed with His Honour entirely and thoroughly that a Bill for this country, for India, should be furnished with illustrations which touched on subjects which were familiar to the people. It had been observed by the Hon'ble Mr. Stephen that to single out a particular class of men and a particular class of contracts by way of example, was to throw a certain amount of obloquy upon them. That, perhaps, might be the case if the illustration was of a decidedly irritating character. But if an illustration suitable

to the country was to be selected, it appeared to HIS EXCELLENCY that it must be selected from the field of that class of contracts in which undue influence or abuse was most likely to exist. There were two classes of contracts in which this description of abuse was most likely to occur: one of these classes were contracts by which persons bound themselves for an exceptionally long or unlimited period of time to give their labour, especially to planters and zamíndárs; and the other was a class of contracts by which a person engaged to raise a particular description of crop for an excessive number of years, and agreed to give the yield of the crop at stated prices. He thought that an illustration properly drawn and bearing on this question, might, most properly and advantageously, be introduced.

With reference to the abuses of contracts for labour, HIS EXCELLENCY presumed that those abuses had been provided for by special legislation which had the effect of protecting the poor, helpless and ignorant from inequitable and unjust contracts. But there was no special legislation which affected the second class of contracts, in which the poor engaged to produce a particular description of cultivation and engaged to deliver the produce at fixed prices for excessive periods of time. He thought, therefore, that an illustration properly worded, with reference to this particular class of contracts, might be advantageously introduced into the law. The Hon'ble Mr. Bullen Smith had observed that it was not right in a general law like this to interfere with the relations between capital and labour, wealth and poverty, by insinuation; and that the proper way to deal with this question was by special legislation. No doubt, special legislation might be more appropriate; but it seemed to HIS EXCELLENCY that those questions were of a very delicate and difficult character. He therefore did not abandon the hope of introducing into the Bill an illustration of this kind, properly couched and in a better form, and he thought that such an illustration might have something of the effect of special legislation of the kind suggested. He apprehended that, if a Bill of this kind went forth to the country without any reference to the descriptions of contracts under which it was alleged abuse and oppression had been carried on, he was not without apprehension that the publication of such a law without some illustration such as had been alluded to, might lead the poor to suppose that no amount of pressure exercised by unremunerative contracts, would have any effect in vitiating them; and he was not without apprehension that those who exercised oppression and took advantage of their position in reference to the poor, might think that this law recognized their doings and, in fact, vested them with greater power, and the consequence might be that they

might hope to be able to carry on the practices previously complained of with greater safety. HIS EXCELLENCY therefore considered that an illustration of that kind might be of the greatest advantage: it might give confidence to the poor and weak and inspire the rich and powerful with prudence, and he would therefore give his warm concurrence to an illustration couched in a judicious form. At the same time, he did not think that it would be possible to adopt the illustration as it stood, as its language was of a decidedly irritating and provocative character: and if His Honour the Lieutenant-Governor persevered in presenting the illustration in its present form, HIS EXCELLENCY would be under the necessity of voting against it. But if His Honour would substitute for his amendment an illustration in a modified form, HIS EXCELLENCY should be glad to vote for it.

His Honour THE LIEUTENANT-GOVERNOR then proposed to substitute the following illustration for the amendment which he had at first proposed:—

"A, a zamíndár, by his influence, induces B, C and D, ryots holding under him, to engage to grow certain produce and to deliver it to him for an excessive term of years in consideration of a price obviously inadequate. A employs undue influence over B, C and D."

