

Mr. Speaker: The question is:

"That leave be granted to introduce a Bill further to amend the Indian Patents and Designs Act, 1911."

The motion was adopted.

Shri T. T. Krishnamachari: I introduce the Bill.

MYSORE HIGH COURT (EXTENSION OF JURISDICTION TO COORG) BILL

The Minister of Home Affairs and States (Dr. Katju): I beg to move for leave to introduce a Bill to extend the jurisdiction of the High Court of Mysore to the State of Coorg and to provide for matters connected therewith.

Mr. Speaker: The question is:

"That leave be granted to introduce a Bill to extend the jurisdiction of the High Court of Mysore to the State of Coorg and to provide for matters connected therewith."

The motion was adopted.

Dr. Katju: I introduce the Bill.

FORWARD CONTRACTS (REGULATION) BILL

PRESENTATION OF REPORT OF SELECT COMMITTEE

The Minister of Commerce and Industry (Shri T. T. Krishnamachari): I beg to present the Report of the Select Committee on the Bill to provide for the regulation of certain matters relating to forward contracts, the prohibition of options in goods and for matters connected therewith.

ADMINISTRATION OF EVACUEE PROPERTY (AMENDMENT) BILL

PRESENTATION OF REPORT OF SELECT COMMITTEE

Pandit Thakur Das Bhargava (Gurgaon): I beg to present the Report of the Select Committee on the Bill further to amend the Administration of Evacuee Property Act, 1950.

CODE OF CIVIL PROCEDURE (AMENDMENT) BILL

Mr. Speaker: We will now proceed with the further consideration of the following motion moved by Shri Biswas on Tuesday, the 8th July, 1952, namely:

"That the Bill further to amend the Code of Civil Procedure, 1908, be taken into consideration."

The Minister of Law and Minority Affairs (Shri Biswas): Sir, hon. Members will remember that this Bill was considered in part during the last session of Parliament. Certain suggestions were made at the time for amendment of the Bill so as to provide that the United Kingdom and other foreign countries should be placed on the same footing under section 44A of the Civil Procedure Code. That section, as hon. Members know, deals with the question of enforcement of decrees of foreign courts in India on a basis of reciprocity. As originally introduced, that section was a corollary to the British Foreign judgments (Reciprocal Enforcement) Act, 1933 which provided that if His Majesty was satisfied that there existed a reasonable assurance of reciprocal treatment by a foreign country regarding the execution of decrees of British courts in that country, then the benefits of that Act would be extended to that country.

[MR. DEPUTY-SPEAKER *in the Chair*]

Consequent on the enactment of that legislation in Great Britain, section 44A was passed in this country. It provided that decrees passed by superior courts in the United Kingdom and in any other country within the Commonwealth which might be declared to be "reciprocating territory" by this Government, should be executable on certain conditions in the courts of India.

Now, since the attainment of independence it was considered by Government that these reciprocal facilities should not be limited to the United Kingdom and to countries forming part of His Majesty's Dominions. On that basis, the Bill was introduced. But with a view to making the minimum changes in the Section, that portion of the Section which made specific reference to the United Kingdom was left intact, and the only change that was made was in the definition of "reciprocating territory" in *Explanation 2*. On the floor of the House the view was expressed that there was no reason why the United Kingdom should be specifically mentioned even after independence. The suggestion was that the United Kingdom should be placed on the same basis as any other foreign country which might be declared to be "reciprocating territory". I accepted that suggestion, but said that it would perhaps be more graceful on our part if we made that change after giving intimation to the United Kingdom. That intimation has been given, and I am now in a position to suggest that the Bill should

be slightly amended so as to give full effect to the views of this House.

You will find that I have given notice of some amendments, and with your leave I shall move these amendments.

Mr. Deputy-Speaker: He need not move the amendments at this stage. After the motion for consideration is adopted, he will have an opportunity to move his amendments.

Shri Biswas: Very well, Sir. I have nothing further to add.

Mr. Deputy-Speaker: Motion moved:

"That the Bill further to amend the Code of Civil Procedure, 1908, be taken into consideration."

