

THE

20th April 1936

# LEGISLATIVE ASSEMBLY DEBATES

(Official Report)

---

Volume V, 1936

(9th April to 23rd April 1936)

---

## THIRD SESSION

OF THE

FIFTH LEGISLATIVE ASSEMBLY,  
1936



NEW DELHI  
GOVERNMENT OF INDIA PRESS

# Legislative Assembly.

## *President :*

THE HONOURABLE SIR ABDUR RAHIM, K.C.S.I., KT.

## *Deputy President :*

MR. AKHIL CHANDRA DATTA, M.L.A.

## *Panel of Chairmen :*

PANDIT GOVIND BALLABH PANT, M.L.A.

SIR COWASJI JEHANGIR, BART., K.C.I.E., O.B.E., M.L.A.

SIR LESLIE HUDSON, KT., M.L.A.

SIR MUHAMMAD YAMIN KHAN, KT., C.I.E., M.L.A.

## *Secretary :*

MIAN MUHAMMAD RAFI, BARR-AT-LAW.

## *Assistant of the Secretary :*

RAI BAHADUR D. DUTT.

## *Marshal :*

CAPTAIN HAJI SARDAR NUR AHMAD KHAN, M.C., I.O.M., I.A.

## *Committee on Petitions :*

MR. AKHIL CHANDRA DATTA, M.L.A., *Chairman.*

SIR LESLIE HUDSON, KT., M.L.A.

MR. B. DAS, M.L.A.

DR. ZIAADDIN AHMAD, C.I.E., M.L.A.

MR. M. S. ANNY, M.L.A.

# CONTENTS.

VOLUME V.—9th April to 23rd April, 1936.

	PAGE.		PAGE.
<b>THURSDAY, 9TH APRIL, 1936—</b>		<b>THURSDAY, 10TH APRIL, 1936—</b>	
Questions and Answers	3737—75	Member Sworn	3969
Short Notice Question and Answer	3775	Questions and Answers	3969—4008
Statements laid on the Table	3775—78	Statements laid on the Table	4009—14
The Representative Laws Repealing and Amending Bill—Discussion on the motion to refer to Select Committee not concluded	3776—3831	The Andhra Mines (Amendment) Bill—Presentation of the Report of the Select Committee	4014
Statement of Business	3831—32	Resolution re Import duty on unboiled rice and paddy—Adopted	4014—21
		Resolution re Appointment of a Committee on small and cottage industries—Adopted as amended	4021—63
<b>TUESDAY, 14TH APRIL, 1936—</b>		<b>FRIDAY, 17TH APRIL, 1936—</b>	
Member Sworn	3833	Member Sworn	4065
Questions and Answers	3833—76	Questions and Answers	4065—4121
Statements laid on the Table	3876—80	Unstarred Questions and Answers	4121—27
The Italian Loans and Credits Prohibition Bill—Passed	3880—3902	Death of Mr. Siddhewar Prasad Shrivastava	4127
The Salt Additional Import Duty (Extending) Bill—Passed	3902—25	Election of the Standing Finance Committee	4127—28
The Indian Tariff (Second Amendment) Bill—Discussion on the motion to consider not concluded	3925—34	Election of the Standing Finance Committee for Railways	4128
		Election of the Central Advisory Council for Railways	4128
<b>WEDNESDAY, 15TH APRIL, 1936—</b>		The Representative Laws Repealing and Amending Bill—Debate adjourned	4129—49
Election of the Standing Advisory Committee for the Indian Posts and Telegraphs Department	3935	The Parsi Marriage and Divorce Bill—Passed	4149—53
The Decrees and Orders Validating Bill—Postponed	3935	The Hindu Women's Right to Property Bill—Circulated	4153—54
The Indian Companies (Amendment) Bill—Discussion on the motion to refer to Select Committee not concluded	3935—68	The Child Marriage Restraint (Amendment) Bill—Circulated	4154
		The Hindu Marriage Validity Bill—Circulated	4154—56

PAGE.	PAGE.
<b>FRIDAY, 17TH APRIL, 1936—contd.</b>	<b>SATURDAY, 18TH APRIL, 1936—</b>
The Arya Marriage Validation Bill—Referred to Select Committee . . . . .	Questions and Answers . . . . .
4156—57	Election of the Central Advisory Council for Railways . . . . .
The Moslem Personal Law (Shariat) Application Bill—Circulated . . . . .	4167—83
4157—58	The Indian Companies (Amendment) Bill—Referred to Select Committee . . . . .
The Removal of Civic Disabilities Bill—Circulated . . . . .	4183
4158—60	The Indian Tariff (Amendment) Bill—Referred to Select Committee . . . . .
The Hindu Widowers' Remarriage Bill—Withdrawn . . . . .	4184—96
4160—61	The Payment of Wages Bill—Amendments made by the Council of State agreed to . . . . .
The Buddha Gaya Temple Bill—Introduced . . . . .	4196—4209
4161	The Indian Tariff (Second Amendment) Bill—Discussion on the motion to consider not concluded . . . . .
The Hindu Gains of Learning (Amendment) Bill—Introduced . . . . .	4209—20
4161—62	Statement of Business . . . . .
The Code of Criminal Procedure (Amendment) Bill—Introduced . . . . .	4220—25
4162	4226
The Muslim Dissolution of Marriage Bill—Introduced . . . . .	
4162	<b>MONDAY, 20TH APRIL, 1936—</b>
The Indian Subscriptions Bill—Introduced . . . . .	Member Sworn . . . . .
4162—63	4227
The Child Marriage Restraint (Amendment) Bill—Introduced . . . . .	Questions and Answers . . . . .
4163	4227—44
The legal Practitioners (Amendment) Bill—Introduced . . . . .	4250—57
4163	Statements laid on the Table . . . . .
The Child Marriage Restraint (Amendment) Bill—Introduced . . . . .	4244—45
4163—64	Statement regarding net earnings of certain newly constructed railway lines . . . . .
The Indian Medical Council (Amendment) Bill—Introduced . . . . .	4245—49
4164	The Decrees and Orders Validating Bill—Passed . . . . .
The Muslim Intestate Succession Bill—Introduced . . . . .	4257—96
4164	The Indian Tariff (Second Amendment) Bill—Discussion on the consideration of clauses not concluded . . . . .
The Hindu Disposal of Property Bill—Introduced . . . . .	4296—4319
4164—65	<b>TUESDAY, 21ST APRIL, 1936—</b>
The Control of Coastal Traffic of India Bill—Introduced . . . . .	Questions and Answers . . . . .
4165	4331—39
The Indian Arms (Amendment) Bill—Introduced . . . . .	Motions for Adjournment re—
4165	Famine, small-pox and cholera in Berhampur in Bengal—Postponed . . . . .
The Hindu Widows' Maintenance Bill—Introduced . . . . .	4339—41
4165	Suicide committed by Nani Gopal Chakravarti, a Bengal Detenu—Disallowed by the President . . . . .
The Hindu Widows' Right of Inheritance Bill—Introduced . . . . .	4341—44
4166	Message from the Council of State . . . . .
Statement of Business . . . . .	4344

	PAGE.		PAGE.
<b>TUESDAY, 21ST APRIL, 1936—contd.</b>		<b>WEDNESDAY, 22ND APRIL, 1936—</b>	
The Indian Tariff (Amendment) Bill—Presentation of the Report of the Select Committee . . . . .	4344—47	Short Notice Question and Answer . . . . .	4407—09
The Indian Tariff (Second Amendment) Bill—Passed as amended . . . . .	4347—51	Statements laid on the Table . . . . .	4410—13
The Cochin Port Bill—Passed; . . . . .	4352—54	Motion for Adjournment <i>re</i> Famine, small-pox and cholera in Berhampur in Bengal—Not moved . . . . .	4413—17
The Factories (Amendment) Bill—Passed . . . . .	4354—63	The Indian Tariff (Amendment) Bill—Discussion on the consideration of clauses not concluded . . . . .	4417—75
The Indian Aircraft (Amendment) Bill—Passed . . . . .	4363—64	<b>THURSDAY, 23RD APRIL, 1936—</b>	
The Indian Mines (Amendment) Bill—Passed as amended . . . . .	4364—73	Short Notice Question and Answer . . . . .	4477
The Indian Lac Cess (Amendment) Bill—Passed . . . . .	4373—99	Statements laid on the Table . . . . .	4477—79
Resolution <i>re</i> Draft Convention concerning the reduction of hours of work in glass-bottle works—Adopted . . . . .	4399—4400	Famine situation in Berhampur in Bengal . . . . .	4479
Resolution <i>re</i> Draft Convention limiting hours of work in coal mines—Adopted . . . . .	4400—05	The Indian Tariff (Amendment) Bill—Passed as amended . . . . .	4474—4514
Statement of Business . . . . .	4406		

# LEGISLATIVE ASSEMBLY.

Monday, 20th April, 1936.

The Assembly met in the Assembly Chamber of the Council House at Eleven of the Clock, Mr. President (The Honourable Sir Abdur Rahim) in the Chair.

## MEMBER SWORN.

Mr. Kabeer-ud-Din Ahmed, M.L.A. (Rajshahi Division: Muhammadan Rural).

## QUESTIONS AND ANSWERS.

### BAN ON MR. SUBHASH CHANDRA BOSE.

1772. \*Seth Govind Das: Will Government be pleased to state:

- (a) whether they are aware of the departure of Mr. Subhash Chandra Bose for India from Europe, either by sea or air;
- (b) whether they have arrived at any decision as to their action, if any, on the arrival of Mr. Bose in India; if so, what those decisions are;
- (c) whether they have arrived at the decisions in consultation with the Secretary of State for India; if so, what were the suggestions of the Secretary of State thereon;
- (d) whether they have taken into consideration the vote of this House on the matter and whether they are going to change their decision thereupon;
- (e) whether their attention has been drawn to the resolution passed unanimously at the All-India Local Bodies Conference held in Delhi on the 29th March, 1936, to impose no restriction on the liberty and freedom of Mr. Subhash Chandra Bose on his return to the country; and
- (f) whether they have given any consideration to the resolution passed by a body of such responsible representatives of the people of this country; if not, why not?

**The Honourable Sir Henry Orsk:** (a)—(d). As the Honourable Member is aware, Mr. Bose has returned to India and has been interned under Regulation III of 1918, with the approval of the Secretary of State.

(e) I have seen a copy of the resolution published in the press.

(f) The reasons for which Mr. Bose has been made a State Prisoner were fully explained to the House on the 23rd March last, in connection with the adjournment motion relating to his return to India.

## NEGOTIATIONS WITH PRINCES REGARDING THE FEDERATION.

1773. \***Mr. S. Satyamurti:** Will Government be pleased to state:

- (a) whether it is a fact that the Indian Federation will not begin to function by 1940; and
- (b) at what stage negotiations with Princes are standing now?

**The Honourable Sir Nripendra Sircar:** (a) It is impossible to make a forecast at this stage as to the probable date of the inauguration of Federation.

(b) Government are not in a position to add anything to the information contained in their Press Communiqué of the 12th March, 1936.

---

*PRESS COMMUNIQUE.*

The Secretary of State's legal advisers have been engaged in revising provisionally the original draft standard form of the Instrument of Accession published with the White Paper of March 1935. Opportunity will be taken of the presence in London of Counsel representing Indian States for purposes of informal discussion without prejudice in regard to the general form of the draft. It is expected that in a few months time the revised draft Instrument will be available for communication through the local political authorities concerned to the Indian States individually with a view to detailed negotiations when their comments have been received.

S. C. BISWAS,

*Assistant Secretary to the Government of India.*

*Foreign and Political Department,*

NEW DELHI;

*The 12th March, 1936.*

---

**Mr. S. Satyamurti:** May I know, whether the appeal of Lord Willingdon to the Princes to join the Federation at any cost was made with the consent and knowledge of this Government, or was merely a personal appeal to the Princes?

**The Honourable Sir Nripendra Sircar:** To which speech of Lord Willingdon's is the Honourable Member referring?

**Mr. S. Satyamurti:** The speech which Lord Willingdon delivered at the Princes' Banquet, in which Lord Willingdon appealed to the Princes to join the Federation at any cost. I want to know if that speech was delivered by Lord Willingdon in his personal capacity, or with the knowledge and consent of the Government of India.

**The Honourable Sir Nripendra Sircar:** I do not agree that he said that the Princes should join "at any cost". Unless I get the exact speech before me, I do not admit that portion of what was said by him. He was a part of the Government, and, beyond that, I am not in a position to state anything.

**Mr. S. Satyamurti:** With regard to Berar, is there any negotiation going on affecting the political status of Berar in order to induce Hyderabad to come into the Federation, and, if so, will Government consult the wishes of the people of Berar, before they made any commitments?

**The Honourable Sir Nripendra Sircar:** I am not prepared with an answer to that question; I want a question to be put down.

**Mr. S. Satyamurti:** At what stage do the negotiations with the maritime States in the matter of the customs relations between British India and these States stand?

**The Honourable Sir Nripendra Sircar:** I shall require notice of that question also.

**Mr. S. Satyamurti:** With regard to the subsidy to Mysore and the retrocession of the civil and military station of Bangalore to Mysore in order to induce Mysore to come into the Federation, at what stage do the negotiations stand?

**The Honourable Sir Nripendra Sircar:** I require notice.

**Mr. S. Satyamurti:** Thank you very much.

▲ **TRANSFER OF CENTRAL PUBLICATION BRANCH EMPLOYEES TO CERTAIN OFFICES IN CALCUTTA.**

1774. **\*Mr. Suryya Kumar Som:** (a) Will the Honourable Member in charge of the Department of Industries and Labour be pleased to state whether it is a fact that orders were issued to afford facilities for the transfer of the employees of the Central Publication Branch, who had to come up to Delhi consequent on the permanent move of the office from Calcutta, to the sister offices, viz., the Central Stationery Office and the Government of India Press, Calcutta?

(b) Will Government be pleased to state whether the Controller of Printing and Stationery thereafter issued an order to the effect that every alternate vacancy occurring in the aforesaid offices should be filled up by the employees of the Central Publication Branch?

(c) Will Government be pleased to state the total strength of the permanent staff brought up from Calcutta to Delhi?

(d) Will Government state how many permanent clerks of the Central Publication Branch have so far been absorbed in the vacancies in the two Calcutta offices referred to since the date of the issue of the Controller's order?

(e) How many clerks of the Central Stationery Office, Calcutta are due to retire in the course of the financial year 1936-37?

(f) How many clerks of the Central Publication Branch are expected to be absorbed in the Central Stationery Office in the course of the financial year 1936-37?

(g) Will Government state how many permanent or quasi-permanent vacancies have occurred in the Central Stationery office and in the Calcutta Press up till now since the date of the issue of the Controller's orders, regarding the transfer of Central Publication Branch employees brought from Calcutta?

(h) How many of the vacancies have actually been filled by the employees of the Central Publication Branch?

(i) Is it a fact that not a single clerk of the Central Publication Branch has so far been absorbed in any vacancy in the Calcutta Press?

(j) Will Government state whether it is a fact that on the occurrence of some permanent vacancies in the clerical grade in the Calcutta Press, they have been filled up by the men borne upon the fluctuating establishment of that office instead of by the men of the Central Publication Branch?

**The Honourable Sir Frank Noyce:** (a) and (b). I understand that in order to afford facilities to the old permanent staff of the Central Publication Branch for transfer to Calcutta the Controller of Printing and Stationery has issued orders that every alternate permanent clerical vacancy to be filled by outside recruitment may be filled by members of such staff.

(c) 59 excluding the inferior staff.

(d) One, but three others were transferred to the Central Forms Store, Calcutta.

(e) and (f). One clerk will attain the age of 55 years and the period of extension of service granted to an Assistant will expire during 1936-37, but it is premature to say whether it will be possible to fill any of the vacancies by an employee of the Central Publication Branch.

(g) Four in the Calcutta Press and seven in the Central Stationery Office.

(h) One.

(i) Yes.

(j) Out of four vacancies three were filled by men already employed temporarily in the Calcutta Press and one by a member of a minority community. I may mention that the Controller's orders referred to in part (a) above only apply to the filling of vacancies by outside recruitment and are subject to the observance of the orders regarding communal representation.

#### TRANSFER OF CENTRAL PUBLICATION BRANCH EMPLOYEES TO CERTAIN OFFICES IN CALCUTTA.

1775. **\*Mr. Suryya Kumar Som:** (a) Will Government be pleased to state whether it is a fact that even if the order of transfer be strictly followed, it will take at least ten years to repatriate the employees of the Central Publication Branch to the Calcutta offices?

(b) Will Government state whether they are aware that the necessity of maintaining the due percentage of the Muslim and other minority communities in the clerical establishment of the Central Stationery Office and in the Calcutta Press is retarding the absorption of the men of the Central Publication Branch in the vacancies occurring from time to time?

(c) Will Government state whether it is a fact that many vacant posts of clerks have been transferred from the Calcutta Press to the Delhi Press?

(d) Is it not a fact that the order of transfer by reason of difficulties attendant on its execution has practically afforded no relief to even any individual employee of the Central Publication Branch?

(e) Will Government be pleased to state whether any undertaking was obtained from the employees of the Central Publication Branch, either at the time of recruitment, or at any other time, to the effect that they would be required to proceed to any other part of India in the interest of public service?

**The Honourable Sir Frank Noyce:** (a) It is not possible to state the period of time which will elapse before the members of the Central Publication Branch who desire a transfer to Calcutta can be absorbed in the branches of the Stationery and Printing Department located there.

(b) If members of the minority communities who were brought up to Delhi with the Central Publication Branch are not available for transfer from that Branch to Calcutta, vacancies reserved for those communities have to be filled from other sources.

(c) No.

(d) As I observed in reply to part (d) of the Honourable Member's previous question, four clerks of the Central Publication Branch have already been transferred to Calcutta. Two clerks were so transferred before the orders issued by the Controller.

(e) No.

†1776\*—1778\*.

‡1779\*.

#### ALTERATION IN THE AGE OF RAILWAY EMPLOYEES.

1780. **\*Sardar Sant Singh:** (a) Are Government aware that the Chief Commissioner, Railways, in reply to question No. 155(c), informed the Council of State on the 26th April, 1934, that there were precedents in which Government had changed the official record of age of railway employees and further that if an employee could prove that he was younger than shown in his service sheet, he automatically got extension of service?

(b) If the reply to part (a) be in the affirmative, will Government please state if effect was given to the undertaking contained in the aforesaid statement made by the Chief Commissioner of Railways in all cases referred to the Railway Board on this subject thereafter?

**The Honourable Sir Muhammad Zafrullah Khan:** (a) Yes.

(b) The Railway Board give effect to the policy referred to only in cases in which appeals may lie to them, and do not interfere in cases in which powers have been delegated to the Agents of State-managed Railways. I would, however, add for the information of the Honourable Member that the Agents of State-managed Railways have already been made aware of the policy of Government in this matter.

†For questions Nos. 1776—1778, see pp. 4250-57 of these debates.

‡This question was withdrawn by the questioner.

**POST OFFICE CHOWKIDARS AT PESHAWAR ALLOWED TO CARRY PARCELS,  
ETC.**

1781. \***Sardar Sant Singh:** (a) Is it a fact that it is laid down in Circle Order No. 181, that chowkidars, employed to guard post offices at night, should take rest and do no work during the day, so that they can remain on duty at night?

(b) Is it also a fact that an 'Error Book' is maintained in certain offices specially at Peshawar, showing the name of Police engaged in carrying heavy mails with the postmen?

(c) In case the reply to part (a) be in the affirmative, why are the chowkidars at Peshawar allowed to carry heavy parcels, etc., with postmen, which can be easily verified from the said 'Error book' mentioned in part (b)?

(d) What action do Government propose to take against this irregular practice?

**Mr. G. V. Bewoor:** (a) Yes.

(b) The police are never engaged to carry heavy mails with postmen.

(c) Chowkidars at Peshawar are sometimes permitted to convey heavy parcels along with postmen for a small remuneration when coolies are not readily available. The conveyance of such mails is not part of the regular duty of the chowkidars and their occasional employment on such work does not interfere with their normal duties.

(d) The matter is within the competence of the Head of the Circle concerned to whom a copy of the question is being sent for such action as he may consider suitable.

**RUNNING OF TRAINS BETWEEN DELHI AND HOWRAH *via* PATNA.**

1782. \***Mr. Ram Narayan Singh:** (a) Will Government state the reasons why the train known as "Sealdah Express" has been cancelled and is not allowed to run on the main line between Delhi and Howrah *via* Patna since the 1st April, 1936?

(b) Are Government aware that at present there is no direct train between Delhi and Howrah *via* Patna, according to the new time-table?

(c) Are Government aware that this reduction and cancellation of the number of trains on the main line *via* Patna and also the want of even a single fast and direct train on the same line have created a lot of inconvenience to the travelling public in Bihar and consequently a lot of indignation is caused among them?

(d) Are Government prepared to reconsider the position and so arrange the running of trains that at least two fast trains, either mail trains or express, are allowed to run between Delhi and Howrah *via* Patna?

**The Honourable Sir Muhammad Zafrullah Khan:** (a) Government understand that the train known as the "Sealdah Express" has been discontinued between Sealdah and Allahabad for lack of patronage by long distance passengers who travel by the faster trains between Calcutta and Delhi.

(b) Yes.

(c) No. I would refer the Honourable Member to the reply I gave to Mr. Sri Prakasa's question No. 1667 on the 16th April, 1936.

(d) I am sending a copy of the Honourable Member's question and of my reply to the Agent of the East Indian Railway for consideration.

**Pandit Lakshmi Kanta Maitra:** Is the Honourable Member aware that a great inconvenience is being felt for the discontinuance of this train, the Sealdah Express?

**The Honourable Sir Muhammad Zafrullah Khan:** As I have already said, this question and the reply are being sent to the Agent of the East Indian Railway, and the Honourable Member's observations will also be sent to him.

**TIME TABLE OF THE EAST INDIAN RAILWAY.**

1783. **\*Mr. Ram Narayan Singh:** (a) What is the number of copies of the time table of the East Indian Railway printed and published for the first time?

(b) Are Government aware that this new time table of the East Indian Railway was not available to the travelling public on any of the stations between Patna and Delhi for several days in the beginning of this month, and if so, why?

**The Honourable Sir Muhammad Zafrullah Khan:** (a) 12,000 copies.

(b) Government understand that, on the 21st March a hundred copies were despatched to Delhi and fifty each to Dinapore, Moghalsarai, Allahabad and Cawnpore. On the 24th March fifty copies each were despatched to Etawah, Tundla, Aligarh and Ghaziabad and twenty-five copies each to Buxar and Delhi.

**Prof. N. G. Ranga:** Is this time table published in Hindi also?

**The Honourable Sir Muhammad Zafrullah Khan:** I am afraid I shall require notice.

**Prof. N. G. Ranga:** In view of the fact that the time table of the East Indian Railway was not available for the first seven days, will the Honourable Member kindly ask the East Indian Railway to see to it that time tables are published earlier?

**The Honourable Sir Muhammad Zafrullah Khan:** As my reply shows, it is not correct to say that it was not available during the first seven days, but, in any case, I have no doubt, the Agent, East Indian Railway, after this question has been put and information has been asked for, will take steps to obviate the inconvenience caused, for the future.

**Mr. Sri Prakasa:** In view of the many drastic changes in the train timings on the East Indian Railway, will Government instruct that Railway to publish their time tables in plenty of good time, for as a matter of fact, I could not get a time table till the 7th though I tried to get one every day from the 1st to the 7th.

**The Honourable Sir Muhammad Zafrullah Khan:** I shall convey that suggestion to the Agent, East Indian Railway.

**Mr. M. S. Aney:** May I know whether any suggestions or proposals regarding changes in the time tables are placed before the Railway Advisory Committee before they are made?

**The Honourable Sir Muhammad Zafrullah Khan:** I believe all the principal changes are discussed with them.

**Mr. Sri Prakasa:** May I know who fixes the prices of the time tables?

**The Honourable Sir Muhammad Zafrullah Khan:** I could not say; I suppose the Agent is really responsible for the price, but which of the particular officers under him actually fixes the price, I cannot say.

**Prof. N. G. Ranga:** What is the experience of these railway authorities? Is there any profit made out of the sales of these railway guides?

**The Honourable Sir Muhammad Zafrullah Khan:** That does not arise out of the question.

**Pandit Lakshmi Kanta Maitra:** Is the Honourable Member aware that the prices have mounted up to fifty per cent?

**The Honourable Sir Muhammad Zafrullah Khan:** That does not arise out of the question.

#### ENHANCEMENT OF THE PAY OF THE INSPECTOR APPOINTED TO INVESTIGATE CASES OF CLAIMS PREFERRED AGAINST THE EAST INDIAN RAILWAY.

1784. **\*Dr. N. B. Khare:** With reference to the information given on the 12th February, 1936, in reply to unstarred question No. 85 asked in this House on the 4th February, 1936, will Government please state:

- (a) whether, with the approval of the Agent the old scales of pay of any other post were enhanced; and
- (b) the rule under which enhancement in an old scale of pay is permissible?

**The Honourable Sir Muhammad Zafrullah Khan:** I am collecting certain information and will lay a reply on the table of the House in due course.

#### SCALES OF PAY OF STENOGRAPHERS OF HEADS OF DEPARTMENTS OF THE EAST INDIAN RAILWAY.

1785. **\*Dr. N. B. Khare:** With reference to the information given on the 12th February, 1936, in reply to unstarred question No. 89 asked in this House on the 4th February, 1936, will Government please state how far the information to parts (a) and (b) is in conformity with page 3 of the classified lists of subordinate staff of all Departments on scales of pay rising to Rs. 250 and above corrected up to September 1933, September 1934, March, 1935, and 30th September, 1935?

**The Honourable Sir Muhammad Zafrullah Khan:** I am unable to understand what the Honourable Member is referring to. If he will specifically state to what he is referring, I would endeavour to give him a reply.

**Dr. N. B. Khare:** The pay of one lady stenographer on the East Indian Railway at Calcutta was raised recently. I want to know the reasons for the same.

**The Honourable Sir Muhammad Zafrullah Khan:** The Honourable Member will please put down a specific question, and I will get the information.

**REVISED SCALES OF PAY FOR SUBORDINATE STAFF OF THE EAST INDIAN RAILWAY.**

1786. **\*Dr. N. B. Khare:** With reference to the information given on the 12th February, 1936, in reply to unstarred question No. 102 asked in this House on the 4th February, 1936, will Government please state:

- (a) the certain exceptions; and
- (b) lay a copy of the notification under which these posts were abolished on the introduction of the crew system in 1926?

**The Honourable Sir Muhammad Zafrullah Khan:** With your permission, Sir, I propose to reply to questions Nos. 1786 and 1787 together.

I would refer the Honourable Member to my reply to Qazi Muhammad Ahmad Kazmi's starred question No. 832 asked by him on the 26th February, 1936.

**Dr. N. B. Khare:** Will the Honourable Member quote the specific date and number of the question replied previously which contained the information sought for in this question?

**The Honourable Sir Muhammad Zafrullah Khan:** It is question No. 832, dated the 26th February, 1936.

**Dr. N. B. Khare:** In that question, no specific question was quoted.

**The Honourable Sir Muhammad Zafrullah Khan:** I am unable to follow the Honourable Member's question.

**Dr. N. B. Khare:** No information was given in that question.

**The Honourable Sir Muhammad Zafrullah Khan:** I am still unable to follow what the Honourable Member means. The two questions, Nos. 1786 and 1787, are with reference to the information given on the 12th February, 1936, in reply to unstarred questions No. 192 and No. 103. The first question says:

"Will Government please state (a) the certain exceptions; and (b) lay a copy of the notification under which these posts were abolished on the introduction of the crew system in 1926."

The next question deals with ticket collectors. I have answered these questions by referring the Honourable Member to question No. 882 asked on the 26th February, 1936, by Qazi Muhammad Ahmad Kazmi.

**Dr. N. B. Khare:** The previous question referred to by the Honourable Member does not contain any information to the best of my recollection.

**The Honourable Sir Muhammad Zafrullah Khan:** If the Honourable Member has any further question to put, he will no doubt give notice.

#### REVISED SCALES OF PAY FOR SUBORDINATE STAFF ON THE EAST INDIAN RAILWAY.

†1787. \***Dr. N. B. Khare:** With reference to the information given on the 12th February, 1936, in reply to unstarred question No. 103 asked in this House on the 4th February, 1936, will Government please state:

- (a) the certain exceptions;
- (b) the notification as required under Government of India Resolution No. 4863, dated the 4th December, 1891, promulgated to the staff in respect of the cessation of their existing vested rights;
- (c) whether the ticket collecting staff who held permanent posts in a substantive capacity were allowed the option of retaining the scales of pay applicable to the permanent posts held by them in a substantive capacity previously;
- (d) whether the posts of head ticket collector or assistant head ticket collector were included in the ticket collecting staff previously; and
- (e) why the rules which are applicable to others are not applicable to this class?

#### USE OF THE WORD "COOLY" IN RESPECT OF INDIANS AND "LABOUR" IN RESPECT OF EUROPEANS AND ANGLO-INDIANS.

1788. \***Dr. N. B. Khare:** With reference to the reply given to starred question No. 462 asked in this House on the 14th February, 1936, will Government please state the reasons for using the word "Cooly" in respect of Indians and "Labour" in respect of Europeans and Anglo-Indians and do they propose to have a uniform word for both and to avoid all confusion? If not, why not? And who holds the contract for coolies at Howrah, Indian or otherwise?

**The Honourable Sir Muhammad Zafrullah Khan:** As regards the first part of the question there is nothing in my reply to starred question No. 452, asked on the 14th February, 1936, to suggest that the term 'Labour' is used by the Railway Administration in respect of Europeans and Anglo-Indians and 'cooly' in respect of Indians. No further action is, therefore, called for. As regards the latter part of the question I am collecting certain information and will lay a reply on the table of the House in due course.

†For answer to this question, see answer to question No. 1786.