His Honour entirely respected the motives which induced his hon'ble friend, Mr. Bullen Smith, to object to the use of the terms "zamíndár" and "ryot." If these were times when blood was hot and faction was strong, HIS HONOUR would have considered those motives as sufficiently binding upon the Council. But we lived in happier times; and he believed that an illustration, like the one he had last proposed, might be introduced into the Bill with perfect safety. We took advantage of a time when the relations between the zamíndárs and ryots were amicable, to prevent anything of the kind which occurred before, taking place again in future. It seemed to HIS HONOUR that, having before them the great evils of former days, the object of the Council should be to point to the objectionable nature of inequitable contracts between particular classes. As in the English examples which were given, there was a connection and dependence and a habitual state of influence between the parties to the contracts, so in the Indian example which was proposed, there was a habitual state of influence and inter-dependence between the ryot and the zamíndár; and he wished to fix the fact that when, under such circumstances, a zamíndár made a hard and inequitable bargain, the contract should be held to be vitiated by reason of undue influence.

The question being put,

The Council divided—

AYES.	NOES.
His Excellency the President.	Hon'ble Mr. Stephen.
His Honour the Lieutenant-Governor.	Major General the Hon'ble H. W. Norman.
Hon'ble Sir R. Temple.	Hon'ble Mr. Inglis.
Hon'ble Mr. Ellis.	Hon'ble Mr. Robinson.
	Hon'ble Mr. Chapman.
	Hon'ble Mr. Stewart.
	Hon'ble Mr. Bullen Smith.

So the amendment was negatived.

His Honour THE LIEUTENANT-GOVERNOR said that his first amendment having been lost, he would ask the Council to omit from section 16 the English illustrations, which would have the effect of very much limiting the operation of the section. The section, he thought, was a good one; but if those illustrations were allowed to stand while no Indian illustration was admitted, they would greatly lead to limit the section to the particular cases laid down by the English law. HIS HONOUR appealed to the Council to leave out the illustrations, the omission of which could do no harm, as a moderate concession to the views upon this subject which he had submitted to the Council.

The Hon'ble MR. STEWART said that, inasmuch as the illustrations seemed to him duly to illustrate the proposition of the text, and as it was desirable that the Courts should be furnished with some illustrations for their guidance in a section like section 16, he thought the illustrations ought to be retained.

The Hon'ble MR. CHAPMAN was of opinion that, after the discussion that had taken place, the most impartial course would be to omit all illustrations. His reason for voting against His Honour's original illustration was that he thought it was markedly directed against a particular class. In his (MR. CHAPMAN'S) opinion, the Bill already provided for cases in which agricultural, in common with other descriptions of contracts, ought to be set aside. If he had thought otherwise, he would have supported His Honour; but such being the case he did consider, especially after what had passed, that it was just possible, if the other illustrations were retained, and His Honour's

excluded, that the Courts might think the section relating to undue influence was not applicable to these agricultural contracts, which no doubt were of the most frequent occurrence. He thought, therefore, the fairest course under the circumstances would be to omit all illustrations, and he would vote accordingly.

The Hon'ble MR. ROBINSON said:—"My Lord, I would maintain the illustrations; they are needed by our judicial officers to direct them to the principle of the text of the law. I have already said that I believe the authoritative rulings of English case-law are by far the best that can be used in a law of this kind, and the discussion which has already taken place on the subject of the proposed interpolation which has now been negatived, only shows how important it is that they be retained. I think that the proposed omission of the illustrations will damage the perspicacity of the law on the ground which is not fair."

The Hon'ble MR. ELLIS said that had there been no discussion at all on the point on which the Council had just come to a determination, he should then have said that it was quite unnecessary to omit the illustrations which stood under section 16; for the illustrations would have been taken in their proper sense as illustrating and not limiting the operation of the section. Or, had the illustration first proposed by his Honour the Lieutenant-Governor been put to the vote and negatived, MR. ELLIS would still have said that, as the amendment had been rejected for obvious reasons, namely, its pointed invidiousness to a certain class of the people, it was not necessary to omit the other illustrations; for there were reasons for omitting His Honour's illustration, as first proposed, without omitting the illustrations which stood in the Bill. But now that the Council had deliberately rejected an illustration which they were all agreed would have properly been an illustration of undue influence, he thought it would be prudent to omit all the illustrations which stood in the section; and he would therefore support the motion before the Council.