Shri Pataskar (Jalgaon): Sir, we have to look into the history of section 44A before we come to a conclusion as to whether it is necessary to continue it in the Civil Procedure Code and if so, what are its effects. Ordinarily, as between two independent countries the civil decrees of one court are never executed in another country. Therefore, I would first like to take the House through the history of section 44A. In our country, there were formerly some independent States and the question arose first of all before the Privy Council in what is known as the "Faridkot Case". After that, in England an Act was passed in the year 1933, known as the Reciprocating Act. They wanted the decrees of the courts in England to be allowed to be executed in our courts. This Act was extended to India round about the year 1935. Therefore, sometime in 1937 the then Central Legislature thought it necessary to introduce section 44A for the purpose of reciprocation in the matter of execution of civil decrees in both the countries.

So far as the international law on the subject is concerned, ordinarily—as I have already said—the civil decrees of one court are never executed in another court. But at that time we were part of the British Empire and by a reference to the case in 28 Cal. page 642 it will be found that the same question was considered by the High Court of Lahore and at that time it was held

"that as the defendants were at the time of judgment subjects of the Sovereign both of England and of British India, although at the date of judgment they were not

within the territorial jurisdiction of England but were resident in British India, the judgment was not a nullity."

At that time we were a dependency and naturally the Parliament of England had supreme authority over the administration of justice over all these territories. Therefore, section 44A at present is rather anomalous, but under the circumstances that then existed when we were not an independent country, naturally they passed that Act and that Act was extended to all the Dominions in British India. But things are now changed and even on the merits I do not see why we should allow the decrees of foreign courts to be freely executed in our country. There is already provision that they can file a suit on a foreign judgment and a decree may follow, but to allow automatically the civil decrees of one country, whichever that country may be, to be executed in our country is a thing which I think is not consistent with the present status we enjoy. In spite of our being at present in the Commonwealth, we are as independent as any other country. Therefore, it offends against the normal principle of international law that we should allow the civil decrees passed in a court in England to be executed in our country. I object to it, Sir, on principle. Normally, as a principle of international law, I think it is not at all warranted or desirable, because the civil laws of one country differ from those of another. There is this inherent danger in this reciprocal arrangement. Supposing the country with which we are reciprocating has got different periods of limitation and different basis on which decrees are passed—if their decrees came for mere execution and are allowed to be executed, it is likely to cause a great deal of hardship to our citizens. I have not come across any other instance—apart from the innovation introduced in the countries of the British Empire—where such sort of reciprocal execution of civil decrees is allowed.

Where, then, is the necessity of section 44A? As I have already said, section 44A was necessitated by something which was done by an Act of the British Parliament, because before 1933 there were some judicial decisions by which decrees of British courts could not be executed in India. They, therefore, passed what was known as the Reciprocating Act in England in 1933. That was extended to British India in 1935. Therefore, it became necessary to have this section 44A introduced by an Act of our Legislature in the year 1937. Since

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then conditions have entirely changed and I do not think it is consistent with the present position which we occupy as an independent nation that there should be such a measure in our statute book.

It may be argued—and I find it from certain amendments proposed to be moved by the hon. Minister in charge of the Bill—that some safeguarding provisions are being made. But even then, the objection still remains. Supposing there is a decree passed in a neighbouring country sent for execution. It has to be executed here as if it was passed by a court of our country. The consequence will be that a person's property will be immediately attached, in spite of the safeguards we may provide. There are already some safeguards provided in section 44A itself. But it is one thing to have the decree of a foreign court executed in our country and another thing to have a safeguarding provision. In view of the changed circumstances, section 44A should be deleted, rather than amended.

The provision looks very well on paper, but in the new status which we have assumed or which we have attained, I think it is inconsistent that there should be such a provision like this. Nor do I think that such a provision on the statute book is necessary. The ordinary law of a suit being filed on a foreign judgment is enough for purposes of such decrees. To go beyond that is not consistent with the present status of our country. Therefore, I would request the hon. Minister to consider whether this provision should not be dropped altogether. I would also like to be enlightened in this connection as to how many such cases have arisen after attainment of independence by us. Formerly it was altogether a different matter because Parliament was a supreme body and on that ground they thought that the subjects of this country were under the authority of Parliament. But looking to the present status which we have attained, I do not think there is any necessity for the amendment of section 44A consistently with the prestige of our country and the status which we enjoy. The proper course for us to adopt is to drop section 44A which was introduced only in 1937. Before that we had been able to go on with the ordinary provisions of law as between two foreign courts. In 1937, as I said, it was a peculiar circumstance under which an Act was passed allowing the decrees of certain British

courts to be executed in British India. We had then to accept that position. Now, though we belong to the Commonwealth, we are as independent as any other country. We should therefore follow the natural principle of international law that as between two independent countries the civil decrees of the courts of one country, cannot ordinarily be allowed to be executed in another country.

