

Thursday, 23rd April, 1936

THE
COUNCIL OF STATE DEBATES

VOLUME I, 1936

(15th February to 25th April, 1936)

ELEVENTH SESSION
OF THE
THIRD COUNCIL OF STATE, 1936



PUBLISHED BY MANAGER OF PUBLICATIONS, DELHI
PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, NEW DELHI
1936.

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COUNCIL OF STATE.

Thursday, 23rd April, 1936.

The Council met in the Council Chamber of the Council House at Eleven of the Clock, the Honourable the President in the Chair.

MEMBER SWORN :

The Honourable Sir Bryce Chudleigh Burt, Kt., C.I.E., M.B.E.
(Government of India : Nominated Official).

DECREES AND ORDERS VALIDATING BILL.

THE HONOURABLE MR. SHAVAX A. LAL (Government of India : Nominated Official) : Sir, 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, as passed by the Legislative Assembly, be taken into consideration ”.

Sir, Honourable Members, at any rate those who are lawyers, might be aware that there is a difference of opinion among the High Courts in India about the interpretation of clause 12 of the Letters Patent. That clause, Sir, confers jurisdiction on the High Courts at Bombay, Calcutta and Madras to try original suits. Rightly or wrongly the Bombay High Court has consistently for the last 60 years or more held the view that it has jurisdiction to try suits on mortgages executed within the limits of the ordinary original jurisdiction of that Court, although the properties affected by such mortgages might have been situated outside those limits. That question, Sir, was fully examined by seven Judges of that High Court as recently as 1926 and five of the Judges came to the conclusion that the view which had prevailed so long in that High Court was correct. Sir, whether it is correct or not, we are not concerned with that ; but we are only concerned with the practical effect. So far, Sir, or at any rate till last year, no practical difficulty was experienced, because the orders and decrees passed by the Bombay High Court have been given effect to by all British Indian Courts without question. In last August however the Nagpur High Court, or rather the Court of the Judicial Commissioner at Nagpur as it was then known, refused to give effect to decrees of the Bombay High Court on the ground that that High Court had not correctly construed clause 12 of the Letters Patent and therefore the decrees were passed without jurisdiction. Sir, the practical effect of these Nagpur decisions was little short of disastrous. It cannot be denied that there is close business relations between Bombay and the Central Provinces and Berar and on the faith of several decisions passed by the Bombay High Court a large number of mortgage transactions have been entered into in Bombay in the honest belief that if any suits were to be instituted on those mortgages they could be instituted at Bombay. But, Sir, the Nagpur decision threatens to reduce to mere scraps of paper the various decrees that have been passed by the Bombay High Court and which relate to properties in the Central Provinces and Berar

[Mr. Shavam A. Lal.]

A very reliable estimate puts the total amount affected by such decrees at about Rs. 1 crore ; one firm of solicitors in Bombay alone has obtained in favour of their clients decrees affecting such properties worth about Rs. 15 lakhs. These are the practical effects of the decision. We are not concerned, Sir, with the legal aspect of that decision and I therefore do not propose to embark on a disquisition about the legal technicalities involved in that decision. Either the Nagpur decision is right or it is wrong. If it is wrong, then obviously, Sir, there is every reason to undertake legislation to put matters right ; if on the other hand it is assumed to be correct, even then, Sir, there is still greater reason why legislation should be forthwith undertaken to protect those innocent decreeholders who are threatened with serious loss for no fault of theirs. I know, Sir, we have enough legal talent in this House to keep the debate alive for a week if the legal issues are discussed, but, Sir, I do not propose to appeal to the legal talent of the House. I appeal to the common sense of the House. I am sure that if a common sense point of view is adopted, there can be no objection whatsoever to the provisions of this Bill. Of course, Sir, we do not sit in judgment on the decisions of the Bombay or Nagpur High Court. We do not condemn the one or commend the other. As legislators our responsibility is not so much to interpret the law as to make the law and to correct defects in the law. The Nagpur decision, Sir, may be correct. But if it is correct, the law must be at fault, and if the law is at fault, it is our duty to amend the law, and this is what the Bill now proposes to do. Are we, Sir, as practical men, as men of common sense, men with an inherent sense of justice and fairness, to sit quiet when innocent decree-holders are going to be deprived of the fruits of their decrees merely because learned and eminent judges of two High Courts differ as to the interpretation of a certain provision of law ? Surely not, Sir. On the contrary it is our duty when Judges are at loggerheads to intervene and to offer a practical solution of the difficulties. As legislators, Sir, we must see that the laws are such that judges are able to dispense justice. I know sometimes on account of a defect or defects in law the hands of the Judges are forced and the decision is sometimes divorced from justice. But if so, Sir, it is our duty to intervene and correct the fault. Otherwise, Sir, it might be said, as a wag once said, that the court of justice is a place where justice is dispensed with. We certainly, Sir, do not want to give any excuse for such a charge and it is for that reason and to remove the hardship entailed by the Nagpur decision that this Bill has been placed before the House.

Even, Sir, from the strictly legal aspect, I might say that it is highly undesirable that the present anomalous position should continue a moment longer. Sir, except the courts in Nagpur and Berar, other courts in British India are even now giving effect to the decree of the Bombay High Court on mortgages relating to properties outside Bombay. Sir, is there any reason why this invidious distinction should exist between the courts in the Central Provinces and the courts in the rest of British India ? I therefore say, Sir, that even from the legal aspect it is indispensable that the Bill should become law as soon as possible. With these words, Sir, permit me to commend the measure to the House. (Applause.)

THE HONOURABLE THE PRESIDENT : Motion made :

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

To this the Honourable Mr. Kalikar has submitted an amendment :

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

As regards this amendment, so far as time limit is concerned, I am bound to show the same consideration to the Honourable Mr. Kalikar in the matter of his amendment as I have shown to the Mover of the Bill in suspending the Standing Order relating to three days' clear notice. But I am afraid on other and more important grounds I cannot allow the Honourable Mr. Kalikar to move his amendment. It is opposed to my own ruling in this House given two years ago in 1934 and it is opposed to the rulings of my distinguished predecessors, Sir Henry Moncrieff Smith and Sir Montagu Butler. I would draw the Honourable Mr. Kalikar's attention to my ruling at page 754 of the proceedings of the 20th April, 1934, where I have dealt with this question at some length and have also reviewed the rulings of my predecessors in office. But as there are some new Members here, I may briefly explain the position as to why I propose to rule out this amendment. The Standing Orders and rules framed under the Government of India Act make a distinction as regards amendments to be proposed when the question for the consideration of the Bill comes up before this House. Under Standing Order 37, the Mover himself has a right when the Bill comes up to move for the consideration of the Bill at once or at some future time or to refer it to a Select Committee or to move that it may be circulated for the purpose of eliciting public opinion thereon. Under Standing Order 38 any other member has a similar privilege of moving an amendment. This is all right so far as the originating Chamber is concerned and no objection could be taken. But when the Bill comes up for consideration to the upper House or to the other Chamber, Standing Orders 37 and 38 do not apply, but the situation is covered by rules 26 to 29 framed under the Government of India Act. Rule 26 is about notice and rule 27 refers to the Motion to be made in the House. Rule 28 refers to the discussion that takes place in the House and then rule 29 says :

" Any Member may (if the Bill has not already been referred to a Select Committee of the originating Chamber or to a joint committee of both Chambers but not otherwise) move as an amendment that the Bill be referred to a Select Committee and if such Motion is carried the Bill shall be referred to a Select Committee, and the standing order regarding Select Committees on Bills originating in the Chamber shall then apply ".

So that you see it is only permissible in such a case to refer the matter to a Select Committee. It rules out of order any amendment regarding the circulation of the Bill and the propriety and wisdom of such a rule is obvious to all because once a Bill has passed the originating Chamber it would be waste of public time to circulate that Bill again for eliciting public opinion.

I have just explained to Honourable Members briefly the position as regards this amendment and those who desire to go into the matter further may see my ruling to which I have referred above, in which I have gone into this question at some length.

Under the circumstances, I am afraid I cannot allow the Honourable Mr. Kalikar to move his amendment but he is at liberty to make a speech now with reference to the general aspect of the Bill and to say anything he wishes in connection with it.