**Mr. Sri Prakasa:** What objection have Government got to abolish this term "cooly" when we dislike the expression.

**The Honourable Sir Muhammad Zafrullah Khan:** That does not arise out of this question.

**AUTHORITY FOR RECOGNITION OF A RAILWAY SCHOOL.**

1789. **\*Dr. N. B. Khare:** With reference to the reply given to starred question No. 470 asked in this House on the 14th February, 1936, will Government please state the authority who recognises a school and the conditions, if any, attached to such recognition?

**The Honourable Sir Muhammad Zafrullah Khan:** I would refer the Honourable Member to the replies given to parts (a) and (c) of starred question No. 470 referred to by him which contain the required information.

**"PUT OFF" DUTY AND "SUSPENDED FROM" DUTY ON STATE RAILWAYS.**

1790. **\*Dr. N. B. Khare:** With reference to the reply given to starred question No. 472 asked in this House on the 14th February, 1936, will Government please state the administrative rule or order in respect of "putting off" duty or "suspension" from duty?

**The Honourable Sir Muhammad Zafrullah Khan:** I have already stated in reply to the question referred to that this is purely an administrative matter for the Agents of State-managed Railways to decide. I would however, add, that Government are not prepared to obtain information regarding the administrative rules or orders, which may have been issued by the Agents of various State-managed Railways.

**FILLING UP OF VACANCIES ON THE EAST INDIAN RAILWAY WITHOUT THE MEDIUM OF SELECTION BOARDS.**

1791. **\*Dr. N. B. Khare:** With reference to the reply given to starred question No. 489 asked in this House on the 14th February, 1936, will Government please state whether these vacant posts are filled by juniormost staff and if not, who were appointed to these vacant posts during the years 1934 and 1935?

**The Honourable Sir Muhammad Zafrullah Khan:** I am collecting information and will lay a reply on the table of the House. in due course.

**ALLEGATIONS AGAINST THE STAFF OF THE MORADABAD DIVISION OF THE EAST INDIAN RAILWAY.**

1792. **\*Dr. N. B. Khare:** With reference to the reply given to starred question No. 490 asked in this House on the 14th February, 1936, will Government please state:

- (a) how the Divisional Superintendent became aware of the payment of *dasturi*;

- (b) what made the Divisional Superintendent to use the word *dasturi* in that Circular; and
- (c) on what information such warning against the practice of a possible evil was issued?

**The Honourable Sir Muhammad Zafrullah Khan:** (a), (b) and (c). Government have no information.

#### STAFF EMPLOYED ON STATE RAILWAYS UNDER LABOUR LEGISLATION.

1793. **\*Dr. N. B. Khare:** Will Government please state:

- (a) the staff, administrationwise, employed in each category on State Railways under labour legislation; and
- (b) the expenditure on such staff in each category and administrationwise?

**The Honourable Sir Muhammad Zafrullah Khan:** (a) Attention is drawn to Rule 3 of the Railway Servants Hours of Employment Rules, 1931, included as Appendix B in the Annual Report on the working of the Hours of Employment Regulations during the year 1931-32, a copy of which is already available in the Library of the House.

(b) The information asked for is not readily available, and Government consider that the labour and expense involved in collecting it will not be justified by the results to be obtained.

#### STAFF EMPLOYED ON STATE RAILWAYS UNDER LABOUR LEGISLATION.

1794. **\*Dr. N. B. Khare:** Will Government please state whether the staff on State Railways under labour legislation performing continuous duty of eight hours a day have to change duty twice in a week by performing double shifts before they earn 24 hours uninterrupted rest?

**The Honourable Sir Muhammad Zafrullah Khan:** Changes in shifts in the case of continuous workers depend on the nature of the work. In some cases there are no changes: In others one change per week. In a few cases there are two changes per week, but such a week only occurs at intervals for any given individual.

#### REGULATIONS REGARDING DISCIPLINARY ACTION AGAINST RAILWAY STAFF.

1795. **\*Dr. N. B. Khare:** With reference to the reply given to part (b) (i) of unstarred question No. 156 asked on the 18th February, 1936, in this House, will Government please state:

- (a) what is meant by the term "official use only";
- (b) whether non-gazetted staff are not required to know the subsidiary rules;
- (c) the extent to which the non-gazetted staff used the subsidiary rules otherwise than "official use only";
- (d) whether during the service non-gazetted staff are not permitted to use the subsidiary rules officially; and

- (e) why the subsidiary rules have not been published in the Gazette for general information when the principal rules are published for guidance?

**The Honourable Sir Muhammad Zafrullah Khan:** With your permission, Sir, I propose to reply to questions Nos. 1795 and 1796 together.

I am collecting information and will lay a reply on the table of the House, in due course.

**Dr. N. B. Khare:** Why should not the subordinate staff outside office get these circulars and regulations?

**The Honourable Sir Muhammad Zafrullah Khan:** As I have said, I am collecting information with regard to the original question, and, therefore, I am afraid I am unable to reply to the supplementary question.

REGULATIONS REGARDING DISCIPLINARY ACTION AGAINST RAILWAY STAFF.

†1796. \***Dr. N. B. Khare:** Will Government please state the reasons for not making known to the staff the powers delegated by publication in the Gazette as stated in reply to part (b) (iii) of unstarred question No. 156 asked in this House on the 18th February, 1936?

APPOINTMENTS OF TRAIN CONDUCTORS.

1797. \***Dr. N. B. Khare:** (a) Is it a fact that under rules for the recruitment and training of non-gazetted staff on State-managed Railways the posts of train conductors is a non-selection post under the commercial group?

(b) Is it a fact that appointments to train conductors are through normal channel of promotions from the class described as ticket collectors under commercial group, in the rules for the recruitment and training of non-gazetted staff on State-managed Railways?

(c) If the replies to parts (a) and (b) be in the affirmative, will Government please state:

- (i) the rule under which appointments to train conductors are permitted through normal channel of promotions from the class described as guards under transportation group in the rules for the recruitment and training of non-gazetted staff on State-managed Railways;
- (ii) the number of train conductors on State-managed Railways, railway and communitywise;
- (iii) the number of train conductors appointed through normal channel of promotions from the classes described under commercial and transportation groups respectively railwaywise since 1st October, 1932; and
- (iv) the order notifying the relaxation of any rule of the rules for recruitment and training of non-gazetted staff on State-managed Railways issued by the Agent of a railway?

---

† For answer to this question, see answer to question No. 1795.

**The Honourable Sir Muhammad Zafrullah Khan:** (a) No selection posts have been specially mentioned in the rules issued by the Railway Board for the recruitment and training of subordinate staff on State-managed Railways but Agents have been authorised to specify such posts in the cadre of each branch or Department.

(b) Yes. †

(c), (i) and (iv). The attention of the Honourable Member is invited to rule 64 of the rules for the recruitment and training of subordinate staff on State-managed Railways under which Agents can relax or modify the provisions of these rules.

(c), (ii) and (iii). The information asked for is not readily available, and Government consider that the labour and expense involved in collecting it will not be justified by the results to be obtained.

#### WITHDRAWAL OF CERTAIN ALLOWANCES OF TRAVELLING TICKET EXAMINERS ON STATE RAILWAYS.

1798. \***Dr. N. B. Khare:** Is it a fact that the Honourable Sir Muhammad Zafrullah Khan, on the 19th February, 1936, observed: "I do not think that on any particular railway the number of persons effected by that order would be more than, say 40 or 50"? If so, will Government please state whether the number 40 or 50 refers to the Travelling Ticket Examiners or Inspectors or Collectors on State-managed Railways? If not, to which class or category of employee does it refer?

**The Honourable Sir Muhammad Zafrullah Khan:** The Honourable Member is referred to page 1245 of Volume II of the Legislative Assembly Debates, 1936.

#### REVISION OF THE SCALES OF PAY OF THE STAFF ON STATE RAILWAYS.

1799. \***Dr. N. B. Khare:** Will Government please state administration-wise the category of the staff whose scales of pay were revised after the introduction of the revised scales of pay (from 16th July, 1931) on State-managed Railways together with the reasons for revisions and the dates on which such revisions were brought into force?

**The Honourable Sir Muhammad Zafrullah Khan:** Government have no information and do not consider that the labour and cost involved in collecting the information will be justified by the results to be obtained.

#### SCALES OF PAY IN FORCE ON THE EAST INDIAN RAILWAY ON CERTAIN DATES.

1800. \***Dr. N. B. Khare:** Is it a fact that on the East Indian Railway the following scales of pay were in force on 1st April, 1936:

- (a) East Indian Railway Company scales of pay on 31st December, 1924;
- (b) Oudh and Rohilkund State Railway scales of pay on 30th June, 1925;
- (c) co-ordinated scales of pay on 1st November, 1928;
- (d) Revised scales of pay on 16th July, 1931;
- (e) Revised East Indian Railway Company scales of pay?

**The Honourable Sir Muhammad Zafrullah Khan:** I am collecting information and will lay a reply on the table of the House, in due course.

**DURGA PUJA HOLIDAYS ENJOYED BY OFFICERS OF CERTAIN DIVISIONS OF THE EAST INDIAN RAILWAY.**

1801. \***Dr. N. B. Khare:** Is it a fact that the East Indian Railway publish a calendar for each year with a list of holidays observed in Bengal, United Provinces, Bihar and Orissa Province? If so, will Government please state the authority under which the officers of the Divisional Superintendents at Asansol, Dinapore, Allahabad, Lucknow and Moradabad enjoy the privilege of a fortnight's holiday on *Durga Pooja* as is enjoyed in Bengal?

**The Honourable Sir Muhammad Zafrullah Khan:** Government have no information. This is a matter of detailed administration for the Agent, East Indian Railway, to decide to whom I am sending a copy of the question for information and such action as he may consider necessary.

**SENIORITY OF TRANSPORTATION AND COMMERCIAL STAFF ON THE EAST INDIAN RAILWAY.**

1802. \***Dr. N. B. Khare:** Will Government please state the practice on the East Indian Railway in determining seniority of Transportation and Commercial staff?

**The Honourable Sir Muhammad Zafrullah Khan:** I am collecting information and will lay a reply on the table of the House, in due course.

**TENURE OF THE POSTS OF DIRECTORATE ESTABLISHMENT OF THE RAILWAY DEPARTMENT.**

1803. \***Dr. N. B. Khare:** Will Government please state:

- (a) the tenure of the posts of the Directorate establishment of the Railway Department;
- (b) the number and names of officers who have completed their tenure on that establishment;
- (c) the reason for retaining time-expired officers on that establishment; and
- (d) whether they propose to remove the time-expired officers from that establishment; and if not, why not?

**The Honourable Sir Muhammad Zafrullah Khan:** With your permission, Sir, I propose to reply to questions Nos. 1803 and 1804 together.

Normally the Directorate tenure posts are for four years, but there is no rigid rule, and tenures may be extended to suit the exigencies of the service. The other parts of the questions do not, therefore, arise.

**TENURE OF THE POSTS OF DIRECTORATE ESTABLISHMENT OF THE RAILWAY DEPARTMENT.**

†1804. \***Dr. N. B. Khare:** Will Government please state:

- (a) whether it is their policy to retain an officer on a tenure post after expiry of the tenure post held originally on the Directorate establishment of the Railway Department;

---

† For answer to this question, see answer to question No. 1803.

- (b) the names of those officers who are retained in pursuance of that policy on the expiry of each tenure post held during the preceding five years together with the nature of posts held;
- (c) whether rules promulgated in that respect are carried out and adhered to by the Railway Department? If not, why breaches are permitted?

**TRAVELLING ALLOWANCES FOR THE MOVE FROM SIMLA TO DELHI PAID TO THE SUPERVISOR OF RAILWAY LABOUR AND HIS STAFF.**

1805. \*Dr. N. B. Khare: Will Government please state:

- (a) whether the Supervisor of Railway Labour and his staff was paid travelling allowance for the move from Simla to Delhi in October 1935;
- (b) whether any option of using passes or of claiming travelling allowances was given to them; and
- (c) whether passes were issued to any of them; if so, whether it was duty, privilege or transfer pass and whether the passes issued to them were alike in nature; if not, why and what are the reasons for differential treatment to the staff of the same office?

**The Honourable Sir Muhammad Zafrullah Khan:** (a) The staff of the Supervisor of Railway Labour but not the Supervisor of Railway Labour himself.

(b) According to the rules then in force either passes must be used or travelling allowance may be claimed.

(c) Stenographer and peons were on tour with the Supervisor of Railway Labour and made use of their duty passes. Only such travelling allowance as is admissible under the regulations was paid to them. The other staff of the Supervisor of Railway Labour's Office who moved direct from Simla to Delhi were paid travelling allowances admissible under the regulations. The Supervisor of Railway Labour was given transfer passes and was not paid any travelling allowance.

**Dr. N. B. Khare:** When dogs travel with the officer, does he pay for them?

**The Honourable Sir Muhammad Zafrullah Khan:** That is entirely a hypothetical question.

**RECRUITMENT OF A CLERK FOR THE OFFICE OF THE SUPERVISOR OF RAILWAY LABOUR.**

1806. \*Dr. N. B. Khare: Will Government please state:

- (a) whether any post of a clerk for the office of the Supervisor of Railway Labour was advertised between March 1935 and October 1935:

- (b) the date on which the first and the last applications were received;
- (c) the last date by which applications were to reach the office;
- (d) the criterion for the selection;
- (e) the officer who selected the candidate;
- (f) the date on which selection was made;
- (g) the date on which offer was sent to the selected candidate;
- (h) the date on which the selected candidate joined the post;
- (i) number of candidates or of applications received;
- (j) particulars of candidates or of applicants; and
- (k) the degree of relationship between the selected candidate and the officer who made the selection?

**The Honourable Sir Muhammad Zafrullah Khan:** (a) Yes.

(b) The first application was received on the 26th August, 1935, and no applications received after the 15th September, 1935, were entertained.

(c) 15th September, 1935, as advertised.

(d) The vacancy was reserved for a Muslim and the best qualified among them, who was an M.A., was appointed.

(e) Supervisor of Railway Labour and the Director of Establishment, Railway Board.

(f) 16th September, 1935.

(g) 16th September, 1935.

(h) 1st November, 1935.

(i) Out of about 1,000 applications received about 400 were from Muslims.

(j) Matriculates, M.A.'s and B.A.'s.

(k) None.

**CLERKS DISCHARGED BY THE SUPERVISOR OF RAILWAY LABOUR.**

1807. \*Dr. N. B. Khare: Will Government please state:

(a) the number of clerks, temporary or permanent, discharged by the Supervisor of Railway Labour from March 1935 to October 1935; and

(b) the nature of the charges framed against the persons discharged?

**The Honourable Sir Muhammad Zafrullah Khan:** (a) None.

(b) Does not arise.

**POST OF THE DEPUTY DIRECTOR, ESTABLISHMENT II, RAILWAY BOARD.**

1808. \*Dr. N. B. Khare: Will Government please state:

(a) whether the present Deputy Director, Establishment II, Railway (Railway Board) Department's post is temporary;

(b) whether the sanction of the said post will expire in October 1936;

- (c) whether the sanction will be extended thereafter;
- (d) whether the tenure of the Deputy Director will expire in October 1936;
- (e) whether the tenure will be extended;
- (f) whether any undertaking by the Governor General in Council has been given for his retention in the Department after October 1936?

**The Honourable Sir Muhammad Zafrullah Khan:** (a) One of the two posts of Deputy Director, Establishment, is temporary.

- (b) Yes.
- (c) No decision has been reached.
- (d), (e) and (f). Do not arise.

---

#### STATEMENTS LAID ON THE TABLE.

*Information promised in reply to part (e) of starred question No. 661 asked by Mr. Mathuradas Vissanji on the 19th February, 1936.*

#### EMPLOYMENT OF CADETS OF THE "DUFFERIN".

(e) With regard to the shipping companies holding contracts with the Indian Posts and Telegraphs Department for the conveyance of mails, the attention of the Honourable Member is invited to Appendix XI of the Annual Report on the working of that Department for 1934-35, a copy of which is in the Library of the House.

As regards the carriage of stores from London, the London Store Department does not enter into running contracts for freights. Contracts are open to quotations by any shipowners to whom no subsidy or concession is offered.

Mails and passengers between India and the Andamans are carried by the *s.s.* "Maharajah" belonging to the Asiatic Steam Navigation Company. The payment made to the Company is on account of services rendered, that is to say no subsidy or special concession is granted.

Government have no contracts with, or grant any subsidy or concession to, any shipping company for the conveyance of Government servants; though officers who are provided with passages to or from India, at Government expense have been requested to travel as far as possible by Empire ships.

Contracts for hiring of transports, for conveyance of British troops *ex-India* are entered into by the Director of Sea Transport, London. For conveyance of troops in India a contract exists with the British India Steam Navigation Company and, in this connection the Honourable Member is referred to the reply to parts (a) and (b) of Mr. Gaya Prasad Singh's question No. 599 laid on the table of the House on the 30th August, 1934.

---

*Information promised in reply to starred question No. 1345 asked by Qasi Muhammad Ahmad Kazmi on the 20th March, 1936.*

#### ABSENCE OF RAILWAY POLICE ON STATIONS OF THE SHAHDARA-SHAMLI RAILWAY.

- (a) Yes.
- (b) Yes. But as the incidence of crime was found to be comparatively low, it was decided that the district police were sufficient to cope with the crime on that railway.

*Information promised in reply to starred questions Nos. 1403 and 1404 asked by Qazi Muhammad Ahmad Kazmi on the 23rd March, 1936.*

**SINGLE CONTROL SCHEME FOR CARRIAGES AND WAGONS ON CERTAIN RAILWAY STATIONS.**

*Question No. 1403—*

- (a) and (b). Yes.  
 (c) The estimated savings per annum are :—  
 at Delhi Main—Rs. 52,000,  
 at Meerut City—Rs. 11,000,  
 at Saharanpur—Rs. 16,000.

**SINGLE CONTROL SCHEME FOR CARRIAGES AND WAGONS ON CERTAIN RAILWAY STATIONS.**

*Question No. 1404—*

- (a) Yes.  
 (b) An investigation was made by the Railway Administration.  
 (c) The scheme was not entirely successful owing to certain defects in the details of the organisation. Steps have been taken to eliminate these as far as practicable.  
 (d) Railway Administrations are being asked to investigate the possibilities of further extending this form of control.

*Information promised in reply to unstarred question No. 465 asked by Mr. Amarendra Nath Chattopadhyaya on the 7th April, 1936.*

**REST ROOMS AT THE HOWRAH STATION BUILDINGS FOR THE USE OF GAZETTED OFFICERS AND THEIR FAMILIES.**

- (a) Rest rooms have been in existence at Howrah for quite a long time for the use of the officers of both the East Indian and Bengal Nagpur Railways.  
 (b) (i) One big room which has been partitioned into two living-room and one office.  
 (ii) Not known.  
 (iii) No.  
 (iv) No.  
 (v) Yes one, to look after the cleanliness and safety of the rooms. He is on a grade of pay of Rs. 12—1—17.  
 (vi) No.  
 (vii) Yes; a charge of twelve annas per bed for 24 hours or part thereof has recently been introduced.  
 (viii) Yes, but the officers using the Rest Rooms generally come to Howrah by train compartments.  
 (c) Yes, for non-gazetted Inspecting Staff on a special site close to Howrah Station and on a larger scale. There is no discrimination.  
 (d) Does not arise.  
 (e) Yes, and the question of shifting the present Rest Rooms of Inspectors, etc., to this place is under investigation.  
 (f) There is no information, but normally such sanction would not be necessary.  
 (g) In view of the reply to (a) this does not arise.

**STATEMENT REGARDING NET EARNINGS OF CERTAIN NEWLY CONSTRUCTED RAILWAY LINES.**

**The Honourable Sir Muhammad Zafrullah Khan** (Member for Commerce and Railways): Sir, I lay on the table a statement, giving the information at present available as to the net earnings of certain newly constructed railway lines, during the financial year 1934-35, and a comparison of the return given by these earnings on the capital outlay with the return anticipated in the original estimates.

Statements also giving net earnings during the financial year 1934-35 of new lines opened after 1st October 1927 throughout for traffic for a full year.

Serial No.	Name of project.	Working railway.	Gauge.	Mileage.	Date of opening.	Net income creditable to the project for 1934-35.	Percentage return of income (Cohann 7 on Capital outlay).	Estimated percentage return of income on capital outlay some years after opening as estimated originally.	Remarks.
1		3	4	5	6	7	1933-34. 1934-35.	10	11
1	Chittagong-Nadhat	A. B.	3' 3 3/8"	22-27	17-3-1930	14,825	0-60	8-50	
2	Chittagong-Dobansari	A. B.	Do.	22-25	10-4-1931	25,025	(b) 1-12	8-60	
3	Fed Beldia	A. B.	Do.	12-28	1-9-1931	25,025	(b) 2-30	8-80	
4	Farakka-Bajajpura-Jorhat	A. B.	Do.	43-22	1-9-1932	90,813	(b) 2-44	7-00	
5	Karimganj-Locust Valley	A. B.	Do.	39-45	1-6-1929	72,543	(b) 2-71	5-50	
6	Narakaon-Kohanganj	A. B.	Do.	17-25	1-4-1929	14,420	(b) 0-12	9-60	
7	Shaktaganj-Habiganj-Balla.	A. B.	Do.	25-20	1-12-1929	11,448	(b) 1-13	9-40	
8	Sonepur-Mohabari	A. B.	Do.	30-25	20-4-1930	43,028	(b) 1-11	12-0	
9	Sibsagar-Khorwang	A. B.	Do.	39-70	10-11-1927	1,12,870	(b) 1-66	7-00	
10	Mashrak-Thawe Extension	E. & N. W.	Do.	39-32	12-1-1931	68,000	(a) 3-34	6-00	(a) Excludes net earnings of existing lines from new traffic interchanged with new railway. (b) Revised figures.
11	Salpur-Parvaidpuram	B. N.	5' 6"	242-14	31-3-1933	24,39,012	(b) 2-99	5-40	
12	Borlevi-Vajtal	B., B. & C. I.	Do.	3-71	18-4-1929	3,042	(b) 0-51	5-00	
13	Jambuar-Kavi	B., B. & C. I.	2' 6"	17-87	1-8-1930	44,181	(b) 2-92	5-55	
14	Samsi-Dabej	B., B. & C. I.	Do.	24-72	1-3-1930	5,609	(b) 0-94	8-90	
15	Vasai-Kasana	B., B. & C. I.	5' 6"	26-61	1-9-1930	1,91,290	(b) 10-18	8-79	
16	Rebo-Shweenyang	Burma	3' 3 3/8"	11-26	2-5-1928	13,193	(b) 0-48	8-00	
17	Kayan-Thongwa	Burma	Do.	10-80	15-12-1928	5,552	(b) 1-08	10-75	
18	Kyngyar-Palok	Burma	Do.	68-86	18-1-1930	29,733	(b) 0-33	5-50	
19	Yaungbikar-Majitauk	Burma	Do.	11-06	15-8-1929	76,629	6-00	3-37	
20	Yaungbikar-Kyaukpadaung	Burma	Do.	71-82	17-7-1929	81,897	6-00	6-00	
21	Samtipur (Awaragan)	B. B.	6' 6"	57-15	10-2-1929	88,000	1-66	0-97	
22	Samtipur (Kathumantapur)	B. B.	Do.	23-26	15-12-1928	49,000	0-88	1-17	
23	Dhalpur-Kathumantapur	B. B.	8' 6 3/8"	47-80	16-6-1928	4,19,000	9-69	7-00	
24	Kalithal-Bhagpura	B. B.	5' 6 3/8"	53-49	1-3-1932	2,11,000	4-53	6-80	
25	Puruss-Murigan	B. B.	3' 3 3/8"	51-98	1-10-1929	2,01,000	7-10	5-00	

STATEMENT REGARDING NET EARNINGS OF CERTAIN NEWLY  
CONSTRUCTED RAILWAY LINES.

4247

No.	Trains Rangapara	E. B.	Do.	\$2-50	6-2-1925	1,99,000	3-18	4-06	(c) 0-68	(c)
27	Calcutta Chord Railway*	E. I.	5' 6"	8-50	1-2-1922	1,38,800	†	0-32	†	<p>(c) The Government of Assam have agreed to pay the actual loss incurred in working the railway for an indefinite period subject to a maximum of Rs. 1,75,000 each year, provided that if and when, the line yields a return of over 5 per cent. on its capital cost, the balance will be utilized in repaying any sums that may have been paid under the guarantee.</p> <p>† Subsidy for goods traffic only. ‡ If available.</p> <p>§ Includes on broad grounds of improving transportation facilities particularly the quick despatch of coal traffic to the docks.</p> <p>(1) Only part of the whole project was actually built.</p> <p>‡ Represents estimated return on capital outlay for the entire project.</p>
28	Chandigar-Bijnor Muasman- par Narah	E. I.	Do.	37-00	5-1-1920	-4,471	2-61	-0-13	6-10	
29	Dabongal-Barrakana Sec- tion of Central India coal Roads Railway (1)	E. I.	Do.	115-00	31-1-1929	3,21,451	0-50	0-80	6-88§	
30	Ashpuri-Gairat branch of Central India coal Roads Railway (1)	B. N.	Do.	58-84	23-1-1921	7,46,190	4-65	6-07	5-80	
31	Lambora-Satnampur-Satnareed	E. I.	Do.	136-00	25-5-1922	-5,46,157	-5-24	-4-53	6-30	
32	Unao-Madhegaon	E. I.	Do.	48-00	21-12-1920	-1,52,030	0-61	-3-77	6-30	
33	Agra Bah.	G. I. P.	Do.	48-00	10-4-1929	-28,982	-0-89	-0-94	6-81	
34	Dharwa-Punad	G. I. P.	2' 6"	42-65	15-12-1921	20,941	1-13	0-61	6-00	
35	Coomada-Kodipali	M. & S. M.	5' 6"	27-08	1-11-1929	-1,28,957	-4-29†	-4-47†	6-25	
36	Guntar-Macheris	Do.	3' 3 3/8"	79-83	15-1-1920	1,67,929	2-98†	3-68†	6-61	
37	Gadivada Bihmavaram	Do.	Do.	40-60	17-9-1923	1,56,617	3-08†	3-64†	†	
38	Maddavolu-Rameswar	Do.	5' 6"	47-16	2-2-1929	2,50,996	3-48†	3-68†	†	
39	Kamtyhalli-Swasahalli Ex- tension	Do.	3' 3 3/8"	11-74	15-8-1928	1,24,512	42-53†	53-49†	†	

† This line was sanctioned for construction on the assurance that a minimum output of 25,000 tons of manganese ore annually by the Government Mining Company would be enough to guarantee the railway against loss.

Serial No.	Name of project.	Working railway.	Gauge.	Mileage.	Date of opening.	Net income creditable to the project for 1934-35.	Percentage return of Income (Column 7 on Capital outlay.)		Estimated percentage return of income on capital outlay some years after opening as estimated originally.	Remarks.
							1933-34.	1934-35.		
							8	9	10	
1						7				
40	Amritsar-Narawal	N. W.	5' 6"	39-11	6-5-1929	7,08,076	*8-83	10-13	5-50	†Calculated on capital expenditure only excluding interest during construction.
41	Batala-Qadian of Batala Beas Railway (I)	Do.	Do.	12-04	20-12-1928	27,075	†	3-91	15-7(1)	†Not available.
42	Chak Jhama-Kumbab	Do.	Do.	70-47	12-3-1932	12,92,876	6-12‡	10-30	18-00	‡Represents estimated return on capital outlay for the entire project.
43	Jassar-Shahargarh Chak Anra	Do.	Do.	25-07	21-12-1927	71,790	2-73‡	4-35	6-00	§Revised figures.
44	Lyalpur-Jaranwala	Do.	Do.	20-75	2-12-1927	-1,29,078	3-42‡	-8-05	5-48	
45	Robhat-Gohans-Painpat	Do.	Do.	44-01	15-5-1928	-48,364	-2-83‡	-1-89	6-33	Loss to the extent of Rs. 20,000 guaranteed by local Government so as to obtain a return of 5-5 per cent. on capital outlay.
46	Shahdara Narawal	Do.	Do.	48-33	21-12-1926	97,884	1-82‡	3-31	4-84	¶ Includes a guarantee of Rs. 4,00,000 payable by the Bombay Government.
47	Sind Left Bank Feeder Railways	Do.	Do.	164-49	10-12-1931	1,96,375	2-01‡	2-19‡	••	•• The annual loss in working the Sind Left Bank Feeder Railways was estimated at Rs. 4-60 lakhs during the first five years after opening and Rs. 2-62 lakhs after the first five years of opening for traffic. To recoup the loss the Government of Bombay will pay a fixed sum of Rs. 4 lakhs annually for each of the first five years and thereafter the actual loss in working subject to a maximum of Rs. 2 lakhs per annum.

STATEMENT REGARDING NET EARNINGS OF CERTAIN NEWLY  
CONSTRUCTED RAILWAY LINES.