I have another apprehension also. Though the provision looks so innocent, what might happen is that in certain other countries which reciprocate with us there might be an easy way of passing decrees against certain people. We do not know what their laws will be. We have no control over their legislative machinery and we have no means of influencing their decisions. As guardians of the civil rights of our citizens, we should not allow their rights to be interfered with by the execution of decrees passed in the courts of reciprocating foreign territories. It may be that two reciprocating countries, as we know to our cost, are not always following the same principle of straightforwardness. So, as in many other spheres, some of the countries might choose to have laws by which easy decrees could be passed against certain classes of people in our country for certain reasons and in that case there will be hardship.

Therefore, I submit that on the broad ground of the status which we have now attained and also considering the history of this section, I think it is much better that we delete this provision from the Civil Procedure Code, rather than amend it. These are the few suggestions which I have to make at this stage.

Shri U. M. Trivedi (Chittor): Sir, I support the previous speaker in the points that he has raised. Apart from the difficulties that he has enumerated in the execution of these decrees, we have got one other aspect to consider. Suits in India, practically all over, except in the original side of the Bombay High Court, are filed on payment of court fees. Court fee stamps are to be paid for filing suits. We will be deprived of this source of revenue if we allow decrees of the foreign courts to be executed without levying these court fees. It is on that ground also wise for us to delete section 44A altogether from the Civil Procedure Code.

Another thing is that from countries the procedural law of which is not

known to us and of whose method of taking evidence is not known to us, we may get decrees for execution which it may not be possible for us to pass against litigants who might be living in our country. Again, the law of limitation might be entirely different in that country from the one obtaining in our country. Formerly in some of the native States in India the law of limitation was almost unlimited. You could file a suit after hundred years. Such suits would be filed in other countries and it would put unnecessary burden on our citizens who ordinarily might have escaped the liability, or might have forgotten the liability which might have accrued against them. Under these circumstances I wish to say, without reiterating what the speaker before me had said, that it would rather be in the proper scheme of things if our Law Minister agrees to consider the proposition in this light and seeks an amendment of the Civil Procedure Code by omitting section 44A altogether.

Shri Tek Chand (Ambala-Simla):

Sir, I wish to support the motion for amendment of the Code of Civil Procedure moved by the hon. Minister, and my reasons for so doing are that it is in the interests of the litigant that he should not be subjected to a double expense. In relation to countries where the laws are very much similar to ours and where the procedure, in broad essentials, is the same as ours, it will be extremely desirable if the scope of section 44A is extended rather than that this section should be taken off the statute book. The section as it stood before, included one country only. And that country was included not so much because we were the subjects of the United Kingdom, not because this country was a dependency of the United Kingdom, but because it was necessary for the interests of large number of trading people on both sides who were likely to have disputes either in England or in this country. Therefore, to oppose the amendment on the ground that because we are independent we must have no commerce with another country, we should not respect their laws, we should not respect their decrees even if they are going to respect our laws and decrees is, to my mind, opposed to the interests of this country, is opposed to reason and it will be inflicting a very great hardship upon the citizens of this country as well on the citizens of the other. I would go even a step further than the hon. Minister in suggesting that where the law of civil procedure in essential features, is substantially, identical

with ours, say, as in America, similar facilities should be available to the people in this country as well as to those in the other.

Then, again, it is not a question of being unnecessarily sensitive over the matter. It is not that we are recognizing their decrees unilaterally: our decrees are being recognized by those countries as well. And it will be appropriate in this connection to take note of *Explanation 2* to section 44A which runs thus:

“‘Reciprocating territory’ means any country, or territory, situated in any part of His Majesty’s Dominions which the Central Government may, from time to time, by notification in the Official Gazette, declare to be reciprocating territory for the purposes of this section”.