THE HONOURABLE MR. V. V. KALIKAR (Central Provinces : General) :
Sir I congratulate my Honourable friend, Mr. Lal, on the way in which he has placed the case of the Government before us. Sir, in view of your ruling I have no other course but to oppose the Bill which has been placed before us. I will first very shortly give the history of the case and the way in which

[Mr. V. V. Kalikar.]

it cropped up in the Central Provinces. Sir, this question came up before the Judicial Commissioner's Court in two cases—the one being that of Tekchand V. Dharamsey and the other that of Murlidhar V. Gorakhram reported in 31 Nagpur Law Report and the point for decision in these two cases that came up before the High Court was the interpretation of clause 12 of the Letters Patent of the Bombay High Court. Sir, with your permission, I will read just a portion of clause 12 which is identical in terms with clause 12 of the Calcutta High Court and the Madras High Court and with clause 10 of the Letters Patent of the Rangoon High Court. Clause 12 says :

“ And we do further ordain that the said High Court of Judicature at Fort William in Bengal, 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 situate, or in all other cases if the cause of action shall have arisen either wholly or in case leave of the Court shall have been first obtained in part, within the local limits of the ordinary original jurisdiction ”.

So, this trouble arose over the interpretation of the expressions in clause 12 about mortgage suits relating to land. I shall presently show that the view taken by the Nagpur High Court was taken after reviewing all the cases that have been decided by the Calcutta, Bombay, Madras and Rangoon High Courts. I shall show that even in the Bombay High Court there is no consensus of opinion on this point. Though in various cases they have adopted the interpretation put upon it by the recent decision of the Bombay High Court, yet, in a previous case, that is, in 50 Bombay 1—a Full Bench decision it was decided that if the property was situate outside the original jurisdiction of the High Court, the High Court has no power to take cognizance of mortgage suits. That was decided in 50 Bombay 1, by a Full Bench of that Court. I quite agree with my Honourable friend Mr. Lal that in the next year, they decided a case in which they opposed the view held by the Nagpur High Court. I shall cite briefly the cases which support the view of the Nagpur High Court.

THE HONOURABLE THE PRESIDENT : You are going into the special merits of the case. The Honourable Mr. Lal made the position perfectly clear. He said this decision may be right or wrong. That is another matter. At present, Government saw the propriety of bringing forward this measure because a large number of litigants would suffer very heavily and are put to considerable loss. That is why this measure has been promptly brought forward till the clause 12 of the Bombay Letters Patent is revised.

THE HONOURABLE MR. V. V. KALIKAR : I am coming to that point, Sir. I am now stating very briefly that the view held by the Bombay High Court has not been followed by other High Courts. I am not going into the details.

THE HONOURABLE THE PRESIDENT : You know very well that High Courts have been differing from each other. We are not now concerned with the differences of opinion between the several High Courts. We are concerned with avoiding the injustice that may result from that.

THE HONOURABLE MR. V. V. KALIKAR : I am coming to that point, Sir, whether there is injustice to the Bombay bankers or injustice to the money-lending people of other places. I was merely showing that the view held by the Nagpur High Court was also held by other High Courts and I wanted to support that statement with a citation of cases. I am not going to name those

cases, but I am going to make a reference to them, because my speech will appear in the proceedings and I must lay my case properly before the House, so that the House may know where we are. So, with your permission, I will submit that consistently the Calcutta High Court in 19 Calcutta 361, the Bombay High Court in 50 Bombay 1, the Madras High Court in 27 Madras 157, and the Rangoon High Court in 12 Rangoon 370, all have decided that Courts have no jurisdiction to take cognizance of mortgage suits relating to property which lie beyond their jurisdiction. This is a Bill, Sir, which indirectly—I do not say directly—is going to support the view of the Bombay High Court. I must say that the view held by my High Court has been consistently supported by other High Courts. Then I come to the Privy Council case. In 41 Calcutta 1972, they took the view which supports the view taken by the Nagpur High Court. So, the question is whether this House should lend support to a Bill which wants to recognise the view that has been consistently held by other High Courts and the Privy Council to be a wrong view, and whether this House should make a law which has been held on the interpretation of clause 12 of the Letters Patent to be an incorrect view.

It is said that the decrees and orders of the Bombay High Court were being executed for the last 50 years in the Central Provinces and Berar. But I must submit that the question never came up in this form before our High Court. Even assuming for argument's sake that a wrong was being committed for the last 50 years, that is no ground for perpetuating that wrong. I agree that the position is anomalous. The Bombay High Court have decided that they can take cognizance of mortgage suits in relation to property situate outside their original civil jurisdiction. The Nagpur High Court say that they cannot take cognizance of such suits, and other High Courts, *e.g.*, Madras, Calcutta and Rangoon, also say that they cannot take cognizance of mortgage suits in relation to property outside their jurisdiction. The difficulty is there. What is the remedy? According to me, Sir, the remedy lies in the aggrieved party going in appeal to the highest tribunal of the land, namely, the Privy Council. As it is only a question of the interpretation of a particular clause, that would be the proper forum for the settlement of this question.

THE HONOURABLE THE PRESIDENT: How many courts of appeal would you like him to go to?

THE HONOURABLE MR. V. V. KALIKAR: Well, Sir, if the court of appeal is there and if the party feels really aggrieved he has to take that risk, and if that court is not to be used at all and no advantage is to be taken of that court, then it would be better to abolish that court. The highest tribunal has been created by the Constitution and if we are not going to take advantage of it and do not want to go to that court, what is the use of having the Privy Council there.

THE HONOURABLE THE PRESIDENT: You must have seen in the Statement of Objects and Reasons that this is merely a temporary legislation. The Government of India propose to bring in further legislation with a view to amending clause 12 of the Letters Patent.

THE HONOURABLE MR. V. V. KALIKAR: I know, Sir, that the Government of India cannot change the Letters Patent themselves.

THE HONOURABLE THE PRESIDENT: They will move to have it done.

THE HONOURABLE MR. V. V. KALIKAR : The Government of India have to move the proper authorities in England to change the Letters Patent. I was coming to this point, that there are two remedies open to an aggrieved party in this case, either to go to the Privy Council and get the decision of the Nagpur High Court reversed in their favour, or approach the proper authorities in London to get the Letters Patent amended.

THE HONOURABLE THE PRESIDENT : But in that case a lot of hardship will be done to these litigants ; they will lose a lot of money. It is therefore this temporary measure has been brought as a saving piece of legislation.

THE HONOURABLE SIE DAVID DEVADOSS : And changing the Letters Patent will not have retrospective effect so as to affect decrees already passed.

THE HONOURABLE MR. V. V. KALIKAR : My Honourable friend is referring to clause 3, I am speaking about clause 2. I will come to that.

THE HONOURABLE THE PRESIDENT : He is referring to the general situation, that it would probably take years before the Privy Council decision is given and when you have got that you could not undo the injustice already done.

THE HONOURABLE MR. V. V. KALIKAR : Well, Sir, if they think that by the decision of the Privy Council the hardship of the bankers will be increased, or if they think it will take a lot of time to get the Letters Patent amended, they should move the authorities who originated the Letters Patent to get them amended as soon as possible. But that is no reason why, if the law as interpreted by various Courts in India is correct, a different, and I may say a wrong, interpretation should be given to it. So my point was that the aggrieved parties in these cases have not taken advantage of their right to go to the Privy Council but instead have come to the Indian Legislature to have the law temporarily amended. I quite follow what you say, Sir, that in order to relieve the bankers of their hardships this measure has been brought here, but taking into consideration the position as it is, I submit that it is the duty of the Government of India to look to the interests of the judgment debtors, to look to the interests of other creditors in the Central Provinces as well in bringing this law before the House.

THE HONOURABLE THE PRESIDENT : Look after the interests of those who do not want to pay their just debts ?

