15th April 1936

THE

LEGISLATIVE ASSEMBLY DEBATES

(Official Report)

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(9th April to 23rd April 1936)

THIRD SESSION

OF THE

FIFTH LEGISLATIVE ASSEMBLY, 1936

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Legislative Assembly.

President:

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

Deputy President:

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

Panel of Chairmen:

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

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MIAN MUHAMMAD RAFI, BAR-AT-LAW.

Assistant of the Secretary:

RAI BAHADUR D. DUTT.

Marshal:

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

Committee on Petitions:

MR. AKHIL CHANDRA DATTA, M.L.A., *Chairman.*
SIR LESLIE HUDSON, KT., M.L.A.
MR. B. DAS, M.L.A.
DR. ZIAADDIN AHMAD, C.I.E., M.L.A.
MR. M. S. ANEY, M.L.A.

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LEGISLATIVE ASSEMBLY.

Wednesday, 15th April, 1936.

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

ELECTION OF THE STANDING ADVISORY COMMITTEE FOR THE INDIAN POSTS AND TELEGRAPHS DEPARTMENT.

Mr. President (The Honourable Sir Abdur Rahim): I have to inform the Assembly that upto 12 NOON on Tuesday, the 14th April, 1936, the time fixed for receiving nominations for the Standing Advisory Committee for the Indian Posts and Telegraphs Department, only three nominations have been received. As the number of candidates is equal to the number of vacancies, I declare Mr. J. Ramsay Scott, Mr. Akhil Chandra Datta and Mr. Basanta Kumar Das to be duly elected.

THE DECREES AND ORDERS VALIDATING BILL.

The Honourable Sir Nripendra Sircar (Law Member): Sir, the first item in the agenda is in my name—to move:

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

I am not moving that now. I propose to do it later on, because I have reason to believe that if I get a little time, the discussion on this motion will be very much shortened.

THE INDIAN COMPANIES (AMENDMENT) BILL.

The Honourable Sir Nripendra Sircar (Law Member): Sir, I beg to move:

"That the Bill further to amend the Indian Companies Act, 1913, for certain purposes, be referred to a Select Committee, consisting of Mr. Bhulabhai J. Desai, Mr. S. Satyamurti, Mr. Anugrah Narayan Sinha, Pandit Sri Krishna Dutta Paliwal, Mr. Sami Vencatachelam Chetty, Sir Cowasji Jehangir, Mr. Abdul Matin Chaudhury, Mr. Akhil Chandra Datta, Sir Leslie Hudson, Mr. Mathuradas Vissanji, Babu Baijnath Bajoria, the Honourable Sir Muhammad Zafrullah Khan, Diwan Bahadur R. V. Krishna Ayyar, Sir H. P. Mody, Mr. L. C. Buss and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

Having regard to the late stage of the present Session, and as I have asked merely for the reference of the Bill to a Select Committee, I shall take less time than I would have done in ordinary circumstances.

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While I feel that a fairly long discussion on a technical branch of law may be uninteresting and possibly even boring to one section of the House, I think it is but fair that I should not leave the House with a bare enumeration of the proposals for amendments or changes which we put up before this House.

I desire, Sir, with the permission of the House, to give a very brief summary with the barest details of the events leading up to the present Bill. Sir, as trade and industry had been increasing and as joint stock companies were handling trade and industry in ever increasing measure, it was obvious that company legislation would acquire the position of importance which it has done. It affects the growth of trade and industry and the fortunes of thousands of investors who put their money in the shares of joint stock concerns.

To put the history very briefly, the first Indian Companies Act which we had was the Act of 1882. That was based on the English law then prevailing—the English Companies Act of 1867. The defects and deficiencies of the Act of 1882, however, began to be manifest within a fairly short time of its passing, and we had a series of tinkering operations, and, without tiring the House with details, I may tell them that we had to bring in amending Acts in 1887, 1895, 1900 and 1910.