4249

48	Kangra Valley	N. W.	2' 6"	102-99	1-4-1929	-52,286	\$0.10††	-0.10††	5.50††	††Includes a guarantee of Rs. 4,00,000 payable by the Punjab Government.
49	Coimbatore Vridhachalam	S. I.	3' 3 3/8"	35-59	31-6-1928	1,12,064	3.90††	4.32††	§§	§§The line was considered unremunerative but the District Board of South Arcot who were interested in it, expressed their willingness to guarantee the Government of India against loss, if any, arising from the construction and working of the line.
50	Dindigul Polbuchi	Do.	Do.	75-10	19-11-1928	4,97,058	5.44††	5.98††	9.44	
51	Madura Bodinayakanur	Do.	Do.	55-94	20-11-1928	38,000	1.98††	0.71††	3.73	††Excludes net earnings of the existing lines from new traffic interchanged with new Rail way.
52	Polbuchi Palghat	Do.	Do.	33-45	1-4-1933	1,56,709	3.13††	2.93††	5.20	
53	Salem Mettur Dam	Do.	Do.	23-20	15-4-1929	30,894	-0.12††	-2.98††	4.70‡‡	‡‡The estimated percentage return took into account a maximum payment of Rs. 41,000 to be made good by the Madras Government against loss.
54	Salem Attar Vridhachalam	Do.	Do.	82-53	17-8-1931	31,640	0.24††	0.37††	5.80	‡‡Includes maximum guarantee Rs. 1,29,000 from the Govern- ment of Madras.
55	Soranur Nilambur	Do.	5' 6"	41-85	26-10-1927	42,491	9.45†††	0.53†††	4.00***	
56	Vilupuram Trichhopoly	Do.	3' 3/32"	109-00	1-2-1929	11,11,475	4.96††	5.40††	6.50	***The estimated percentage return took into account a maxi- mum payment of Rs. 1,50,000 guaranteed by the Madras Government against loss.
57	Trichhopoly Chord	Do.	Do.	94-22	1-7-1930	5,08,984	8.90††	4.50††	5.37	

## QUESTIONS AND ANSWERS.

**Mr. M. Ananthasayanam Ayyangar:** Sir, with your permission, I should like to make a submission. I am sorry I was not present here when my question No. 1776 and two others were called. The question hour is not yet over, and I find that the House of Commons practice is that when the question period is not over those questions which could not be put are allowed to be put, when the other questions do not exhaust the whole time.

**Mr. President** (The Honourable Sir Abdur Rahim): Where is that ruling?

**Mr. M. Ananthasayanam Ayyangar:** I have found it in Hansard. This is not in conflict with the ruling that you have given before, because, in those cases, the question time was fully occupied with the other questions, and there was no further time for questions which could not be asked in time and were, therefore, allowed to lapse.

**Mr. President** (The Honourable Sir Abdur Rahim): Without laying down any precedent, the Chair will allow the Honourable Member to ask those questions now.

### HOSPITALS, ETC., UNDER THE SUPERVISORY OR ADVISORY CONTROL OF THE CHIEF MEDICAL OFFICERS, DELHI AND NEW DELHI.

1776. **\*Mr. M. Ananthasayanam Ayyangar:** (a) Will Government be pleased to state the various hospitals, hospital and other committees, institutions, and Acts over which the Chief Medical Officers of Delhi and New Delhi, respectively, hold supervisory or advisory control?

(b) Are Government aware of the numerous occasions when the conduct of the hospital staff has been severely criticised in the meetings of the Delhi Municipality?

(c) Do Government intend that the two Chief Medical Officers shall hold singly or in collaboration administrative charge of the Lady Irwin Hospital?

(d) Will these officers be allowed private practice?

(e) Will the earnings through the hospital accrue to the hospital, as happens in the Hindu Rao Hospital, Delhi, or, will they accrue to the officers' pockets as happens in the case of the Civil Hospital, Delhi?

(f) Will these officers have an assistant administrative officer under them, and will this administrative officer be allowed private practice?

(g) Will Government be pleased to state the salary and allowances now drawn by each of these officers separately and respectively, and the additionals intended when they are given charge of the Irwin Hospital?

(h) Will Government be pleased to state whether applications were invited for the post of the junior administrative officer? If not, why not?

(i) Were applications invited for the post of the senior administrative officers from eminent members of the medical profession willing to do honorary work? If not, why not?

(j) Are these senior appointments intended for members of the Indian Medical Service, and to a lesser extent to the Provincial Medical Service?

**Sir Girja Shankar Bajpai:** (a) A statement giving such information as is available is laid on the table.

(b) No.

(c) Administrative charge of the Irwin Hospital will be held by the Chief Medical Officer, of whom there is only one.

(d) The Chief Medical Officer will, as now, be allowed private practice.

(e) The question of the disposal of receipts from hospital charges at the Irwin Hospital is under consideration.

(f) The Resident Medical Officer who will assist the Chief Medical Officer in the administration of the hospital will not be allowed private practice.

(g) A statement giving the information is laid on the table.

(h) It is intended to fill this post from among the applicants for the post of Assistant Surgeon.

(i) and (j). The Chief Medical Officer, Delhi, will be the senior member of the staff of the Hospital and no new senior post is being created. The question of advertising does not, therefore, arise. It is proposed also to associate with the Chief Medical Officer a number of specialists in an honorary capacity. These arrangements are most consistent with economy the need for which is paramount.

---

*Statements.*

---

(i) The Chief Medical Officer and Civil Surgeon Delhi is in administrative charge of all medical institutions in Delhi Province, and is chairman of the Hospital Sub-Committee of the Delhi Municipality. He is also in medical charge of the Delhi Jail during the summer. The following institutions are under his control:—

1. Paharganj Dispensary.
2. Lalkua Dispensary.
3. Venereal Dispensary.
4. Shri Narain Dispensary.
5. Sadar Bazar Male Dispensary.
6. Sadar Bazar Female Dispensary.
7. Bara Hindu Rao Dispensary.
8. Kashmere Gate Dispensary.
9. Civil Hospital, Delhi.
10. Mahrauli Dispensary.
11. Shahdara Dispensary.
12. Narela Dispensary.
13. Nangloi Dispensary.
14. Najafgarh Dispensary.
15. S. J. T. B. Hospital, Kingsway.
16. Balak Ram Hospital.
17. Hindu Rao Hospital.
18. Police Hospital.
19. Isolation Hospital, Kingsway.
20. Irwin Hospital.

(ii) The Civil Surgeon, New Delhi, is in charge of the Willingdon Hospital, New Delhi, Press quarters Dispensary and Jangpura Dispensary. He is also in medical charge of the Delhi Jail and the Reformatory School during the winter.

(i) Pay and allowances of the Chief Medical Officer, Delhi.

Pay—Rs. 1,600 in the time scale for the I. M. S. (Civil).

Special pay as Chief Medical Officer—Rs. 250.

Compensatory allowance—Rs. 150.

Overseas pay—£30.

For Medical charge of Jail during summer only—Rs. 100.

NOTE :—Nothing additional for charge of the Hospital.

(ii) Pay and special pay of the Resident Medical Officer, Irwin Hospital, Delhi.

Pay—Rs. 200—450.

Special pay—Rs. 150.

NOTE :—Special pay given as remuneration for increased responsibility at the Hospital and loss of private practice.

**Mr. M. Ananthasayanam Ayyangar:** With reference to the answers to clauses (a) to (d), may I ask the Honourable Member to state if, besides the inspection of the hospitals, there are not other duties for the Chief Medical Officer, e.g., under the Factories Act, etc.? If so, will there be sufficient time for him to keep all these engagements if he is allowed private practice?

**Sir Girja Shankar Bajpai:** I have already informed my Honourable friend that I am laying on the table a statement of the supervisory duties of the Chief Medical Officer. He is already in charge of a very important hospital which will be vacated as soon as the new hospital gets going, and therefore there is no reason to anticipate that his charge of the new hospital will in any way interfere with the duties that he has been performing so far.

**ADVERTISEMENT FOR A POST OF AN ASSISTANT SURGEON FOR THE IRWIN HOSPITAL, NEW DELHI.**

1777. \***Mr. M. Ananthasayanam Ayyangar:** (a) Will Government be pleased to state whether the post of an assistant surgeon to the Irwin Hospital, New Delhi, on a salaried grade of Rs. 191—15—416 has been advertised in the public press, and further that preference has been vouchsafed to candidates holding foreign diplomas, such as the M.R.C.P.? If so, why?

(b) Under whose authority and why was the F.R.C.S. examination foisted on India? Was the present Director General, Indian Medical Service at any time a party to it?

(c) Is it the policy of Government that those equipped with this foreign degree should be afforded preference over those qualifying in India?

**Sir Girja Shankar Bajpai:** The post was advertised at the rate of pay mentioned in the question. No preference was shown to the London M. R. C. P. over equivalent Indian qualification. The M. D. of an Indian

University has been placed in the same category as the M. R. C. P. (London).

(b) The F. R. C. S. examination was not foisted on any one; on the contrary, Government understand that the arrangement to hold the preliminary examination for this qualification in this country is widely appreciated. The present Director-General, Indian Medical Service, assisted in making this arrangement.

(c) No.

**Mr. M. Ananthasayanam Ayyangar:** With reference to clause (a), is it or is it not a fact that in the advertisement it was said that preference would be given to an M. R. C. P. candidate.

**Sir Girja Shankar Bajpai:** No, Sir; the advertisement says that preference will be given to the holder of an M. R. C. P. (London), or an M.D. of an Indian university.

**Mr. M. Ananthasayanam Ayyangar:** With reference to clause (b), why is the F. R. C. S. examination held in India, and has it been attracting a good number of candidates?

**Sir Girja Shankar Bajpai:** It has been attracting a very considerable number of candidates, and my Honourable friend may be interested to know that the majority of these come from the Madras Presidency. The reason why the examination is held in India is that it saves the Indian candidates the trouble and expense of having to go to England and study there for any period varying from nine months to two years.

**Mr. M. Ananthasayanam Ayyangar:** If so, is any preference shown to an F. R. C. S. over Indian degrees of any province?

**Sir Girja Shankar Bajpai:** The inference is to be drawn from the answer which I have given to part (a) of the question, that is to say, equivalent qualifications are graded alike, whether they are English or Indian.

**Mr. M. Ananthasayanam Ayyangar:** Then may I know what is the advantage of holding such examinations here when for the purpose of public service those qualifications are no better than other local qualifications?

**Sir Girja Shankar Bajpai:** It so happens that there are a number of medical students in this country who desire English qualifications.

**Dr. N. B. Khare:** What is the equivalent Indian degree for the F.R.C.S.?

**Sir Girja Shankar Bajpai:** I expect it is the Mastership in Surgery.

**Mr. S. Satyamurti:** Are attempts being made by Government to raise, if necessary, the standards of examinations, and make the F. R. C. S. unnecessary for higher qualifications in India?

**Sir Girja Shankar Bajpai:** I think my Honourable friend, the Army Secretary, has in the past answered questions regarding recruitment for the highest medical service maintained by Government, namely, the Indian Medical Service. And I think he has informed the House that Indian qualifications are as much admissible for appointment to the Indian Medical Service as British qualifications. The question of raising the standards of medical examinations in this country is in the hands of the Indian Medical Council and I gather that they are doing everything possible to raise it.

**Dr. N. B. Khare:** Do Government make any difference in practice between the F. R. C. S. (England) and the M. S. (Indian)?

**Sir Girja Shankar Bajpai:** I have never sat on a recruiting board myself but my Honourable friend knows that the selection board generally includes both Indians and Europeans, and I should be very much surprised indeed if it turned out that anybody in making a selection gave preference to a British qualification merely because it happens to be British.

**Srijut Kuladhar Ohalika:** Is it a fact that the Surgeon-General, Madras, brought in this F. R. C. S. examination without consulting the Director-General of the Indian Medical Service?

**Sir Girja Shankar Bajpai:** No, Sir. What happened was that the Director-General of the Indian Medical Service in that capacity completed negotiations for the holding of this examination in India which he had started when he was Surgeon-General with the Government of Madras.

**Mr. M. Ananthasayanam Ayyangar:** Is it a fact that in the Lady Hardinge College and Hospital even Sisters and Matrons are recruited from among those who have British qualifications and ordinarily persons with Indian qualifications are not recruited?

**Sir Girja Shankar Bajpai:** The Lady Hardinge Medical College is not controlled by Government, and further, I would submit that that does not arise out of the question that I am answering.

**Mr. S. Satyamurti:** Have Government considered the adverse effect on the development of higher medical education in this country, of instituting and conducting in this country a foreign examination? Will, therefore, Government consider the desirability of abolishing this, and concentrating on evolving our standards as high as necessary, in order that medical education in the Indian universities may develop to its fullest height?

**Sir Girja Shankar Bajpai:** My Honourable friend is not quite correct in assuming that Government assist in any way in the conducting of this examination. The examination is conducted by the representatives of the Royal College of Surgeons who come out at their own expense and work in this respect in collaboration with the Indian Medical Faculties.

**Mr. M. Ananthasayanam Ayyangar:** Does not the Lady Hardinge College receive a substantial grant from Government?

**Sir Girja Shankar Bajpai:** It may receive a substantial grant but that does not mean that Government has any control over it.

ADVERTISEMENT FOR THE POSTS OF HOUSE SURGEONS FOR THE IRWIN HOSPITAL, NEW DELHI.

1778. \***Mr. M. Ananthasayanam Ayyangar:** (a) Have the posts of five senior and five junior house surgeons for the Irwin Hospital, New Delhi, been advertised in the public press, and will the juniors get only an allowance of Rs. 15 a month?

(b) Is it a fact that none of those appointed to these posts will be allowed private practice?

(c) How do Government justify the distinction drawn as regards private practice between those holding higher and those holding lower posts in the hospital?

(d) Who is responsible for drawing up this scheme?

**Sir Girja Shankar Bajpai:** (a) Yes. The allowance to juniors is for conveyance and not paid as salary.

(b) The junior House Surgeons will be allowed private practice as they will receive only a conveyance allowance from Government.

(c) The senior House Surgeons will have to reside in the premises and to be available for duty whenever required. This will not permit of the right of private practice being allowed to them.

(d) By Government's advisers and with Government's approval.

**Mr. S. Satyamurti:** Will Government consider the whole question of stopping private practice for whole-time Government servants, in view of the rapid development of private medical practitioners in this country?

**Sir Girja Shankar Bajpai:** That is rather a large question. I would not like to answer it off-hand, but I can tell my Honourable friend this, that in so far as new appointments that are being created are concerned, generally the tendency of Government is not to allow private practice.

**Mr. S. Satyamurti:** Will Government consider amending it and making it a uniform rule that, at least so far as new appointments are concerned, if they are whole-time appointments, its holders shall not be allowed private practice?

**Sir Girja Shankar Bajpai:** I do not think Government can commit themselves to that, because there are certain services the holders of appointments in which have the right of private practice as a term of their service and assuming that a new post is filled by a member of that service, it may not be possible to deny him the right of private practice except on payment of compensation by way of an allowance which may be excessive.

**Mr. S. Satyamurti:** Will Government consider addressing those who are in charge of recruiting these services that they must change this condition in the future, especially in view of the fact that the whole time of a

Government servant ought to be devoted to his work—it is the principle of public service—and that they have a highly developed system of private practitioners, some of whom are unable to obtain practice?

**Sir Girja Shankar Bajpai:** I can undertake to have the suggestion considered, but I cannot make any commitment on behalf of Government.

**Sir Cowasji Jehangir:** Is it not a fact that a good many medical practitioners give honorary service, and the allowance is merely a conveyance allowance?

**Sir Girja Shankar Bajpai:** I have already said in reply to this question that with regard to junior House Surgeons the only allowance that is being given is an allowance for purposes of conveyance. My Honourable friend's question was that Government should consider the desirability of abolishing all private practice even for those who are whole-time servants of Government.

**Sir Cowasji Jehangir:** Are those men doing honorary work?

**Sir Girja Shankar Bajpai:** The juniors are doing honorary work, yes.

**Sir Cowasji Jehangir:** Would it not cost much more to Government if they were to be whole-time servants of Government?

**Sir Girja Shankar Bajpai:** It will cost Government more.

**Mr. S. Satyamurti:** What are those services, recruitment to which gives to the men thereof, the right to private practice?

**Sir Girja Shankar Bajpai:** As far as I am aware, all the Provincial Medical Services, and the Indian Medical Service.

**Mr. S. Satyamurti:** Cannot the Government of India move in the matter, and change the rules of recruitment in the direction I suggest? Is there any difficulty administratively or otherwise?

**Sir Girja Shankar Bajpai:** I have already told my Honourable friend that I will have the suggestion considered.

**Sir Muhammad Yakub:** May I ask a question? Is it not a fact that some efficient medical practitioners will not enter Government service if they are denied the right of private practice and that those who are Government servants and Government institutions will suffer?

**Sir Girja Shankar Bajpai:** If my Honourable friend would like to have information on that point, our information is that so far as recruitment for the Indian Medical Service is concerned, the fact that there are few attractions in the Civil Medical Service has adversely affected medical recruitment, and I should say that what my Honourable friend has said will probably apply to most of the medical services in India.

**Mr. S. Satyamurti:** Do Government consider that it is worth while keeping up a service, recruitment to which can only be on a part-time basis—they pay the man, but yet he goes on having private practice? Will Government consider increasing the emoluments, if necessary, and getting a whole-time Medical Service, as they get work from every other servant of the Government?

**Sir Girja Shankar Bajpai:** My Honourable friend's assumption that everybody who has the right of private practice indulges in private practice at the expense of his legitimate duties is not justified.

**Mr. S. Satyamurti:** What is the amount of time which the average medical practitioner who has the right of private practice gives to private practice? Can Government get information in the matter?

**Sir Girja Shankar Bajpai:** In this particular case I do not think that an average will be an index to exact facts.

**Mr. S. Satyamurti:** Are there any rules at all governing the minimum time that a man who is allowed private practice is bound to devote to his work?

**Sir Girja Shankar Bajpai:** Every man who is in the service of Government is required by rule to attend to Government duty first.

**Mr. S. Satyamurti:** Are Government aware that in certain provinces—in mine to my knowledge—Government doctors neglect their work, in order to develop their private practice?

**Sir Girja Shankar Bajpai:** May I suggest to the Honourable Member that he should draw the attention of the Minister concerned in his province to this matter?

**Mr. President** (The Honourable Sir Abdur Rahim): That is going beyond the question.

---

#### THE DECREES AND ORDERS VALIDATING BILL.

**Mr. President** (The Honourable Sir Abdur Rahim): Legislative business . . . . .

**Mr. Sri Prakasa** (Allahabad and Jhansi Divisions: Non-Muhammadian Rural): On a point of order. I do not think, Sir, that a Bill like this can be moved in this House. I should like to draw your attention to page 20 of the Manual of Business and Procedure. In section 57(2) (iv), it is said that no reflections can be made on a Court of law in the exercise of its judicial functions. In clause 3 of this Bill, we find that certain judgments of High Courts are to be declared void and of no effect. In these circumstances, it seems to me that, if this Bill is discussed on the floor of this House, the judgments of the High Courts will have to be discussed.

**Mr. President** (The Honourable Sir Abdur Rahim): It can be properly discussed without casting any reflection on any Court of law or judge and the Chair hopes it will be discussed like that.

**The Honourable Sir Nripendra Sircar** (Law Member): Sir, I am glad to find the dust of Lucknow has increased my friend's sense of humour. I beg to move:

"That the Bill to remove certain doubts and to establish the validity of certain proceedings in High Courts of Judicature in British India be taken into consideration."

As the matter involved is rather technical, may I have the liberty to explain it in non-technical language to the best of my ability? Certain High Courts—the Calcutta High Court, the High Court of Bombay, the High Court of Madras, the High Court of Rangoon—have jurisdiction to entertain, try and determine certain classes of suits. That power is given to these High Courts by Letters Patent, and although the numbering is different—in one case it is clause 10, in another case clause 12 and so on—the language is the same. Among other things, the High Court can entertain a suit which is not a suit for land under certain considerations. If it is a suit for land and if the land is wholly outside the original jurisdiction of the High Court, then the High Court has no jurisdiction to try that suit. So far, it is very simple. But what is a suit for land has led to a hopelessly conflicting number of decisions among the different High Courts. The present Bill really involves Bombay and the Central Provinces and is limited to the narrow question whether a suit on mortgage—whether a registered mortgage or a mortgage by a simple deposit of title deeds—which happens so frequently in commercial places like Calcutta and Bombay is a suit for land. If that is a suit for land, if the land is wholly outside the jurisdiction of the High Court, the suit cannot be entertained in the High Court. On the other hand, if it is not a suit for land, within the meaning of the phrase as used in the Letters Patent, then the High Court can entertain the suit provided the defendant is within its jurisdiction or carries on business within the jurisdiction of the High Court.

Now, so far as the Calcutta High Court is concerned, it has ruled, for very many years, that a suit on mortgage, including a mortgage by the deposit of title deeds is a suit for land, and, therefore, the Calcutta High Court has declined to entertain suits on mortgages where the holder of the land is outside the original jurisdiction of the Calcutta High Court. On the other hand, in the Bombay High Court, what has happened is this. The Bombay High Court for very many years has ruled that a suit on mortgage is not a suit for land. That has been the view of the Bombay High Court for a very long time—certainly at least from 1890. There was, if I may say so, a slight change in their view as expressed in a recent case in 50 Bombay, but that was cured within ten months or so by a full Bench of the Bombay High Court, which affirmed the ruling which has been fairly consistent, though not always so throughout nearly fifty years, namely, that a suit for land does not cover one based on mortgages. The consequence of all this jargon is this. Suppose a man in Nagpur—and I specially mention Nagpur because I find circulation motion coming from my Honourable friend, Mr. Aney—wants to borrow money—I presume even a man from Nagpur, sometimes, wants to borrow from a Bombay capitalist and he has

nothing to offer but his mills in Nagpur or other property in Nagpur, the Bombay capitalist lends in the faith that he can bring his suit in Bombay. I shall show to you from the statements made by the chambers of commerce that such transactions involve crores of rupees: what happens is this: the Bombay capitalist finds the money, provided the defendant, the borrower, is within the jurisdiction of the Bombay High Court or is carrying on business there. Business has gone on to the extent of crores of rupees on this footing, the Bombay capitalist knowing that he will be able to bring his suit in the Bombay High Court and quickly realise his money; and I may also inform my friend, Mr. Aney, that the Nagpur Court has, throughout, executed these decrees without raising any question until August, 1935. In August, 1935, the Nagpur Court came to the conclusion that what it had been doing so long, for so many years, was wrong and that as a matter of fact the Bombay High Court has no power, no jurisdiction to entertain a suit on mortgage if the land is outside Bombay. That has created a confusion which is likely to confuse the title of many people who have obtained decrees, executed decrees, and are now in possession, as purchasers in execution of decrees. The situation which has been created by these two decisions in August, 1935, I would like to describe in the language of others—I am reading from the views of the Indian Merchants Chamber in a letter dated the 25th October, very shortly after the Nagpur judgments:

"My committee are informed that numerous decrees have been passed by and many suits are even now pending in . . . ."

**Mr. Ghansham Singh Gupta** (Central Provinces Hindi Divisions: Non-Mulhammadan): May I know what it is that you are reading from?

**The Honourable Sir Nripendra Sircar:** I am reading from a letter from the Secretary to the Indian Merchants Chamber, Bombay, to the Secretary to the Government of Bombay, dated the 25th October, 1935. After I have read it, I shall be glad to make it over to my Honourable friend if he wants it.....

**Mr. Ghansham Singh Gupta:** I do want it.

**The Honourable Sir Nripendra Sircar:**

"My committee are informed that numerous decrees have been passed by and many suits are even now pending in the Bombay High Court affecting properties situate in the Central Provinces within the appellate jurisdiction of the Court of the Judicial Commissioner of Nagpur. In several cases these properties have been sold or have been ordered to be sold by the Bombay High Court. Bombay banks and financiers have advanced money on the mortgage of properties in the Central Provinces acting on the faith of the correctness of the view expressed in the Bombay decisions that a suit to enforce such mortgages would lie in the Bombay High Court. If the Nagpur decision—(I would draw the attention of the House to this passage)—is allowed to stand, not only important business transactions but titles to numerous properties in the Central Provinces which have been sold by the Bombay High Court in the course of the last several years will be seriously affected. Whatever may be the merits of the decision of the Nagpur High Court, as business men, my committee fail to understand how it is possible that when a British Indian High Court passes a decree in accordance with the law as understood by it, another court in British India can refuse to execute it as being against its own view of the law."

[Sir Nripendra Sircar.]

I would like to remind the House, once more, that up to August, 1935, the Nagpur Courts have been executing all decrees passed by the Bombay High Court and never taken exception to them.

Then, I would like to read a view which was expressed in the *Bombay Law Journal*: a copy was sent by the editor to the Government and it was also published in the *Bombay Law Journal*, a very well-known journal. I am reading only two paragraphs from it:

"The question of the jurisdiction of the High Court of Bombay in such cases has not remained academical. The Bombay Merchant has received definite assurance as to the jurisdiction of the Bombay High Court, by considered judgments of various Benches of the Bombay High Court. Today there are pending in the Bombay High Court cases in which decrees absolute have been passed and mortgaged properties have been advertised for sale by the Commissioner, High Court.

Under these circumstances, the two decisions of the Court of the Judicial Commissioners of Nagpur (the judgments wherein are published in the *Bombay Law Journal* of November, 1935, a copy of which is sent herewith) have caused the greatest disturbance among Bombay investors. They have opened up controversies, which had been laid long ago, they have thrown a cloud over the title of innocent purchasers, and have disturbed the market in similar mortgages, to an extent which, perhaps, it is difficult to realise from a distance, but which, to any impartial observer near at hand, would appear to be catastrophic."

**Mr. K. Ahmed** (Rajshahi Division: Muhammadan Rural): Would it not be advisable if the decisions of the Bombay High Court and the Nagpur High Court come to the Federal Court which is under the conception of the Government and ask the Federal Court to consider the matter so that the commercial people of Nagpur and the commercial people of Bombay can meet together in front of the Law Member here?

**Mr. S. Satyamurti** (Madras City: Non-Muhammadan Urban): Is this all? I was told a great deal about you.

**Mr. K. Ahmed**: That is not Parliamentary.

**The Honourable Sir Nripendra Sircar**: My Honourable friend was so busy the last eighteen months fighting elections that he has forgotten that the Federal Court has nothing to do with these questions. I read now from the *Times of India* of the 28th September:

"The Bombay High Court for a number of years held the opposite view and entertained suits where, although the property was situated outside, the mortgage itself was made in Bombay. In 1926, however, a Full Bench upset this current of decisions and accepted the Calcutta view as correct, incidentally causing considerable consternation in legal and commercial circles. The situation was, however, soon retrieved by another Full Bench of seven judges who, by a majority, overruled the previous Full Bench decision; and matters have gone on with apparent smoothness for the last seven or eight years. Now, the Nagpur Full Bench has again thrown the whole question into a state of confusion and uncertainty. It would be rash on our part to suggest which view of the law is correct. The Judges are not agreed and the High Courts have scarcely been consistent. There is no authoritative pronouncement of the Privy Council. But, from the standpoint of the man of business, it does not matter a brass button which view of the law is correct. It is no longer a question of good law or bad from the lawyer's angle, but of determining what the law is. A bewildering conflict of views upon a point of such great practical importance has been permitted too long, and the position is rendered really intolerable by the decision of the Nagpur Full Bench. It means that although one High Court gives a decree in accordance with the law as understood by it, another court of British India is free to ignore it as being against its own view of the law. It is now imperative for the Government and the Legislature to intervene and declare the law definitely once for all and for the whole of India."

The next passage I would like to read is from a letter which came from the High Court of Bombay, which is signed by the Prothonotary and Civil Master, High Court of Bombay:

"Their Lordships without going into the merits of these decisions beyond observing that they appear to ignore the general rule that an executing Court should not challenge the decrees, are of opinion that if matters are allowed to remain as at present the dead-lock which has been created by these decisions will continue, and very serious losses will be sustained by the Banks and Mercantile Community of Bombay who have already obtained from this High Court decrees affecting properties situated in the Central Provinces, as these decrees are ineffective according to the said decision."

So, the Bombay High Court is very keen on it: the Bombay Government is very keen on it: the *Bombay Law Journal* and other public opinion is also very keen on getting this difficult position created by the two Nagpur judgments removed.

I will read one more extract. The view of the East India Cotton Association is as follows (it is after all these merchants and bankers who have lent their money and they are really the only people interested.): they say:

"I am directed to explain that in the ordinary course of business it is a common practice for members of this Association to take security for the obligations of up-country constituents. In many cases such security takes the form of a mortgage of immovable properties which are situate outside the town and Island of Bombay and very often in the places where the up-country member resides or carries on business. This is so, although all the transactions are to be performed in Bombay. My Board wish to urge that the recent decision of the Full Bench of the Judicial Commissioner's Court of Nagpur has thoroughly unsettled the law as to immovable property and has created grave confusion even in the administration of justice . . . . ."

Then, Sir, the last extract is from a representation by the Bombay Incorporated Law Society. This is what they say:

"In hundreds of cases suits to realise mortgage securities situate entirely outside the Presidency have been filed in the Bombay High Court. Decrees Absolute for Sale have been passed and properties have been sold in these suits and purchased, on the faith of the decrees being passed with jurisdiction. Your petitioners submit that at a rough estimate crores of rupees are at present invested by Bombay people on securities of immovable properties situate wholly outside Bombay."

Sir, the object of the Bill is to remove this doubt, and, if I have got to oppose at the proper time any dilatory motion for circulation, I shall explain my reasons just now. After all, it is all very well to say let us see what the public opinion is in this matter. But who is interested in this matter? The only people, Sir, who are interested are the judgment-creditors or people who had purchased property on decrees passed by the Bombay High Court. That is the only limited community who are interested in this question. Then, Sir, I understand, that if once you accept a Select Committee, it means you accept the principle of this Bill. If you accept the principle of this Bill, what else is there to be done before the Select Committee? The principle of the Bill is, that, whichever may be the correct view of the law, things have gone on for half a century, and on the strength of decrees passed by Courts, properties to the extent of crores of rupees have changed hands, and all the confusion created by the Nagpur judgments should be avoided and titles are not to be disturbed. If that principle is accepted, then there is nothing else to be done in the Select Committee. That is why I say I shall object any dilatory motion being made in respect of this Bill.

Sir, I would remind my friend, Mr. Aney, of one argument. If his

[Sir Nripendra Sircar.]

objection to this Bill, or rather to take time over this Bill, is in the interest of the man in Nagpur or the Central Provinces who is going to borrow money, let me tell him from my experience, and I am talking now only of Calcutta and not of Bombay, but I daresay similar considerations will apply,—that in Calcutta it is difficult to get money if the capitalist or financier or the banker knows that his suit will have to be instituted outside Calcutta, and probably the Honourable the President also knows this,—that in most of the big transactions where there is any doubt, the Calcutta High Court having held that some part of the land must be situate in Calcutta, parties who are borrowing twenty or thirty lakhs of rupees buy a piece of land in Calcutta for say Rs. 200 only for the purpose of jurisdiction,—the point is that my friends in Berar or Nagpur will find it extremely difficult to get money if the Bombay capitalist or banker or financier knows that he will be debarred from bringing a suit in the Bombay High Court and that he will have to run up to Nagpur for filing his suit. You will help nobody except probably a few dishonest judgment debtors who, having borrowed the money, have not allowed decrees to be passed; such people will then go back and say that a decree cannot be executed here.