THE HONOURABLE MR. V. V. KALIKAR : I certainly do not want to stand here to represent the cause of those judgment debtors who do not want to pay their debts. But you know that you can get certified copies of Government land records, and it is only necessary to deposit those certified copies of title deeds with a banker in Bombay and the mortgage is complete. Now one member of a joint family may do this and other members of the same family having in the same property may obtain advances or loans in cash from other people, and if the banker then brings a suit against the first member all the subsequent creditors will have to be impleaded as defendants.

THE HONOURABLE THE PRESIDENT : The question will arise, who is the manager of the joint family ?

THE HONOURABLE MR. V. V. KALIKAR : That question will arise, but according to Hindu Law the question will also have to be decided what interest each of the other members has in the property? And in that case all these people will have to run from Nagpur or Berar to Bombay to get their claims and titles established, and those acquainted with proceedings in the Bombay High Court will know what a great cost one has to hear in defending a case there in comparison with a mofussil court. Therefore I moved my amendment with the intention of making it clear that in this case the Government of India have taken into consideration the hardships, or the alleged hardships, of Bombay bankers; but they have ignored the views of various High Courts and have not taken into consideration the views of the people of Central Provinces and Berar. They have not invited the opinion of Local Governments; they have not also consulted the Bar Associations of the Central Provinces and Berar. If I had been allowed to move my amendment and if Government had accepted it, then the Government would have had material before them to consider whether to proceed with this Bill in its present form or to get the Letters Patent amended without bringing this Bill before the Legislature. So, Sir, my first charge against Government is that in this matter they have sided with the bankers of Bombay; they have not taken into consideration the hardships that are likely to be caused to the entire creditor class, the judgment debtor class, of Berar and the Central Provinces. Also they have not taken into consideration or invited the views of Local Governments and the Bar Associations. I therefore submit that this Bill,—without taking all the materials into consideration,—should not be passed in the form in which it is before the House. I submit, Sir, that this Bill does not affect adversely only the Central Provinces and Berar, but it might affect adversely Madras, Calcutta and Rangoon. The Calcutta High Court has decided consistently that courts outside whose jurisdiction properties are situated cannot take cognizance of suits in relation to that property. Now, Sir, here in clause 2 we find that the orders and decrees passed by the High Courts of Bombay, Calcutta and Madras should not be called in question by any other court. I have my own doubts—and my Honourable friend Mr. Lal will correct me in his reply—because if according to the Bombay High Court they give a decision that such and such property situated in the Madras Presidency should be attached and sold, the decrees go for execution to the Madras Court. The Madras Courts have consistently held, as my Honourable friend Sir David Devadoss, an *ex-High Court Judge* of Madras, may know perfectly well, that the view of the Bombay High Court is wrong. Now, the subordinate courts of Madras or Calcutta have to execute those decrees of the Bombay High Court. What will they do? Under this Bill they will have to go against the decisions of their own High Courts to whom they are subordinate and they will have to execute the decrees of the Bombay High Court. So the anomaly is not removed; the anomalous decision is there. I am afraid the subordinate courts of Madras and Calcutta will find it very difficult to go against the decisions of their High Courts, but on account of this Bill they will have to execute those decrees. So, Sir I have not been able to follow the implications of clause 2. Then, Sir, it has been stated by my Honourable friend that the common sense point of view is that the decrees and orders should be executed and the property should be sold. I have tried to explain the difficulties that are likely to follow if the decisions of the Bombay High Court are given effect to by this Bill and the hardships the *bona fide* creditors of the Central Provinces—not the fraudulent judgment-debtor—but the *bona fide* creditors of the Central Provinces will have to meet.

THE HONOURABLE MR. SHAVAX A. LAL : You mean debtors, not creditors?

THE HONOURABLE MR. V. V. KALIKAR : I mean also creditors, not only the debtors but the other creditors.

Then, Sir, my Honourable friend Mr. Lal says that other High Courts are giving effect to the decrees and orders of the Bombay High Court. I have not been able to verify the correctness of this statement. My information is that the other High Courts go by their own decisions and the subordinate courts of those High Courts which hold the view as the view expounded by the Nagpur High Court do not carry out the decrees or orders of the Bombay High Court. My Honourable friend Sir David Devadoss may correct me if my information is wrong. What are the special circumstances? So far Bombay is only concerned. If according to my information the decrees of the Bombay High Court in regard to mortgage suits are not being given effect to in Madras, Calcutta and Rangoon, why should these decrees and orders be given effect to in the Central Provinces and Berar only? If there are any special circumstances, Sir, at least we have not been made aware as to why we should follow the view held by the Bombay High Court and not the view held by Calcutta, Madras and Rangoon.

So, Sir, to sum up the whole case, I submit that according to the general law of the land—I mean section 16 of the Civil Procedure Code and the interpretation put upon clause 12 of the Letters Patent—the view propounded by the Nagpur High Court and supported by the Privy Council and Calcutta, Rangoon and Madras High Courts should be supported by the Legislature and the Legislature should not support the view which is held only by one High Court in India. Then, Sir, if the view which is covered by this Bill is really in the interests of the bankers as well as in the interests of creditors and debtors of the Central Provinces and Berar, then, Sir, all the parties concerned in this affair should be consulted, their views should be asked and the Government then should have come to a proper decision on this point. I do not understand why there should be such breakneck hurry in rushing this Bill before the Legislature.

Sir, as you have ruled out my amendment and as I know that the Government would not accept my amendment, I have no other course but to oppose the Bill.

THE HONOURABLE LIEUTENANT-COLONEL NAWAB SIR MAHOMED AKBAR KHAN (North-West Frontier Province : Nominated Non-Official) : Sir, I welcome the introduction of the Bill validating the proceedings and specially the decrees of a High Court to be executed in British India. Sir, it seems simply a mockery when a creditor residing in Bombay or Calcutta gets a decree against his debtor residing in the North-West Frontier Province or Central Provinces but at the time of his loan he happens to be in Calcutta or Bombay and when the creditor after getting his decrees in Bombay or Calcutta High Court by spending a good deal of money in incurring the expenses of these courts in order to get a decree against the debtor temporarily residing in these places, but when he wants to enforce his decree say in the North-West Frontier Province or in the Central Provinces then the Bench of the Judicial Commissioners or a Judicial Commissioner of the Central Provinces turns round and says that that decree is invalid because it was passed by a High Court of Bombay or Calcutta which has got no jurisdiction in the North-West Frontier Province or the Central Provinces. Sir, it stands to reason and according to strong common sense when a creditor gets his decree from a High Court that decree should be enforced anywhere in British India, because now-a-days men of the various provinces of India are engaged in the principal places of commerce such as Calcutta, Bombay or Karachi

and when a creditor gets a decree in these Courts against his debtor residing temporarily in the North-West Frontier Province or Central Provinces or say any other province of India, after all the creditor has spent a good deal of money in obtaining this decree from the highest Court of these places and it is a very strange phenomenon that when a creditor has spent so much money in getting his decrees he is faced with another enigma by being told by the Bench of the Judicial Commissioners or the Judicial Commissioner of a small and minor province that the jurisdiction of a certain High Court does not run within his territory. After all, Sir, we are all Indian British subjects of His Majesty and when an Indian High Court of His Majesty is made a playful institution by a Judicial Commissioner of a minor province I should say that it is nothing else but rank insubordination on the part of a Judicial Commissioner or the Bench of the Judicial Commissioners not to admit the regularly constituted decree or any other proceedings of the Judges of High Courts constituted by His Majesty and whose Judges are supposed to know more about the legal aspects and proceedings than the Judicial Commissioner of a minor province getting much smaller pay and possessing a smaller status than a Judge of a High Court. Well, Sir, I am not a lawyer and do not belong to the legal profession but as a soldier I am absolutely browbeaten when I hear that a General Officer Commanding a division gives a certain order to his Brigadier and the Brigadier begins to question the authority of his Divisional Commander, or the Brigadier of an Independent Brigade begins to question the authority of the Army Headquarters.

THE HONOURABLE MR. V. V. KALIKAR: May I bring to the notice of my Honourable friend that the Judicial Commissioner's Court is not subordinate to the Bombay High Court ?

THE HONOURABLE LIEUTENANT-COLONEL NAWAB SIR MAHOMED AKBAR KHAN: But the Bombay High Court Judges know much more than your Judicial Commissioner.