Therefore, if you think that the laws of another country are not such as are in consonance with the spirit of our laws, you need not declare that country to be a ‘reciprocating territory’. Even when you include other countries and extend the scope of section 44A you have still the liberty to declare or not to declare the other countries as ‘reciprocating territories’. But so long as their laws remain essentially identical in principle to ours, it will be in the interests of the litigant public in this country as well as in the other country that they should have those facilities and advantages. If after a fair trial in a foreign country a decree-holder obtains a decree and the property of the judgment-debtor lies in this country, there is no reason why he should be subjected to the long and expensive ordeal of a second trial in this country. It may be that the evidence is no longer forthcoming; it may be that there are difficulties, and the expenses will be endless. Therefore, it is extremely desirable that if a person in such a country which has a similar procedure obtains a decree, that decree should be given the same validity as if that decree were passed by our own court—so long as and subject to the proviso (which is already there) that if a decree-holder in this country obtains the decree in the courts of our country he can go abroad and have his decree executed and only so long as our decrees are receiving recognition in foreign countries. If similar facilities to the decree-holders in this country are given in matters of execution of the decree in the other countries, there is no reason why in the interest of

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convenience, in the interest that litigation should terminate quickly and expeditiously, this should not be extended to the other countries.

I would in all humility recommend to the hon. Minister that he should see his way to find out, after consulting the countries that are likely to be the reciprocating territories—like America and others—if the scope of this provision cannot be extended to them. Then the benefit to the decree-holders in the respective countries will be immense and it will not be easy for the judgment-debtor to escape the consequences of a decree by one technical reason or another, by one dodge or another. With these words I support the motion.

Shri Barman (North Bengal—Reserved—Sch. Castes): Sir, I also endorse the views expressed by the previous speaker in supporting the amendment moved by the hon. Minister. I have heard the first two speakers who opposed this Bill or the amendment on two grounds. The first ground is that India is now an independent country and there should be no legislation passed by us which may give the impression of any sort of subordination to any other country. I fail to understand how the passing of this measure will give any such impression. On the first day when this Bill was brought before this House, the opinion was expressed that there should be no distinction between the United Kingdom and other countries so far as this amending Bill is concerned. The amendment that the hon. Minister proposes to move is in deference to the opinion of this House and in accordance with the wishes of the House expressed that day.

The second argument that was advanced was that we will lose court fees. My hon. friend lost sight of the fact that this is a reciprocal agreement. If our country loses court fees so far as the filing of any suit is concerned, similarly the other reciprocating country also will lose it. It is a reciprocal treatment between two countries and there is no question of any loss on one side only.

I think this amendment is necessary and this section ought to be in the body of the Civil Procedure Code. Now that India is independent and the transactions of her citizens in commercial and business fields will expand to a large extent and grow fast in other countries, wherever the Central Government feels that there should be some such arrangement so that the transacting parties (the creditor and the deb-

tor) may not be put to any difficulties so far as the realisation of their dues is concerned, the Central Government has got to be empowered with an Act like this to reciprocate mutually in this matter. I think that this measure not only keeps our honour intact and does not detract in any way in the matter of our foreign relations but I also think that such a provision should be in the body of the Civil Procedure Code in order to enable the Central Government to help our growing industrial and commercial transactions outside India. Sir, I support the Bill.

Shri Biswas: Sir, I do not profess to be an expert on international law but I do believe that with the attainment of independence, India has acquired a new status in the international field. India cannot remain isolated from all other countries of the world. It is therefore all the more necessary that India should live on terms of reciprocity with other countries. There are certain facts about this Bill which are overlooked. First of all, it is to be observed that this is going to be entirely a reciprocal measure. These facilities regarding execution of decrees of superior courts of foreign countries will not be extended unless those foreign countries do likewise in respect of decrees passed by courts in this country. So that is itself a safeguard. Then, it will further be seen from the definition of "decree" that the decrees referred to in this Bill, as in the British Reciprocal Jurisdiction Act, are limited to decrees for money, and it does not extend to other decrees. Then, again, there need not be any apprehension that if we accept this Bill on the lines proposed, we shall lose considerable revenue, as the parties will no longer be required to file suits on foreign judgments. Suits on foreign judgments, it is said, would require *ad valorem* court fees to be paid, and so on and so forth. Apart from the fact that suits, if filed, say, in the Calcutta High Court, will not require *ad valorem* court fees, the number of such executions will not be so large as to occasion a substantial loss of revenue. So, I do not think we need take serious notice of this argument. I do not find there is anything against international law in the proposed Bill. Section 44A was no doubt introduced after the British Act was enacted in 1933. That does not mean that this provision is not in accordance with international law. Our Act followed the British Act—Foreign Judgments (Reciprocal Enforcement) Act, 1933. Is it suggested that though England was an independent country, still she passed this law, though this