I do not think I need detain the House longer. As Honourable Members will see, the whole point of this Bill is, we want to remove this confusion and probable infirmity of title which, after 50 years, has been created by the two judgments of Judicial Commissioners of Nagpur. Sir, I move.

**Mr. President** (The Honourable Sir Abdur Rahim): Motion moved:

“That the Bill to remove certain doubts and to establish the validity of certain proceedings in High Courts of Judicature in British India be taken into consideration.”

There are two amendments, both of a dilatory character, one in the name of Mr. Aney, and the other two in the names of Mr. Ghansham Singh Gupta and Mr. Sri Prakasa, that the Bill be circulated for the purpose of eliciting public opinion thereon and the other that the Bill be referred to a Select Committee. Does Mr. Aney wish to move his amendment?

**Mr. M. S. Aney** (Berar Representative): Yes, Sir.

**Mr. President** (The Honourable Sir Abdur Rahim): Let the amendment be formally moved, and then there will be a discussion on the motion and this amendment.

**Mr. M. S. Aney**: Sir, I formally move the motion which stands in my name:

“That the Bill be circulated for the purpose of eliciting public opinion thereon by the 31st of July, 1936.”

**Mr. President** (The Honourable Sir Abdur Rahim): The other motion is in exactly identical terms, but only the date is before the 31st August, 1936. The Chair does not know if the Honourable Member wants to move that motion?

**Mr. Ghansham Singh Gupta:** I don't want to.

**Mr. President** (The Honourable Sir Abdur Rahim): Then, the Honourable Member is satisfied with Mr. Aney's motion?

**Mr. Ghansham Singh Gupta:** I adopt his.

**Mr. Sri Prakasa:** Sir, I shall not move my amendment, but I shall support Mr. Aney.

**Mr. M. S. Aney:** Sir, the Honourable the Law Member has very lucidly placed before the House the circumstances which necessitated him to come with a Bill like this before the House. He has also explained the position of the law on this point as it is understood by other High Courts and by the Bombay High Court. - The dispute has arisen on account of difference of interpretation of certain expressions in clause 12 of the Letters Patent. The Honourable the Leader of the House has tried to place before this House in non-technical language the entire substance of the points at issue. I also realise the force of some of the observations which he has made in support of his motion, and, particularly, of those observations which he addressed to me, in trying to show certain other difficulties. Probably he thinks that I am here to represent the cause of people who are likely to suffer, in case the Bill is not passed immediately and the dilatory motion is accepted by this House. Sir, I want to clear up one point at the very outset, and it is this. I am not actuated by any sense of provincialism in this matter. It is not because there is a conflict in the decisions of the Nagpur High Court and the Bombay High Court that I am getting up here to support the judgment of the Nagpur High Court as I happen to come from the Central Provinces. That is not my point of view at all. I feel, and I think it is obligatory on every Honourable Member of this House, to forget all provincial feeling when we are sitting here as Legislators, and if I make any observations, I hope that the Honourable Members of this House will not look at them as those coming from a man who is actuated by any ultra provincial feeling, but from one who is trying to understand the problem from the interests of those who are likely to be affected adversely or favourably by the Bill before the House, if the same be passed into law.

In the first place, if Honourable Members have correctly followed what has been so lucidly placed before the House by the Honourable the Leader of the House, they will understand that the dispute relates, so far as the present Bill is concerned, to one point, namely, whether the High Courts are under the Letters Patent entitled to take cognisance of mortgage suits in respect of properties situate beyond the jurisdiction of the High Courts as prescribed there. There is a difference of opinion on this point, and the interpretation placed upon certain expressions in clause 12 of the Letters Patent has given rise to all this trouble. The position is this. The Bombay High Court have decided in the last case to which I shall presently refer, that they have jurisdiction and they have passed decrees. The Leader of the House has told me, and he is right, that that has been the view of the Bombay High Court from a long time, although, I do not admit, that that has been the consistent view of the Bombay High Court all these years.

**The Honourable Sir Nripendra Sircar:** I did not say so.

**Mr. M. S. Aney:** But I may admit that that has been the general view of the Bombay High Court. There have been more than one  
 12 Noon. decisions, in the intervening period, of the Bombay High Court and there was one which was given only about a short time before the last decision which has given rise to this trouble, in which the Bombay High Court had taken a different and contrary view also. The Bombay High Court has taken the view that it has jurisdiction to take cognisance of suits based upon equitable mortgages or legal mortgages of properties situated beyond the original jurisdiction of the Bombay High Court. It is also true that those decrees, whenever they have been made, used to be executed in the Central Provinces and Berar. But the Honourable the Law Member is, I believe, not quite correct when he says that the Nagpur High Court allowed those decrees to be executed. The point is this. That question in that form had never come before the Nagpur High Court for decision till the last case which has given rise to all these troubles. That case is reported in 31, Nagpur Law Reports, known as the case of Karan Chand Tekchand vs. Dharamsey,—that is one case, and immediately after a month, another case was decided, and in these two cases this question was categorically raised before the High Court. The whole case law was reviewed by the Judges of the Nagpur Judicial Commissioners' Court, which was then a Judicial Commissioners' Court, and they have come to the conclusion that the view of law as regards jurisdiction, taken by the Bombay High Court, is not, according to their opinion, a correct view. On the other hand, they have shown that the weight of authority has been against the view propounded by the Bombay High Court in the last case. The decree being therefore, *ultra vires*, its execution also was illegal and unfructuous.

When such a dispute between two High Courts has happened, what is the proper way of approaching that difficulty? Ordinarily, the aggrieved party goes in appeal to the Privy Council. There is a Court with superior jurisdiction with ultimate appellate powers, that Court can take cognisance of the issue in an appeal appropriately filed before it, and decision can be given. That decision will set at rest whatever doubt exists about the interpretation of any particular expression of any Act or any law. That is one way. The second way is to get the law amended. But my submission is this. In the present case neither the one nor the other remedy is tried. Let me read out to the House clause 12 of the Letters Patent itself; I shall only read the portion which is relevant:

"And We do further ordain that the said High Court of Judicature at Fort William in Bengal (*you may substitute the words, Bombay, Madras, etc., it makes no difference*). in the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description, if, in the case of suits for land or other immovable property, such land or property shall be situated, or in all other cases if the cause of action shall have arisen . . . ."

The dispute arises over the meaning of the words, "suits for land or other immovable property"—whether a suit for mortgage is a suit for land or not; whether that is the meaning contemplated by the authors of the Letters Patent is the point at issue. If there is that ambiguity, that ambiguity can be cleared, either by final authoritative legal opinion expressed by the highest tribunal, or, by those who have promulgated the law themselves. Here, the Government of India now comes forward with a Bill before us, by which it wants to lay down that notwithstanding the real objects of the authors of the Letters Patent or the real state of the law, if any High Court thinks it has got the right—the Government of

India want to prevent anybody else from raising an appropriate plea, if he has got an opportunity of doing it, to challenge the decision of the High Court on the ground that the original order or decision, that was passed, was wrong for want of jurisdiction. That is what clause 2 of the Bill means. The Government of India do not ask the Parliament to amend the Letters Patent and to remove the ambiguity. It is, no doubt said in the Statement of Objects and Reasons—the Government of India see the necessity of having the Letters Patent amended, but I am not quite sure whether the Government of India will get the Letters Patent amended in the way in which they want the present law to be interpreted authoritatively or on lines in which it has been understood by all the High Courts, except the Bombay High Court.

The Statement of Objects and Reasons says:

“Clause 12 of the Letters of the Bombay High Court, which is identical in terms with clause 12 of the Letters Patent of the Madras and Calcutta High Courts and corresponds to clause 10 of the Letters Patent of the Rangoon High Court, has been variously interpreted by the several High Courts, and the question of amending the clause is under consideration.”

I do not know under whose consideration it is.

**The Honourable Sir Nripendra Sircar:** May I give a bit of information on that question that has been raised? As regards amending the Letters Patent, the Government of India are taking steps. I believe, that towards the end of October, or in November, 1935, representations have been made, in the proper quarters to put an end to all these difficulties by amending that, but even if that prayer is granted, that will not remove this difficulty, because we cannot possibly ask them to do it with retrospective effect.

**Mr. M. S. Aney:** I am just coming specially to that point within a few minutes. It has been admitted, it is natural, it should be conceded that the real necessity is to get the Letters Patent amended. We are told that efforts are being made to get the Letters Patent amended. In what form it will be amended we do not know,—whether the High Courts with original jurisdiction are going to be conferred this new jurisdiction which, under the interpretation of this section as it is made by other High Courts, is denied to them, or whether they are going to be denied any jurisdiction altogether, is a point on which we know nothing.

**The Honourable Sir Nripendra Sircar:** I can give some information on that point. What will happen, of course, is not within my power, but we are trying to have the Letters Patent amended so as to give effect to the view of Bombay decisions, relating to suits for land as applied to mortgage suits, administration suits, etc.

**Mr. M. S. Aney:** My very object in bringing this motion and my main objection to the present Bill is this, that in a way the Government of India are forcing the hands of the authorities to get the law amended in such a way as to confer that jurisdiction with regard to suits on mortgages permanently in the four High Courts to the disadvantage of the defendants who are to be sued there. In bringing this Bill also, the Government of India wants to secure the verdict of this House in favour of giving an amendment like that in the Letters Patent very easily—because if the House sanctions clause 2, it means that this House also wants a similar jurisdiction to be given to the High Court.

**The Honourable Sir Nripendra Sircar:** You are wrong there. We are not asking the House to decide which view is correct.

**Mr. M. S. Aney:** Clause 3 stands on a different footing. Clause 2 allows the High Courts to exercise that jurisdiction if it wants and prevents anybody else challenging the orders of the High Court, on the ground that it had no jurisdiction whatsoever in passing that and clause 3 is intended to give retrospective effect. Had the Bill been confined only to give retrospective effect with regard to those decrees and orders which were passed it would have been a different story altogether. The retrospective measure can be confined only to the case where, under a *bona fide* belief, the parties had approached the High Court and the High Court exercised that right in accordance with the view of the law prevailing and they had obtained decrees. But when once the legality of such an order is successfully challenged by a Court of competent jurisdiction what I wish the Government of India to do is to prevent the High Court of Bombay from exercising its original jurisdiction in that direction, hereafter. If you pass a section like section 2, the Bombay High Court can go on interpreting the section in wrong way and entertain suits and prevent the decisions and orders which will be passed, hereafter, from being challenged. If the effect of the amendment was only to give retrospective effect to those decisions which had been affected as a result of the decision of the Nagpur High Court, the case would have been different but section 2 goes much beyond that and creates a jurisdiction where there is none. Tomorrow a Bombay banker can bring a suit on an equitable mortgage in the Bombay High Court against a defendant who resides in the Central Provinces or in Berar or any other place with regard to property which is also situated beyond its jurisdiction and even beyond British India. He can get a decree in the High Court and it will be necessary for the Courts in Berar and the Central Provinces to execute that decree.

**The Honourable Sir Nripendra Sircar:** They have done it for 60 years.

**Mr. M. S. Aney:** That is a different thing. There is now definite view explained by the High Court and which is in conformity with the view held by other High Courts also. It is necessary that the process of bringing in suits in the Bombay High Court on that wrong interpretation of the law should be put a stop to till a modification of that law is made by the proper authorities. I do not understand the haste with which this thing is being done here. There is another point also which I wish to bring to the notice of the Honourable the Law Member. I want him to consider that point for himself. What does section 2 really mean? In my opinion, section 2 really means a kind of explanation given to the clause which embodies clause 12 of the Letters Patent. The Letters Patent lays down certain conditions explaining the original jurisdiction of the High Court established under the Letters Patent. There are ambiguous expressions and clause 2, in a way, creates an explanation by which the ambiguity is being removed. That is the net effect of clause 2 of this Bill. But what I want to know is whether this Legislature has got the power of making any law which repeals or affects an Act of Parliament. Now, I will read out to the House what sub-clause (2) of section 65 of the Government of India Act says:

“Provided that the Indian Legislature has not, unless expressly so authorised by Act of Parliament, power to make any law repealing or affecting any Act of Parliament passed after the year one thousand eight hundred and sixty and extending to

British India (including the Army Act, the Air Force Act and any Act amending the same) or any Act of Parliament enabling the Secretary of State in Council to raise money in the United Kingdom for the Government of India; and has not power to make any law affecting the authority of Parliament, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom or affecting the sovereignty or dominion of the Crown over any part of British India" and son on.

My point is this. Anyhow, this Legislature cannot claim the right of amending the Letters Patent but what it cannot claim it wants to do indirectly by passing a law here with a view to fix the exact meaning of that Act. So, this law, in my opinion, in a way, affects the Act which it is not within the power of this House to amend or repeal or modify.

**The Honourable Sir Nripendra Sircar:** May I correct a mistake? It is an entirely wrong statement that we have no power to change that. By the terms of the Letters Patent themselves, they are made subject to certain powers of the Legislature.

**Mr. M. S. Aney:** By the Letters Patent the laws made by this Legislature are in a way to be administered by the High Courts established under the Letters Patent, but are the Letters Patent themselves to be modified by an Act of this Legislature?

**Mr. Bhulabhai J. Desai** (Bombay Northern Division: Non-Muhammadan Rural): May I draw your attention to clause 44 of the Letters Patent?

**Mr. M. S. Aney:** (After looking at clause 44 of the Letters Patent): I withdraw my objection with respect to this portion of my argument, namely, the competency of this Legislature to consider the present Bill. I was under some misapprehension.

Now, I have stated at the very beginning that I will have the House consider the question from the point of view of the general principles on which questions with regard to the jurisdiction of the Courts is determined by the ordinary law of the land. As Honourable Members know, the position is made clear in section 16. All the necessary provisions, that relate to this matter, are laid down in section 16 of the Civil Procedure Code. There the law is laid down like this:

"16. Subject to the pecuniary or other limitations prescribed by any law, suits—

(c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immoveable property,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate."

The general principle has been that suits for mortgage, *viz.*, for sale, foreclosure or redemption, should be brought into those Courts within whose jurisdiction the mortgaged property is situated. That is the ordinary law, and here there is sought to be made a big exception. Whatever interpretation you may put upon the words "equity in personum" what it comes down to is this. We are trying to create an exceptional jurisdiction in the Bombay High Court; we are trying to concede an exceptional jurisdiction to the Bombay High Court so far as this matter is concerned. Now, what

[Mr. M. S. Aney.]

I want to know is this. What was the idea of the Legislature when it enacted section 16 of the Civil Procedure Code? The real point is whether the convenience of the litigant world was taken into consideration by this Legislature or not when they enacted section 16 of the Civil Procedure Code. After all, the balance of convenience lies in suing the man in the Court within whose jurisdiction the mortgaged property is situated. I, therefore, do not see what are the actual circumstances peculiar to the town of Bombay as distinguished from Calcutta, Madras and any other place, that this ordinary rule should be entirely departed from and a special jurisdiction should be either created or understood to be vested in the Bombay High Court.

**The Honourable Sir Nripendra Sircar:** I would invite the attention of my Honourable friend to section 120 of the Code which expressly says that section 16 does not apply to the High Courts.

**Mr. M. S. Aney:** That is true, and it is governed by that; they have got their own provisions for that; but what I say is,—if we have to find out what is the proper Court in which the mortgagee is to be sued, we must bear in our mind those very considerations which weighed with the Legislature in enacting the Civil Procedure Code. That is my point; and those considerations cannot be different for those Courts which are situated outside Bombay as against the High Court which is situated in the town of Bombay itself. I do not see that there is any such fundamental difference in the circumstances of the town of Bombay, as against other towns that we will be justified in making great departure from the general rule in its favour. Not only that but that we shall certainly not be justified in making a departure here and now without even calling for or moving the proper authority to amend the law in the proper way after giving the matter full consideration. The Honourable the Leader of the House has no doubt read out to us the opinions of certain Bombay merchants, etc. Now I do not know whether they were opinions invited by the Government of India before this law was made or, were gratuitously sent to them in order that the attention of Government should be drawn to the anomalous position created by the conflict of decisions between the Nagpur and the Bombay High Courts. Having received all those opinions the Government have considered this question and it seems probable that they are moving the authorities in England also to take such a step. But I have not heard a single opinion as to what the Local Government of the Central Provinces has to say on this point. After all, litigation implies two things,—the judgment-debtor and the judgment-creditor—in the world of litigation. In regard to a mortgage the difficulty is this. It is not only that they can bring suits on their equitable mortgage before the Bombay High Court but where the same property is mortgaged in these Provinces the subsequent mortgagees who are there are impleaded and made co-defendants in the Bombay High Court and they are expected to defend their title and claims against the plaintiff and the defendant in the High Court of Bombay. Those who know what it is, how costly and ruinous it is, to carry on a litigation and to file suits and fight claims in the High Courts of Bombay or Calcutta as compared to the mufassil Courts, can imagine the difficulty in which the entire money-lending class in Berar and the Central Provinces finds itself. My friends have got solely the interests of the big bankers in Bombay who advance money to certain judgment-

debtors in mind. I do not want however to stand for fraudulent or dishonest persons. There are a number of innocent people who are bound to be impleaded in suits before the Bombay High Court, sometimes owing to collusion, fraud and so forth. It is difficult for them to prove that there is collusion in Bombay—they are unable to prove their case. I am just taking an example, which may give my friend some idea. In Bombay a mortgage can be had by merely depositing the title-deed. That is what is known as equitable mortgage.

**Sir Cowasji Jehangir** (Bombay City: Non-Muhammadan Urban): Not always.

**Mr. M. S. Aney:** It may be there may be a suit in connection with the mortgage in the Bombay High Court and even in such a suit they are entitled to make all the subsequent legal mortgagees as co-defendants and these persons have to defend their case in the Bombay High Court. They must there lead a proper defence. My difficulty is this. I must assure my Honourable friend that the matter is of great importance to defendants living in Berar and the Central Provinces. Some portion of the same property is mortgaged to more than ten persons; a certain property which is mortgaged to a Bombay banker may be found to be mortgaged here with a number of persons. With regard to the first mortgage or other mortgages, the date of the mortgage is sometimes never known. The property may be mortgaged to several persons without their having the slightest knowledge of there being an equitable mortgagee in Bombay who has a priority over them all on account of some fraud of the mortgagor.

**The Honourable Sir Nripendra Sircar:** But surely, your man inquires about the title-deeds? If you are advising your client and he is going to advance money to a man in Nagpore, the first thing you will do is to see where are the title-deeds?

**Mr. M. S. Aney:** Many times we have to go by the registered copies of certain Government records as title deeds of property. In the mufassil what they do is this. Many times, these people take a certified copy from the Registrar and then proceed. We here call upon a number of persons, after their having entered into transactions of the nature of a contract with a banker at Bombay, also to face the difficulty of finding themselves as defendants in a suit instituted in Bombay. It is a very difficult position and it involves a great hardship to them. It is on account of this consideration mainly—out of consideration for those persons who are innocent and who are impleaded as a matter of course in suits brought in Bombay—that I thought it necessary to move the amendment before this House. I think if this motion is accepted by the Honourable the Law Member, then it would be possible for us to know exactly what is the real position with regard to judgment-debtors also, whether it would be difficult really for them to get money to carry on business. On that point we have only the views of those who advance money. They say, "We will not be able to advance money, we will not be able to carry on any transaction, if we are not given facility to run to the nearest Court and file a suit and get a decree; and, instead, if we are compelled to go to the Central Provinces Court for the sake of executing our decree". I submit the creditors will naturally say this. But whether the real position is like that or not, it is necessary for us to be satisfied by being able to consult other persons who are interested in this.

**An Honourable Member:** What about Mr. Bhulabhai J. Desai? Why does he support this Bill?

**Mr. M. S. Aney:** My Honourable friend, Mr. Desai, is interested in that class of persons who approached him with representations. I am sorry to have to make this comment. Here it is one of those rare occasions when the Honourable the Leader of the House and the Honourable the Leader of the Opposition have got a common cause to fight for. It is a unique occasion and I congratulate them on coming together to make a common cause and fight. But I am speaking for those persons whose interests, I am afraid my Honourable friend, Mr. Desai, has got very little occasion to represent. It is the class of persons who are called judgment-debtors and the innocent persons having interest in the mortgaged property, that I am speaking for. My Honourable friend, Mr. Desai, is interested in judgment-creditors. He is the Counsel for all the creditors in Bombay. However, I am quite sure, that if my Honourable friend, Mr. Desai, defends this Bill, it will not be on those considerations. I am not going to attribute any motive of that kind to him; nor am I going to attribute any motive of that kind to the Honourable the Law Member. He was one of the biggest Counsels in the Presidency town of Calcutta with perhaps the largest practice on the original side of the Calcutta High Court. But I am sure he has not introduced this measure out of any motive. He has a public duty to discharge, and as several applications were before Government, the Honourable the Law Member probably thought that the way out of the difficulty lay in confirming jurisdiction on other High Courts. But I want to bring to the notice of my Honourable friend, Mr. Desai, that he should take into consideration the interests of another class which is going to be affected. Have the Government got before them all the materials to come to a definite decision that this measure should be passed immediately? Are the Government sure that there are not other classes of people who are interested, that is those classes of people who will be compelled by this measure to run to the Bombay High Court to defend their cases and incur all the costly expenditure which litigation in the Bombay High Court involves? Therefore, I submit, it is necessary that we must be in a position to ascertain their views. The Bar Associations in the Central Provinces, Berar and all the mufassil towns, should be consulted so that we may be in a position to know exactly where we stand with regard to this matter. I am not suggesting that this is necessarily a bad law. I have got my own doubts about the effect which the absence of a law like that might produce. I have got my own doubts on the point. But I feel that unless we know exactly the opinion of the other party—the opinion, nay even the existence of the other party seems to have been completely ignored—it is not fair to rush this measure through now. As it is only the opinions of the Bombay merchants seem to have been placed before the Government. The opinion of the Bombay bankers and that of the Bombay High Court must naturally be that their view must be upheld. We have got nothing before us to know what is the view of the other party interested. My submission, therefore, is that there are two points to be considered. The first is that the view of the Bombay High Court is abnormal, namely, that the view of law it has propounded in its superior wisdom should be confirmed by the Legislature in the form of law. Why are those who are affected not resorting to the Privy Council? I do not understand why the Bombay bankers should set the machinery of this Legislature in motion? Perhaps the banking interests of

Bombay thought that it is easier to move the machinery of the Government of India and to get a law enacted as they liked without difficulty rather than go to the Privy Council to get a decision in their favour. I think the Government of India, for the sake of maintaining its own reputation of keeping an impartial view of all the interests concerned, ought not to rush this Bill at once and call upon the House here and now to pronounce its opinion upon it. I suggest, that the Government ought to have ascertained the opinion of the mufassil litigants before placing this motion for the consideration of the House. If the Bill is circulated, we shall be in a position to know the views of all parties concerned. If the views are obtained by the 31st July, we will be able to consider this Bill in the Simla Session. With these words, I move my motion.

**Mr. President** (The Honourable Sir Abdur Rahim): Amendment moved:

"That the Bill be circulated for the purpose of eliciting public opinion thereon by the 31st of July, 1936."

**Mr. Ghansham Singh Gupta:** Sir, this Bill which is before the House is not so innocent as it appears to be. There are two questions involved in this measure. The first and foremost is whether this is a good Bill or not. But the more important question that is involved is this: whether there is such an urgency about this matter and whether the matter is so clearly beyond doubt that all normal procedures of legislation be brushed aside and that this House should pass the Bill all at once. These are the two main questions that must be discussed and discussed dispassionately before we come to any conclusion. For my part, I cannot vouchsafe the impartiality of my respected friend, Mr. Aney.

**An Honourable Member:** Why?

**Mr. Ghansham Singh Gupta:** Because I have some bias in favour of my own High Court, and even though I shall try to be as impartial as I can, I think I shall carry that bias in my argument. The first point is whether this Bill is a good Bill or not. I shall only state certain points. I consider this Bill to be not a good Bill, not a harmless Bill. For more reasons than one, it is a bad Bill. The whole question, as the Honourable the Leader of the House put it, is whether a suit to enforce a mortgage is or is not a suit for land. If it is a suit for land, then the Bombay High Court view is wrong. If it is not a suit for land, then, the Bombay High Court view is correct. Now, Sir, this discrepancy or this difference did exist for a very long time between the Bombay High Court and the other High Courts. This is clear from the various decisions of the other High Courts. As far back as 1892, the High Court of Calcutta in *Kanti Chandra Paul Chaudhuri versus Kishori Mohan Roy* in 19 Calcutta, page 361, held in favour of the Nagpur view. Then, Sir, there is a Privy Council ruling reported in 41 Calcutta, page 972, in the case *Harendra Lal Rai Chaudhuri versus Hari Dasi Debi* in which their Lordships of the Privy Council held that the suit to enforce a mortgage is a suit for land. That ruling is followed by the Nagpur High Court. The Madras High Court in 1904 in the case reported in page 157 of 27 Madras held the same opinion. In Rangoon also in 1934 in 12 Rangoon, page 370 the same opinion was held. And the Bombay High Court also in 1926, in 50 Bombay, page 1, held the same opinion.

[Mr. Ghansham Singh Gupta.]

Now, Sir, we have the Calcutta, the Madras and the Rangoon High Courts on one side and the Bombay High Court on the other side. Shall we be doing a good thing if by enacting this legislation we put our seal on the decision of one High Court as against the rulings of so many High Courts and against the ruling of their Lordships of the Privy Council? I submit that this will be a very bad case of interference by the Legislature in favour of one High Court against the view of the other High Courts. Then there is another point against this measure. The Preamble to this Bill says that "it is expedient to terminate those doubts" and "Whereas doubts have arisen as to the validity of certain proceedings in High Courts of Judicature", etc. I say the doubts did arise and have been there since the year 1892, and, therefore, it cannot be said that the doubt has only arisen because of the judgment of the Nagpur High Court in the year 1935. There was this conflict of decision from the year 1892 right up to the year 1935. It is not on this question alone that the decisions of High Courts differ, but there are hundreds of questions on which the decisions of High Courts differ. Did the Legislature intervene in them? If the Legislature tried to intervene in all cases in which there are differences of opinion between the High Courts, I think there will be no end of legislation and every day we shall have one Bill or another in order to bring into conformity the opinions of the various High Courts. So on that ground also this is a very bad measure.

Another thing for which I oppose this Bill is this. Here we shall appear to be not only technically siding with the Bombay High Court but to be actually siding with the Bombay financiers against, as my Honourable friend said, not only the judgment-debtors whose interest is to be seen but also many other creditors in local places, whose interests may have to be seen. And, therefore, this Legislature which is after all a very dignified body should hold the balance even. In rushing through this Bill I think it will not be doing a very good thing.

These are my reasons for considering this Bill to be a very bad measure. Now, even though it be a good measure, the next point that naturally arises in discussing this question is whether it is of such a great public urgency and whether there is no room for two opinions as to the soundness of the Bill that the ordinary procedure with regard to legislation should be brushed aside. I do not see why it should not be referred to Select Committee or circulated for opinion. Ordinarily when we enact any legislation we generally invite the opinions of persons who are interested, and then we go to Select Committee and after that we finally enact it. Is this Bill of such great public urgency and in which there can be no room for any two opinions and in which all interests have been consulted or all possible views considered? I submit that this has not been done. From the extracts that I heard from the Leader of the House, the opinions that he read out were all one-sided opinions and those opinions were only from Bombay. I did not hear any opinion either from Calcutta or from the Central Provinces or from anywhere else; and even the opinions that were received from Bombay were not available to us. It cannot therefore be said that all opinions are available to us today so that we may brush aside the usual procedure of sending this Bill for circulation or to Select Committee for consideration.

I submit that there are things to be considered beyond the opinion of the Bombay financiers and the opinion of the Bombay High Court or the Bombay Government. The Bombay Government are likely to look to the interests of a trading town like Bombay and therefore we cannot implicitly rely on the opinion of the Bombay Government or on the opinion of the Bombay financiers. We have to look to other opinions, for instance, the opinion of the Central Provinces Government, where there may be many persons who may be trading with Bombay and where not only this sort of question is involved, but there may be many other questions like those which my friend mentioned, namely, that there may be other mortgagees. And it is really a very sound principle that all land suits should be filed in the Court within whose jurisdiction the property lies.

Then, Sir, there is another point which I wish to bring before this House. We are here in fact helping one party unnecessarily and we are going out of our proper sphere. I am told, though I cannot vouch for the absolute truth of it, that in the Nagpur High Court a petition is pending to obtain leave to appeal to His Majesty against the decision of the Nagpur High Court. If this is true, shall we be right in helping the one party who should see really whether the point is correct or not? The point here is not whether the judgment-creditor should or should not get his money. There are many suits in which honest persons who have advanced a loan lose all their money simply because it is time-barred by one day. The point is whether the law as stated by the Bombay High Court is or is not correct, whether the law as stated by the Nagpur High Court is or is not correct. And if opinions of journals read by the Honourable the Law Member are to be relied upon, then I have on my side the opinion of such an eminent lawyer as Sir Hari Singh Gour who says that the Nagpur view is quite correct. What I mean to say is this: not whether there is any hardship on a particular creditor or not but whether he has moved the right place in getting redress. If he has moved the wrong place, he must suffer. He cannot come here for help against an act of his which can be questioned and which was ultimately questioned by the Nagpur High Court supported by the ruling of their Lordships of the Privy Council. If it is true, is it not better for us to wait instead of rushing through this legislation without even having the opinions of other persons or even without caring to know whether there is a petition pending for leave to appeal to their Lordships of the Privy Council or not. I cannot see the propriety of this haste. It is said that unless such a Bill or such a measure is passed, business will suffer and that the Bombay, Calcutta, Madras and Rangoon financiers will not finance money. I say that these are not the only towns where there are businessmen. There are businessmen in Delhi, there are businessmen in Cawnpore, there are businessmen in many other places. Are you going to help them? If you are not going to help them and if you cannot help them, where is the propriety in helping only these three or four towns. You are making a legislation which is specially favouring these four towns, and I would like to know how by favouring only these four towns you will be doing the right thing.