The Hon'ble MR. STEPHEN thought that the illustrations explained the section and should stand. He could not imagine why they should be omitted, because the Council had thought fit to reject some other illustration that had been proposed.

His Excellency THE PRESIDENT said 'that, after what had passed, it appeared to him that the retention of the illustrations would rather obscure than explain the intention of the section, and he would therefore vote for their omission.

The question being put,

The Council divided—

Ayes.	Noes.
His Excellency the President.	Hon'ble Mr. Stephen.
His Honour the Lieutenant-Governor.	Hon'ble Mr. Robinson.
Hon'ble Sir R. Temple.	Hon'ble Mr. Stewart.
Hon'ble Mr. Ellis.	Hon'ble Mr. Bullen Smith.
Major-General the Hon'ble H. W. Norman.	
Hon'ble Mr. Inglis.	
Hon'ble Mr. Chapman.	

So the amendment was carried.

His Honour THE LIEUTENANT-GOVERNOR then moved that clause one of section twenty-five and the corresponding illustration (*b*) be omitted. He said that the clause to which he objected, and which he proposed to omit, provided that a contract without any consideration would be valid, if only it was in writing and had been registered. That was a provision which HIS HONOUR thought would not be found in the Contract Law of any country in the world. It amounted to this that if a man was induced to make a promise, although he had received no consideration for that promise, if the promise was a written one and had been registered, he should be bound by it. That was contrary to the principles of the Roman Law, which was the foundation of modern Civil Law, and contrary to the practice of almost every country in the world. He had thought that no consideration was very much the same as a totally inadequate consideration. But it had been suggested to him as an overwhelming argument that it was always the practice of the Native lender to say to the borrower—"You must register the bond before you get the money," and after the bond had been registered, he might say—"Now you have registered the bond, you shall not have a farthing of the money."

[The Hon'ble MR. STEPHEN said that that would be a case of fraud.]

His Honour THE LIEUTENANT-GOVERNOR continued:—It would be on the other party to prove the fraud. On the whole, therefore, he thought that, as this provision was a most unusual one, and one not to be found in the Contract Laws of other countries, it ought to be struck out.

The Hon'ble MR. STEPHEN did not attach much importance to this provision, which was simply intended to represent the English rule that,

when you made a contract, you need not prove the consideration. He thought it was a superfluous provision, and he would not object to its omission.

The Hon'ble MR. CHAPMAN would have no objection to the omission of this provision if family affection were held to be a sufficient consideration in certain cases, such as a person undertaking to refrain from service in consideration of being adopted as a son. If cases such as that were provided for, he would have no objection to consent to the omission of the provision under discussion.

The question being put,

The Council divided—

Ayes.	Noes.
His Excellency the President.	Hon'ble Sir R. Temple.
His Honour the Lieutenant-Governor.	Major-General the Hon'ble H. W. Norman.
Hon'ble Mr. Stephen.	Hon'ble Mr. Stewart.
Hon'ble Mr. Ellis.	Hon'ble Mr. Bullen Smith.
Hon'ble Mr. Inglis.	
Hon'ble Mr. Robinson.	
Hon'ble Mr. Chapman.	

So the amendment was carried.

The Hon'ble MR. STEPHEN then moved that the following be introduced as clause 1 of section 25 :—

"(1) it is expressed in writing and registered under the law for the time being in force for the registration of assurances and is made on account of natural love and affection between parties standing in a near relation to each other; or unless"

The Motion was put and agreed to.

His Honour THE LIEUTENANT-GOVERNOR then moved that the following words, after the word "promises," in line 3 of section 37, be omitted :

"or make compensation to the promisees for the non-performance of them."

He hoped the Hon'ble Member in charge of the Bill would not object to the omission of those words: their omission would only have the effect of clearing the ground for the next amendment.