While this was the fate of the Indian Act, a similar fate was meeting the English Act on which the Indian Act had been based, and a series of amending Acts were found necessary in England to bring their Act up-to-date and we had a series of Acts in 1879, 1880, two Acts in 1890, the Companies Act of 1900 and the Companies Act of 1907. After these tinkerings had been done in England, they produced their consolidating Act of 1908 which is, or rather was, a convenient and self-contained Code. That English Act of 1908 was taken as the model and as the basis of our next Act, namely, the Act of 1913, which is the Statute still in operation and which is the Statute which is now to be amended. As on the previous occasion, so in 1913, the Legislature followed the English Act which was in force, namely, the Act of 1908. It accepted its general provisions and most of its details also with certain variations necessitated by local conditions.

I think I should tell the House that, immediately after the passing of this Act, there was another amending Act. That was in 1914, and while this Act was passing through the House,—I mean the Act of 1914—a question cropped up which will again loom large before the present House. In 1914, they discussed what changes were necessary in the Indian Companies Act to meet the requirements of a system which is in vogue in India and is unknown in England, namely, company management through managing agents.

In the Select Committee, it was proposed, and in fact a section was drafted, section 88C (although that was not ultimately passed in its entirety), the object of which was *inter alia* to provide that every company should have Directors. I should remind the House that, before this Act, there was no obligation on any company, under the Indian Law, to have Directors at all. They wanted to provide that every company should have Directors, secondly, that every company should have a majority of Directors, independent of the managing agents, an exception being made

in the case of private companies, and, *thirdly*, certain provisions for disclosure by interested Directors of their interest in the concern.

Now, the majority of the members of the Select Committee came to the conclusion that, although it was necessary to provide that there should be Directors, it was not necessary to provide that the majority of the Directors should be independent of the managing agents. There was a certain amount of dissentient opinion, but that was what was decided by the majority.

Now, Sir, I have drawn the attention of the House pointedly to this matter, because, as I have already said, this matter will again loom large in the discussions both in the Select Committee and later on in this House.

Sir, by Act II of 1914—the Act passed immediately after the Act of 1913,—certain changes were introduced into which I need not enter in detail. The changes introduced, Sir, were done with the object of putting further liabilities on Directors, and, although the Indian Act of 1914 introduced certain sections which were not to be found in the English Act, they as a matter of fact, reproduced the English law as laid down by the Courts, and, if I may quote that principle of law, as enunciated in one of the cases, "the Director is precluded from dealing on behalf of the company, with himself and to enter into engagements in which he has a personal interest conflicting, or which may conflict, with the interests of those whom he is bound by fiduciary duty to protect".

Now, that was the amendment in 1914, and we are in 1936; more than 21 years have passed, and the need of bringing the Indian Statute up-to-date in various matters has been felt by Government, by mercantile bodies and by the public generally interested in companies, for a fairly long time.

I have told this House that the present Act of 1913 is based on the English Act of 1908, and, I think, I have also told the House that there had been a good deal of tinkering with the Act of 1908, because it was found unsatisfactory.

Sir, ultimately, in England, on account of the agitation which they were having against the Act for its amendment, a Committee was appointed which came to be known as the Wrenbury Committee, better known as Lord Justice Buckley. He presided over the Committee, he made a report, but I have not been able to follow why that report was not acted upon. Nothing happened on the completion of that report, and, as a matter of fact, the Committee was limited to a very small matter, *viz.*, the question as to the extent of the restrictions which should be imposed on the rights of aliens in matters of trading in the United Kingdom.

Later, in 1926, they had a Committee which did most excellent work and which is known as the Green Committee. That was in 1926. Mr. Wilifred Green, K.C., who is now Lord Justice Green, presided. The Committee went into the matter very thoroughly and made extensive recommendations.