**Qazi Muhammad Ahmad Kasmi** (Meerut Division: Muhammadan Rural): Only one town, Bombay.

**Mr. Ghansham Singh Gupta**: No, four towns.

**Qazi Muhammad Ahmad Kazmi:** The others are not observing it.

**Mr. Ghansham Singh Gupta:** My friend is right, because the other High Courts do not hold the Bombay opinion. We are thus favouring the opinion of the High Court of Bombay alone as the Calcutta High Court might still persist in their view that they have no jurisdiction. In spite of this Act, it will not give jurisdiction to the High Court of Calcutta to try mortgage suits of property outside their jurisdiction. If that was intended, the form of the Bill should have been otherwise. Although clause 44 of the Letters Patent gives that power to the Legislature, it is not being done here. If clause 12 had been modified to include such a suit, the High Court of Calcutta would have taken a different view. But this only says that whatever the views of the different Courts may be, and that difference being maintained, mind you—any decision that they give shall not be questioned by any other High Court. Therefore, the Calcutta High Court may continue in their old view and they may say that they have no jurisdiction in suits of mortgage in which the land is situated in the Central Provinces.

**Mr. M. S. Aney:** There is no difficulty in that case at all.

**The Honourable Sir Nripendra Sircar:** That means no difficulty whatsoever. If the Calcutta High Court persists in its view, no harm is done to anybody because the Calcutta High Court has not passed any decree. It is the Bombay High Court which is concerned. Suppose I find an innocent purchaser purchased Rs. 50,000 worth of property in the Central Provinces in execution of the Bombay decree and he is now going to lose it?

**Mr. Ghansham Singh Gupta:** That is true, but this is only in favour of one city. Suppose a man borrows money from Cawnpore or Delhi and his property is situated in the Central Provinces. He cannot sue in Delhi or in Cawnpore. He must necessarily bring his suit in the Central Provinces. Similarly, there can be no harm to a Bombay financier in suing in the Central Provinces instead of . . . .

**Sir Cowasji Jehangir:** What about the properties already sold and bought under a decree? What happens to that?

**Mr. Ghansham Singh Gupta:** If it is a wrong interpretation of the law you must suffer. What about the person who loses because in one day his claim is time-barred. What about the man who has advanced thousands of rupees?

**Mr. Bhulabhai J. Desai:** Clause 3 is all right.

**Mr. Ghansham Singh Gupta:** My point is that we must know public opinion before we can rush through this measure. I do not mean to say that this measure is necessarily bad. There is a case for making enquiries and finding out the opinions of other parties interested in the matter. I submit there is no urgency about it. At least it can wait for three or four months until the Simla Session. If the present provision is maintained and the Bill is taken up in Simla there will be no hardship even to these two judgment-creditors, because as the clause reads they can apply within

six months from the commencement of the Act and execute their decrees. So without any hardship to those persons who have already obtained decrees in their favour, we shall in the few months available to us be possessed of opinions from other quarters also.

There is one matter which I wish to bring to the notice of the House. Although the decrees of the Bombay High Court will be executed, you really are not bringing any conformity in the law. I quite see that the Calcutta High Court will not pass a decree and, therefore, there will be no difficulty for any judgment-creditor: But the trouble of the Calcutta financier will necessarily be more than that of the Bombay financier, because the Calcutta financier will not be able to sue in Calcutta as this view is not accepted by the Calcutta High Court, but the Bombay financier can sue in Bombay and he will get his decree. Suppose the property, instead of being in the Central Provinces, is in Calcutta, the plaintiff is in Bombay, and there is a judgment in favour of a Bombay financier against a judgment-debtor in Calcutta. What will happen? The Bombay High Court will pass a decree in favour of the plaintiff against the judgment-debtor in Calcutta, that will be transferred to the Calcutta High Court, and the Calcutta High Court, against their established opinion, will be compelled to execute that decree.

**The Honourable Sir Nripendra Sircar:** No.

**Mr. Ghanshiam Singh Gupta:** How, I want to understand.

**The Honourable Sir Nripendra Sircar:** There is this Bill.

**Mr. Ghanshiam Singh Gupta:** This very Bill will compell the Calcutta High Court to execute a decree from Bombay.

**The Honourable Sir Nripendra Sircar:** Yes.

**Mr. Ghanshiam Singh Gupta:** That is what I say. The High Court of Calcutta which thinks that the jurisdiction of a High Court under the Letters Patent is limited to the property situate within its jurisdiction will be compelled by this legislation to execute a decree from Bombay against its expressed opinion. There seems to be no propriety in all this. Because up till now every Bombay financier knew that he could not execute his decree in Calcutta.

**Mr. Bhulabhai J. Desai:** Excuse me, it is the other way about. There is no High Court which has refused to execute its decree. I am only giving a fact.

**The Honourable Sir Nripendra Sircar:** Only Nagpur has shown its independence.

**Mr. Ghanshiam Singh Gupta:** I do not know whether the High Court of Calcutta has been executing the decrees of the Bombay High Court, expressly when such a case came before it for decision. That is what I want to know, and, therefore, I want time. I want to know if the High Court of Calcutta, holding this opinion, has been executing decrees from Bombay against its opinion, in cases that expressly came before them for decision. All that information this House is entitled to possess, and before this House gets all that opinion, it is really premature for us to pass this legislation. That is all I have to say.

**Mr. Sham Lal** (Ambala Division: Non-Muhammadian): Sir, I do not  
 1 P. M. represent the judgment-debtors of Nagpur or the decree holders  
 of Bombay; but before I vote I want certain information—I  
 want to be clear on certain points. The position is this, that doubts have  
 arisen with regard to the provisions of the Letters Patent whether in a  
 mortgage suit the Bombay High Court has got jurisdiction with regard to  
 property situated outside its jurisdiction, and the remedy provided is this:  
 that representations have been made to the proper quarter to make the  
 law clear, but so far as the retrospective effect is concerned, this Bill is  
 being introduced into this House. That is the position as I understand  
 it. I may be wrong, I do not know: but as far as I have been able to  
 understand the Honourable the Law Member, it is this: that so far as  
 the Letters Patent are concerned they would be amended by the proper  
 authority: so far as retrospective effect of the Letters Patent is concerned  
 we want to pass this Bill so that the decrees passed by the Bombay High  
 Court may not be questioned in any other province; and, so far as any  
 other High Court may have taken a view contrary to the view of the  
 Bombay High Court that view will not hold good. Is that not the posi-  
 tion? So far as I understand the position, it is that in so far as the  
 permanent law is concerned, the Letters Patent are to be amended or  
 made clear by the Parliament: so far as the retrospective effect is concern-  
 ed this Bill would give that Act the retrospective effect, and the retros-  
 pective effect would be that the decree of the Bombay High Court, whether  
 passed with jurisdiction or not, would not be questioned in any proceeding.  
 That is the first part of the Bill: then with regard to clause 3, the position  
 is, that if the Nagpur High Court has held the view that the Bombay  
 High Court had no jurisdiction, that view would not hold good, and that  
 view is overruled here. That is the object of the present Bill.

The Honourable the Leader of the House has also stated that this Legis-  
 lature can amend the Letters Patent, and the Honourable the Leader of the  
 Opposition has also clearly stated in the House that Mr. Aney is wrong, and  
 that the Letters Patent can be amended in this House. I want to put this  
 question: if this Legislature can amend and make clear the Letters Patent,  
 why not have a consolidated Bill to make the Letters Patent clear and  
 amend it, and also lay down that this Letters Patent will have retrospec-  
 tive effect? There can be no difficulty with regard to that, because, in  
 that case, the whole picture would be before the House and we shall be  
 able to discuss whether this law is good that Courts should have jurisdic-  
 tion with regard to property which is situated within their jurisdiction and  
 should have no jurisdiction with regard to property outside their jurisdic-  
 tion. We have to see which law is more sound, whether the Courts should  
 have extra territorial jurisdiction or not. The propriety of that law can be  
 discussed in this House and then, with regard to the retrospective effect,  
 this question can be discussed whether if rights have arisen or have been  
 created and the party could go to the Privy Council and take the decision  
 of the Privy Council, whether the Legislature should come to the aid of  
 a particular party and over-rule the decision. I can understand a validat-  
 ing Bill where it is a question of technicality and where no rights are  
 involved; but if rights are involved and certain persons have  
 acquired certain rights which can be set aside by the Privy  
 Council or by the higher authorities, whether the Legislature  
 should come to the aid of a particular party. In this case,  
 certain parties, on account of the decision of the Nagpur High Court, have  
 got certain rights, and this Legislature says: "We will take one side: we

will hold that the Nagpur Court is wrong and the Bombay High Court is right". Is that proper? Then, why not wait till the Letters Patent is amended and this point debated there, whether the Bombay High Court should have jurisdiction over property situated outside the Bombay Province? Let the proper authority come to that decision and if they come to that decision that the sound law is that the Bombay High Court should have that jurisdiction, even in that case your Bill giving retrospective effect to it might be justified; but introducing a Bill having retrospective effect before the Act or the Law is amended by the proper authority, is, I should say, premature and is not sound. So far as my position is concerned, I find that in Bombay there is a party and there are persons who get fraudulent decrees and harass people outside the Bombay Presidency. There is a regular party which traffics in decrees: they can get a decree against any person, and I do not consider it to be a sound law that the Bombay High Court should have jurisdiction with regard to property which is not situated in the Bombay Province. If a man wants to advance money on certain properties, he should also send a man to inquire into the rights with regard to those properties and he should seek his remedy in Courts where that property is situated. Otherwise, there is bound to be fraud, because the persons having rights in those provinces where the property is situated might be deprived of their rights. That is the position. That may be an arguable position and, of course, on the other side, it may be argued that people will not advance money. That is a debatable point. If it is an arguable point, why not have the whole law in one Legislature whether it may be the Parliament or the Indian Legislature? Let the law be, "We want to lay down that the Bombay High Court should have jurisdiction", and then we can discuss the propriety of that law. It may also be laid down that the law will have retrospective effect. Let that also be debated. Why take this by parts? Why have one part legislation in some other Legislature and the other part here? Therefore, I want to know what is the difficulty in having the whole Bill before this Legislature, both with regard to the substantive amendment and retrospective effect being given or not: and on that depends my view whether I should vote for this Bill or against it.

**Qazi Muhammad Ahmad Kasmi:** Sir, so far as this Bill is concerned and so far as the speech of the Honourable the Leader of the House is concerned, they seem to be different. The latter is a frank statement of the facts that have taken place; but if we have a look at the Bill, we find that probably there is no such thing as a mistake by any party or by any High Court. I know perfectly well that so far as this House is concerned, we are not to rectify mistakes committed by the High Court, and it is probably for that reason that instead of writing "the correction of mistakes", the words "doubts have arisen" have been written. That may be the correct position, but the question is as to how far the present Legislature is entitled to take up individual cases and to bring about Bills and legislate on them. It is admitted by the Honourable the Leader of the House that in Calcutta the ordinary procedure is that it is only in respect of the properties which are situated inside the original jurisdiction of the High Court that decrees are passed; and so it is with other High Courts. The Bombay High Court, however, goes further and passes decrees in respect of immovable property situated outside its jurisdiction. It is a thing, as was pointed out by Mr. Aney, which is against the Code of Civil Procedure . . . .

**The Honourable Sir Nripendra Sircar:** No, no.

**Qazi Muhammad Ahmad Kazmi:** I shall presently explain my point. Under section 16 of the Civil Procedure Code, every Court can pass decrees in respect of immovable properties which are situated within its jurisdiction. According to the interpretation of the Bombay High Court, in the exercise of its original jurisdiction, it can pass decrees in respect of immovable properties or mortgages of immovable properties situated outside its jurisdiction.

**The Honourable Sir Nripendra Sircar:** I think my Honourable friend has not looked at section 120 of the Code which says that section 16 does not apply to High Courts.

**Qazi Muhammad Ahmad Kazmi:** I know that, but the only point I want to bring out is that you take shelter under section 120 of the Civil Procedure Code . . . . .

**The Honourable Sir Nripendra Sircar:** I take shelter under nothing. I am pointing out the mistake.

**Qazi Muhammad Ahmad Kazmi:** It is a thing by which the Code of Civil Procedure does not apply to the Bombay High Court or to any High Court. My point is that two enactments exist in India, one for ordinary Courts and the other for High Courts, and some of the High Courts are interpreting their powers in the same light as is mentioned in the Code of Civil Procedure, and it is only one High Court which wants to extend its jurisdiction beyond its territorial jurisdiction and also bring about a conflict with the Code of Civil Procedure. So the position is that by this enactment and by the contemplated enactment which has been pointed out by the Honourable the Law Member, they want—not only to take advantage of this mistake and bring about retrospective legislation in the form of the present measure—but they want to extend the jurisdictions of all the High Courts making a change in the Letters Patent itself. When Mr. Aney was speaking, Sir, I asked the Law Member to tell me in what direction they were contemplating the amendment, and what steps they were considering to take, and I was told that they were amending the law in such a manner as to make the jurisdiction of the High Courts extend to all places where the property is situate, whether inside or outside the territorial jurisdiction. So my point is this, that the Bombay High Court have given a wrong judgment. You now come to this Legislature, and you want to extend the jurisdiction, not only of that High Court, but of all High Courts to properties which are situated outside their territorial jurisdiction. Instead of confining yourself to admitting your mistakes and leaving the aggrieved party to take its own recourse to the Privy Council, you are going to ignore the Privy Council, you want to deprive the Privy Council of its jurisdiction to decide whether the matter is correct or not; you yourself come to the Legislature and extend the powers of the High Courts beyond their territorial jurisdiction. For these reasons, Sir, I feel this is not a cursory matter on which an opinion can be expressed at once, and that it is a matter on which public opinion should be invited, and, therefore, I support the amendment that the Bill be circulated for eliciting public opinion thereon.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after Lunch at Half Past Two of the Clock, Mr. President (The Honourable Sir Abdur Rahim) in the Chair.

**Sardar Sant Singh** (West Punjab: Sikh): If I intervene in this debate at all, I do so for the purpose of discussing the principle underlying such a legislation as is presented before us. It seems to me, Sir, that most of the Honourable Members, who do not belong to the profession of law, do not follow the various technicalities involved in this Bill. I will, with your permission, Sir, explain the principle underlying the jurisdiction which is conferred on the Courts by the Legislature. This jurisdiction is of two kinds: it is limited either by the money value of the suit or by the territorial extent. Sections 15 to 20 of the Civil Procedure Code define this jurisdiction. In the case of the High Courts, sections 16, 17 and 20 of the Civil Procedure Code do not apply; the High Courts get their jurisdiction under the Letters Patent of the various Charters. In the case of the Bombay High Court, the jurisdiction, on its original side, is conferred by clause 12 of the Letters Patent. The various High Courts have got different Charters, but on this point, the powers conferred on the various High Courts, on the original side, are the same.

The point which is brought into prominence by this Bill refers to the principle which is enunciated in section 16 of the Civil Procedure Code. According to that section, the territorial jurisdiction of the Courts is limited in the case of immovable property to those properties that are situate within its limits. In the case of the Letters Patent conferring jurisdiction on the Bombay High Court, clause 12 lays down the jurisdiction in respect of suits for land or other immovable property. The phraseology that is used in section 16 of the Civil Procedure Code is in these words:

“Subject to the pecuniary or other limitations prescribed by any law, suits—

- (a) for the recovery of immovable property with or without rent or profits,
- (b) for the partition of immovable property,
- (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,
- (d) for the determination of any other right to or interest in immovable property,
- (e) for compensation for wrong to immovable property,
- (f) for the recovery of movable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate.”

This is the phraseology employed in the Civil Procedure Code which has been passed by this Legislature. But in the case of the Letters Patent the phraseology employed is this.

“.....shall be empowered to receive, try, and determine suits of every description, if in the case of suits for land or other immovable property, such land or property shall be situated, or, in all other cases, if the cause of action shall have arisen either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court. . . .”

[Sardar Sant Singh.]

The difference in phraseology lies in this, that, whereas, in section 16 the words used are, "suits relating to immovable property", here the phraseology used is, "suits for land or other immovable property". We have to see whether this phraseology has made any difference in the meaning of the term or confers any extraordinary jurisdiction on the Bombay High Court which is not conferred on the mofussil Courts by the Legislature in the legislation enacted by this House. Here, the various High Courts have, from time to time, dealt with cases which have been brought before them on the original side, and those High Courts have held, in some cases, that if the property is not situate within the limits of the original jurisdiction of the High Court, the High Court cannot entertain any such suit. But the Bombay High Court, on the contrary, has held that in the case of suits for foreclosure or sale, or creating a charge on immovable property the High Court has got such jurisdiction. I need not go into the various authorities that are cited in the commentary under clause 12, where the different views of different High Courts are given and are fully dealt with. What we have to see now is which view should prevail. In the Nagpur decision which has been the cause of the present Bill being introduced in this House, at page 50, the Honourable Judges of the Judicial Commissioners' Court of Nagpur, say:

"The contrary view adopted by the High Courts of Calcutta, Madras, and Rangoon in the cases cited for the appellants and by the Bombay High Court itself in the India Spinning and Weaving Co. Ltd. *vs.* Climax Industrial Syndicate that a suit on a mortgage being one for land is excluded from the cognizance of the High Court unless the mortgaged property is situate within the jurisdiction of the Court appears to me to be absolutely sound and correct. Further in *Harendra Lal Roy Chowdhury vs. Haridasi Debi* their Lordships of the Privy Council also took the same view and held that the High Court of Calcutta had no jurisdiction to entertain a mortgage suit and pass a decree for sale of the mortgaged property when no part of that property was situate within its territorial jurisdiction on the original side. The weight of judicial authority is thus clearly against the view adopted by the High Court of Bombay in *Hatimbhai Hassanally vs. Framroz Eduljee.*"

This is the summary of the law as it stands in India today. One thing is certain, and that is, that the weight of authority, not only of the Calcutta, Rangoon and Madras High Courts, is against the interpretation put by the Bombay High Court, but even the Privy Council is against that view. Therefore, we have to see what are the issues which are raised by this Bill. According to my reading, the question is whether legislation should intervene in those cases where the High Court assumes a jurisdiction where it is not vested in the High Court by the law or by the Letters Patent. That is an important issue which is raised by this Bill. Calcutta, Rangoon, Madras and their Lordships of the Privy Council are of opinion that such a jurisdiction does not exist in the High Courts, under clause 12 of the Letters Patent, but the Bombay High Court wants to assume jurisdiction. So, the Honourable the Leader of the House wants to legalise the decrees which would otherwise be a nullity in law. I think we should expect from the Honourable the Law Member an opinion given by himself whether this view of the Bombay High Court, in assuming jurisdiction, is correct and that the Calcutta, Madras and Rangoon High Courts are wrong. He does not say so. He says that doubts have arisen. On account of the doubts we have to see which is the correct view. That is one thing which we want to know. That information has not been given to us and, in the absence of such information, we are entitled to assume the weight of authority being against the Bombay High Court, the other High Courts are correct.

I now come to the other point. Let us proceed on this assumption that the Bombay High Court had no jurisdiction, originally, when they tried this suit. What is the legal position? This position would be that if a Court assumes the jurisdiction, which is not vested in it by law, the decree or order passed by that Court is a nullity in the eye of the law. In the course of the debate, a specific case was mentioned of a certain gentleman who went to the Nagpur High Court, carrying a decree of the Bombay High Court, which was passed on the basis of a jurisdiction which did not exist. He has successfully challenged the jurisdiction of the Bombay High Court and actually got a decree given by an equally good Court and now this Legislature wants to intervene and say that the Nagpur Judicial Commissioner's view is wrong and the view of the Bombay High Court is correct. I ask—is it fair, is it equitable? I do not think it is. Further on, a question was raised by my Honourable friend, Sir Cowasji Jehangir . . . .

**Sir Cowasji Jehangir:** I have not spoken.

**Sardar Sant Singh:** By an interruption, you asked, 'What about the equities of the case?' He said that so many titles will be unsettled if this view of the Bombay High Court is not supported. May I ask the Honourable the Leader of the House, apart from other lawyers in this House, whether it is or is not a fact that a decision has been given on a particular point by the High Court which was upset later on after long years and in course of time even the course of succession has changed. I can refer him to one well-known instance in the Punjab. For some years it was held by the Punjab Chief Court that daughters have no status in inheriting the property of their fathers. After a long series of decisions, the High Court changed its view. Is the Legislature to intervene and say that this decision should be unsettled? No. The Courts are human Courts. Their judgments are based on particular facts of each case. The judges are as liable to error as other human beings. Therefore, the Legislature should not intervene if there is an error. In the ordinary course the appeal lies to the Privy Council and they can get the decision of the High Court upset. It is not for the Legislature to do it. It will be nothing short of an anomaly, if every person, who thinks himself to have been vested with certain rights by the decisions of the High Courts, is deprived of that right when another High Court interprets the law differently. I think the Legislature should be very jealous of the respect for its own laws. The business of the Courts is to interpret the law and if they are wrong in interpreting the law it is not the business of the Legislature to say, 'No, you will continue to interpret such a law wrongly as you have been doing before'. This will be very anomalous and mischievous. All that my leader, Mr. Aney wants is, that the legal opinions and the opinions of those interested in this legislation should be obtained. It is the most modest motion that can be made in this House. It is not dilatory in any sense. Sir, in the end, what I will say would be that even according to the Letters Patent, given to the chartered High Courts, it is laid down that where there is a doubt as to the exercise of jurisdiction under these Letters Patent the Courts in India will be guided by the principles laid down in the law of the land. That is the equity suggested therein. I will read the relevant portion. Clause 19 of the Letters Patent says:

"And We do further ordain, that with respect to the law or equity and the rule of good conscience to be applied to each case coming before the said High Court, the Judicature at Fort William in Bengal (*the law in Madras and Bombay is the*

[Sardar Sant Singh.]

same) in the exercise of its extraordinary original civil jurisdiction such law or equity and rule of good conscience shall, until otherwise provided by the law or equity and the rule of good conscience which would have been applied to such a case by any local court having jurisdiction. . . ."

This is the guidance given by the Letters Patent themselves. What is the law? As I submitted before you, section 16 lays down a very sound principle of law conferring jurisdiction upon the Courts in the case of immovable property. Therefore, I would support the motion of my leader, Mr. Aney.

**Mr. Bhulabhai J. Desai:** Mr. President, in the midst of this controversy, I wish to make it clear that the opinions that I am expressing before this House are entirely my own, for it is not one of those controversies in which I wish to support any person who does not care to agree with the reason of the thing, and it is with that preface that I wish to shortly answer the considerations which have been put forth before this House in opposition to this Bill in the form of a dilatory motion. I recognise, Sir, that the Bill falls into two parts.

So far as clause 2 is concerned, it deals with decrees other than those which are the subject-matter of clause 3, and I think I am rightly stating the position and I am not doing any injustice to my friend, the Honourable Mr. Aney, when I say that I gather from his speech that, if clause 3 of the Bill had alone stood, he probably would not have thought fit to oppose it. But he feels that the Bill, in so far as clause 2 is concerned, carries the matter a bit further than what he thinks the principle of the matter requires or calls for. In order to be able to answer the difficulties which have been raised, it would be my duty to state, without reference even to a law report or to the Letters Patent, in as plain a manner as it is necessary to do before a legislative body, for, after all, no legislation is worth entering upon unless, lawyer or no-lawyer, every Member of the House is in a position to truly appreciate the problem on which he is voting, however, complex it may appear in its form so far as the mind of the lay-man is concerned. The matter, Sir, rests on a very narrow ground. I will not attempt to go into too many large issues which have been raised in the speeches of several Members including those of my friend, the Honourable Sardar Sant Singh. They have travelled far too much outside the possibility of an answer and raised too many legal propositions. It is better, therefore, to confine our attention to the only material and relevant legal propositions applicable to the Bill in question. I am not one of those who believe that it is not open, as a matter of policy, to a Legislature if it so desires that the jurisdiction of any particular Courts or class of Courts may be different and more extensive than the jurisdiction of any other in this country. I think you would be ignoring the whole history of law-making in this country if an argument of that kind were allowed to prevail. My Honourable friends know as much as I do that on the Statute-book of India there are many pieces of legislation specially applicable to what are called Presidency towns and the High Courts. I may instance among others the Indian Arbitration Act, and, in fact, if it were necessary to pursue this as a matter of argument, I should be able to give them many more instances. Let us, therefore, not try to argue that, because what exists in section 16 of the Code of Civil Procedure does not exist in clause 12 of the Letters Patent, and, therefore, the thing is

essentially wrong. That argument, with great respect I may say, is entirely fallacious. Any question, therefore, that the Legislature, so far as Letters Patent are concerned, having conferred jurisdiction on the High Courts to whom the Letters Patent were granted, a jurisdiction in language which in 1908 and in the earlier Civil Procedure Codes the mufassil Courts or Courts other than High Courts concerned themselves to lay down a further restrictive principle is beside the point altogether. The only real point at issue is this. Under the Letters Patent, the High Court on its original side is competent to entertain every suit of a civil nature provided the defendant resides or carries on business within the jurisdiction or where a part or the whole cause of action has arisen save and except in the case of a suit for land and even to that there is an exception, viz., that if part of the land lies within the local jurisdiction, then, under the leave granted under clause 12 of the Letters Patent, the High Court would have jurisdiction. So you are concerned with a very very narrow case, viz., a suit for land where no part of the land is situated within the jurisdiction in question.

The next narrower point is this. There have been differences of opinion between High Courts and it is not a matter of any general jurisprudence at all. That is a point I cannot too often stress. The differences of opinion have been on the construction of the language of the statute conferring jurisdiction. It is not a case in which the Statute has said—“Court A shall not have jurisdiction in a particular matter”, it would be undoubtedly open to another Court to say that according to Statute that Court may not assume to itself a jurisdiction which was not conferred upon it. This is an argument in a circle. The issue is not solved by saying that the High Court has no jurisdiction, that it is assuming a wrong jurisdiction, whereas, whether it has jurisdiction or not depends on the very meaning of the words “suit for land”, and it is certainly competent to High Courts without any disrespect to each other to entertain a different opinion as to the true scope of “suits for land”. Therefore, the narrower issue is whether a suit for land covers a suit for the enforcement and realization of a mortgage. Therefore, further narrowed down, the issue is this. Within the meaning of the Letters Patent, a suit for land covers a suit for the realisation of a mortgage and the issue on that is equally simple. A High Court, for instances, which takes the view that this is not a suit for land looks upon a mortgage-suit again as primarily a suit for the recovery of debt and secondarily only as a realization of a collateral security. It does not require a very much complex knowledge of law to appreciate the distinction between a suit for the enforcement of a mortgage in which debt is primarily concerned and secondarily is only concerned with security, as distinct from the title to the land properly so called, where the question is whether A or B is entitled to a particular property. It is an entire misconception to think that there is any question of title at all. The mortgagor's title is assumed, because he has mortgaged his property. If a person other than the mortgagor has any other decree, it does not bind him. But on the assumption that the mortgagor is the true owner of the property, no question of title can arise in a suit for mortgage. He has given as security land which is indisputably his, as collateral security for debt for which, in addition to his property, he is personally liable. Let me test it in this way. Has it ever been seriously argued anywhere that if a man borrows a lakh of rupees in the City of Bombay, then part

[Mr. Bhulabhai J. Desai.]

of the cause of action would have arisen in the City of Bombay? The creditor gets a personal decree for a lakh, and that decree, when sent out to Nagpur,—the blessed place where nobody pays any debt at all so long as there is this conflict of jurisdiction,—must be executed. Supposing that decree is transferred to Nagpur, the man's property would have to be sold. Therefore, the man commits an offence, and, in fact, it was wrong for him not to have lent money on a mortgage in addition to personal security, in which case the same property could have been sold in its execution, but he commits an offence inasmuch as he says: "I trust you but I also want a little more trust. Will you therefore mortgage your property to me?" In other words, the simple judgment-creditor has a higher right than the mortgagee who, in addition to a personal right to recovery of his debt, is seeking a right also further to realise the mortgage over property which was given to him as special collateral security.

**Sardar Sant Singh:** May I ask whether a decree passed on such equitable mortgages is passed under order 34, rule 6, or not?

**Mr. Bhulabhai J. Desai:** Yes.

**Sardar Sant Singh:** Whether the charge on the property comes first and the personal decree comes later on?

**Mr. Bhulabhai J. Desai:** Undoubtedly. I may inform my Honourable friend, Sardar Sant Singh, that it is mortgage decree and therefore necessarily it is under Order XXXIV, Rule 6, but the fact that it is under Order XXXIV, Rule 6, does not convey any sense to this House, it is nonetheless a decree for the enforcement of a debt, in its essence. That is the view that is taken. You may differ from me as a lawyer. That is not the proposition. The proposition before the House today is this, whether it is a case in which it is assumed as if some heinous sin was being committed by the mortgagee when he takes a mortgage and seeks to enforce that security . . . .

**Mr. M. S. Aney:** Nobody has said that any heinous sin is being committed. Only equity and legalities are involved. There is no question of sin.