The Hon'ble MR. STEPHEN thought the words were mere surplusage, and he would not object to their omission.

The Motion was put and agreed to.

His Honour THE LIEUTENANT-GOVERNOR then moved that, in section 73, line 6, the word "reasonable" be inserted before the word "compensation." He said that this amendment was also one to which he hoped the Hon'ble Member in charge of the Bill would not object—not that he hoped the insertion of the word "reasonable" would be of any considerable practical effect, but he wished to mark the fact that the damages which the Court gave for breach of a contract should be "reasonable" rather than "arithmetical;" that all the circumstances attendant upon the making of the contract should be taken into consideration; and that the Courts should be empowered only to give that kind of reasonable compensation which a reasonable jury would award for a breach of contract.

The Hon'ble MR. STEPHEN said that he should certainly oppose this amendment, because His Honour the Lieutenant-Governor attached so much importance to it. If you gave a reasonable definition of the word "reasonable," the effect of the amendment would come to very little. The words of the section were taken from the English treatises on the subject, and formed the only rule which you could lay down in estimating the loss which a party suffered from the breach of a contract. The cases given did really supply the rule by which the Court was to estimate the damages; but in many cases the damages must, from the nature of things, be arithmetical. No Court would give damages for ten years at once; it would consider what loss or damage accrued to the party in the usual course of things from the breach of contract. The inconvenience could be remedied by rescinding the contract with one party and making it with another. MR. STEPHEN objected to the amendment, because it formed part of the subsequent amendments on the paper.

His Honour THE LIEUTENANT-GOVERNOR said that the object of his amendment was to enable the Courts to test the reasonableness of compensation to be awarded. The Courts, it appeared to him, had sometimes given excessive and unreasonable damages, and they had been led to do that by looking at the arithmetical result of the breach of contract. All he wished was that the Courts should be told that, when they came to consider the amount of damages to be awarded for the breach of a contract, they should consider whether the compensation they proposed to award was reasonable or unreasonable, all things being taken into consideration and the arithmetical calculations being checked by common sense.

The question being put,

The Council divided—

Ayes.	Noes.
His Honour the Lieutenant-Governor.	His Excellency the President.
Hon'ble Sir R. Temple.	Hon'ble Mr. Stephen.
Hon'ble Mr. Inglis.	Hon'ble Mr. Ellis.
	Major General the Hon'ble H. W. Norman.
	Hon'ble Mr. Robinson.
	Hon'ble Mr. Chapman.
	Hon'ble Mr. Stewart.
	Hon'ble Mr. Bullen Smith.

So the amendment was negatived.

His Honour THE LIEUTENANT-GOVERNOR said that he now came to another set of amendments. The amendments which he first submitted to the Council had for their object to show whether a contract should, under certain circumstances, be held to be void: the question which he now proposed for the consideration of the Council was the question of damages. His object in proposing these amendments was to give the Courts that amount of reasonable discretion which was exercised as to the amount of damages by juries in England. He would again take the case of the good-looking scoundrel and the young lady with £100,000; and he would say that the consideration in that case must be held to be most inadequate. In that case, the Court or jury might say "the man by his good looks and bad arts has induced the young lady to make a promise of marriage, and he has thereupon taken out a license for the marriage and bought a new coat; he has suffered damages to this extent, and we don't think he has suffered any other damages: we will therefore take into consideration the damages he has suffered and give him a decree for damages to that extent only." He would first move amendment six, namely, that the following clause be added to section 73:—

"When the consideration for the agreement was, at the time when it was made, very inadequate, below the market-price, or such as would not have induced a prudent and independent man to make the agreement, the circumstance may be taken into consideration in determining what compensation for breach of the contract is reasonable."