THE HONOURABLE THE PRESIDENT: Order, order. The Honourable Member will continue.

THE HONOURABLE MR. V. V. KALIKAR: My Honourable friend does not realise, Sir, that he is indirectly abusing the Privy Council.

THE HONOURABLE LIEUTENANT-COLONEL NAWAB SIR MAHOMED AKBAR KHAN: Well, I am coming to that. I am merely putting what seems to me a strong common sense point of view. And common sense dictates that, as the Judicial Commissioner gets less pay, his brain and his capabilities must be in accordance with his pay.

THE HONOURABLE THE PRESIDENT: Order, order. Perhaps you are not aware that these Judicial Commissioners' Courts have the status of a High Court ?

THE HONOURABLE LIEUTENANT-COLONEL NAWAB SIR MAHOMED AKBAR KHAN: Well, Sir, as I was saying when the Brigadier of an Independent Brigade begins to question the authority of the Army Headquarters, that Brigadier will not have to remain in service for long when he begins to question the authority of his superiors. In the same way, Sir, the Judicial Commissioner or a Bench of Judicial Commissioners must know their position properly and they should not be permitted to question the validity of a High Court's proceedings and decrees.

THE HONOURABLE THE PRESIDENT : Let me tell you that they have co-equal powers with the High Court.

THE HONOURABLE LIEUTENANT-COLONEL NAWAB SIR MAHOMED AKBAR KHAN : Well, Sir, if they have the same powers, then the High Court being the senior court they must be guided by them.

THE HONOURABLE THE PRESIDENT : They are not subordinate to any High Court but to the Privy Council.

THE HONOURABLE LIEUTENANT-COLONEL NAWAB SIR MAHOMED AKBAR KHAN : Well, Sir, the sooner the Government of India comes to the rescue of the creditor in enabling them to enforce a decree, the better it will be, Sir. If these kinds of objections are entertained by the Government of India, it means that a creditor must have his decree from every High Court or the Judicial Commissioner of that province in which the decree is going to be executed. Then a very long life and a very long purse is required to get decrees from all the High Courts or Judicial Commissioners of that province in which the debtor resides. The sooner, Sir, this malpractice is discontinued, the better the result will be for every Indian subject of His Majesty concerned. A decree or proceedings of any court must be binding on the other courts in India. Then only will the administration run smoothly and the supply and demand of the commercial world can be carried out satisfactorily, otherwise nobody would dare to lend if he cannot be sure of repayment of his debt with such frivolous pleas and excuse.

With these words, Sir, I strongly support this Bill.

THE HONOURABLE SIR DAVID DEVADOSS (Nominated: Indian Christians): Sir, I wish to say only a few words. We are not sitting in judgment over the Bombay High Court or the Nagpur Court. What we are concerned with at present is the removal of the hardship caused by certain judgments. After all, Sir, man-made law is not perfect. Judges are entitled to take what they consider to be a just view in every case. The Bombay High Court has taken a certain view and has passed mortgage decrees against property outside its original jurisdiction. The Nagpur High Court seems to think that it had no power to do so. Whether Nagpur is right or wrong, as has been mentioned by Mr. Lal in his very able speech property to the tune of a crore is in jeopardy and I think, Sir, the Government is bound to come to the assistance of people who for no fault of their own are in danger of losing their property. Therefore, we are not concerned with the various interpretations of the law. We are only concerned in removing certain hardships. I quite sympathise with Mr. Kalikar in his anxiety to protect the legal creditors of the people in Nagpur. If I understood him aright, what he meant to say was that if a member of a joint family took the title deeds belonging to the family and pledged them in Bombay and raised a loan—the other members of the family evidently had mortgaged the property in the ordinary way—what is called the legal mortgage—in Nagpur. Then

12 Noon. the question would arise whether the person who had mortgage of the property in Bombay should be held to have priority over the other mortgages? It is a well known axiom of law that if you lose your title deeds—even if a mortgagee hands over the title deeds to somebody else—if the title deeds are validly pledged in Bombay or Madras or Calcutta within their original jurisdiction the legal mortgagee loses his priority. A man should not lose his title deeds. He must keep them. So, the legal

mortgagee must have his documents. The answer to that is there may be a number of title deeds. If the original title deeds are not forthcoming, the Honourable Mr. Kalikar says you can apply to the revenue authorities and get copies from the revenue registers. For that the remedy is not in the courts but in the Legislature. An Act must be passed preventing the issue of these certificates or making one particular certificate the title deed of the property. My Honourable friend Mr. Kalikar forgets the fact that the fault is the fault of the Hindu Law. One member is allowed to go and pledge the property of the family and raise a loan whereas the other members are not allowed to do so. So, they also do it in some other way. We are not concerned with all that here. All that is unnecessary for the present purpose. So far as I can understand this Bill, it is only to prevent the hardship that would be caused to the Bombay creditors by reason of the fact that their decrees could not be executed within the province of Nagpur on account of the decision of the Court of the Judicial Commissioner. Therefore, Government have come forward with this Bill. No doubt it might create some hardship to other creditors, but we are not concerned with that now. We are only concerned with the fact that when people, relying upon a Full Bench Judgment of the High Court, advanced money on property security, they should not be deprived of the value of that security. That being so, I think there can be no objection to the passing of this Bill. Any further amendment of the law may be fully considered by reference to all the High Courts and the public. So far as this Bill is concerned, I think it is a remedial measure and ought to be passed.

* THE HONOURABLE SAYED MOHAMED PADSHAH SAHIB BAHADUR (Madras : Muhammadan) : Sir, I feel that I should raise my voice of protest against the passing of this measure. I admit that there is some injustice involved in the case of people of Bombay who have advanced large sums of money on the security of immovable property situate outside Bombay. That is a matter with which we all sympathise. I would have given my consent to this Bill if it had only been confined to decrees which had already been passed, and if it had not allowed the continuance of the passing of such decrees by the Bombay High Court. While giving some sort of relief to the money-lenders of Bombay by passing this Bill we would be causing great hardships to a lot of other people whose interests might be adversely affected. We have to realise that in laying down the law for the cognizance of suits by courts, the Legislature had some salutary principle in mind. It was with this object that limitations were placed upon the jurisdiction of all the courts—limitation in respect of the pecuniary value of the suit, limitations in respect of the locality in which the subject-matter of the suit is situate, etc. Sections 15 to 20 of the Civil Procedure Code enumerate the various kinds of jurisdictions. I am aware that High Courts are not bound by section 16 of the Civil Procedure Code which lays down the limits of territorial jurisdiction. But, all the same, section 16 does embody a principle which has been recognised to be a very salutary principle not only by the mufassil courts but also by the majority of the courts functioning in our country. The High Courts of Madras, Calcutta and Rangoon have recognised the wholesome principle which this section lays down and have in consequence refused to take cognizance of any suits which are based upon mortgages, whether equitable or legal, in which the property is situate outside the territorial jurisdiction of the Court. Besides various other reasons that might have induced the Legislature to enact section 16 and similar sections of the Code, I feel

* Not corrected by the Honourable Member.

[Saiyed Mohamed Padshah Sahib Bahadur.]

that one obvious reason which induced the Legislature to limit the jurisdiction of the Court to such properties only as are situate within the territorial jurisdiction of that Court should have been that the evidence with regard to title and other things pertaining to the property would be available only in the locality in which the property is situate.

THE HONOURABLE MR. SHAVAX A. LAL : I may tell the Honourable Member that it is a separate question. That depends upon the amendment of the Letters Patent which is already being considered. Whatever the Honourable Member has just said will be borne in mind when the Letters Patent are amended. It is an entirely separate question.

THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR : Even in sanctioning a temporary measure, if the effect of that measure is not only to cure some evil which had already occurred but also to continue to give rise to such kind of evil, we have got to be guided by the principles which would go to justify that measure.

THE HONOURABLE THE PRESIDENT : You have been told that this is a purely temporary measure.

THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR : That is why I submit that since the effect of this measure would be to allow the Bombay High Court to go on taking cognizance of such suits, I am opposed to it. If it had been confined only to the decrees which had already been passed, and if its effect had been to put a stop to the Bombay High Court continuing to take cognizance of such suits—

THE HONOURABLE THE PRESIDENT : Several suits must be pending in the High Court.

THE HONOURABLE SIR DAVID DEVADOSS : What about limitation ?

THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR : Has there been any assurance given by the authorities at home that the Letters Patent would be amended on the lines on which this Bill has been drafted ? If there is no assurance that the amendment in the Letters Patent would be on these lines, then what is the good of holding out this false hope ? If the amendment is going to make permanent the law which has been enunciated in the courts in my province and in Calcutta and Rangoon, then this relief which we are giving to the people of Bombay whose property to the extent of Rs. 50 lakhs is involved would place a number of other people under great disadvantage. As has been observed by my Honourable friend Mr. Kalikar, in deciding upon this measure, it is impossible for only one set of interests to be considered. There are a lot of other interests involved. Government should have taken care to consult the various other interests also. They should have consulted the Provincial Governments, and the Bar Associations not only of Presidency Courts but also of the mufassil courts, and they should have taken into account the difficulties which legislation of this kind places on the litigant public. As has been stated by him, the fact that equitable mortgages are allowed in towns by the depositing of title deeds places great difficulties in the way not only of the other people who may be interested in that property and who have not participated in the equitable mortgage, but also in the way of those people who may advance money on

the security of this very property in the province in which the property is situate. We know that there are cases where an equitable mortgage of property has been made in big towns within whose jurisdiction the property is not situated and subsequently, other people who are not interested in that mortgage have mortgaged the property to local people. We know that there are instances of the same property having been mortgaged to ten different people, and if this equitable mortgage had taken place in the first instance all the people concerned in the subsequent mortgages would have to be impleaded in any suit brought in the Bombay High Court on the basis of the first mortgage.

THE HONOURABLE THE PRESIDENT : Please do not repeat your arguments. We have four other Bills before us.

THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR : I do not want to repeat, Sir, I only say that the interests of these people have also to be taken into consideration. The Nagpur High Court in giving its decision in one of these cases, which has given rise to this legislation, also shows how even the Privy Council has supported a view contrary to the view held by the Bombay High Court. And so, considering the statement of the law, the weight of authority that lies on any particular interpretation of the law and also on the equities involved and the various interests affected, I feel that this measure is calculated to do more harm than good.

THE HONOURABLE THE PRESIDENT (to the Honourable Mr. Lal) : You need not refer to many of the arguments which are not at all relevant. You can speak on the merits of the Bill.

THE HONOURABLE MR. SHAVAX A. LAL : Sir, I am afraid the Honourable Members who have thought fit to oppose this measure are for the most part defending a position which does not arise on this Bill. The Honourable Mr. Kalikar has suggested that the proper remedy was for the aggrieved party to go in appeal to the Privy Council, but the Honourable Member overlooked the fact that this is not an isolated case. Hundreds of cases have been affected by this decision, and what we have to bear in mind is that the parties who have been affected relied on a particular view, which, but for a very brief space of about six months, has been consistently held by the Bombay High Court for 60 years, and the object of the Bill is to protect those people who have sunk their money in mortgages relying on that view. A remedy by way of appeal to the Privy Council, as one Honourable Member has pointed out, might take years to materialise, and meanwhile the deadlock would continue and all these various people affected and the whole mercantile community in Bombay will not know where they stand. The uncertainty enshrouding the law on account of the Nagpur decision is certainly undesirable from the legal point of view, and therefore the Government prepared this remedial measure as early as possible and have brought it forward now.

The second point made by the Honourable Mr. Kalikar was that the Government have not taken into consideration the interests of the judgment debtors. But, Sir, I may remind the Honourable Member that whenever there has been an adjudication, upon all the questions involved, by the Bombay High Court, the parties concerned were not unrepresented. It is only because of a technical defect or an alleged technical defect that the decrees of the Bombay High Court are being questioned. The parties were there and they could have contested the claim if they wanted to. But, Sir, it seems to me

[Mr. Shavax A. Lal.]

that after the defendant has been put out of court by the front door by the Bombay High Court, he is now trying to steal in by the back door to rob the plaintiff of the fruits of his decree. That is hardly fair and that, Sir, is what this Bill wants to prevent, and I cannot see that any hardship is involved in it. As a matter of fact these debtors find it convenient to come to Bombay to take advantage of the lower rate of interest prevailing there and borrow money there; they do not find any difficulty in going to Bombay for the purpose of borrowing, but when it comes to a suit on those debts they find it difficult to go to Bombay. That does not seem to be fair. In any case I do not see how the judgment debtor's interest suffers by this legislation. Even in the case of the creditor to whom the Honourable Member has referred I do not think he can be affected by this Bill. If the mortgage itself was invalid or was invalid on account of any legal defects, he could have questioned that in the court of law when the suit was being heard, and I am sure the Bombay High Court would have considered that defence and given a judgment accordingly. But that point does not survive when the judgment is there. It is only the execution of the judgment that is being questioned, and I can assure my Honourable friend opposite that the Nagpur High Court stands alone in refusing to give effect to the Bombay High Court judgment. As a matter of fact in Madras and Lahore the Courts have given effect to the Bombay judgment, although they have expressed the view that the construction put upon clause 12 of the Letters Patent was not according to them correct. But in spite of that fact they have given effect to the Bombay decree because of the comity of judicial tribunals and because the general principle of the law is that the execution of the decree, unless on its very face it is passed without jurisdiction, should not be questioned. That is an accepted principle of law. But I am not going to comment on the Nagpur decision; it would be presumptuous on my part to do so. I only refer to the practical difficulties involved in that question, and I am sure there are no two opinions about the practical difficulties. As I have already said, a crore of rupees are involved and a number of people are affected by the decision and there is absolutely no reason why those people should be penalised for no fault of their own. That is the whole issue before the House. As for the law as it ought to be, the question of amending the Letters Patent is now being considered and all the suggestions made will be borne in mind. Meanwhile, Sir, the present measure is before the House.

THE HONOURABLE THE PRESIDENT : 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, as passed by the Legislative Assembly, be taken into consideration”.

The Motion was adopted.

Clauses 2 and 3 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. SHAVAX A. LAL : Sir, I beg to move :

“That the Bill, as passed by the Legislative Assembly, be passed”.

The Motion was adopted.

COCHIN PORT BILL.

THE HONOURABLE MR. T. A. STEWART (Commerce Secretary) : Sir, I move :

“ That the Bill to make special provision for the administration of the port of Cochin, as passed by the Legislative Assembly, be taken into consideration ”.

Sir, the object of this Bill is to transfer to the Government of India the statutory powers of control over the port of Cochin which are now enjoyed by the Government of Madras. The reasons leading to this step are adequately set out in the Statement of Objects and Reasons and I do not propose, Sir, to repeat them now.

Sir, I move.

THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa : Muhamadan) : Sir, I have a fundamental objection to the passage of this Bill. The port of Cochin, as it well known, is a unique one in that although it is situated in British territory, its development is dependent on the goodwill and co-operation of two Indian States. The matter has been for a very long time before the public as to what should be done with this port. It was a very minor port in 1865 when the first Inter-Portal Convention was entered into by the Government with these two States. After that a long history of it can be recounted, but in 1925 there was an agreement whereby the proceeds of these ports were divided in equal parts between the Durbars of Cochin and Travancore and British India. Later on when the port was being developed and sum of about Rs. 1½ crores was being spent on the development of this port, there was a great deal of discussion on the quantum and the distribution of the customs revenue. I am not aware of the exact nature of the agreements that have been entered into by the British Government and the two Durbars, but what I wish to say is that by this Bill we are changing the status of the port from a minor port to that of a major port. We had the recommendation of the Davidson Committee appointed by His Majesty's Government for adjudicating on the question of Indian States' financial rights. That Committee came to very definite conclusions on the subject of the administration of the Cochin harbour. I need not weary the House with minute details about the subject. Suffice it for me to read paragraph 378 of their recommendation. They say :

“ We recommend therefore that negotiations with Cochin for the adjustment of the difficulties arising from the divided ownership of the port, and with Travancore and Cochin for the purchase of their existing rights in its customs revenue, should not be delayed.”