**Mr. Bhulabhai J. Desai:** Supposing the question of legality and equity arises, I say you should look upon the mortgage transaction as the Bombay High Court claims to do. What it says essentially is that it is a suit for debt for the realisation of money which has been advanced with a collateral security. It may easily be that the mortgage property may be worth one-fourth or one-fifth although the rest of the property of the man is still liable for the debt and he is immune from it because he comes from that blessed land, the Punjab or the Central Provinces. So that, for the purpose of one-fourth property, you say you must go to the Court of the Central Provinces. It is only one-fourth. For the three-fourths there is no objection to the Bombay High Court passing a decree of the debts. You can get a decree in the Bombay High Court and execute it against the rest of the property of the man. Therefore, if any question of equity arises, I do not think this House will have the least hesitation in taking

the view that the Bombay High Court has done the right thing. For, after all, all that is meant is that a man is liable for the debt on the whole property, but only some property is ear-marked for the purpose of this debt in preference to the other debts. That is the only difference between the liability of a man who is personally liable and the whole of this property, plus liability on a mortgage a specific property ear-marked for the debt, specifying the property as one-tenth part of the debt. Now it is said: "Oh! yes, as to the nine-tenths there is not the smallest objection, there is no iniquity, there is no law preventing the man from getting a decree on the whole debt executable against the whole of his property from the Bombay High Court". But, in case of a mortgage suit you say: "Oh, no, there is something sacred, because security by way of property has been given to the person who wants to execute for the purpose of realising his debt." Anyway, the point that I am putting before the Court, I mean putting before you, Sir, and it has also been placed before Courts very often, the point that the House is called upon to vote is this: if there is a mortgage decree and supposing the property is not sufficient a personal decree can be executed and the High Courts would have no jurisdiction in calling it nullity, but because attached to it there is some security, therefore, it becomes a nullity, that is the equity for which you are asked to vote. You may do it, if you choose to do so. More than that, the matter does not rest there. The Bombay High Court as long ago as 1890 has held to this view and what is more when the Civil Procedure Code is read, it is pertinent to point out that when the Civil Procedure Code was enacted by the Legislature in 1908, even this section 120 was enacted so as to distinguish the High Courts from the other Courts. So you get no assistance whatsoever from the fact that section 16 exists in the Civil Procedure Code. In other words, High Courts were left to exercise whatever jurisdiction they had in this matter. Again so far as these transactions are concerned, looking at it from a purely commercial and equitable point of view, it is well-known that the bulk of cotton from the Berars and the Central Provinces is exported through the Bombay houses whether large or small. Naturally, therefore, financial facilities are required. It is not an uncommon thing in Bombay for the purpose of taking further security if required for debtors to go to their creditors and say, "we are quite willing in addition to the cotton that we have got, because the margin is narrow and the price of cotton has gone down, we will give you further security in the shape of our property". Whose interests therefore are you really supporting in this Bill? First the interest of the man who wants credit facilities for the purpose of his business. I think he would be entitled to say "save me from my friends". Therefore, he is the man who wants facility for the purpose of his business. Otherwise he would not come to Bombay and mortgage his property. I am sorry to say that a sort of atmosphere is created in this House as if there are scoundrels sitting in Bombay who enter into fraudulent transactions with the debtors in the Central Provinces. Let there be no mistake about this. There is the businessman in the Central Provinces who with his eyes wide open seeks the aid of another businessman in Bombay. Each understands business well. The man goes to Bombay for his credit facilities. By the position which my Honourable friends are taking in the House they are crippling the very resources of the man whom they are seeking to protect by this dilatory motion. It is for this reason, I stand here for the protection of the very man whom you profess to protect. I say that the

[Mr. Bhulabhai J. Desai.]

man, if he were consulted, would say what the Honourable the Law Member said . . . .

**Mr. M. S. Aney:** Why don't you allow the Law Member to consult him?

**Mr. Bhulabhai J. Desai:** I do not want to consult him, for I shall express my opinion.

**Mr. M. S. Aney:** I do not say that you should consult him. Why not let the Law Member consult that man.

**Mr. Bhulabhai J. Desai:** I wish to base it on the actual conduct of evidence during a period of some sixty years. It is not a matter of re-consultation today for credit facilities. He has not gone to Bombay only today. Until this judgment of the High Court was given, all decrees used to be executed.

**Mr. M. S. Aney:** How many decrees? Is the Honourable Member in a position to give this information?

**Mr. Bhulabhai J. Desai:** Hundreds.

**Mr. M. S. Aney:** Hundreds! I am sure not even one.

**Mr. Bhulabhai J. Desai:** It may be hundred, or it may be one or it may be none. Supposing only one decree was executed. I do not wish to argue this matter in terms of the number of the decrees executed. It would divert the attention of the House from the true issue. The true issue is that by what is laid down in a Letters Patent appeal, if a part of the property is situate outside, you preserve merely nominal legal sanctity of the decision. Supposing you go and say, "I will buy this small plot of land worth Rs. 200 because it is worth my while or because otherwise this banker is not going to give me money". He says "if you are going to drag me to the Berars, to some subordinate Judge's Court, I am not going to lend you any money. I am not going to undertake this difficulty of filing a suit outside Bombay". Then the fact remains that the creditor is unable to invoke the jurisdiction of the Bombay High Court decree and so he will not care to lend money for the purpose of trade. Under those circumstances, either he must go round and create a legal circumlocution and purchase Rs. 200 worth of property in Bombay within the local jurisdiction with two lakhs worth of property outside . . . .

**Sardar Sant Singh:** It is there already in the Letters Patent.

**Mr. Bhulabhai J. Desai:** You cannot argue that if Rs. 100 or Rs. 200 worth of property is situate in the town and island of Bombay coupled with a crore or more in the Berars, it would seem that the Bombay High Court would have jurisdiction. Are you not reducing this thing to an absurdity

by this kind of argument? It is legal fiction. Therefore the fact remains that it is much better, instead of driving people to legal fiction, that they should act legally and honestly. It is very much better that it should be allowed to have jurisdiction in this limited way where a mortgage decree is concerned, for the simple reason that essentially it is a suit for a debt and therefore not a suit for land. The whole issue before the House is this. What right have you and I to assume, it is not a case in which you can say it is entire absence of jurisdiction, you may call it erroneous view of the construction of these words, it is not absence of jurisdiction as jurists sitting here ought to know. In fact, there is a further point, and that point is this: those debtors against whom decrees are passed by the Bombay High Court raised that point of jurisdiction. If they raised it in the Court of first instance and it failed, raised it in the Court of appeal and it failed, they had the right of appeal to the Privy Council which they did not exercise. Therefore, the point before the Privy Council in the case would not decide this issue whether the Bombay High Court had jurisdiction. The point before the Privy Council would decide a very narrow issue, whether or not the man is not barred by the rule of *res judicata* in that having failed to appeal to the Privy Council, irrespective of the construction of the High Court is right or wrong, he is bound by the judgment. You are not going to get the decision to which Mr. Ghan-shiam Singh Gupta called attention. You are not going to get a decision on the point which it is believed would be got by this supposed Privy Council appeal. And for the simple reason that there is a very narrow and small issue before the Privy Council. The issue would be whether or not the man, having a right of appeal to the Privy Council on the point of jurisdiction having failed so to do, can now be allowed to take the point of jurisdiction when the decree is sought to be executed. What merit has he acquired to say that he is a man on whom hardship is inflicted. After all, why should it be said, let there be an appeal from this, so that the creditor who has got a decree would have to go to the Privy Council? The man who had the right and opportunity to go to the Privy Council did not do so. He failed to do so, and as a matter of law, having failed to do so, I humbly submit that no lawyer here would be found to say that he is not barred by the rule of *res judicata*.

**Sardar Sant Singh:** Why cannot the decree be treated as a nullity?

**Mr. Bhulabhai J. Desai:** You can treat the day as night and say you have proved the proposition. The narrow point is this that, by repeating that it is said to be a nullity, you cannot get nullity.

**Sardar Sant Singh:** The High Court says that.

**Mr. Bhulabhai J. Desai:** But that does not mean that it is a nullity. It is one thing to say so and it is another thing to prove that it is so. It is one thing to say that the Nagpur High Court says so but it is not the same thing as to prove that it is so. The question whether or not it is a nullity depends on a narrow issue which any intelligent man can understand, lawyer or no lawyer. Where the High Court entertained a suit below Rs. 100 where the minimum jurisdiction is Rs. 100, it is a case of nullity and I appreciate it. But supposing two persons differ as to the meanings of words in a statute, it cannot be a nullity. You

[Mr. Bhulabhai J. Desai.]

may say it is an erroneous decision but the nullity cannot arise. Nullity cannot possibly arise where from the different construction of the same words a different view is taken. And therefore it is that I say that let us not be misled by mere words. The fact remains that this jurisdiction has been exercised by the High Court of Bombay; the fact remains that many titles have been as a result of these decrees acquired by persons other than the mortgagees themselves, who have got their money; the fact remains that so far as the point of view of any equity or justice is concerned, I hope I have made it clear that it is competent to a man in the execution of a personal decree to get the whole of his land in any part of British India sold. There seems to be no inequity in getting a particular property which is not particularly earmarked for his debts. At all events no layman can understand this wonderful distinction,—he may sell the whole of the property which is not earmarked for the debt but he may not sell the property which is earmarked for the debt. This is a wonderful legal line of argument to which we have been treated and I refuse to be drawn into it. I therefore say that you are not adding to the credit of the lender in whose interest you are speaking.

There is a third point which Mr. Aney raised, namely, some subsequent mortgagees of the same property who might be impleaded by the Bombay High Court. My answer to that is the exceedingly simple one which I think was given by the Leader of the House during the course of an interlocutory discussion. My answer is this: no man who really values any security at all would without investigation of title and without the possession of title deeds be likely to advance money to a man. Every time a legal mortgage which is subsequent to an equitable mortgage,—apart from the question of jurisdiction how is it determined? Is it or is it not determined by point of time? Let us forget the question of jurisdiction which Court decides. As between a mortgage created by the deposit of title deeds and a mortgage by a document, undoubtedly the first in time prevails. Because in the eye of law both are mortgages,—section 58 of the Transfer of Property Act is clear on the point. If that is so, why is it so? For the simple reason that the man who takes a legal mortgage, the law makes it his duty as a matter of prudence if he does not wish to run risks,—he may run any risks, probably they are accustomed to do so in other parts of the world but not in mine.—if he does not wish to run any risks the first thing he requires to know is, where are the title deeds. As soon as he finds any suspicion that the title deeds are not produced, the answer he gets from all decent men who wish to advance money is "Thank you, I do not wish to take any risks". What I wish to impress upon the House is this that what I call the substantive rights of the parties are not affected by this issue before the House. Let that be very clearly understood. In other words, if there is a mortgage created by deposit of title deeds, it will take priority if they are deposited in Bombay, whether the suit is decided by the Court in Nagpur or the Court in Bombay. And therefore as regards the man who has a legal mortgage,—what is the hardship on him? The man takes a second mortgage knowing the existence of the first, or in law he will be presumed to have had knowledge of the existence of the first mortgage. He knows there is a first mortgage. If he knows that he knows also how and where it was created. If he does not care to do so the consequences are upon him. It is a question of affecting a man

with notice and what you ought to have done as a prudent man of business. If he, therefore, said, "I do not care who has got the title deeds, I do not care what particular creditor there is, I do not care before which High Court it is going to come", then in his behalf a legal plea is put forward, here, "Oh, the poor man is dragged to the Bombay High Court". But what is the second mortgagee who can either redeem or not as he likes? He is the second mortgagee in the eye of the law. Whether it is a legal mortgage or not the fact remains that if the title deeds are already given to a banker in Bombay, the banker in Bombay is the first mortgagee. Supposing the first mortgagee files a suit, and supposing the first mortgage is created by a document in Calcutta or a document in Bombay, what then?

There are three points of view from which the matter must be looked at. First, the alleged lender for whom much sympathy is spent; the alleged debtor for whom a great deal more sympathy is spent. So far as the alleged debtor is concerned, he has entered into the transaction well knowing the decision of the High Court of Bombay and knowing therefore that the High Court will exercise its jurisdiction. Secondly, that a debtor having been sued in the Bombay High Court and having taken or failed to take the point of the jurisdiction is barred either way. Thirdly, in trying to protect him you would either protect him by a legal fiction of acquiring property worth Rs. 200; and most of the people there are there in every cotton season. All that they will have to do therefore is this; either buy a small house or buy a small field. Once that is done, all these great principles on which this question has been argued entirely disappear. Under the Letters Patent themselves, no question could arise about the jurisdiction of the Bombay High Court, so that all he has to do is to acquire a field worth Rs. 100 in the City of Bombay yielding a profit of three or four rupees per annum is not going to be a hardship. Or, you may make him a still more honest man. I do not want a legal fiction, I know that the Bombay High Court has exercised jurisdiction; it is on the face of that that I have borrowed money, and I do not want to object to the jurisdiction. These are the four stages of the matter, and I submit that every rule of equity, every rule of commercial stability, every rule of commercial prudence for the protection of the men for whom this is supposed to be argued, has to be observed. What after all are they going to say when the Bill is circulated? Can they say "amend the Letters Patent, so that a part of the property worth Rs. 100 being comprised in the mortgage does not confer jurisdiction upon the High Court". That I can understand. Why don't they bring in a Bill to repeal that part of the Letters Patent, where with leave granted, when a part of the property is situated within jurisdiction however small in value (above Rs. 100), the Court can entertain suits. That is a drastic measure, that is a sort of position which I submit with great respect does not do any good to any of the parties concerned. So far as the analysis of the position is concerned, therefore, I say that in so far as the Bombay lenders, whoever they may be—and I hope and trust that my friend, Mr. Aney, knows that I am speaking for no particular creditor in this particular respect, and I may also tell him that as regards the hiatus in the City of Bombay the case of Climax against Sipra is one of those cases of tragic history where the first Court passed a mortgage decree, the Appellate Court with zeal reversed it and

[Mr. Bhulabhai J. Desai.]

gave leave to amend the plaint, passed a decree on the personal covenant, so that I could go and sell all the property; by the time I reached Ahmedabad where the property was situated, the High Court in a full bench of nine Judges decided the contrary and we had to begin again and file a second suit on the mortgage in the Ahmedabad Court. That is the whole history of that short appeal, one Chief Justice having decided against his predecessors, and, within less than about eight months, the original position obtaining before 1890 was restored. But the point is not that. The point is that so far as this validation is concerned, let us not stand apart. The propositions which are stated are so wide that I cannot answer them. I do not know of any rule of law whereby different grades of jurisdiction may not be conferred upon different Courts; otherwise we should have judges all having the same powers. Why is it that a man is to try small cause Court cases of Rs. 100. Rs. 3,000, and why these different classes? This is no matter of any essence of law or essence of jurisprudence. It is a pure matter of convenience so far as equity and justice are concerned. These are the only things that matter. What is sought to be done by this Bill ought to be done. (Applause.)

**Some Honourable Members from Government Benches:** The question may now be put.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That the question be now put."

The motion was adopted.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That the Bill be circulated for the purpose of eliciting public opinion thereon by the 31st of July, 1936."

The Assembly divided:

AYES—29.

Abdullah, Mr. H. M.  
Aney, Mr. M. S.  
Ayyangar, Mr. M. Ananthasayanam.  
Chattopadhyaya, Mr. Amarendra  
Nath.  
Datta, Mr. Akhil Chandra.  
Deshmukh, Dr. G. V.  
Essak Sait, Mr. H. A. Sathar H.  
Ghiasuddin, Mr. M.  
Govind Das, Seth.  
Gupta, Mr. Ghansham Singh.  
Hans Raj, Raizada.  
Hoernani, Mr. S. K.  
Kailash Behari Lal, Babu.  
Khare, Dr. N. B.  
Maitra, Pandit Lakshmi Kanta.

Malaviya, Pandit Krishna Kant.  
Mangal Singh, Sardar.  
Muhammad Ahmad Kazmi, Qazi.  
Murtuza Sahib Bahadur, Maulvi  
Syed.  
Raghubir Narayan Singh, Choudhri.  
Ranga, Prof. N. G.  
Sant Singh, Sardar.  
Sham Lal, Mr.  
Shaukat Ali Maulana.  
Sheodass Daga, Seth.  
Siddique Ali Khan, Khan Sahib  
Nawab.  
Singh, Mr. Ram Narayan.  
Thein Maung, Dr.  
Umar Aly Shah, Mr.

## NOES—53.

Acott, Mr. A. S. V.  
 Ahmad Nawaz Khan, Major  
 Allah Bakhsh Khan Tiwana, Khan  
 Bahadur Nawab Malik.  
 Aminuddin, Mr. Saiyid.  
 Ayyar, Diwan Bahadur R. V.  
 Krishna.  
 Ayyar, Rao Bahadur A. A.  
 Venkatarama.  
 Bajoria, Babu Baijnath.  
 Bajpai, Sir Girja Shankar.  
 Bewoor, Mr. G. V.  
 Bhagchand Soni, Rai Bahadur  
 Seth.  
 Buss, Mr. L. C.  
 Craik, The Honourable Sir Henry.  
 Dalal, Dr. R. D.  
 Dash Mr. A. J.  
 DeSouza, Dr. F. X.  
 Dow, Mr. H.  
 Gidney, Lt.-Col. Sir Henry.  
 Grigg, The Honourable Sir James.  
 Hands, Mr. A. S.  
 Hudson, Sir Leslie.  
 Hutton, Dr. J. H.  
 Hydari, Mr. M. S. A.  
 James, Mr. F. E.  
 Jawahar Singh, Sardar Bahadur  
 Sardar Sir.  
 Jehangir, Sir Cowasji.  
 Jenkins, Mr. E. M.  
 Khurshaid Muhammad, Khan Bahadur  
 Shaikh.

Lal Chand, Captain Rao Bahadur  
 Chaudhri.  
 Leach, Mr. F. B.  
 Lloyd, Mr. A. H.  
 Metcalfe, Sir Aubrey.  
 Mody, Sir H. P.  
 Morgan, Mr. G.  
 Mukherjee, Rai Bahadur Sir Satya  
 Charan.  
 Noyce, The Honourable Sir Frank  
 Rajah, Raja Sir Vaandeva.  
 Rajah, Rao Bahadur M. C.  
 Rau, Mr. P. R.  
 Rhodes, Mr. C. K.  
 Roughton, Mr. N. J.  
 Sarma, Mr. R. S.  
 Scott, Mr. J. Ramsay.  
 Sher Muhammad Khan, Captain  
 Sardar.  
 Singh, Rai Bahadur Shyam  
 Narayan.  
 Sinha, Raja Bahadur Harihar  
 Prosad Narayan.  
 Sircar, The Honourable Sir Nripendra.  
 Spence, Mr. G. H.  
 Tottenham, Mr. G. R. F.  
 Vissanji, Mr. Mathuradas.  
 Witherington, Mr. C. H.  
 Yakub, Sir Muhammad.  
 Yamin Khan, Sir Muhammad.  
 Zafrullah Khan, The Honourable  
 Sir Muhammad.

The motion was negatived.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That the Bill to remove certain doubts and to establish the validity of certain proceedings in High Courts of Judicature in British India be taken into consideration."

The motion was adopted.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That clause 2 stand part of the Bill."

**Mr. M. Ananthasayanam Ayyangar** (Madras ceded Districts and Chittoor: Non-Muhammadan Rural): Sir, I oppose clause 2. It is really unfortunate that I have not only to contend against the Leader of the House but the Leader of the Opposition. (Interruption.) I withdraw so far as the Leader of the Opposition is concerned. By this clause, it is intended to make the opinion that has been held for some time, and not without dissent, by various Judges of the Bombay High Court prevail over the decisions of other High Courts in India. I agree that it might be necessary to remove some hardships in case of decree-holders who have obtained certain decrees, but then let them restrict the scope of this Bill and make the Bill apply only to those persons: it is not necessary to apply this clause in general terms to all High Courts. Besides, in trying to remove hardships, there is a very great principle involved so far as this clause is concerned.

[Mr. M. Ananthasayanam Ayyangar.]

The question of jurisdiction is not a mere academic question, it is one of substance. Besides the lender and the borrower there are various other persons who are also involved in this. The possession of land has been taken to be good notice for all purposes as regards the ownership of the land. On the same principle, it is said that registration also constitutes notice. It has been laid down in various statutes that whenever a suit has to be filed concerning land, the suit has to be filed in the Court within whose jurisdiction the land lies. The same principle is found in the Registration Act. Mortgages and such like have to be registered in the district where the land is situated. It may be easily said that this is a matter of no consequence, so long as the mortgagor undertakes to mortgage his property and pay his debt, as to where the mortgage is registered. If the property is situated in Cape Comorin, it may equally well be said if we accept the argument that has been so ably put forward, that the mortgage may be registered in the North-West Frontier Province: it will work havoc, it will disturb society. It is not the mere lender and borrower who have to be left to themselves; for fraudulent transactions will be brought into being. There are third parties: a mortgagor who mortgages his property to a creditor at Bombay mortgages equally without the knowledge of the creditor at Bombay and without the knowledge of others in his own locality, to others, and creates other mortgages: these persons are affected: they cannot know what has been done at Bombay with that property. The object is that if the Bombay High Court should be clothed with jurisdiction or all the High Courts in the presidencies should be clothed with jurisdiction to try suits regarding lands not situated within the original civil jurisdiction of those Courts, the mischief that will be done will be incalculable: for this reason, that behind the back of these parties and with very little notice, property may be sold away by the High Courts. The analogy of obtaining simple money decrees and transferring them to civil Courts and obtaining execution of those decrees by attachment of lands does not apply. There the ultimate Court which executes the decree is a different Court, not the Court which passes the decree. Whereas, if the property is mortgaged and if the High Court should be clothed with jurisdiction to pass decrees against agriculturists, if High Courts situated far away from the places where the lands lie have a right to sell away those properties, ten to one, speculators will clutch at these properties and the lands may be sold away to persons who are more speculators: who are not agriculturists: and lands worth lakhs of rupees may be sold away for a song. The principle involved is urban versus rural. Therefore, agriculturists will lose all their lands and the lands in the mufassil will pass into the hands of capitalists and money-lenders who are resident in the capital cities of the several presidencies. That is an unfortunate circumstance which has had to be relieved against in various countries in the west: legislation has been passed to prevent this calamity from occurring, of lands gradually passing away by hook or crook and by various indirect means from the agriculturist to the money-lending classes who make a profit out of the difficult situation in which these agriculturists find themselves.

I would, therefore, say that it is not merely a matter of form: it is not merely that the debtor is bound at his peril to pay his debt to the creditor: that may be so; it is not the granting of evasion of his debt by the debtor that I am trying to press for before Honourable Members

of this House. We have absolutely no sympathy with the debtor who wants to evade payment of his debts; but the question is when rights of other persons are involved, what is the procedure? Sir, even succession to immovable property is governed by the law of the country where the immovable property is situated. With respect to registration, the same rule applies. Primarily, if inconvenience could be avoided, suits regarding land must be filed in those places only or in those Courts only within whose jurisdiction the lands lie. Some difficulties may arise where lands are situated partly within one Court and partly within the jurisdiction of another Court. In those circumstances it is really as a compromise that it has been provided by the Civil Procedure Code and even under the Letters Patent that the one or other of the High Courts can exercise jurisdiction. If we had the power and the strength with the growing needs of society, I would urge for a modification of the existing law saying that unless a substantial part of the mortgaged property is situated within the jurisdiction of one Court, no Court, within whose jurisdiction a small estate is situate, shall exercise jurisdiction. That is not in the interests of the community, that is not in the interests of the borrowers, and that is not in the interests of the people at large. Sir, my leader has said that those provisions are easily evaded. I am sorry some of the recent decisions seem to have been forgotten or overlooked. In a case where a property is situated within a particular locality, the registration law compels that registration should be made in the place where the property is actually situated, but for the purpose of evading the registration law, some property which is situated in some other district is tacked on to some of this, not in the place where the bulk of the property is situate, but in a place where there is only a small portion of the property. Such a kind of transaction has been held to be a fraud by the Privy Council and such transactions have been declared to be illegal. We see clearly from such a ruling by the highest Tribunal in the land that the Legislature and the Courts are against any such frauds being practised. Under these circumstances, I would urge that if a particular difficulty has arisen with respect to two or three decrees passed by the Bombay High Court, you should really confine the scope of this measure to that High Court alone, and not extend the operation of this Bill to all Courts like Calcutta and Madras and other places.

Sir, there is another inconvenience here. Under the Letters Patent as understood by the Madras and Calcutta High Courts, those Courts have no jurisdiction to pass decrees for sale or foreclosure of mortgages of lands situated not within the presidency towns. Should this Bill become law, it is open to any of those Judges to pass a decree contrary to that practice, in which case there will not be a right of appeal. What is the Appellate Court to do? Those Judges of the Calcutta or Madras High Court will say,—well, in view of this Act it is not necessary to do this and by virtue of this Act indirectly jurisdiction is conferred upon us. I don't say a single word about the existing judges, but a time may come when an eminent Judge might not be above corruption and take a contrary view. Sir, we are unnecessarily introducing so much doubt in law. The doubt is this. The majority view is that the Court has no jurisdiction to pass a decree, but one of the Judges admitting the principle of this law might hold that he can pass a decree contrary to the prevailing practice. Are you going to intensify this kind of doubt in law by a measure of this kind? Are you going to give discretion into the hands of Judges not to administer

[Mr. M. Ananthasayanam Ayyangar.]

the law as it should be administered, but to evade the law contrary to the prevailing view of that particular Court? Sir, there are serious consequences behind it. I am sorry to say that this is not a dilatory motion, but unfortunately the real point has been overlooked. Now we are on the second one. If any inconvenience has arisen by a particular view prevailing in the Bombay High Court, let the operation of this Act be confined to that High Court alone, but to extend its operation to other High Courts is most unjustifiable. There were differences of opinions in the decisions given by the Nagpur High Court with respect to Divorce and Matrimonial proceedings, and the Law Member the other day came to this House for the purpose of validating those decrees. This is another instance, Sir. How are the general public to be satisfied about the way justice is administered. We are making the law doubtful and doubly doubtful.

Now, Sir, out of five Courts, four Courts are of opinion that those Courts have no jurisdiction under the Letters Patent. I do not know how the Honourable the Law Member has induced himself to agree with the prevailing opinion of the Bombay High Court. Why should the opinion of the Bombay High Court alone prevail? I say, Sir, it will not be proper to thrust the opinion of one particular High Court of the country upon other Courts which hold a different opinion. I also see from the answers given by the Honourable the Law Member that he has not only tried to introduce this Bill, but he has also tried to get the Letters Patent modified in accordance with the prevailing opinion of the Bombay High Court. I do not know how even with respect to the Bombay High Court it can be said that there has been a uniform opinion for 60 years. I have gathered some dates here. The difficulty arose in 1890 in a certain case, and one of the judges, in pursuance of one of the previous decisions of the High Courts in England, wanted to clothe the High Court of Bombay with jurisdiction over suits for land. That was overruled in another case. In 1905 a difference of opinion arose from the opinion prevailing before that. Sir Lawrence Jenkins in 29 Bombay, 249, differed from the previous view, and held a contrary view, and his view was followed from 1905 to 1925. There was a conflict of rights under two mortgages, and the dispute arose as to which mortgage should prevail. It was disputed as to whether the Bombay High Court had or had not jurisdiction over the mortgage suits. Justice Pratt in 1925 said that that Court had no jurisdiction, because that referred to a case of land. In 1923, there was another case, and in 1927 there was a change again. Thus even in the Bombay High Court there has not been a consistent view held all along. Why then place a premium upon the opinion of the Bombay High Court and try to make it law for the whole of India? Therefore, I say, Sir, please give up the case of Madras and Calcutta High Courts. Do not try to unsettle by the introduction of this clause a long course of decisions in Madras and Calcutta. If you are trying to avoid such inconveniences which have arisen in the Bombay High Court, then for Heaven's sake, do not unsettle a long series of decisions in Madras and Calcutta. Therefore, I say, retain clause 3 and forgo clause 2. I would again appeal to all sections in this House and say that it is not a matter which affects only those who practise the law; it is a very vital matter affecting all sections of the public. Please do not put temptations before the High Court Judges who might be unwarily induced to take this particular course

contrary to the prevailing opinion in the same Court. In the same Presidency one Judge will hold one view, and another Judge will hold a different view. How am I come to the Law Member and ask him to modify the Letters Patent then.

Then, again, as regards the question of principle, I am opposed to confer jurisdiction upon the High Court over lands situated in the mufassil. Why do you place a High Court upon a much higher pedestal than any other Court in the Presidency? I would ask the Honourable the Law Member to say that if a piece of land in Madras or Bombay is mortgaged to a person in Poona, can the Poona District Court execute a decree or give a decree on the mortgage of that property, and can a suit be filed in any Court other than Bombay? If property in Bombay is mortgaged to a person in Poona, both the plaintiff and the defendant might be residing in Poona, but can a suit be filed in Poona? If the entire land is situated within the jurisdiction of the Poona Court, the Bombay High Court has no jurisdiction, or if the entire land is situated within the jurisdiction of the Bombay High Court, the Poona Court has no jurisdiction. Under the Civil Procedure Code, the mufassil Courts have no jurisdiction to entertain suits on mortgages over land situated in the presidency towns. I find certain rulings which say with respect to clause 12—one decision says that suits for land must be held to apply to all those categories of transactions which are covered by section 16. Sections 18 to 20 are not directly applicable, but the principle is there. If we want, we can certainly refer to a similar statute for the purpose of construing another statute, and it should not be improper to refer to similar provisions under section 16 of the Code. I, therefore, say that you are conferring upon the High Court some jurisdiction which advisedly under the Letters Patent they were not prepared to confer. Because some persons have somehow or other caught the ear of the Honourable the Law Member, it would be iniquity and injustice to the other High Courts and the mufassil Courts to confer a jurisdiction which previously had not existed. I heard the Honourable Member draw a distinction between the two,—the Arbitration Act, equitable mortgages and various other things generally. If I had the right, I would scrap all those differences.