The Hon'ble MR. STEPHEN observed, that he had said almost all that occurred to him upon this subject, when speaking upon the first illustration which His Honour the Lieutenant-Governor had proposed to add to section 16. The amendment now before the Council put the matter in a broader way. The only illustration which His Honour had put was that of a case of breach of promise of marriage, but if the Council would look into the matter, MR. STEPHEN thought they would perceive that such a case hardly illustrated the subject at all. An action for a breach of promise of marriage was hardly an action for a breach of contract, but an action for wrong. The cases to which the provision before the Council would apply, were purely cases of contract. A man contracted to sell goods at a certain price, and failed to do so. Under the amendment as it was drawn, you would put it into the power of the Court to say, with the party who had broken the contract, that the consideration was very inadequate. You would set the Court to consider whether the consideration was adequate or not, and whether the contract was one which a prudent and independent man would have made. It would put every contract which came before the Court under the arbitration of the Judge: the Judge was to say whether the man ought to have made the contract, and it would really put an end to all liberty of contract whatever. It put a degree of power into the hands of the Judge which MR. STEPHEN could not consent to give.

The Motion was put and negatived.

His Honour THE LIEUTENANT-GOVERNOR had not much hope after what had passed that the last amendment would have been accepted, but he must beg the special attention of the Council in regard to the next two amendments which he had upon the paper. It seemed to him absolutely essential that there should be some limit of time with regard to the duration of contracts: it was almost impossible that there should be no law upon that point. It almost amounted to a question whether, as the law stood, and as it would stand under the Bill, a man might contract for slavery, that was to say, make a contract of service for life. If a man might not contract for life, under the rule that it would be a contract contrary to public policy, then might he contract for fifty years, or thirty years, or twenty years? He thought it should be permitted to the Courts to say: "This is an unfair and inequitable contract, and we cannot enforce it;" but there was nothing in the Bill to prevent the Courts enforcing such a contract as that. The Courts might say that a contract for service for life or for fifty years was contrary to public policy; but would they be justified in saying so in the case of a contract for twenty years, or for twelve years, or for five years? There was nothing to settle that question.

HIS HONOUR was sanguine that, in this matter, he would have the support of his hon'ble colleague Mr. Bullen Smith, who knew the people of this country, and how easily they were induced to enter into unreasonable contracts. Contracts for an unreasonable period, HIS HONOUR thought, ought not to be enforced in all their literal strictness; it was a very serious thing that they should be enforced. As it appeared to him that this point had not been taken into consideration by the Select Committee, he thought that the Council was bound to give the matter their attention rather than that they should do injustice; and he would therefore ask every Member of the Council to take the matter into his serious consideration, and to come to the decision which seemed to him to be just. His amendment consisted of two parts; one was that, in the case of contracts for excessive terms, the Court, in assessing damages, should be allowed to take the term of contract into consideration. That was the first of the two amendments which he now moved, and it ran as follows:—

"When the term over which the obligation to perform the contract extends is unusual or excessive, the circumstance may be taken into consideration in determining what compensation for breach of the contract is reasonable."

The second amendment which he had to propose was a more difficult proposition, inasmuch as it was more definite, although we had not had the opportunity of taking advice upon the subject, he was not quite without hope that the Council would consider it a reasonable proposition. The second amendment was—

"In contracts for the lease of immoveable property, no term is excessive. In all other contracts, when the term for the performance of the contract extends beyond three years from the date of making the contract, such term shall be deemed to be excessive, unless it is shown to be reasonable and usual in contracts of a similar character."