That, Sir, was not the recommendation of an irresponsible body like the Opposition in India, but of His Majesty's own Committee appointed by an authority higher than the Viceroy and the Government of India. In the adjustment of the rights and interests of Indian States *vis-a-vis* the Indian people the Government of India has always been rendering us step-motherly treatment. The amount of concessions and privileges granted from time to time to Indian States, as I stated on the 31st March in connection with the postal enquiry, have been liberal, not only liberal but they have been I should say more than generous and I am almost tempted to say that there has not been even that amount of fairplay which we expect from the hands of the British. This port from being a minor port which had a very small income

[Mr. Hossain Imam.]

has developed, on account of certain changes in our revenue tariff, as well as due to the effect of increased railway facilities, a very considerable income. The income of the harbour was only Rs. 18 lakhs in 1926-27, whereas in 1930-31 it was Rs. 34 lakhs. If we come to an arrangement with these Indian States at the moment, we would have to pay a smaller compensation and the greater the delay the greater will be the income of the States and consequently there will be a greater amount of compensation to be paid. We have always been faced by the Government of India with the dictum that the agreements entered into by the Government of India and the Indian States are sacred and they cannot be set aside by unilateral action; but, Sir, the fundamental difference between us and the Government of India is that we do not regard these treaties as anything but commercial treaties, and commercial treaties can always be terminated by unilateral action as we have done in the case of Ottawa. We want to know what are the intentions of the Government about this port? Are they proposing to acquire undivided control, as has been recommended by the Davidson Committee Report or are they waiting for something to turn up and then to exercise the right? Then again we must not be blind to the fact that these treaties involve a very great hardship on British India. While I do not question the right of Indian States which do possess a port to impose customs duty for articles consumed and used within their territory, the difficulty arises when we allow Indian States to export goods imported from outside countries free of charge to British India. The Government also has been alive to this fact and we took certain steps in connection with the Kathiawar ports—they improved the Viramgam line—but in the case of Cochin I find that the Government have not taken any steps either to acquire the right, or to minimise the hardship of British Indians. According to the agreement we of British India only get a third part of the customs revenue, while the Indian States are getting two-thirds.

THE HONOURABLE THE PRESIDENT: You are discussing a much bigger question under the guise of this Bill, which has nothing whatever to do with it.

THE HONOURABLE MR. HOSSAIN IMAM: Sir, in the Statement of Objects and Reasons Sir Muhammad Zafrullah Khan has said:

“ The port of Cochin will be declared, under item 9 of Part I of Schedule I to the Devolution Rules, a major port on or about the 1st April ”.

and therefore the question of its administration comes in. We on our part are anxious that any injustice that has been done to British Indians by former Governments should be undone as quickly as possible and we do not think that the measures adopted by the Government up till now have been in this direction. As I was saying, Sir, the diversity in the rights enjoyed by Indian States is very great; but be that as it may, I am not concerned with that. My only point is that when you have developed this port and you are giving facilities for first class vessels to come into this port, we will be indirectly harming our own selves. Any increase in the income of the Cochin harbour will have the direct effect of reducing the customs income of Bombay and Madras because in the 800 miles of coastline, barring Goa—

THE HONOURABLE THE PRESIDENT: You will have to go in for a greater measure of toleration when Federation comes.

THE HONOURABLE MR. HOSSAIN IMAM : Mr. President, may I quote a part of the Report of the Davidson Committee as far as Federation is concerned to show that it is not my opinion but the opinion of authorities even higher than myself ?

" We recommend therefore that negotiations with Cochin for the adjustment of the difficulties arising from the divided ownership of the port, and with Travancore and Cochin for the purchase of their existing rights in its customs revenue, should not be delayed. The rights of the States concerned came into existence as the consequence of a mutual exchange of valuable considerations. They are in effect commercial rights. "

This, Sir, is the opinion of an authority even higher than that of the Government of India. And they have also recommended, Sir, that in considering the compensation requested for this transfer, the advantages accruing to the Indian States on the establishment of Federation due to their having a voice in controlling the quantum of the customs revenue should also be taken into consideration and should be regarded as a part payment of the compensation for the loss which the transfer may have entailed. These are their exact words :

" In our opinion, the port of Cochin—as the only port (excluding Portuguese Goa) between Bombay and Colombo which affords safe anchorage and real harbour facilities to large ships at all seasons of the year and which, when fully developed, will afford all the facilities of a modern port—is of great present value and must in the future be of even greater value to an Indian Federation, in whose undivided possession unhampered by any obligations to third parties, it clearly ought to be. "

If the Government is not prepared to listen to the voice and the considered opinions of His Majesty's experts, we, Sir, on this side of the House, are unable to follow suit.

THE HONOURABLE THE PRESIDENT : Those opinions are not conclusive or binding on the Government of India.

THE HONOURABLE MR. HOSSAIN IMAM : This opinion, Sir, of the Davidson Committee had the indirect support of the Round Table Conference and implied acceptance of His Majesty's Government because they did not object to the views expressed in it. It also, Sir, in a certain manner brings out the decisions of the Butler Committee too. Therefore, the Government have no escape and they cannot plead that this is a mere expression of an opinion of an expert.

For these reasons, Sir, I am unable to support the Motion.

***THE HONOURABLE MR. A. J. RAISMAN** (Government of India : Nominated Official) : Sir, if I intervene in this discussion it is because the remarks made by the Honourable Mr. Hossain Imam concern much more directly the subject with which I am concerned than that of my Honourable friend who is in charge of the Bill. I should say that Mr. Hossain Imam's remarks all go to show the necessity for this measure. The position at Cochin is that you have a port there part of which is in British territory and part in the territory of the State of Cochin. Now this Bill deals, as it can only deal, solely with the British port of Cochin. Mr. Hossain Imam has pointed out that there are a number of problems, very delicate and difficult problems connected with the customs aspect of the port and also with the administration of the port. Now what this Bill seeks to do is to place the Government of India in direct relation with the State of Cochin in regard to this port. It is obvious

* Not corrected by the Honourable Member.

[Mr. A. J. Raisman.]

from the considerations which my Honourable friend brought forward that it would be entirely inappropriate, particularly in view of impending constitutional changes, for a provincial Government to be in charge of the administration of a port which raises so many problems of the highest importance for the Federation. I cannot now, it would not be proper for me to indicate here, the exact action which the Government of India has taken in regard to the recommendations of the Davidson Committee which my Honourable friend quoted. I can only assure him and assure the House that those recommendations received the most careful consideration. I would only remind him that, although those recommendations undoubtedly carry great weight and authority, they of themselves are not sufficient to induce other parties to give up valuable rights. In other words, it requires two sides to come to any bargain about the matters there discussed and, however much British India might be prepared to accept certain recommendations that in itself would not bring them into effect. What I am concerned to do is to assure the House that the Government of India have been pursuing with the utmost perseverance the solution of these very difficult and delicate problems and I would only say that, in the very important matter of customs, I am confident that the solution which we have reached will be admitted to be one far more favourable to British India than the state of affairs which existed before.

In conclusion, I would say again that all the arguments that my Honourable friend has brought forward support the necessity of this action, namely, of bringing the Government of India into direct relation with the other parties, which are concerned with this harbour.

THE HONOURABLE MR. HOSSAIN IMAM : On a point of information, Sir. Will Government consult the House before they conclude any agreement on this question ?

THE HONOURABLE MR. A. J. RAISMAN : I am afraid I cannot give an answer to that question.

THE HONOURABLE THE PRESIDENT : Does the Honourable Member in charge of the Bill wish to say anything ?

THE HONOURABLE MR. T. A. STEWART : No, Sir, I have nothing to add to what has been said by my Honourable friend Mr. Raisman.

THE HONOURABLE THE PRESIDENT : The Question is :

“ That the Bill to make special provision for the administration of the port of Cochin, as passed by the Legislative Assembly, be taken into consideration ”.

The Motion was adopted.

The Schedule was added to the Bill.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. T. A. STEWART : Sir, I move. :

“ That the Bill, as passed by the Legislative Assembly, be passed. ”

The Motion was adopted.