A long time ago there was a marked difference between the High Courts and other Courts, when the latter were not able even to crawl, and there was a distinction between the resident of the town and the resident of the village, and the resident of the town wanted to boss it over the resident of the village. Similarly, the High Court wanted to boss over the other Courts. But now, fortunately, the power is given to the Legislature. And I submit, Sir, it is not a question of mere form, it is a question of principle. Why should the High Court exercise in its original jurisdiction over land which the mufassil Courts have not? Sir, it is a vital matter. One further thing, the debtor and the creditor may collude, and what happens? All the other persons may be dragged 150 miles away, they may have to engage lawyers in Madras and come back empty handed. Sir, I submit again that it is not a mere matter of form. I would therefore appeal to the Honourable the Law Member not to insist on this clause. When a matter is sent up by way of reference to the Full Bench for opinion, very often the judges of the High Courts say, this matter does not arise on the facts, and therefore we are not going to give an opinion in advance. The Judges of the High Court do not give opinion in advance with reference to hypothetical cases, and I would ask the House to deal with the existing situation

[Mr. M. Ananthasayanam Ayyangar.]

and not to try to legislate for all future. Therefore, you can set out all those decrees which are affected by the Nagpur decision in a schedule to the Act but with regard to others do not extend the operation of the Act, and if the House agrees with me, the only way in which it can be done is by deleting this clause.

**Mr. M. S. Aney:** I join with my Honourable friend in opposing this Bill, and I adopt all his arguments in doing so.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

**The Honourable Sir Nripendra Sircar:** Sir, I move:

"That the Bill be passed."

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That the Bill be passed."

The motion was adopted.

---

#### THE INDIAN TARIFF (SECOND AMENDMENT) BILL.

**Mr. President** (The Honourable Sir Abdur Rahim): The House will now resume consideration of the following motion moved by the Honourable Sir Muhammad Zafrullah Khan on Tuesday, the 14th April, 1936:

"That the Bill further to amend the Indian Tariff Act, 1934, for certain purposes (Second Amendment) be taken into consideration."

Surdar Mangal Singh.

**Sardar Mangal Singh** (East Punjab: Sikh): When the House rose on Saturday, I was saying that this annual reduction of wheat import duty generally depresses the wheat prices. Last year, when the duty was reduced some of us thought that there would be no further reduction of duty and that Rs. 1-8-0 would be stationary, at any rate, for several years to come, till the wheat position improved. But the Government of India, I am sorry, have again come forward with an eight annas reduction, and if we go on at this rate, there will be no duty two years hence, and I suspect that this move of the Government is a cold, calculated, slow process of killing the wheat duty altogether. It is that feeling which creates uneasiness in the minds of the wheat growers of Northern India. I am sorry that in this matter one of the leading wheat growers of our province. . .

[At this stage Mr. President (The Honourable Sir Abdur Rahim) vacated the Chair, which was then occupied by Mr. Deputy President (Mr. Akhil Chandra Datta).]

... I mean the Honourable the Commerce Member himself is allowing himself to be used in furthering the interests of some millowners of Calcutta and other places. This is our suspicion, because, otherwise, there can be no purpose in reducing the wheat duty. If the Government of India, as they say, do not want foreign wheat, then why is this annual reduction in duty? If they want to prohibit foreign wheat, it does not matter whether the duty is Re. 1 or Rs. 1-8-0. But that is not the case. The Government of India definitely want to keep down the prices to do away with the duty ultimately. It is true that the reduction of duty may not lower the prices, but I am certain that it would definitely check the upward movement of wheat prices.

**The Honourable Sir Muhammad Zafrullah Khan** (Member for Commerce and Railways): Why?

**Sardar Mangal Singh**: Because of the reduction of duty. Then what is the object of reducing this duty? Last year, the Honourable the Commerce Member admitted that they wanted to keep down the prices. Speaking on this question he said:

"Firstly, too high a rate of duty would make it possible for the retailer to put his prices unnecessarily high to the consumer without any guarantee that the benefit will go to the producer."

~ They do not want that the prices of wheat should go up; probably, they want that there should be no difference between the price of foreign wheat and Indian wheat. Probably, they want to bring down Indian parity prices to foreign parity prices. Speaking on this question, my Honourable friend, Mr. Morgan, said last year:

"Again, my Honourable friend, the Honourable Sir Joseph Bore, on the 21st March, 1933, said that the Government would propose to remove or lower the duty if they found that it is essential in the consumer's interest. Sir, it has all along been recognised as an important factor that the wheat duty might become a burden on the consumer. It is this position which I consider necessitates a reduction in the rate of duty to-day."

I repeat, that the Government of India, in the interests not of the consumers in general, but, particularly, in the interests of the millowners of Calcutta and other places want to keep down the prices of Indian wheat. That is the crux of the whole problem. Speaking on the same question, my Honourable friend, Mr. Morgan, said:

"Exports have failed to be stimulated under these artificial conditions and the mills submit that no increase in exports of either wheat or flour can be expected unless and until the present duty is substantially modified to admit of a stimulus being given to exports of flour from this country."

There has been a definite move on the part of the Government to reduce this duty. I asked the other day as to what public bodies have asked for this reduction, while on the other hand I quoted a Resolution of the Punjab Legislative Council in which the Punjab Council had unanimously urged upon the Government of India not to lower the wheat duty and in this matter the non-official Members and the Punjab Government are united. The Honourable Nawab Muzaffar Khan, Revenue Member, speaking on behalf of the Government said, he

[Sardar Mangal Singh.]

was glad to inform the House that in this question they were all united. Not only he but His Excellency the Governor also took personal interest in the matter and they had made as strong a representation to the Government of India as it was possible for any agricultural province to do. As soon as this Resolution was passed, he assured the House it would also be communicated to the Government of India. I would like to hear from the Honourable the Commerce Member what letter the Punjab Government have written to the Government of India and what action they are going to take on that Resolution.

**The Honourable Sir Muhammad Zafrullah Khan:** The Honourable Member knows from this Bill what action the Government is going to take.

**Sardar Mangal Singh:** If the Government of India wish to give protection to wheat, this protection should be effective and it should be such as to inspire complete confidence in the wheat growers but this annual reduction—I would not use the un-Parliamentary expression, monkeying with the wheat duty—is shaking the confidence of the wheat growers. What I would urge upon the Government of India is to keep the duty fixed for several years, so that the wheat growers may know where they stand. Last year they were greatly agitated by the policy of the Government of India, which was to kill the wheat duty by slow process and if we go on at this rate of reduction, two years hence there will be no duty and, in this way, there will be no confidence in the wheat growers. The agriculturists in this country were expecting something better as soon as the author of the Report of the Agricultural Commission would come to Delhi, but I am sorry to say that the first act that we see, after his arrival, is the reduction of the wheat duty. The other day the Honourable the Commerce Member interrupted my friend, Dr. Ziauddin, and asked what steps the Government of India should take in order to raise the price of wheat. If the Government of India want to take steps, they can take several steps to raise the price of wheat. Other countries have done it. Even England is doing it to raise the price of wheat. The Honourable the Commerce Member who is also the Railway Member can certainly do several things by which the price of wheat can be raised. We have been agitating for the last several years for the reduction of railway freights on wheat, not only to ports but to several inland provinces, so that the movements of wheat may be facilitated. The question of ratio is a very controversial one and the Honourable the Finance Member would not listen to it but by raising the exchange ratio from 1s. 4d. to 1s. 6d. you have put an excise duty on wheat of 12½ per cent. and, if you bring down the exchange ratio from 1/6 to 1/4 you straightaway raise the price of wheat by four annas a maund and the Government of India, if they are free to do it, should do it, but if the Government of India feel helpless that they cannot do anything in the matter but if they cannot do anything by way of raising the prices of wheat, they should tackle this question from another point of view and that is they should lower the cost of production. At the present time, the Punjab Government have instituted an inquiry and they have come to the conclusion that the cost of production is Rs. 2-8-0 per maund in the Punjab. If the price of wheat is less than Rs. 2-8-0 it is uneconomical and unremunerative for the wheat growers to grow wheat and the Government of India, if they cannot raise the price, should reduce the cost of production by lowering the land revenue on wheat.

**The Honourable Sir Muhammad Zafrullah Khan:** Surely, the Honourable Member is not suggesting that the Government of India can reduce the land revenue.

**Sardar Mangal Singh:** They can lay down a policy for the Local Governments to follow. It is no use saying that it is a provincial subject. Sometimes when we come to the Government of India and say that they should do this and that, it is said, "I am sorry. It is a provincial subject". When we go to the Provincial Governments, they say, 'The matter is one for the Government of India. What can we do in this matter?' This sort of shilly-shallying will not help the country.

**Mr. N. M. Joshi** (Nominated Non-Official): What is your Provincial Government doing for agriculture?

**Sardar Mangal Singh:** I do not follow the Honourable Member. Before I sit down I would ask one question from the Honourable the Commerce Member. He is reducing this duty from 1/8 to Re. 1. We fear that foreign wheat may come to our country. Is he prepared to announce that in case the foreign wheat comes to our country, the Government of India will immediately take action to raise this duty from Re. 1 to Rs. 1-8-0 or more, if necessary. We feel very awkward in this matter. If we oppose this Bill and throw it out, there will be no duty on wheat and we are not willing to support the present policy. So we are in an extraordinarily difficult position. In these circumstances, I can neither support nor oppose the Bill.

**Sir Muhammad Yamin Khan** (Agra Division: Muhammadan Rural): This Bill is the most disappointing Bill which has come from the Government this year. Two years ago, when the duty was Rs. 2 per cwt. we found that still the prices of wheat were so low that the men who were engaged in this industry could not get a sufficient return. Even when the duty was 1/8, we found, that at the time of harvest, the competition from foreign countries was so great that the Indian cultivator could hardly get what he invested in the land.

**The Honourable Sir Muhammad Zafrullah Khan:** What does the Honourable Member mean by competition from foreign countries?

**Sir Muhammad Yamin Khan:** I am referring to wheat which is imported into India from Australia, Argentine, Canada and other places.

**Sir Muhammad Yakub** (Rohilkund and Kumaon Divisions: Muhammadan Rural): No wheat is imported now.

**Sir Muhammad Yamin Khan:** Technically it is quite right, but the wheat which comes to the mills of Bombay and Calcutta, which goes outside in the shape of flour, decides the prices in Lyallpur and other places.

**An Honourable Member:** No.

**Sir Muhammad Yamin Khan:** If my Honourable friend had been dealing with this industry he would have known that it is not a question of labour in the mills. It is the question of growing, it is the labour in the fields, in which my friend is not interested so much. Now, if a wheat

[Sir Muhammad Yamin Khan.]

grower invests in the land Rs. 1-8-0 he cannot get a return of Rs. 1-8-0 by selling all his produce. There is sometimes the question of the high rents or of the canal dues that is made to agitate the mind of a peasant but the level of the prices agitates him always and the level of the prices is determined by the price at which we can purchase the foreign wheat. The foreign wheat which comes to the millowners in Bombay, they purchase at a certain rate and they are not willing to purchase the Indian wheat because it is costlier. Because they are not willing to purchase in Bombay and Calcutta, the dealers in grain are not ready to purchase above a certain level of prices in other places and, when the dealers in Bombay and Calcutta are not willing to purchase above a certain level, naturally their price determines the wheat price at Lyallpur and other *mandis* in North India, and that is how the prices of wheat work out. May I ask my friends who do not agree in this—what is the cause of the price of wheat being so low? Do they know what are the reasons? Can they explain it? If they say, “this is not the cause”, what then is the cause? Have they ever given a minute’s thought to the question why is it that the prices of wheat are so low? Is it that the produce of wheat is so much in the country that the consumers are not to be found? What are the reasons? If the consumption and the produce are what they used to be ten years ago, then why is it that the prices ruling in 1925, 1926 and even 1929 are not the prices that are ruling today? It is the same land which is at present cultivated and is covered by wheat. My friend may say that in 1930 we produced about two hundred million tons extra. Well, how long are you going to say that those two hundred million tons extra have never been consumed since 1930? There were 200 million tons extra grown in Argentine, there were two hundred million extra grown in Australia, there were two hundred million extra produced by Canada, all these countries have washed off their extra produce, but in India we do not find the level of prices going up. We have today the same number of consumers, because our exports have never exceeded more than 300,000 tons of wheat to other countries. If our exports were never more than that, supposing we are not exporting at all, the 300,000 tons do not affect the question at all when our produce is something like eight hundred million tons every year and our consumption is about eight hundred million tons a year in India. These are the figures which find a place in the reports of the Commerce Department,—that our produce is somewhere near eight hundred million tons annually and our produce normally is about the same. If India consumes all its produce, then the reason must be found somewhere else as to why is it that the price of wheat is not rising sufficiently to be equal to cost of production. No cultivator can cultivate wheat properly unless the level of price goes up to ten seers a rupee. If wheat sells at a cheaper rate than ten seers, the cultivator cannot go on producing. The cultivator has to pay the rent, the cultivator has to pay the canal dues, the cultivator has to pay every side, he has to pay for the interest on the capital which he sinks. Everything combined together comes up to the same thing per acre, and apart from that, he gets nothing for his labour which he has to do for the whole one year.

Sir, wheat takes about a year to grow. If you sow wheat on a piece of land, you cannot have any other crop on that land within the year. So, on land which is chiefly meant for wheat, no other crop can be grown in the same year. That may be very good land in which you can grow, besides wheat, some coarse kind of produce but that has no value. In a *kutchra*

*bigha* four maunds is the highest limit which has been found in this country. You cannot get more than four maunds of wheat to a *bigha*. You sell it at Rs. 1-6-0 per maund, then Rs. 1-6-0 multiplied by 4 comes to Rs. 5-8-0. The net price which the cultivator gets for his produce of one *bigha* comes to Rs. 5-8-0. Now see his costs. He has to pay at least Rs. 3 as rent. He has to pay about a rupee as canal dues. That is Rs. 4-8-0, and then the interest on the capital which he has had to invest and for which he paid something, everything combined, comes to Rs. 5-8-0. Now this poor fellow and all his family who are also working with him in the field get no return whatsoever, and that is the reason why we find that, everywhere, there is discontent in this land. The prices are at this stage that the purchasing power of the cultivator has gone down below zero, he cannot purchase anything, practically, and the only thing he can do is that whatever he grows he eats away, and the decree-holder is running after him without getting his decree realised! That is the only result, *viz.*, that the cultivator is at present living, not on his earnings really but, because he cannot pay anything out of the produce to anybody, he consumes the whole of that. Now, how long will the Government allow this state of affairs to continue? If Government continue this policy, the net result will be that although the socialism preached by some of my Honourable friends there will never prove successful, this policy of the Government will unquestionably help to make socialism successful in this country (Hear, hear). This policy is driving the peasants to socialism, because they would want nothing better in their present state than a change, whatever the nature of that change may be, and that change will be welcome to the peasants (Hear, hear), because the peasants cannot continue to live in the circumstances that are being forced upon them by the Government and by the unforesighted policy of the Government. (Hear, hear.) Nobody, who wants that the Government should be strong, that the country should be peaceful, that there should be an evolution and steady progress, can ever agree to this proposition that the peasant should be left in his present most dissatisfied condition. (Hear, hear.) This is the desire of everybody,—that the peasantry should be well-fed, well-clothed. They should have some extra means to live on. If the Government persist in their folly, they will be driving the agriculturists into the hands of the people who want revolution in the country. I submit, it is in the interest of the Government that the purchasing power of the peasants should be increased. Their purchasing power cannot be increased, unless the price of wheat is increased. At least in North India, wheat is the only commodity which decides the price of everything. If the price of wheat goes low, we find milk becomes cheap, the price of rice goes low and, in fact, every food-stuff falls in price. Whatever commodities the cultivator produces in his fields, he must be able to get a good price in the market, so that he may have sufficient means of living, with a little bit left over to meet his other requirements. He requires one square meal a day for himself and his children and his wife. Even that is not left to him by the policy which the Government are pursuing.

I think those who are interested in seeing that Government should remain strong would wish that they should change their policy in the interests of good government and peaceful administration in the country. The Government are not doing justice to the peasants by their wrong policy and it is up to all those who are interested in ordered government and the stability of government to wish that the Government should pursue a more wise policy in regard to the cultivators, otherwise, they would drive

[Sir Muhammad Yamin Khan.]

the peasants to revolution and, afterwards, the Government will not be able to control the situation. Unless the price of wheat comes to ten seers a rupee, no cultivator can live in comfort and peace. The other day an announcement was made by the Government that they exempted the duty on wheat which comes to Bombay, Calcutta and Karachi, for the purpose of grinding and exportation to Egypt and other places. My objection to that is, that those people who are engaged in that industry are the mill-owners and they determine the price for the whole country. They are not willing to purchase Indian wheat at a higher price. The price prevailing in Calcutta and Bombay is low. Therefore, the people in Bombay, Calcutta and Karachi will purchase wheat flour at a lower price than the wheat brought from Lyallpur and ground there. Although technically it is said that the price at the ports does not affect the price in Lyallpur, yet the fact remains that the price is depressed because of cheap wheat coming from Australia and other places. If you have got a piece of cloth or some commodity coming into the market and if you do keep them at a certain price, and you say that by customs duty, it will sell a little higher, do you mean to say that the price of indigenous products will not be affected. Do you mean to say that the price of wheat in Delhi will not be affected, even though foreign wheat is stored outside Delhi market? If the goods outside Delhi market are sold at a cheap price, then they are bound to affect the Delhi market. The price of wheat in Calcutta, Bombay and Karachi is really determined by the millowners who grind flour. If you disallow the millowners in those places, then the price of wheat will be determined by the producers in Lyallpur and other places by the *mandi* people. Now the *mandi* people are absolutely powerless in determining the prices. They have got no control over the prices. The whole policy of the Government in this matter is completely in the interests of the mill-owners who have got very little at heart the interest of the country, and the Government by their policy want to exclude 80 per cent. of the population from having any voice in determining the price of wheat. If the Government ignores the interests of 80 per cent. of the population which is engaged in agriculture and looks to the interests of the big millowners who are not tillers or producers, then the Government is driving these cultivators to revolution and the result will be that in a few years, Government will be wiped out. (Hear, hear.) There will be no Government at all. The Government will stand to ridicule in the eyes of the world by their shortsighted policy. The Government seem to force the hands of loyal people to resort to agitation. The cultivators do not want to have recourse to agitation. They only want to be left in peace in their villages. But by the wrong policy which the Government are pursuing, they are forcing the peasants to run into the hands of my Honourable friend, Prof. Ranga. (Laughter.)

I, therefore, submit that if the Government want to remain strong, they should ignore the interests of people represented by my Honourable friend, Mr. Morgan, and others, if the Government want to get increased customs revenue, they must look to the interests of the peasants and increase their purchasing power and if the people in the villages get good price for their produce, they will have plenty of money in their pockets and they will purchase a lot of goods coming from outside. Now, they have got no money. That is why the customs revenues are falling. If there was a temporary increase in the customs revenue that was due to the fact that prices were going a little bit higher of agricultural products.

As regards this measure, I am in the same position as Sardar Mangal Singh: This like "Sánp ki Chhachundar", i.e., a snake catching musk rat; that is he can neither swallow, nor vomit it out. If the musk rat goes into the mouth of the snake it will become a leper, if he vomits it, he will become blind. I am in that position now. We can neither reject this measure nor accept it. It is a most difficult position and I think it is due from this House that a protest should be raised against the ways of Government. The Government ought to have brought forward this Bill before the 31st March, 1936. By having postponed the introduction of this Bill till after the expiry of the 31st March, the Government have deprived this House of the power of suggesting the old scale of duty on wheat. I submit, it is the most crooked policy of Government which is responsible for depriving the House of its right. I cannot call this policy of Government as commendable. Their policy has precluded the House from having any voice in the matter and the House is forced to accept whatever is dictated by Government. This, I think, is not fairly treating the House and this is not the proper manner in which the Government should have behaved. In conclusion, I submit, Sir, that I have explained my own position. I will have to vote for this measure, otherwise I will dig my own grave.

**Prof. N. G. Ranga** (Guntur cum Nellore: Non-Muhammadan Rural): Sir, I am glad that at long last wisdom has dawned on my Honourable friend, Sir Muhammad Yamin Khan, and he has been able to discover the fact that this Government is really crooked in its methods and it is very irregular in its habits and heartless in its feelings. Sir, at the same time, I am not prepared to admit my Honourable friend to my embraces, for Sir Muhammad Yamin Khan is not a real regular genuine *kisan*. He has made his speech here because I know that he is having his eyes on the next elections and I dare say that many others, for the sake of election, will make such a speech and not for the real sake of a fight with the Government. If he is really keen in his anxiety to support the *kisans*, he ought not to be afraid of doing so. He ought not to be talking of *kisans* as satisfied with what they have got, the *kisans* not having any political interest at all in the public life and the *kisans* being lulled to sleep again, if only this Government would be good enough and sensible enough to accept his proposal of not reducing this import duty on wheat. I may assure this House as well as my Honourable friend, Sir Yamin Khan, that the *kisans* are becoming socialists, not because they think that Socialism is something foreign and something new, something which may offer them something better than what this Government have been able to offer them, but because they know that the sum total of all their needs and demands is nothing but Socialism. It is not Socialism that they are adopting, but it is their demands which are put together and are called Socialism by several others who are in towns. Those who are in towns have got to talk of Socialism. The *kisans* do not talk of Socialism; they talk of their immediate demands. And one of their immediate demands is just this import duty on wheat and the import duty on rice. I am also opposed to this reduction in the import duty on wheat, and I am also in agreement with Sir Yamin Khan when he said that the price of Australian wheat which is imported into Calcutta somehow in an indirect fashion has some influence in determining the price of our own Indian wheat. Therefore, I am really upset by this new proposal of the Government of India to reduce this import duty on wheat.

[Prof. N. G. Ranga.]

As Sir Yamin Khan has said, the supply of wheat is not considered to be over too much. There is demand for the supply of wheat and there does not seem to be any legitimate reason why the price should be so low as it has been. It may be argued that our Indian prices are above world par but that does not go anywhere at all, because even the price as it is at present, is not enough to enable our peasants to make both ends meet, is not enough to enable the peasants to pay their *kist* and rent. That is quite enough reason why the peasants should oppose this proposal of the Government of India to reduce this import duty on wheat.

Then, coming down to paddy and rice and the Madras peasants who are very much interested in it, I should like to say that this House at least had an excellent opportunity of expressing its view in regard to that. It is not necessary now for us to deplore that we are in an awful quandary, as was stated by my Honourable friend, Sardar Mangal Singh. This House has had its opportunity; it expressed its wish by an overwhelming majority in favour of an extension of import duty on rice as well as paddy, in addition to the duty on broken rice. Yet Government have done nothing till now; Government do not propose to withdraw its own Tariff Amendment Bill and come back with another Bill to give effect to the wishes of this House. Why? Is it because Government were not warned about the feelings of the peasants? I myself had stood up in my place in this House and warned Government about the feelings of the peasants, in my parts as well as in other parts of India. It is no secret for this Government that the peasants are very much discontented with their present policy of negation, the pusillanimous policy of browbeating everybody and of doing nothing whatsoever.

[At this stage, Mr. President (The Honourable Sir Abdur Rahim) resumed the Chair.]

Yet Government wish to go on in the same way and the chariot of Juggernaut goes on although so many lives are being crushed under it. Sir, we are told that after all it is only a portion of 1 per cent. of the total production of rice that is being imported into this country, and it cannot really be claimed to have any important effect upon the price of paddy in this country or of rice. But I would like to remind Government that the strength of a chain is to be measured by that of its weakest link; and in the market it is the price at which any maund of rice is sold that fixes the price of all the rice placed within that market for sale. And when rice and paddy and broken rice are imported from other countries at comparatively low rates and are sold at very low prices, one cannot expect a larger quantity of rice, paddy and broken rice produced in this country to be sold at higher prices. And it is for that reason that although the imports into this country are of very small dimensions, their prices being lower than the Indian prices have a very much depressing effect upon the general level of Indian prices for rice, paddy and broken rice. For that reason we want an extension of this import duty on rice as well as paddy.

We were told that Government have done an immense amount of good work in order to help these paddy growers, and in support of their claim my Honourable friend, Sir Girja Shankar Bajpai, mentioned the fact that there is as much as 2 million acres of land under improved variety

of paddy. But he did not mention that it formed only 1/42nd part of the total acreage under paddy in this country. There is as much as 84 million acres of land under paddy out of which only two million acres are supposed to have been brought under improved varieties.

**Sir Girja Shankar Bajpai** (Secretary, Department of Education, Health and Lands): The correct figure is three millions.

**Prof. N. G. Ranga:** Very well. Out of a total acreage of 84 millions under paddy, this Government after 150 years of rule has succeeded in bringing three million acres under the improved variety of paddy. And all the other paddy growers are expected to be satisfied and consoled with this particular thought that somewhere in some parts of India those of them who are interested in 3 million acres of paddy are helped to some extent by the introduction of a new and improved variety of paddy. Is that reasonable? Will it carry any conviction to any peasant? Will it carry any conviction to any Member of this House? I am sure it does not.

Then, Sir, we were told that imports must be allowed into this country and if the imports must be allowed into this country they do come not only to the Madras Presidency but also to any other part of India wherever it is needed; and the recent imports of Siamese rice in Calcutta were instanced in order to support their plea. Yes, imports there must be, we have to admit it and we are prepared to have imports of rice and paddy into this country. But we would like to have them only after licensing them properly, so that the paddy growers in this country would be assured that only such quantities of rice and paddy would be allowed to be imported into this country as can be demonstrably proved to be absolutely necessary in the interests of Indians, and therefore there will not be any fright whatsoever of an unlimited quantity of rice imports in the ranks of the merchants and in the ranks of the peasants which naturally usually results in a lowering of prices. If the peasants can be assured that not more than what is necessary alone will be allowed to be imported into this country, they would not believe any one who goes about saying that there are going to be shiploads of rice and shiploads of paddy imported from other countries and therefore the price is sure to be reduced abnormally. And if they do not believe any such rumours there can be no chance at all for the price of paddy to tumble down so precipitously as it has done in the past, specially as a result of this particular difficulty. It is for that reason that I would like Government, first of all, to accept our suggestion to extend this import duty to rice as well as to rice in the husk, and next to devise a means by which imports are allowed into this country only to the extent that such imports are considered necessary. Wherever I went—and I can assure this House that I have been visiting the largest number of villages possible and I can stand competition with any other Honourable Member in this House in that respect—I was accosted by these peasants in a monotonous fashion by one consideration. They simply asked why, when Government were prepared and were particular to control the price of rice during war time, they are not prepared to stop any further reduction in the prices of their agricultural produce, and why Government have not done anything to arrest this precipitous fall in the prices of their agricultural produce? I had no answer. The only answer that I was able to give was "It is all because of you peasants that Government have not done it". And they have given me the answer "Yes, we shall certainly strive our best, we shall certainly organise ourselves to the best of our capacity in order to

[Prof. N. G. Ranga.]

see that Government behave themselves in our interests in the same way in which they tried to behave themselves in the interests of others when prices were rising during war time". That is the crux of the whole problem, and that gives you the key to the Socialist bogey that my friend, Sir Muhammad Yamin, seems to be so much afraid of. It is not socialism from town that is filtering down to the villages, but it is the peasants' needs when expressed in English and when expressed in our urban verbiage which come to mean socialism and nothing else.

Sir, we are told that prices after all have risen to some extent. Have they risen? In answer, it was said that between last year and this year after all there has been no fall, but between this year and two years ago, 1933-34, there has been some rise. We say that that rise is not enough, and that rise does not go very far. At the same time, even the slightest possible rise in prices is beneficial to the peasants. It may not be much, but it will be something, and it is for that reason that I want Government to extend their system of protection to cover rice as well as rice in husk because . . . . .

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member need not mention it, there is a separate amendment on the subject.

**Prof. N. G. Ranga:** The amendment would come later on, and I am not quite sure whether you will rule it in order or rule it out of order.

**Mr. President** (The Honourable Sir Abdur Rahim): If the Honourable Member thinks it is not in order, then it must necessarily be so. Why is he discussing about it?

**Prof. N. G. Ranga:** I am not discussing it. I am discussing the general consideration of the Bill and at this stage I would like to say that any slight rise in the price of paddy and rice will go to tone up the whole system under which the peasants are subjected to work, will go to increase their credit-worthiness, will go to raise the prices of all their assets, specially their lands, and to that extent they will at least be able to bear the burden of their agricultural indebtedness for some time longer and stave off the trouble of having to repay their debts by simply saying that their prices are rising and some time later they will be able to pay and so they shall not be committed to the civil debtors' prison or forced to sell away their lands to pay off their debts. At the same time Government say that they have their doubts, but what about the fate of consumers? I can assure Government that there may be many doubters of their solicitude for consumers, but there cannot be many doubters for the solicitude of the peasants themselves for the consumers, because the peasants themselves happen to be the great majority of the consumers of industrial produce and other kinds of produce in this country. It is not fair that while industrial wages, industrial incomes, profits, dividends, interest—all these sources of income of the industrial classes and urban classes—have remained the same—and I say that their incomes have remained the same—during the last six years, the agricultural prices should be allowed to go down progressively year after year. What has happened? The salaried employees have been receiving the same salaries, both in Government service and in private companies; and the industrial workers,

although they have had to suffer some reductions here and there in wages, have not had to suffer at least half as much as the agriculturists. I do not want them to suffer, but yet the fact remains that their incomes are just the same, or they may be a little less than what they were in 1929; but the agriculturists have suffered more than 50 per cent. loss and reduction in their incomes and in the prices which they were able to get for their agricultural produce, and it is these people who have been selling their produce at such a reduced price to the industrial classes. This only means one thing,—the transference of wealth from peasants and agriculturists to non-peasants and non-agriculturists, to urban classes, to industrial classes, to salaried classes, during all these six years. Is this drain to be continued and to be permitted? Is this invisible transference of wealth and income from the peasants to other classes of people to be allowed, to be permitted with impunity, without doing anything whatever either by Government or by the public? I say 'no'. Just as industrial workers should have their minimum wage, peasants also should have their minimum return from their lands, and it is only too true to say that most of the peasants are not able to have even one meal a day. It is not Sir Muhammad Yamin Khan alone who has to state that they are obliged to go with one meal a day. Even if any one of the Members on the Treasury Bench were to go incognito to any village he chooses, he would not find it very difficult to come across a large number of peasants who would be able to testify to the fact that they are obliged to go with only one meal a day. They may say "in that case, why should they go on producing any paddy at all?" They produce paddy because they have nothing else to do. They produce paddy because they have been doing so for ages. and ages and ages, and if they were to leave their lands, the moneylender would be there ready to pounce upon them, the law Courts would catch hold of them and put them into the civil debtors' jail, and the shopkeeper would be there even to refuse to give them even oil to burn lights in their houses. It is for this reason—in order to keep up the usual show of householders' lives—that they are obliged to carry on their cultivation even though it does not pay them. For these reasons I wish that Government would accept our proposal, but I know in advance that this Government are not going to accept it. I know that Sir Muhammad Yamin Khan was not far wrong when he said that there would soon be no Government: but at the same time, I can assure this Government that there would surely be a Government, but not this Government but some other Government and that Government will be a government of the peasants and workers.