was against international law? Nothing of the kind.

Shri Pataskar: It is confined only to the countries of the Commonwealth. Does it enable Great Britain to enter into an agreement with France?

Shri Biswas: My hon. friend Mr. Pataskar asks us whether the British Act would allow any decrees, say, of the French Courts to be executed in Great Britain. I will read out the first section of that Act which clearly lays down that the Act is applicable to "any foreign country":

"His Majesty, if he is satisfied that in the event of the benefits conferred by this Part of this Act being extended to judgments given in the superior courts of any foreign country, substantial reciprocity of treatment will be assured as respects the enforcement in that foreign country of judgments given in the superior courts of the United Kingdom, may by Order in Council direct" etc.

So here also in India, if we adopt the Bill as proposed to be amended, it will be for the Central Govt. to decide whether or not there is justification for the issue of a notification which will extend these reciprocal facilities to any foreign country. It is not that every foreign country will be entitled to demand that its decrees shall be enforceable here as a matter of course. It is only when we are satisfied that reciprocal arrangements exist or will come into existence in other countries, then alone shall we declare such countries to be "reciprocating territory". So there is no ground for any fear that our honour or prestige will be affected or our status in the international world will suffer in the slightest degree. If that were so, Sir, the Govt. of India would not have sponsored such a measure. On the last occasion I could appreciate why a specific reference to the United Kingdom as distinguished from other foreign countries was objected to. There was a good deal of force in that objection. I recognised that. At the same time, having regard to the history of this legislation, I thought that before we made this change, we ought to inform the British Govt. If you will adopt this Bill today, it will come into force on a date which the Central Govt. will notify and the notification regarding the United Kingdom will also be issued on that date. That is about all. My learned friend Mr. Patasker asked if I could give him information regarding the number of cases in which foreign decrees were sought to be executed here. I have

not got the information, but I can say this that the number is very negligible. There is no doubt about it. Lately, since independence, we have had one enquiry from Switzerland whether or not a decree passed by a court in Switzerland would be enforceable here. We had to give them a reply that there was no such law at present in existence, though really that enquiry led to this proposed legislation. We might have had similar enquiries from one or two other countries as well, and we thought we ought not to ignore them, as we have now acquired a new status in the international field. There was no longer any reason why we should limit these reciprocal facilities only to the United Kingdom or to countries within the British Commonwealth. I hope, Sir, that the House will agree to take this Bill into consideration and then accept the amendments which I shall move.

Mr. Deputy-Speaker: The question is:

"That the Bill further to amend the Code of Civil Procedure, 1908, be taken into consideration."

The motion was adopted.

Clause 2.—(Amendment of Section 44A, Act V of 1908)

Shri Biswas: I beg to move:

In page 1, for clause 2, substitute:

"2. Amendment of section 44A, Act V of 1908.—In section 44A of the Code of Civil Procedure, 1908,—

(a) in sub-section (1), the words "the United Kingdom or" shall be omitted;

(b) for Explanations 1 to 3 inclusive, the following Explanations shall be substituted, namely:—

Explanation 1.—"Reciprocating territory" means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section; and "Superior Courts", with reference to any such territory, means such courts as may be specified in the said notification.

Explanation 2.—"Decree" with reference to a superior court means any decree or judgment of such court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgment."

Mr. Deputy-Speaker: If it is carried, Mr. Pataskar's amendment will be ruled out. His amendment was for the deletion of the whole section. If this amendment is carried, clause 2 will be ruled out, or if it is the desire of the House that I should put that first, I will put it.