INDIAN AIRCRAFT (AMENDMENT) BILL.

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD (Education, Health and Lands Member) : Sir, I move :

"That the Bill to amend the Indian Aircraft Act, 1934, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration".

It is unnecessary to make a long statement. The reason for this measure has already been stated very fully in the Statement of Objects and Reasons. We have hitherto vested the Local Governments under the control of the Government of India with power to make quarantine rules in regard to seaborne vessels but we have no such power at present in regard to aircraft. All that we propose to do is to take those rule-making powers. Such powers are necessary because aircraft is now coming from certain countries, *e.g.*, Africa, and India may be affected with certain diseases from those countries if we do not have these regulations. We have already appointed a whole-time Health Officer at the Air Port of Karachi. Honourable Members probably know that yellow fever is prevalent in parts of Africa and we should take measures to protect India from this particular disease and to protect other countries from this disease being carried through India. The rules to which reference is made in the Bill are of a nature which are already in existence in regard to seaborne vessels, that is to say, rules to segregate patients, rules in regard to the precautions that should be taken, rules in regard to preventing aircraft which is infected from proceeding and so on. I think the House will agree that it is essential that we should have this rule-making power in order to protect ourselves and other countries.

THE HONOURABLE KHAN BAHADUR DR. SIR NASARVANJI CHOKSY (Bombay : Nominated Non-Official) : Sir, I have great pleasure in supporting the Bill which has been introduced by the Honourable the Leader of the House. The question of the introduction of yellow fever and sleeping sickness was considered by the Bombay Government some years ago, when a special Committee was appointed to suggest measures to prevent the introduction of those diseases into India by vessels. The Committee, after considerable deliberation, suggested that a hulk should be provided and located in the extreme north of the Bombay harbour for the isolation of those suspected to be suffering from these diseases. This was, however, not considered to be a practicable proposition. It was thereafter determined that the Bombay Municipality should have two wards constructed at the Arthur Road Hospital then in my charge for the purpose. Accordingly, two special wards were constructed with wire gauze netting, double doors, etc. Only one suspicious case of sleeping sickness was however admitted, but on examination it proved to be negative. And now, Sir, the position has considerably changed on account of the frequent passage of aircraft. Yellow fever is a disease which has been endemic on the West Coast of Africa. It has penetrated into Central Africa and if it should extend to the East Coast, there would be great danger of the disease being conveyed to India.

THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern : Non-Muhammadan) : What is yellow fever ?

THE HONOURABLE KHAN BAHADUR DR. SIR NASARVANJI CHOKSY : Yellow fever is a most deadly disease. It is highly infectious and much more

[Sir Nasarvanji Choksy.]

dangerous than even malignant plague or influenza. It is true that patients afflicted with it may not be conveyed by aircraft. The carrier of the germs of the disease, a mosquito known as the tiger mosquito, *Stegomyia*, is capable of introducing it. This mosquito is most extensively prevalent throughout India. It is to be found in open vessels containing drinking water in and around households: in open irrigation channels: in the bilge of the country crafts engaged in coastal trade at our ports on the west coast of India and elsewhere. One of its common hiding places is the water tap. When opened the water forces it out. Most stringent measures are thus required for the prevention of the introduction of such infected mosquitoes, such as thorough inspection, and fumigation etc., of the aircrafts arriving from infected localities. It is thus absolutely necessary that India should have some protection. This disease in its most virulent form has been studied most extensively through the help of the Rockefeller Foundation of the United States of America. Several British, American and Japanese investigators have sacrificed their lives in the cause of science and humanity during their investigations. Investigation and research are still in operation in Africa and in the cities and towns of South America, Brazil, etc. The capital of Brazil was so highly infected that the Rockefeller Foundation took the matter in hand and freed it from infection for a number of years. It is impossible to value the great humanitarian work the Foundation has done in this and other connections. Its annual reports teem with facts and figures and exhibit the grave danger that India has to face from the introduction of this mosquito. Science has lately discovered a vaccine to immunise workers in the laboratories and thus save valuable lives. Under these circumstances, Sir, it is incumbent upon us to pass this Bill in order to enable Government to frame the necessary rules.

THE HONOURABLE KUNWAR SIB JAGDISH PRASAD: Sir, I am very glad that I have had the support of such a great medical authority as my Honourable friend Dr. Sir Nasarvanji Choksy.

THE HONOURABLE THE PRESIDENT: The Question is:

"That the Bill to amend the Indian Aircraft Act, 1934, for a certain purpose as passed by the Legislative Assembly, be taken into consideration."

The Motion was adopted.

Clauses 2 and 3 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE KUNWAR SIB JAGDISH PRASAD: Sir, I move:

"That the Bill, as passed by the Legislative Assembly, be passed."

The Motion was adopted.

FACTORIES (AMENDMENT) BILL.

THE HONOURABLE MR. A. G. CLOW (Industries and Labour Secretary): Sir, I move:

"That the Bill further to amend the Factories Act, 1934, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration."

This Bill seeks to amend only one section of the Factories Act, and the amendments suggested do not affect the structure of that section. Honourable Members will find the actual section appended to the Statement of Objects and Reasons which is in their hands. They will observe that it is a section empowering the Local Governments to apply any or all of the provisions of the Factories Act to manufacturing establishments which do not come within the ordinary definition of "factory". The changes proposed are really two in number : they are the substitution of the word "place" for "premises" in that section and the omission of the reference to "precincts".

The object of the Bill is to ensure that those manufacturing establishments, which carry on their work entirely or partly in the open air, can be regulated when necessary. If Honourable Members will refer to the existing section, they will see that although it refers both to premises and precincts, the actual notification when issued applies only to the premises and does not extend to the precincts. Further, it is very doubtful, in the light of certain judicial decisions in England, whether places in the open air, which have no substantial buildings, can be regarded as premises, and there are some establishments of this character which stand urgently in need of regulation. As a matter of fact, the need for the Bill was brought to notice by the Bombay Government who are anxious to regulate conditions of work in certain *dhobi ghats* in Ahmedabad where there is reported to be "unmerciful exploitation of labour". The use of the word "places" instead of "premises" will render this possible, and with that substitution the reference to precincts becomes unnecessary.

*THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern : Non-Muhammadian) : Sir, I desire to express my appreciation of the Bill which has been introduced by the Honourable Mr. Clow. This Bill, as Mr. Clow has just explained, would give power to a Local Government to notify as factories not only the premises which have 10 or more persons working in them but their precincts also. That is, it would become possible under this Bill to apply the Factories Act to places in the open air. As Mr. Clow has said, the need for this Bill was pointed out by the Bombay Government where there are some *dhobi ghats* where this evil exists very much. The change is one which all those who are interested in the welfare of labour will welcome and I give my hearty support to this Bill.

THE HONOURABLE THE PRESIDENT : The Question is :

"That the Bill further to amend the Factories Act, 1934, for a certain purpose as passed by the Legislative Assembly, be taken into consideration".

The Motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. A. G. CLOW : Sir, I move :

"That the Bill, as passed by the Legislative Assembly, be passed".

The Motion was adopted.

INDIAN LAC CESS (AMENDMENT) BILL.

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD (Education, Health and Lands Member): Sir, I move :

"That the Bill further to amend the Indian Lac Cess Act, 1930, for certain purposes, as passed by the Legislative Assembly, be taken into consideration".

Honourable Members will have noticed that to the Bill is attached a very full Statement of Objects and Reasons. In another place when the Bill was introduced it was passed without any amendment. No notice of amendment has been received in this House. As this is an important Bill, I should like very briefly to explain its main principles.