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member need not make any prophecy like that. This is a simple Bill now before us: we are not now dealing with what sort of Government we are going to have.

**Prof. N. G. Ranga**: That is my view, that this Government is sure to be replaced by another Government of peasants. It is not necessary for them to be incited or excited by socialists coming from towns. The peasants are capable of developing their own leadership, and they are developing it. It is not necessary for Sir Muhammad Yamin Khan to warn this Government that the peasants should not be allowed to go into the hands of Prof. Ranga. Prof. Ranga alone will not create a revolution. It is this Government which is creating it. It is this Government

[Prof. N. G. Ranga.]

which creates it by flouting the decisions of this House, even this House depending as it does upon a restricted franchise; and it is this Government which will bring about that state of affairs. I welcome that state of affairs, but, at the same time, in the meanwhile I want my peasants to live, and it is for that reason that I plead from this place of mine for a more sensible attitude from the Government as well as the Honourable Member in charge of this Department.

**Mr. G. H. Spence** (Secretary, Legislative Department): Sir, I move that the question be now put.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

“That the question be now put.”

The motion was adopted.

**The Honourable Sir Muhammad Zafrullah Khan:** Sir, Dr. Ziauddin Ahmad, in dealing with the figures that I had put forward in support of my contention that the excess of Indian wheat prices over Australian wheat prices was such as did not warrant any higher duty than the Government had proposed and that, as a matter of fact, the duty proposed left a sufficient margin of safety, objected that the prices that I had submitted compared the Calcutta prices of Lyallpur wheat with the London quotations of Australian wheat, and that that was not a fair basis of comparison. As there are no direct quotations of Australian wheat in Calcutta, I propose to supplement those figures by comparing the prices of Lyallpur wheat landed in Calcutta with the estimated prices of Australian wheat landed in that port, based on Australian quotations, allowance being made for freight and insurance from Australia to Calcutta. By this method we find that the excess of Indian wheat prices over potential Australian wheat prices in Calcutta, no allowance being made for duty, has been as follows in recent months:

September, 1935	.	.	.	.	2a. 3p. per maund.
October,	„	.	.	.	4a. 5p. „
November,	„	.	.	.	5a. 7p. „
December,	„	.	.	.	3a. 9p. „
January, 1936	.	.	.	.	1a. 6p. „
February,	„	.	.	.	8a. „

These figures will also show that the level of duty which Government propose to continue in respect of wheat leaves an ample margin for any contingencies that may arise. Later speakers have mostly harped on the theme that a lowering of the duty is bound to lower prices and that that would be disastrous in the present circumstances for the grower of wheat. Now, if it were true that the level of prices inside India would be governed by the quantum of the duty, there might be something in the argument. But, I am extremely sorry to have to observe, that the greater part of the debate has proceeded upon a fallacy, namely, that it is the level of the duty that will determine the level of the prices. I give far too much

credit for intelligence to Honourable Members who have adopted that line of argument to believe that they really themselves believe in it. Whatever may be the reason for their advancing that argument here, that argument is so patently without foundation that I cannot imagine that they seriously believe in its soundness. If that argument were to be considered sound, then the position would be that the simple method of raising internal prices would be to go on raising the duty, and also, that the difference between foreign prices and Indian prices should correspond exactly to the amount of the duty. That is to say, supposing the duty is Rs. 2 per cwt., if this argument is sound, the difference in the price of foreign wheat and in the price of Indian wheat should be Rs. 2 per cwt., that is, the Indian price would be higher by Rs. 2 per cwt.; and that is patently incorrect. All that an import duty can do so is to keep out foreign wheat which may be offered at lower prices than are prevailing inside the country; but once that has been accomplished, an import duty can do nothing more to raise prices. The effect of the import duty is to confine the interplay of the factors of supply and demand to the country itself and to safeguard it from any interference from lower prices outside. Once that has been done, the level of prices must be regulated by the other factors that operate within the country, and the level of the duty would have nothing whatsoever to do with the level at which prices will adjust themselves. That being so, all appeals to Government that their proposal is likely to reduce prices and that they should continue the old rate of duty in order to keep up prices, fall to the ground, because the level of the duty must be determined only with reference to one factor and that is, what rate of duty is necessary to keep out foreign wheat. Once this is secured, the duty can affect nothing else with regard to the prices, it will neither bring them down nor raise them.

If that is correct, then the greater part of the criticism of the action that Government are taking is beside the point.

There is, however, one question that was put to me by Sardar Mangal Singh to which I feel I must give a reply. He said, "Suppose that your calculations are entirely wrong: suppose that certain contingencies arise which you have not taken into account and you find that foreign wheat does begin to come in in spite of your duty and begins to disturb the market, will you then take action?" I wish to assure Sardar Mangal Singh and the House that, if that contingency arises, Government will certainly take action; for, in that case, the contingency would be that the very object for which the import duty has been imposed would begin to be defeated, and it would be the business of Government to take such measures with regard to fixing the level of the duty as would again secure the position that foreign wheat, so long as the present depression continues, has got to be kept out of the country. I think that ought to reassure Honourable Members that, if foreign wheat begins to be imported in appreciable quantities Government will take such action as would make the duty effective.

Speaker after speaker said that if you are going to protect wheat, you should make your protection effective. That I accept. We are protecting wheat in the sense I have indicated, protecting it from competition inside India from cheaper wheat from outside. If that policy ceases to be effective as a result of our lowering the duty, Government will take proper action in that direction.

[Sir Muhammad Zafrullah Khan.]

Then, another question was raised by Sardar Mangal Singh, and he said: "Well, if your object is to keep foreign wheat  
 5 P.M. out and it can be equally kept out at the rate of Rs. 2 per cwt., Rs. 1-8 per cwt. or Re. 1 per cwt. why should you disturb this, year after year, why not leave it as high as it is? You are unnecessarily disturbing the mind of the cultivator, you are unnecessarily disturbing the market by seeking to reduce it." That may be all very well, but if that argument were followed, all that need be done in these matters is to fix duties inordinately high and to leave them at that level. It is a matter that must be decided with reference to the level of prices ruling outside, and the duties should be only such as to achieve the object for which they are imposed, and should certainly not be in excess of that level, for, if duties are pitched unreasonably high, other consequences begin to follow which would be equally harmful to the interests which Honourable Members have at heart. For instance, one effect of an unreasonably high duty would be that if at any time during a year an occasion arose when a dealer in wheat here could take advantage of the parity of prices and export a quantity of wheat, he would be likely to hold it in the hope that conditions, inside India, owing to a high duty might be such that at some subsequent period, during the year, he might get a better price from the consumer inside the country than he would get by the export of wheat. I think it is far more in the interests of the country to secure that the dealer should be able to export when the parity of world prices enables him to do so rather than that he should hold back in the hope that he might be able to get better prices from the consumer in India later on. That is one of the consequences that might follow if you keep the duty at a higher level than is necessary to safeguard you against the inrush of the cheaper foreign article. You should not exclude any possibility that might arise of the dealers being able to export wheat during certain seasons of the year, provided the world parity prices would permit them to do so. That is one reason why an unnecessarily high duty might operate to the prejudice of those very interests which Honourable Members are anxious to help.

Then, Sir, a very curious kind of argument was urged that somehow or other under your present arrangements it is the Australian wheat that comes into Bombay and Calcutta for the purpose of being milled and re-exported as flour which rules prices in India and no other factor whatsoever. I confess, Sir, I was entirely unable to follow that argument. If that argument is well founded, all that it amounts to is that the drawback upon the export of flour should be stopped, and it is not an argument that the import duty should not be lowered. The argument is that you did not give this drawback which you at present give on the flour which is being exported, somehow or other Indian prices would be higher,—I don't see how that follows. Supposing the drawback were taken away, and supposing all wheat that came in was treated on the same level, that is to say, for consumption inside the country, and even when it can be proved that that wheat had been milled into flour and that the flour is being re-exported, no drawback is permitted, what would happen? This small milling industry would come to an end, but it would not affect the Indian prices in the slightest degree. The Honourable Member who put forward that contention, Sir Muhammad Yamin Khan, assumed that if you took away the drawback, then the miller in that case will purchase Indian wheat and mill it into flour and export it rather than purchase Australian wheat. He is able to do that at present . . . .

**Sir Muhammad Yamin Khan:** I never said that that Indian miller will get wheat in India and after converting it into flour re-export it. What I said was that if he does not get Australian wheat for milling it into flour, the prices at which he is getting the wheat will not be the ruling prices, but the prices will be determined by Lyallpur.

**The Honourable Sir Muhammad Zafrullah Khan:** I entirely fail to see how the 7,000 tons that comes into Calcutta and goes back again outside the country can rule Indian prices, my Honourable friend himself having admitted that the consumption inside India is 800 million tons. Apart from that altogether, my submission is, that this drawback has nothing to do whatever with the question of level of prices in India. As I have said once, the duty having kept the foreign wheat out, and the level of prices is fixed by the question of supply and demand inside the country . . . .

**Mr. M. S. Aney** (Berar Representative): May I put a question on this point, Sir? How do these 7,000 tons come to India? Is it purchased and imported by the Indian merchants and then exported, or is it simply detained here in the godowns in the ports on its way to its destination where it is afterwards exported?

**The Honourable Sir Muhammad Zafrullah Khan:** I fail to follow the distinction that the Honourable Member is seeking to draw.

**Mr. M. S. Aney:** The distinction is,—if that wheat is purchased by merchants and then re-exported, and the price of Indian wheat is determined to some extent on that level, that is, by the price of the wheat so purchased; otherwise it will not.

**The Honourable Sir Muhammad Zafrullah Khan:** Does the Honourable Member mean the prices of internal wheat? Certainly not. Australian wheat is cheaper, and has been so, though the margin is diminishing, than Indian wheat. Therefore, if it is taken in for the purpose of milling and for re-export, unless this drawback is given, the result will be that the millers will have to shut down; it will not in any way affect prices inside India. It must be remembered that when the millers buy Australian wheat they pay duty on it. It is only when they re-export flour that they get the drawback.

Then, Sir, with regard to rice, Professor Ranga, in addition to the other matters he mentioned, said that if the prices were not actually going down, there had been no appreciable rise in them recently. In any case, he said this year's prices were no better than last year's prices, though last year's prices were a little better than those of the previous year. That, I submit, is not the real consideration with regard to this matter. The consideration is this. Is any duty necessary on the import of paddy and rice in order to keep the imports at their previous level more or less and in order to stop any extraordinary imports of paddy and rice into the country? In my opening speech when putting forward this motion for consideration before the House, I showed that the imposition of this duty upon broken rice had the indirect result of appreciably reducing, 45 per cent. in one case and 11 per cent. in the other, the imports of whole rice and paddy into the country. That is so far as the imports are concerned. So far as prices are concerned, I am afraid Professor Ranga was not right in suggesting that

[Sir Muhammad Zafrullah Khan.]

this year the prices had been the same as during last year. Though I am not contending that the imposition of an import duty upon broken rice would necessarily have the result of raising the prices of paddy and broken rice but as it happens, prices have become steady, and there has even been a slight rise in this year. Prices in March, 1936, according to the list of detailed prices,—if necessary I could give the House all the detailed figures, but I don't propose to do it, at this stage,—prices in March, 1936, have on the whole been slightly higher than in March, 1935. And it is admitted by Professor Ranga himself that in March, 1935, prices were higher than in March, 1934, and his admission I submit is supported by the figures.

I, therefore, submit, that apart altogether from the question of any psychological prejudice in the matter, apart from the general prevailing but erroneous impression that any lowering of the duty is bound to lower the prices, there is nothing which would warrant the assumption on the figures that that is likely to happen. As a matter of fact, if that argument had any substance in it, last year prices of wheat should have gone down by eight annas a cwt. inasmuch as the duty was reduced by so much, but as I was able to show in my speech when I moved this motion that is not what actually happened. As a matter of fact, the result was that prices were on the whole higher and steadier than in the previous year. I do not ascribe that entirely to the reduction in the duty, but in spite of the reduction in the duty, prices were steadier and were on the whole higher than in the previous year. Therefore, there is no warrant for the apprehension that a mere reduction in the duty is bound to lower the prices unless this apprehension were justified to this extent that the margin is being so much affected between the prices of foreign wheat and the prices of Indian wheat that a large quantity of foreign wheat at cheaper prices is likely to be imported into this country. If Government find that that tendency arises as a result of the reduction in the duty—there is no reason to think that it is likely to arise upon the present figures, but if some extraordinary change takes place outside this country or inside this country and prices begin to move in such a manner that this duty becomes ineffective for the purpose of preventing imports of large quantities of wheat, Government will certainly take action. With this assurance, Sir, I hope the House will accept this motion.

**Mr. President** (The Honourable Sir Abdur Rahim): The question is:

"That the Bill further to amend the Indian Tariff Act, 1934, for certain purposes (Second Amendment) be taken into consideration."

The motion was adopted.

**Mr. President** (The Honourable Sir Abdur Rahim): There is an amendment\* in the name of Seth Govind Das. Is it not increasing the burden on the people?

**Seth Govind Das** (Central Provinces Hindi Divisions: Non-Muhamadan.) No, Sir. The duty was in existence previously.

\*"That in sub-clause (a) of clause 2 of the Bill, in the proposed Item 10 (1), for the words and figure 'Re. 1 per cwt.' occurring in the fourth column, the words and figures 'Rs. 1-8-0 per cwt.' substituted."

**Mr. President** (The Honourable Sir Abdur Rahim): Is the last Act in force?

**The Honourable Sir Muhammad Zafrullah Khan**: The last Act has expired on the 31st March, 1936.

**Mr. S. Satyamurti** (Madras City: Non-Muhammadan Rural): I want to make a submission to you, if I may. I am sorry. I did not expect you to sit at this late hour. I have not got all the references, and I wanted to look them up, and submit my point to you. However, I shall make my submission, with the authorities I have in hand now. The latest ruling on this matter was last year, some time in 1935, but the more elaborate ruling was given earlier—there were three rulings on this by yourself, and by your distinguished predecessors, one on the 19th March, 1923, by Sir Frederick Whyte, another on the 13th November, 1931, and the last by yourself on the 5th April, 1935. I will now refer to the ruling of 1931, that is, in Volume VII of Assembly Debates, pages 1956-8. It arose this way. The Honourable Mr. B. Sitaramaraju wanted to move, "That in Part I of Schedule I to the Bill, amendment No. 4 be omitted". Sir George Rainy raised the point of order that the sanction of the Governor General was required. The President said, "I wish the Leader of the House had explained why he thinks so. The existing rate of tax is Rs. 1-4-0. The Bill proposes to reduce it to one rupee. The amendment does not propose to impose an additional burden on the people if the tax is retained at Rs. 1-4-0. The Chair wants that point to be elucidated". Sir George Rainy then referred to the surcharge and said that, if the amendment were passed by the Assembly, it would increase the burden to Rs. 1-9-0. The President ruled:

"The present taxation is Rs. 1-4-0. This clause proposes to reduce it to one rupee, and later on, adds a surcharge of 25 per cent, making it Rs. 1-4-0. It is a question for the House to decide whether they will accept these proposals or not, but the present amendment does not increase the burden on the people, and therefore the question of sanction does not arise. I should like to read out to Honourable Members the ruling which was given on the 19th March, 1923, by Sir Frederick Whyte. The point of order was raised by Sir Hari Singh Gour and it was as follows:

"May I, Sir, in this connection inquire whether if the Government proposal is for the decrease of the tax, as for instance, under clause 2 of section 3, an amendment maintaining the *status quo ante* would be in order?"

That is exactly the case on the present occasion. The President ruled:

"The existing charge is in the Indian Tariff Act as now on the Statute Book. Therefore, that item could not be held as a proposal to increase the tax." Therefore, no sanction was required."

Then further argument went on, and Sir George Rainy said, "That is certainly so, if this particular entry in the Schedule is taken by itself, but when the entry in the Schedule is read with clause 4 of the Bill, then it does have the effect of increasing the taxation". The President asked him to explain it. He explained the position, other Honourable Members took part in the debate, and ultimately, at page 1958, the President gave the following ruling:

"At present, the amendment merely proposes to restore the duty which exists at present, and therefore, no sanction of the Governor General is required. If this amendment is carried, it will be open to Government when clause 4 is reached to move

[Mr. S. Satyamurti.]

an amendment eliminating the surcharge on this item. I should like to remind Honourable Members, that the only issue is whether this amendment can be considered by the House without the previous sanction of the Governor General. The Chair holds that the House is perfectly entitled to do so. If the House decides to pass the amendment and restores the tax to Rs. 1-4-0, it will be open to Government to move an amendment that this item should be excluded from the proposed surcharge. The question concerns the rights and privileges of the House, and the Chair is clearly of the opinion that this amendment is quite in order."

The reason why I read this ruling at some length is this.

**Mr. President** (The Honourable Sir Abdur Rahim): It is admitted that if it increases the burden on the people, then it cannot be moved without the sanction of the Governor General—that is common ground?

**Mr. S. Satyamurti**: I admit that. But, in this case, I am asking your ruling on a matter uncovered by any of the precedents.

**Mr. President** (The Honourable Sir Abdur Rahim): There is no tariff now?

**Mr. S. Satyamurti**: There is a tariff.

**Some Members on the Government Benches**: No.

**Mr. S. Satyamurti**: There is a tariff. If you look at the Bill, you have this:

"It is hereby declared that it is expedient in the public interest that the provisions of clause 2 of this Bill shall have immediate effect under the Provisional Collection of Taxes Act, 1931."

There is a tariff today. I would like to draw your attention to the Provisional Collection of Taxes Act, 1931.

**Mr. President** (The Honourable Sir Abdur Rahim): How long does it last?

**Mr. S. Satyamurti**: It lasts until this Bill becomes law. My submission is this, that the Government have treated this House, as if it does not exist in connection with this matter. The whole point of the ruling is this. The House is an entity on the one side, and the Government on the other. The Government comes to the House, and asks for Rs. 1-4-0. The House agrees. Very well. If the Government comes to the House in time for a reduction of that tax, then it is within the power of this House to put back the tax. What the Government have done in this case is this. They have waited for the expiry of the term of the schedule in the Indian Tariff Act of 1934 which has prescribed the 31st March, 1936, and then they have introduced this Bill reducing the tax to one rupee and enforcing it immediately. My submission is this, the spirit of all these rulings is that, by a vote of this House, it ought not to increase a tax which by a vote of this House it had already levied. Government come to the House, and ask for a particular rate of tax. The House agrees to it either in the original form or in an amended form. This is the tax levied by the House. If the House is again to deal with the matter, the House has a right to restore the tax to the original level which was imposed by the vote of the House.

**Mr. President** (The Honourable Sir Abdur Rahim): Under the Provisional Collection of Taxes Act, 1931, I understand the tax is only one rupee.

**Mr. S. Satyamurti**: That is an act of the Government, outside this House.

**Mr. President** (The Honourable Sir Abdur Rahim): Whatever burden is there, does not exceed that.

**Mr. S. Satyamurti**: Whatever burden is there today is a burden of one rupee levied by Government without reference to this House.

**Mr. President** (The Honourable Sir Abdur Rahim): But apart from that, there is no other tax?

**Mr. S. Satyamurti**: No other tax.

In the earlier case of 1931, the surcharge, if it had been taken, would have raised the tax to more than what was originally there, but then the Honourable Members successfully argued before your predecessor, and he ruled, that it is open to the Government not to move the surcharge increase, and the House agreed to the amendment.

**Mr. President** (The Honourable Sir Abdur Rahim): The surcharge was sought to be imposed by that very Bill.

**Mr. S. Satyamurti**: The Provisional Collection of Taxes Act cannot come into force except as part of this Bill. I am reading to you that Act. Section 3 of that Act says:

"Where a Bill to be introduced in the Legislature on behalf of Government provides for the imposition or an increase of a duty of customs or excise, the Governor General may cause to be inserted in the Bill a declaration that it is expedient in the public interest that any provision of the Bill relating to such imposition or increase would have immediate effect under this Act. The declared provision shall have the force of law immediately on the expiry of the day on which the Bill containing it is introduced."

The declared provision is part of this Bill. It has no force otherwise.

Then, Sir, I want to make one more submission from May's Parliamentary Practice, in order to show you the spirit of this rule.

**Mr. President** (The Honourable Sir Abdur Rahim): How will it help? There is no Governor General there.

**Mr. S. Satyamurti**: In the British House of Commons, the ruling is that, except a Minister of the Crown, nobody can initiate an amendment proposing an increase of taxation. Therefore, the same principle applies. The same principle applies in both cases.

**Mr. President** (The Honourable Sir Abdur Rahim): Supposing he applied for sanction and sanction was refused, then you would be out of order.

**Mr. S. Satyamurti:** The question will be whether sanction is required. If you hold that sanction is required, then I am out of court. My submission to you now is that the amendment, as it stands, does not require sanction, on the same principle that in the House of Commons a similar rule prevails that only Ministers of the Crown can propose taxation for the first time or even increase of taxation. It is open to private members to make amendments in the following spirit. I will only read two passages for your consideration. Before I do so, I shall refer to the Government of India Act. It comes under section 67 (2):

"It shall not be lawful, without the previous sanction of the Governor General, to introduce, at any meeting of either Chamber of the Indian Legislature, any measure affecting the public debt or public revenues of India or imposing any charge on the revenues of India."

I am imposing no charge here. The only question is—"affecting the public revenues". The measure is there. The Government have introduced this Indian Tariff Amendment Act, affecting the public revenues of India. I am only seeking an amendment therein. There is nothing in the Act itself, prohibiting this, except the practice which has been followed in this House, that no non-official Member can introduce an amendment which seeks to increase the burden on the taxpayer. Therefore, we have got to go back to Parliamentary practice. I will only make two submissions to you. One is on page 512. At page 512, this is what the learned author says:

"The House can make amendments which diminish the amount of a reduction of taxation, or postpone the day when the reduction takes place, although the amendments may increase to that extent the charges proposed to be levied upon the people."

(Interruptions from Official Benches.)

If any Honourable Member there wants to say anything, he may get up and address the Chair in his turn. I suggest that they should extend to us the same courtesy that they expect from us. My submission, in this case, is this. The Government proposal is to reduce the amount of taxation. It is from Rs. 1-8-0 to one rupee. I say, it is open to this House to make "amendments which diminish the amount of reduction, although the amendments may increase to that extent the charges proposed to be levied upon the people." Then in the same page you find:

"In the committee on the bill introduced upon those resolutions, it was proposed to postpone the period at which such reduction of duty would take place; and the Speaker ruled privately that the amendment was regular, although it postponed the relief from taxation beyond the time voted by the preliminary committee and agreed to by the House."

Then, the next passage is on page 552:

"On the consideration by the House of the Finance Bill, as amended in committee, the House is subject to the same restrictions as regards the imposition of charges on the people as at other times. A new clause or an amendment cannot, therefore, be proposed at that stage for the inclusion in the liability to a tax of persons who were not subject to it while the bill was in committee, or for the imposition of a charge. When an exemption from an existing tax has been granted by a provision in the bill, as introduced or by an amendment made in committee, the exemption can be struck out on report by the House on the principle stated on page 512, as the effect of such action is to leave the tax as it was. This practice applies equally to other bills imposing taxation."

I lay great emphasis on this ruling. These words cover the present case exactly :

"When an exemption from an existing tax has been granted by a provision in the bill as introduced or by an amendment made in committee, the exemption can be struck out on report by the house on the principle stated on page 512."

That is the actual provision in this case.

**Mr. A. H. Lloyd** (Government of India : Nominated Official): It was nothing before the Bill was introduced; it was Rs. 1-8-0 till the 31st March, and the Bill was introduced later.

**Mr. S. Satyamurti**: That is the trick which I wanted the Government not to play on this point. I am asking you, Sir, to hold that this is a breach of the privileges of the House.

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member has stated his arguments very elaborately. It is only a point of order.

**Mr. S. Satyamurti**:

"When an exception from an existing tax has been granted by a provision in the Bill as introduced, or by an amendment made in Committee, the exemption can be struck out on report by the House on the principle stated at page 512, as the effect of such a motion is to leave the tax as it was. This practice"—it has been recognized,— "applies equally to other Bills imposing taxation."

I want you really, today, to take this precedent; after all, so far as the Government of India Act is concerned, it does not directly govern those cases, we are merely following the House of Commons practice; and I submit that the Government ought not to be allowed by you to deprive the House of its privilege by allowing an Act to expire and then bringing up an almost identical Bill. . . .

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member has got to establish his case.

**Mr. S. Satyamurti**: I am trying to do that, to the best of my ability. Sir, this Act was to expire on the 31st March, 1936. If the Government wanted the Bill to be fairly discussed by this House, they ought to have allowed us to discuss it earlier. The *statu quo ante* in this case is the Act, because, according to the rulings in Mav's Parliamentary Practice, the reduction from Rs. 1-8-0 to one rupee has been done, only by a declaration under this Bill which comes into force only on the day on which the Bill is introduced, and ceases to have force when the Bill is passed. I, therefore, submit that we have every right to ask the House to raise the duty to Rs. 1-8-0, which it imposed by its vote on the previous occasion which was the Act and which has been continued by a declaration only by this Bill and in this way. I, therefore, submit that the amendment is in order.

**The Honourable Sir Muhammad Zafrullah Khan**: Sir, the Honourable Member has submitted that by this Bill Government are seeking to reduce a certain duty, and that the amendment merely seeks to continue it at its

[Sir Muhammad Zafrullah Khan.]

original level. If that were so, there might be something in the contention, but with all respect, that is not so. Government are not seeking by this Bill to reduce the wheat import duty at all. They are imposing by this Bill a wheat import duty of one rupee per hundredweight and for this reason. Last year's Act expired on the 31st March, 1936. Now supposing the present Bill which is before the House were defeated, that the House said, "we will have none of it, turn it down", would the old duty continue? If the object of the Honourable Members is, by this amendment, that they wish to continue the old duty and they are not trying to increase the duty proposed by this Bill, then all that they need do to attain that object is to say, "we do not want this Bill". But is that the result likely to follow if the present Bill is defeated when the old Act is dead and when the old duty is dead? Another point which reinforces my argument is this. The Honourable Member in raising this point referred to the Provisional Collection of Taxes Act, 1931. Now that Act applies only to the imposition of a duty or to an increase in a duty, it does not apply to a reduction in a duty. The very fact that the Honourable Member seeks to bring to his aid that Act shows that the Bill that is at present under discussion is not a Bill seeking to reduce a duty,—because in that case the Provisional Collection of Taxes Act would not have applied at all. If Government were seeking to decrease an existing duty,—that is a duty which would continue if the proposal made by Government were not accepted,—then it would be open to the House to say that the duty shall not be reduced or that the reduction shall not be operative till some later date. That would not be laying an additional charge upon the subject because that charge would have continued in any case unless this Bill were to be passed; but in the present case the charge has come to an end. Nothing would continue if this Bill were not passed, and this Bill seeks to impose a fresh duty after the expiry of the old one. The 31st March, 1936, was specifically mentioned as the date up to which the duty was to be continued. This Bill wants to impose a fresh duty for another year at the rate of Re. 1 and what the Honourable Members are seeking to do is to increase this burden. My submission, therefore, is that, whatever has been read out on the other side is perfectly correct and applicable to the circumstances therein described. Supposing the existing duty were there and Government were trying to reduce it, any part of the House could say, "no, no reduction," or they could say, "a reduction but later on". In the present case they are not in order. The very Act under which this duty is being collected now itself postulates that the measure to which it applies is a measure which imposes a new duty. This Bill is imposing a new duty; it is not seeking to increase or reduce the old duty; that duty is dead.

**Mr. President** (The Honourable Sir Abdur Rahim): The Chair had considered these amendments when notice was given, and it has also heard the arguments on both sides as to whether these amendments are in order or not. The Chair thinks the rulings are quite clear on the point. The circumstances of this case are that the duty on wheat expired, under the last Act, on the 31st March, 1936, and then the Government, under the Provisional Collection of Taxes Act, 1931, imposed a duty of one rupee per hundredweight on wheat as a protective duty; and now this Bill seeks to impose a protective duty of one rupee per hundredweight on wheat, to come into effect as soon as this Bill becomes law. There is no doubt that what was done under the Provisional Collection of Taxes

Act, 1931, was to impose a certain duty on wheat, as none existed before and this Act also seeks to impose a fresh duty on wheat. What the amendment seeks now is to increase the amount of duty, that is from Re. 1 to Rs. 1-8-0. This is clearly increasing the burden on the people. This is the effect of the rulings on the point. What has been read out from May's Parliamentary Practice in no way affects the question, because there also it is fully recognised that it is the Government alone who can impose a burden on the people,—and when a certain question is raised whether a burden is imposed on the people or whether a burden is sought to be increased or not, that is to be decided upon the circumstances of each case. In this case, there can be no doubt whatever that what is sought to be done by the amendment is to increase the burden on the people. The Chair, therefore, rules that this amendment—the other amendments are all to the same effect—of Seth Govind Das is out of order, and that the amendment of Prof. Ranga, who wants to add "broken and whole rice and rice in the husk" enlarges the scope of the Bill, and that also is out of order.

The next amendment is in the name of Seth Govind Das which seeks to raise the duty from one rupee per cwt. to Rs. 1-8-0 per cwt., and that is also clearly out of order.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 21st April, 1936.