He believed that in by far the greater portion of contracts relating to labour or service or to moveable property, they ought to be, and would be, performed within three years, and that those the performance of which extended over a longer period than three years were exceptional. He by no means proposed to make such contracts illegal; but all that he desired was that the Courts should consider them as exceptional, unless it could be shown that such contracts were of a usual kind. The Hon'ble Member in charge of the Bill had given three instances of contracts which usually extended over a period of three years. The first case he put was the case of a contract for marriage. HIS HONOUR thought that, if a man promised to marry a lady five years hence, the performance of the contract should not be enforced. Then, with regard to contracts of partnership, HIS HONOUR did not

think that a partner was usually bound down for more than three years; he thought that a partner was always at liberty to dissolve partnership on giving notice. His hon'ble friend, Mr. Bullen Smith, would be able to tell the Council if that were not so. The other instance of a contract extending over three years which had been given was the case of the sale of the good-will of a profession; this the Council would admit was an exceptional one, as sales of that kind were very rare in this country. On the whole HIS HONOUR was firmly of opinion that contracts for excessive terms should be dealt with in the way he had proposed in the two amendments which he had read to the Council.

The Hon'ble MR. STEPHEN said that it was quite obvious that His Honour's imagination must be struck by some case of long personal service, to induce him to propose a particular rule of this kind for all cases. He asked the Council to make a provision of this kind, and showed that it might be useful to prevent contracts of long personal service: his whole argument came to this form of long personal service. He admitted that if the term of contract was long enough, it might amount to slavery, and that a contract for slavery would be void as being opposed to public policy. If, on the other hand, the contract was a case of bad bargain, and was made under great disadvantages, it would be a case of undue influence. Suppose a man made a bargain to serve another for ten years, and failed to keep the contract, the damages in such a case would not be calculated at what the wages for ten years would amount to, or the amount of profit which the master would derive from the ten years' service; but the damages would be calculated rather on the amount of inconvenience that he had suffered, and the expense that he had been put to in getting the services of another man. The Committee did not deal with the subject of specific performance: they did not say that the man must work to the last drop of his blood; what they proposed was that the breaker of a contract must pay that amount of damages which naturally arose in the usual course from the breach of contract. If an arbitrary limit was put, the Council would be acting in the dark and would not know what they were doing.

The Hon'ble MR. BULLEN SMITH said that, as His Honour had appealed to him, he would say that he did not hesitate to declare that the amendments proposed allowed to the Courts an amount of discretion which he should be sorry to see given to many of the minor Courts of the country. With regard to the duration of contracts, he himself would not object to the number of years that was proposed; but it appeared to him that the Council were not in a position to come to an authoritative conclusion in the matter. He knew of no contracts which went beyond five years; and contracts for twenty years were absolutely

beyond his knowledge. That was his information on the subject at present; but as he had said before, he did not think the Council were in a position to come to a determination upon the matter.

The Hon'ble MR. STEWART said that he was not in a position to say that three years was the extreme limit within which a contract should be considered reasonable. He thought this was a subject on which a great deal of evidence would be required.

The question being put,

The Council divided—

Ayes.	Noes.
His Excellency the President.	Hon'ble Mr. Stephen.
His Honour the Lieutenant-Governor.	Hon'ble Mr. Ellis.
Hon'ble Sir R. Temple.	Major-General the Hon'ble H. W. Norman.
	Hon'ble Mr. Inglis.
	Hon'ble Mr. Robinson.
	Hon'ble Mr. Chapman.
	Hon'ble Mr. Stewart.
	Hon'ble Mr. Bullen Smith.

So the amendment was negatived.

His Honour THE LIEUTENANT-GOVERNOR'S motion was then put that the following clause be added to section 74:—

"In contracts for the lease of immoveable property, no term is excessive. In all other contracts, when the term for the performance of the contract extends beyond three years from the date of making the contract, such term shall be deemed to be excessive, unless it is shown to be reasonable and usual in contracts of a similar character."

The Motion was put and negatived.

The Hon'ble MR. STEPHEN said the first amendment which he had upon the list was simply with the object of consolidation. There was an Act for avoiding wagers, Act XXI of 1848, which had been repealed and re-enacted by this Bill; and Act VIII of 1867 made an exception to that Act. It was proposed to put that exception into a section, and to repeal the Act by the

schedule. The effect of the amendment, which was as follows, would be to strike out a single Act from the Statute-book:—

"That Act VIII of 1867 be placed in the schedule of repealed Acts, and that after, and as part of, section thirty, the following be read:

'This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse-race.

'Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294A of the Indian Penal Code apply.'"

His Honour THE LIEUTENANT-GOVERNOR said he must oppose this proposal by every means in his power. He regarded it, he might almost say, with horror, as a piece of class legislation suddenly proposed without any due notice. He did not mean to express any opinion as to the merits or demerits of horse-racing. He believed there was no pretext whatever for suggesting that, in this country, it led to improvement in the breed of horses or anything of that kind. It was an amusement—a very innocent amusement—to a good many people; an amusement far from innocent to a great many other people who were led into gambling and bad courses. On the whole, he believed that the evil, a good deal, preponderated over the good. Be that as it may, he objected to special legislation to legalize this particular form of gambling by excepting it from a rule which affected gambling in general. And what he most especially and emphatically objected to, was the grossly partial and one-sided character of the clause which would legalize the gambling of the rich whose stake was five hundred rupees and upwards, but left out in the cold the gambling of the poor whose stakes were not so high. The result of this clause would be that, if poor men got up a donkey-race, it would be beyond the pale of the law; but if rich people subscribed large sums to a horse-race, the law would aid them. That was on a par with the justice which, in England, shut up the small gambling-shops, but left Tattersalls untouched: he for one would have no part in such an unfairness.

Turning, again, to the general question, he by no means proposed to put down horse-racing. Excepting certain forms which came under the Penal Code, any one who chose might pay their money and horse-race in a decent manner to their heart's content, for anything he was now going to say; but he did most strongly object to that which was the sole object of the proposed clause, namely, to enable those who could not or would not pay down their money to gamble on credit—on tick, to use a vulgar expression. The effect of this enactment

would be that, if the promoters of such affairs were not able to get them up upon ready-money principles, they might induce rash people to put down their names, relying on the law to enforce such promises although, by the general policy and terms of the law, such promises could *not* be enforced. It must be distinctly understood that the general provision was that such promises were not a ground of action, and HIS HONOUR thought that to make this exception in favour of one particular class of transactions was most undesirable. He thought that horse-racing on credit, as well as any other such gambling, was in every way to be discouraged and not be encouraged by this special provision.

Under all the circumstances, then, HIS HONOUR did confidently hope that this Council would not allow this great law to be disfigured by what he again must call this shocking piece of class legislation: there should not be such a blot on this great Code of Contract. We should not by a sudden surprise allow such an excrescence favouring the rich and influential and denying the poor to be tacked on to it and to go down with it to posterity. He would therefore move that all the words in the motion after the words "repealed Acts" be left out.

The Hon'ble MR. STEPHEN said that, in answer to the remarks which had fallen from His Honour the Lieutenant-Governor, he would observe that the rule was, that amendments which affected the principle of a Bill must have notice given of three days. The question before the Council was purely one of consolidation. The Wagering Act was re-enacted in section 30 of this Bill, this was a qualification upon that Act which was left out by mistake. He doubted whether His Honour had considered the subject when he said that this would be a blot in the Bill, and gave vent to such vehement feelings, and looked upon Act VIII of 1867 with such horror. MR. STEPHEN did not know whether it was necessary to have passed Act VIII of 1867 at all; but as the Act had been passed, it was thought well to include it in this Code. The effect of the amendment was simply to leave the law as it stood.

The Hon'ble MR. ELLIS said that it did not appear to him that, by adopting this amendment, the Council were in any way legalizing horse-racing; they were merely saying that the provisions of section 30 were not to render unlawful certain proceedings which were allowed under Act VIII of 1867. It seemed to him that the provision was a harmless one. He objected very strongly to a change in the law being made without any opportunity for discussing whether there was anything objectionable in the law as it stood.