Sir, I have no desire to tire the House with the details of those recommendations, but, broadly speaking, the recommendations may be placed under five or six big heads; *one*, the issue of, and dealing in, shares including full disclosure in the prospectus; *two*, imposition of further liabilities on Directors including the prohibition of clauses relieving Directors of

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liability for negligence; *three* provisions for penalising fraudulent trading; *four*, the accounts are required to give fuller information, and there are also provisions for winding up, and further provisions for reconstruction and amalgamation by facilitating procedure and giving larger powers to achieve these objects. I need not go into greater details.

This was the report which was made by the Green Committee of 1926. This report was considered by Parliament and on it is based the present English Statute, the Act of 1929, the new English Companies Consolidation Act. Parliament did not accept all the recommendations of the Green Committee, but many of them—some of them wholly, and others with some modifications.

Then, Sir, apart from accepting, with certain modifications, the recommendations of the Green Committee, the framers of the new Act in England of 1929 changed the entire arrangement of the Act. I confess I started with a bias in favour of following the same course, that is to say, having a new arrangement following the English Act of 1929 rather than have additions, substitutions and alterations in the existing frame-work of the Statute of 1913. But, although that was my original inclination, I found, on inquiry from certain members of the English Bar, who enjoy large practice in Company Law in England, that this arrangement has been rather confusing and has done no good; and that opinion is supported by the opinion of Lord Wrenbury which will be found in the preface to the last edition of the English Companies Act, and, on that ground I have given up the original idea and have proposed a Bill in the form in which Honourable Members will find it.

Sir, since the Act of 1929, or, to be accurate, even before it, agitation in India, and I should say a very legitimate agitation, has been growing both in volume and intensity for the amendment of the Indian Companies Act. This agitation has been carried on, not only through the Press, but also in the proceedings of several business bodies like the Associated Chambers of Commerce, the Federation of Indian Chambers of Commerce, and a very strong case been made out for amending the Act of 1913 with a view to remedying what are considered to be defects in the present Act.

In 1934, the Government of India decided to expedite the matter, and, to make up for lost time, they decided to appoint a person, with a large knowledge of Company Law, to examine the material which was then available, and the material available was copious indeed, and to make a report.

In August, 1934, His Excellency the Governor General, addressing this House, intimated, that Mr. S. C. Sen, a Solicitor of Calcutta, had been appointed for this purpose. Mr. Sen entered upon his duties next month, that is September, 1934, and exactly to a day, in four months, he made his report. The report of Mr. Sen was a purely departmental report, made for the purpose of enabling Government to make up their mind about their own suggestions. This report has now been circulated to Honourabe Members.

Before Mr. Sen's time and also at his instance suggestions were invited from Local Governments, from the Associated Chambers of Commerce and from various individuals, and we received also a mass of opinion,

which was nonetheless welcome, because these persons and associations had not been specifically asked to send in their opinions. The report of Mr. Sen very carefully considered all these opinions which were then available.

Mr. Sen, in making his report, divides it into two parts, one he calls the major recommendations and the other minor recommendations. The terms are relative, and, as a matter of fact, some of the so-called minor recommendations are fairly important. But, distinguishing major and minor amendments in this sense, the major amendments may be described as relating to (1) the prevention of formation and continuance of what he has called mush room companies and companies guilty of fraudulent trading, (2) full disclosure of all material particulars in the prospectus, (3) full disclosures in balance sheets and better facilities for shareholders for their inspection, (4) duties and liabilities of Directors, (5) rearrangement of the procedure relating to winding up of companies so as to give creditors a better control and prevent unnecessary delay, and arrangement and compromises, and (6) lastly managing agents.

Mr. Sen also dealt with and made his recommendations with regard to banking companies in the light of the recommendations made by the Central Banking Enquiry Committee. Facts disclosed show that, during the last three or four years, indigenous banking companies and institutions in the country had been passing through very strenuous times owing to various causes.