Shri Pataskar: I do not want to move that amendment.

Mr. Deputy-Speaker: Amendment moved:

In page 1, for clause 2, substitute:

"2. Amendment of section 44A, Act V of 1908.—In section 44A of the Code of Civil Procedure, 1908,—

(a) in sub-section (1), the words 'the United Kingdom or' shall be omitted;

(b) for Explanations 1 to 3 inclusive, the following Explanations shall be substituted, namely:—

'Explanation 1.—"Reciprocating territory" means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section; and "Superior Courts", with reference to any such territory, means such courts as may be specified in the said notification.

Explanation 2.—"Decree" with reference to a superior court means any decree or judgment of such court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgment."

Pandit Thakur Das Bhargava: (Gurgaon): Sir, I support the amendment. These two Explanations which are now sought to be added make the position very clear. In regard to such decrees as were obtained from superior courts in foreign countries, it is but meet that we should recognise their validity as the validity of the decrees of our superior courts will be recognised by foreign countries. Instead of in any manner deprecating or detracting from our prestige, I should be inclined to think that it will add to our prestige. We have just heard from the hon. Law Minister that Switzerland has made such an enquiry. There may be enquiries from other countries. All self-respecting countries and all countries that have sovereign status—are bound to recognise

equally the sovereign rights of other countries and the validity of the decrees of their superior courts. I should think that as we advance more and more, there will be such reciprocity from other countries also.

With regard to decrees, their scope has also been limited by this Explanation which proceeds on the same basis on which the Explanation proceeds in the Foreign Jurisdiction Act of the United Kingdom. For instance, I understand it is quite clear that in regard to immovable property, etc., such decrees could not have any force. In regard to other matters, for instance, decrees for specific performance and such other matters also, some people might say that we should reciprocate also. But, now I understand that in the United Kingdom, as well as from the Explanations which are now being added to this section, these decrees will only be decrees for the payment of sums of money.

Mr. Deputy-Speaker: That would be the existing law also. No alteration has been suggested so far as that point is concerned.

Pandit Thakur Das Bhargava: So far as this aspect of the question is concerned, we are only allowing this validity to decrees of special kinds, according to the previous law and the present law, as is mentioned in the Explanations. If the Explanations were not there, I should think that the decrees to which we would have attached validity would have been many more, and perhaps that would have landed the citizens of any country in difficulty. I can understand, for example, some clever people trying to obtain decrees in foreign countries and bring those decrees here. I know that we had some sort of an agreement with Pakistan in this matter even after the Partition. At one time, even the superior courts in Pakistan and perhaps in India also were so minded that we could not place much reliance on the decrees of superior courts. In the Punjab High Court, after the Partition, it so happened that Judges used to decide cases, not with very good motives, but with ulterior motives.

Shri Tek Chand: Question.

Pandit Thakur Das Bhargava: It is absolutely correct when I say that some Judges decided cases in this way: if an appeal came from the judgment of a judge of a particular community, they will say, 'disallowed'; if it came from others, they will say, 'allowed'. This happened after the Partition.

Shri Tek Chand: Not in the Punjab High Court.

Pandit Thakur Das Bhargava: In the Punjab High Court. Now there are two Punjabs.

Shri Tek Chand: Say in the Lahore High Court.

Pandit Thakur Das Bhargava: Yes; Lahore. That is Punjab High Court too so far as foreign Jurisdiction is concerned. It happened in the Lahore High Court. My hon. friend now seems to recognise and affirm what I said.

Shri Tek Chand: On a point of personal explanation, Sir, being an Advocate of the Punjab High Court, I could not subscribe to the observations of my hon. friend when he said, Punjab High Court.

Pandit Thakur Das Bhargava: My hon. friend should have asked me what I meant by Punjab High Court.

Mr. Deputy-Speaker: You are not differing in substance.

Pandit Thakur Das Bhargava: As a matter of fact, it happened in Lahore.