Major-General the Hon'ble H. W. NORMAN said that he agreed with His Honour the Lieutenant-Governor, that this provision would be a blot

in the Bill, although he would not go so far as His Honour and propose the repeal of an existing Act without due notice. He regretted very much that Act VIII of 1867 had a place in the Statute-book; but as it existed, he could not assent to its repeal in this irregular manner.

The Hon'ble SIR RICHARD TEMPLE thought His Honour the Lieutenant-Governor would admit that it was out of place to repeal an Act without due notice. Act VIII of 1867 was passed in due course after full discussion; and if His Honour thought the Act was objectionable, the proper course would be for him to take means to ensure its repeal after all the forms of proceedings for the introduction and discussion of a measure had been observed.

His Honour THE LIEUTENANT-GOVERNOR said that he objected to Act VIII of 1867 being consolidated with this great Code by a side-wind.

The Hon'ble MR. STEPHEN said that the Act upon which Act VIII of 1867 was a rider, was repealed by this Code, and it was much better therefore that that Act itself should stand in its proper place as a rider upon section 30 of the Code; it was a part of the law of the land, and the effect of his motion was simply to consolidate the law. As to the taking the Council by surprise, he could only say that, if His Honour knew the trouble and worry of looking through all these Acts and finding out what portions of it were necessary, he would not have raised such an objection.

The question being put,

The Council divided :—

AYE.	NOES.
His Honour the Lieutenant-Governor.	His Excellency the President.
	Hon'ble Sir R. Temple.
	Hon'ble Mr. Stephen.
	Hon'ble Mr. Ellis.
	Major-General the Hon'ble H. W. Norman.
	Hon'ble Mr. Inglis.
	Hon'ble Mr. Robinson.
	Hon'ble Mr. Chapman.
	Hon'ble Mr. Stewart.
	Hon'ble Mr. Bullen Smith.

So the amendment was negatived.

The Hon'ble MR. STEPHEN's motion was then put and agreed to.

The Hon'ble MR. STEPHEN then moved the following amendments:—

That the following explanation be added to section 25:—

"*Explanation 2.*—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate, but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given;"

and that the following illustrations be added after illustration (*e*) to section 25:—

"(*f*.) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

"(*g*.) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given. The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given."

That the explanation to section 75 be omitted, and the following be substituted:—

"EXCEPTION.—When any person enters into any bail-bond, recognizance or other instrumen of the same nature, or gives any bond for the performance of any public duty or act in which the public are interested under the provisions of any law or under the orders of the Government of India or of any Local Government, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.—A person who enters into a contract with Government does not necessarily thereby undertake any public duty or promise to do any act in which the public are interested."

The Motion was put and agreed to.

The Hon'ble MR. STEPHEN then moved that the Bill as amended by the Committee be passed.

The Motion was put and agreed to.

CARRIERS BILL.

The Hon'ble MR. STEPHEN also introduced the Bill to amend the law relating to Carriers. He said, this Bill if it had been drawn a year ago, would have been included in the Code of Contract Law which had just been passed. But that course was not taken, and we proposed to introduce it at rather a late

period. We consulted the Departments of the Government which were principally interested in the matter, especially the Public Works Department, and we received a strong representation from that Department that the liberty of the Railway Companies in the matter of contracts should be restricted to a degree far beyond that to which it was restricted at present, and that they should be prohibited from limiting their liability on contracts by special conditions. It was considered that it would be improper to carry out a measure of that kind without consulting those concerned; and, accordingly, the Bill was taken out of the Contract Law, and it was proposed that it should be introduced separately and read as part of the Contract Law when it was passed. The opinion of the Government of India upon which those measures were taken would form a part of the papers in connection with this Bill. All that he would now do, would be simply to introduce the Bill.

The Motion was put and agreed to.

The Council adjourned to Tuesday, the 16th April 1872.

CALCUTTA,
The 9th April 1872.

H. S. CUNNINGHAM,
Offg. Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

Government of India Central Printing Office.—No. 180 L. D. —31-10-83.—70.