The then Commerce Member, Sir Joseph Bhore, acting as the Leader of the House, gave an assurance to Honourable Members of this House that before the Government of India drafted this Bill, the one which is now before the House, they would consult commercial opinion, although as a matter of fact, the suggestions of many commercial bodies were already before the Government of India.

Sir, in pursuance of this assurance given to the House, a small Committee for giving advice was called, it consisted of representatives of (*a*) the Federation of Indian Chambers of Commerce, (*b*) the Associated Chambers of Commerce, (*c*) the Bombay Shareholders Association, (*d*) the Millowners' Association of Bombay, and (*e*) of the Imperial Bank of India. They met at Delhi in January last and gave their views as to the recommendations which had been made by Mr. Sen. It was really an advisory committee called to ascertain the views to be presented by the shareholders, by the capitalists and by other interests concerned with companies. The various divergent views were discussed before this committee with Mr. Sen's report and other opinions before them.

I acknowledge, Sir, that the discussions before this Committee were extremely useful, and, while the representative of the shareholders point of view missed no opportunity of pressing his case with the greatest ability from the point of view of shareholders, the opposing views were also fully placed and discussed. I admit that I was agreeably surprised to find, at the end of the discussions, there was a much greater measure of agreement than I originally expected. Those conclusions have also been circulated to Honourable Members.

By agreement, the Committee only had their conclusions recorded and not their arguments in support of their various contentions.

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As I have said, Sir, I should like to acknowledge publicly the great assistance rendered both by Mr. Sen and by the Committee; and this Committee also expressed a sense of great appreciation of Mr. Sen's report.

We have thus passed through four stages. We have, first of all, Mr. Sen's report, secondly, we have the draft provisional suggestions of Government based on those reports; thirdly, the conclusions of the advisory committee; and, lastly, the final shape of these suggestions which is now before the House and which are to be embodied in the Bill under discussion. Most of the conclusions of the Committee have been accepted in drafting the Bill, although I admit that there is one, or rather there are two possibly not very important points on which the Bill does not embody the conclusions of the Committee. They can at once be found out by comparison of the Bill with the small red book.

I should like to make it clear to this House that, speaking generally, the proposals which are contained in the Bill under discussion—these proposals do not represent any unchangeable view of the Government, and further discussions in the Select Committee as also discussions in the House will be required to give final shape to the Bill. I desire to make it perfectly clear that on none of the proposals which have been made, the attitude will be taken up that that is a position from which we cannot possibly advance or recede. We are prepared to consider all arguments which may be advanced for or against any suggestion.

Sir, in making these provisional suggestions in this draft Bill, Government have tried their best to arrive at a mean between two extreme views. One extreme view under which most of us labour, that extreme view which it is rather difficult to shake off from our minds, is that businessmen, or, for the matter of that, any set of men can be made honest by force of Statute, and that all possible avenues of dishonesty or malpractices can be effectively stopped by legislation. While the other extreme view presented has been that there is nothing very wrong with the present Indian Companies Act and very little change is required.

I believe, and I am putting forward only my personal view, that every attempt should be made to make it impossible or at any rate to make it extremely difficult the malpractices which have come to light as a result of the working of the Companies Act of 1913. Yet, on the other hand, the provisions for stopping these apprehended malpractices may be so unreasonable and onerous as to keep away honest men from having anything to do with joint stock companies. Sir, trade and industry in India are in a backward state compared to some other parts of the world, and it will indeed be disastrous if amendments of existing law stifle the healthy growth and development of joint stock concerns.

It is certainly desirable that shareholders should have far greater knowledge and far more effective control of the affairs of the companies than they now possess, and, yet, I venture to submit that, on the other hand, it should not be possible for the smooth running of the business of a company to be embarrassed or even to be effectively checked by an unreasonable or hostile shareholder. Indeed, Sir, it is not difficult to imagine that efficiency and success of management will depend on comparative freedom to pursue a policy without undue and excessive interference. Instances have been known from reported cases of shareholders

in company "A", buying shares in a rival or competing company "B" solely for interfering with or dislocating the smooth working of the other company.