As my hon. friend Mr. Pataskar was arguing for the repeal of this section, it struck me that we have entered into agreements with certain foreign countries e.g. Pakistan in the validity of whose superior courts decrees we had not full faith, though it is a thing of the past and it is not going to recur. At the same time, so far as this Bill goes, we are perfectly justified in giving this power to our own Government. After all, it is not obligatory on our Government to recognise this country or that. The Government will look into the matter and see whether the decrees of the High Courts of those reciprocating countries are good enough. It all depends on what view the Government take in regard to those decrees. We are not bound to give reciprocity to any country when we are not satisfied that the decrees of those countries should be regarded as binding. We are only giving this power to the Government. I do not know how many countries will reciprocate. As time proceeds, it may happen that many countries reciprocate. We are only arming our Government with this power. We are not making any distinction between the U.K. and any other foreign country. In my humble submission, the Bill should be passed.

Shri S. S. More (Sholapur): May I inquire on a point of clarification, Sir? In Explanation 2, 'decree' has been defined. It says:

".....but shall in no case include an arbitration award, even

if such an award is enforceable as a decree of judgment."

For the life of me, I cannot understand why an arbitration award should be excluded from the definition of decree.

Mr. Deputy-Speaker: It is so excluded in the existing section.

Shri S. S. More: If you want to improve on the previous position, why should we retain a provision which is objectionable on the face of it? Once a decree is accepted to be enforceable in this country, due to reciprocity, I do not see why an award, which is eventually convertible into an enforceable decree, should be excluded from the ambit of a decree.

Mr. Deputy-Speaker: I would request the hon. Member to refer to Explanation 3(b) of the present section 44A. It says:

"In no case includes an arbitration award even if such an award is enforceable as a decree or judgment."

Even those persons who wanted to extend the facilities did not think that desirable.

Shri S. S. More: Is there any reason for retaining that sort of distinction?

Mr. Deputy-Speaker: It appears that in the international field they are not prepared to recognise arbitration awards and give them such a status.

Pandit Thakur Das Bhargava: Awards cannot be set aside by Courts except for certain reasons. They cannot be put on the same status as decree.

Shri Biswas: I will attempt an answer, Sir.

Shri Raghobachari (Penukonda): Awards may relate to immovable properties.

Mr. Deputy-Speaker: Even awards for payment of money are excluded.

Shri Biswas: I shall attempt an answer to the last speaker first. There is a distinction between a decree of a court based on a judgment pronounced after hearing both sides, upon evidence, and on the merits, and an arbitration award which need not state the facts and state the reasons for the decision. The arbitrator may merely say, whereas the differences between A and B have been referred to me, I make the following award. There is always some danger, therefore, in treating the award of an arbitrator on the same footing and giving it the

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same force as the judgment of a court. Then, sir, do not forget that though this section provides for enforcement of decrees of foreign courts in this country, there is an important safeguard: it is not every decree that shall be executable; but only a decree which does not fall within the exceptions specified in section 13. These exceptions relate to foreign judgments, which are not recognised if they are hit by any of them. Similarly, courts in India shall not be bound to execute a foreign decree falling within any of these exceptions.

The exceptions are these: I shall read them—

(a) "where it has not been pronounced by a court of competent jurisdiction."

[This will also exclude awards of arbitration tribunals.]

(b) "where it has not been given on the merits of the case."

[This may also have the same effect. For aught we know, an arbitrator may give his award based on materials not on the record or on the evidence.]

Shri S. S. More: Does the hon. Minister suggest that all awards are of the same type?

Shri Biswas: I am not suggesting that. But an award may be of that character and you cannot impeach it on that ground. I am just trying to show what the reasons may have been for differentiating between a decree pronounced in the ordinary way and an award of an arbitrator. Then, the next exception:—

(c) "where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of the State in cases in which such law is applicable."

Next:

(d) "where the proceedings in which the judgment was obtained are opposed to natural justice."

Mr. Deputy-Speaker: All of them are applicable to decrees also?

Shri Biswas: Quite so.

Then (e) "where it has been obtained by fraud"; and

(f) "where it sustains a claim founded on a breach of any law in force in the State."

So, there is ample safeguard, and there need not be any fear that we

shall let in, in this way, decrees for enforcement in this country which could not be enforced in other countries.

Sir, the amendment may be accepted.