The object of the Bill is, firstly, to increase the resources of the Lac Cess Committee, and secondly, to reorganise the present Lac Cess Committee on the lines of the Imperial Council of Agricultural Research. As Honourable Members will have noticed, we propose that the cess should be raised on shellac from four to seven annas and on *kiri*, which is a bye-product of shellac, from two to five annas. The reason why more intense research is required is that there is very keen competition now from synthetic resin products. Therefore this industry has been constantly on the alert in order that it may not find itself supplanted by synthetic products. With this object in view we have research officers in England, three Indian research officers. We are also giving a subsidy to a research organisation in America, which is one of our best customers for shellac, and we have a research institute at Namkun, which is a few miles from Ranchi. This institute was established in 1925. It has been found that the present income, which is normally about a lakh and a half, is not sufficient to meet our requirements. We not only want to do research, we also wish to spread the results of research amongst the cultivators and a certain amount is required for the purpose of bringing home to cultivators the results of our research.

Then the second object, as I said, was to reconstitute the present Lac Cess Committee. The present Lac Cess Committee consists of 17 members the majority of whom are officials. Under our proposals the membership will be increased to 26 which will be divided between a Governing Body consisting of 15 members and an Advisory Board of 11 members. The Governing Body will be the body to lay down policy and will also control the funds, and the Advisory Committee will deal with technical questions. We have found that this bifurcation of functions has been very successful in the Agricultural Research Council. Honourable Members will also be glad to note that in the reconstituted Committee the non-officials will be in a majority in the Governing Body ; in the present Lac Cess Committee the officials are in a majority. And we have so constituted the Advisory Board that the experts, who are mostly officials, will be largely represented there.

These are the two main objects of the Bill, to get more funds and to reconstitute the Committee. We expect that under our proposals we shall get a normal increase of income of over a lakh a year, so when the Bill is passed we shall be getting about two and a half lakhs a year. This is one of the industries in which the cultivator is very much interested, especially in the province of Bihar, and I hope that the House will support this Bill.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan) : Sir, before I make observations if any I should like to know from the Honourable Education Member whether the proposed raising

of the cess will affect the production and the sale and export of lac? As for as my information goes, in 1933 the price of "T. N" shellac fell to Rs. 12 per maund. In 1934 London speculators raised this price to Rs. 45 a maund, but in 1935 the price fell to Rs. 25 per maund, which more or less now prevails. From the annual exports of lac we find that the exports notwithstanding Governments' efforts have not materially increased. They have been varying from 442,021 cwt. in 1925 to 672,752 cwt. in 1934. In 1935, if my figures are

correct, the exports were 473,000 cwt. Sir, synthetic
 1 P.M. substitutes will soon be competing with lac, as I understand that their price at present is higher than the real lac. But there is a danger that synthetic lac will very soon be competing with the real lac. Therefore, Sir, it is essential to know whether this practical doubling of the cess will not give a setback to the production of lac which is solely the monopoly of Indian cultivators. Although Bihar produced about 50 per cent. of the total quantity, other provinces also take a share in the production; and as this question mainly affects the zamindars and cultivators, I am rather afraid that the practical doubling of the cess instead of encouraging the export and the sale and the production of lac may not give a setback. This is one of the functions I should say of the Agricultural Research Institute, although you might class it as a different branch of another scientific investigation. I wish it be included in the Agricultural Research Department and be maintained by it. In case I am assured that the prospect of the cultivators suffering is far distant, I will be prepared to support the Bill.

THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa : Muhamadan) : Sir, I simply want some information and will be grateful if the Honourable the Leader of the House will supply it. In the first place in section 3 item (4) (v) the Government of Bihar and Orissa has been treated as a unit. Perhaps the Bill was drafted long ago and it was not then thought that Bihar and Orissa will be two separate Governments. I therefore wonder what happens to the nomination of two members by the Government of Bihar and Orissa? There is no such Government at the present moment in existence. That is only my technical point.

Now, in the Governing Body that is being appointed, the proportion of nominated members is twice that of elected members. Only five members are to be elected by different associations and 10 members are to be nominated by the Governor General in Council. When a thing has been done in the interests of the trade alone, as is the claim of the Government of India, the majority of the Governing Body should have been elected members. True, the Honourable Member cited to us the examples of the Agricultural Research Institute, but there is representation of the Central Legislature on that body, whereas in this Lac Cess Committee, Legislatures have been boycotted, and Government have taken a leaf out of the Congress programme and non-co-operated with us. They are learning things by association with the Opposition in the Assembly. Our information is that the Lac Cess Committee formerly was a very conservative body which did not give much employment to Indians in its staff. Its staff consisted of a great deal of highly paid European officers. This was the direct result of the method adopted in the constitution of that body. If you have a non-official elected majority in a body you will be always sure to have a good representation of Indians in the services and salaries will be accordingly reduced and expenditure will be on a lower scale than if you have a committee consisting of nominated members whose constituency we know is the Treasury benches.

[Mr. Hossain Imam.]

There is another point on which I want some light to be thrown, and that is about the Chairman who is to be appointed by the Governor General. Is he to be a paid officer or is he an honorary officer? What will be the scale of pay of the Chairman and whether at the present moment there is a Chairman and, if so, what are his emoluments? Then, Sir, at the present moment we do wish to be given more self-government than exists at the present moment. It is the spirit of the times, that the association of elected members with extensive rights should be increased instead of decreased. I should like the Honourable Member to point out how the constitution differs from the present constitution, whether the element of election has been increased or decreased in this Committee which is to be restricted?

With these words, Sir, I resume my seat.

THE HONOURABLE KUNWAR SIB JAGDISH PRASAD: Sir, my Honourable friend, the Leader of the Progressive Party, Rai Bahadur Lala Ram Saran Das, has put a very pertinent question. He wants to know whether the proposed increase in the duty is likely to affect production. This matter was very carefully considered and we found that this small increase which we propose is not likely to affect prejudicially the grower of lac. My Honourable friend can rest assured that if there had been any such danger we would not have come up before this House with this proposition, nor is it likely that the other House would have passed that particular item without modification. So he can rest assured on that score. Then, my Honourable friend Mr. Hossain Imam has asked me a certain number of questions. About Bihar and Orissa, we know that these will be separate provinces and that may be taken to mean that the representatives will be selected in consultation with the Governors of those two provinces. Then, as regards the question of election *versus* nomination, in the present Lac Cess Committee there is no elected representative at all. The progress which we have made is that, though the system of election has not been introduced, we have given in the Governing Body, as I stated, the non-officials a majority, and if my Honourable friend will look at the Bill, he will find that there are to be six representatives of the growers. These are —

THE HONOURABLE MR. HOSSAIN IMAM. But all nominated, Sir.

THE HONOURABLE KUNWAR SIB JAGDISH PRASAD: Yes, but that is the difficulty. This point was raised in the Lower House also. We found that it would really be complicating matters if we were to ask each province to elect one representative of the tenants to this Committee. I think probably the whole of the income from the cess will be absorbed in the election expenses of these representatives. Looking at the constitution, I think it is just as well to move cautiously. We have made one advance, we have given the non-officials a majority. I agree that there are nominated non-officials, but I am not prepared to say that they will not discharge their duties as efficiently as the nominated non-officials do here in this House. I therefore hope the House will now without further ado pass this Bill.

THE HONOURABLE MR. P. N. SAPBU (United Provinces Southern: Non-Muhammadan): Will the proceeds of this cess be devoted exclusively to research?

THE HONOURABLE KUNWAR SIB JAGDISH PRASAD: There is expenditure on administration, research and propaganda.

THE HONOURABLE MR. P. N. SAPRU : But the bulk of it on research ?

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD : Yes, the bulk of it is on research ; the Lac Research Institute costs at present over a lakh and a half.

THE HONOURABLE MR. HOSSAIN IMAM : The Honourable Member did not enlighten us about the Chairman.

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD : I am sorry, Sir. The present intention is that the Chairman will be the Vice-Chairman of the Imperial Council of Agricultural Research but in any case he will not be paid from the funds of the lac cess.

THE HONOURABLE THE PRESIDENT : The Question is :

“ That the Bill further to amend the Indian Lac Cess Act, 1930, for certain purposes, as passed by the Legislative Assembly, be taken into consideration ”.

The Motion was adopted.

Clauses 2, 3, 4, 5, 6 and 7 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD : Sir, I move :

“ That the Bill, as passed by the Legislative Assembly, be passed ”.

The Motion was adopted.

The Council then adjourned till Eleven of the Clock on Friday, the 24th April, 1936.