Mr. Deputy-Speaker. The question is:

In page 1, for clause 2, substitute: "2 Amendment of section 44A, Act V of 1908.—In section 44A of the Code of Civil Procedure, 1908,—

(a) in sub-section (1), the words 'the United Kingdom or' shall be omitted;

(b) for Explanations 1 to 3 inclusive, the following Explanations shall be substituted, namely:—

'Explanation 1.—"Reciprocating territory" means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section; and "Superior Courts", with reference to any such territory, means such courts as may be specified in the said notification.

Explanation 2.—"Decree" with reference to a superior court means any decree or judgment of such court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgment.' "

The motion was adopted.

Mr. Deputy-Speaker: Now, Mr. Pataskar is not moving the other amendment.

The question is :

"That clause 2, as amended, stand part of the Bill."

The motion was adopted.

Clause 2, as amended, was added to the Bill.

Clause 1 - Short title.

Amendment made:

In page 1, for clause 1, substitute:

"1. Short title and commencement.—(1) This Act may be called the Code of Civil Procedure (Amendment) Act, 1952.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint."

—[Shri Biswas]

Mr. Deputy-Speaker: The question is:

"That Clause 1, as amended, stand part of the Bill."

The motion was adopted.

Clause 1, as amended, was added to the Bill.

The Title and the Enacting Formula were added to the Bill.

Shri Biswas: I beg to move:

"That the Bill, as amended, be passed."

Mr. Deputy-Speaker: The question is:

"That the Bill, as amended, be passed."

The motion was adopted.

Mr. Deputy-Speaker: There is very little time. The House will now stand adjourned to 2-30 P.M. today.

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

The House re-assembled after Lunch at Half Past Two of the Clock.

[MR. DEPUTY-SPEAKER in the Chair]

INDIAN COCONUT COMMITTEE
(AMENDMENT) BILL

The Minister of Agriculture (Dr. P. S. Deshmukh): I beg to move:

Mr. Deputy-Speaker: The hon. Minister is moving on behalf of Shri Rafi Ahmad Kidwai. I want to make the proceedings correct and complete. The order paper shows this motion in the name of Shri Rafi Ahmad Kidwai. Whenever any other Minister is acting on his behalf, he has to say 'The Bill stands in the name of.....' and that he is making the motion on his behalf.

Dr. P. S. Deshmukh: On behalf of Shri Rafi Ahmad Kidwai, I beg to move:

"That the Bill further to amend the Indian Coconut Committee Act, 1944, be taken into consideration."

This is quite a simple Bill, and there are only a few changes that are proposed which seek to amend certain sections of the Indian Coconut Committee Act, 1944.

This is quite a simple Bill, and section 2, Act X of 1944, and we are proposing to modify the definition of the word 'mill'. Formerly, a mill was

mittee Act, 1944
"any place in which copra is crushed for the extraction of oil,

which is a factory as defined in section 2 of the Factories Act, 1934."

The present definition that is proposed is:

"any premises in which or in any part of which copra is crushed or is ordinarily crushed with the aid of power for the extraction of oil".

Then there is an *Explanation* added:

"'power' means electrical energy or any other form of energy which is mechanically transmitted and is not generated by human or animal agency."

With regard to all the amendments that have been suggested, there is a fairly comprehensive explanation accompanying the Bill in the shape of the Statement of Objects and Reasons. I need not therefore take very long to explain the provisions of this Bill. Yet certain brief comments would probably be necessary. This definition of the word 'mill' has been altered with the intention of including all mills where the extraction of oil is done with the aid of power, irrespective of the number of hands employed. As has been our experience, with the existing definition, there were chances of evasion, and so this new definition has been proposed.

So far as clause 3 which seeks to amend section 4 of the original Act is concerned, the changes that are proposed are more or less verbal ones. For instance, the change from the word 'Vice-chairman' to 'Vice-President' of the Indian Council of Agricultural Research is one such. By the sub-clause (aa) that has been proposed, it is intended to add 'The Agricultural Marketing Adviser with the Government of India.' He was not there originally, and now we propose to include this Adviser also as a member of the Committee.

Coming to sub-clause (ii) of clause 3, it is proposed to substitute clause (d) of section 4 of the parent Act with the following:

"(d) four persons representing respectively, the Governments of Assam, Madras, Mysore, and Travancore-Cochin, appointed in each case by the State Government concerned;"

Here, the difference between the original Bill and this Bill is only the addition, of the State of Assam, which