These principles, I realise, are quite easy to lay down to formulate, but in practical application there may be honest differences of opinion in relation to particular situations. I think, it would be unwise to lose all sense of proportion, about abuses, because some companies have indulged in them.

Sir, with the leave of the House, I propose shortly to indicate the changes which have been recommended for acceptance in this Bill. I cannot hope to indicate them exhaustively, having regard to the time available to me, as Honourable Members have seen that the Bill runs into about 60 printed foolscap pages.

The first matter of importance which has been dealt with in Mr. Sen's report is, as I have told this House, the matter of prevention of the growth and continuance of what have been called by him mushroom companies. Honourable Members of this House will agree with me that experience has shown that the growth of such companies is fast becoming a menace to the healthy evolution of business life in this country. As a result of the ushering in of these companies, with their short span of life, it has become immensely difficult, if not practically impossible, to secure capital even for deserving industrial institutions. And, in the opinion of Government, matters have come to such a pass that the Legislature is now bound to step in to prevent the formation or continuance of these companies. It is a matter of relief to me to find that public opinion is also unanimous on this point.

In the Bill, Honourable Members will find that the matter has been dealt with from two points of view. We have tried, first of all, to provide against formation of mushroom companies in future by, first of all, providing that the fixing of the minimum subscription, upon which depends the certificate of commencement of business, is no longer to be left to the caprice or the whim of the promoters who start the company, but it is to be fixed upon a basis which must leave in the hands of the management a reasonable working capital after payment of the preliminary expenses, subject to a minimum limit set in the Statute. It should not be less than one-third of the capital offered to the public of which 25 per cent must be paid up.

I acknowledge that we have got guidance in this matter from the English Act and from the deliberations of the Green Committee who came to a very similar, if not identical, opinion.

This provision is being introduced to prevent undue and misleading window-dressing in the matter of new formations, and we hope that this will prevent companies which have not got a sufficient amount of working capital from commencing their activities and thus prevent the formation of these so-called mushroom companies.

I think Honourable Members of this House will agree that the growth of companies which is desirable is a healthy growth, and checks should be placed on companies which are bound to lead to disastrous results and consequences to investors and shake public confidence in joint stock concerns. I am sure this House will help in finding ways and means for combating the growth and existence of these companies and thereby try to restore the confidence of the investing public in this country which

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has been rudely shaken in recent years. It is no good concealing the fact that an atmosphere of suspicion prevails with regard to a fairly large class of Indian companies, and this has resulted in setting back the industrial progress of this country.

I have so far dealt with the aspect of companies which are to be formed in future. In the case of existing companies, which come within this category, Honourable Members will find that it is proposed in the Bill, in the first place, for keeping of proper books and the publication of further details in the balance-sheets. In the next place, powers have been given to the Registrar on his own motion, and upon reasonable information, to require explanations and to make inquiries, if necessary, to institute criminal proceedings, if the company is found to be guilty of fraudulent trading. Lastly, power is given to the Registrar to apply to the Court for winding up of companies which, from their balance-sheets and other documents, are found to be really in insolvent condition. These provisions are, in the opinion of Government, necessary to combat the vicious activities of a large number of companies which have come into existence during the last 10 or 12 years. The ordinary provisions of the Indian Penal Code have been found to be wholly insufficient to meet the necessities of these cases, and Government have, therefore, made express provisions in the Bill itself to meet and cope with omissions and commissions which are commonly found in this class of companies to be dealt with as offences under this Act.

I have been unable to accept in its entirety the very much wider powers of interference of the Registrar recommended by Mr. Sen. Public investigations into the affairs of a company by a Registrar, who may happen to be an over-zealous person or who may have been misled, may damage the credit of a company irreparably, even though the ultimate decision may not be adverse to the company. On principle, I am opposed to exercise interference, and I could not, therefore, accept the recommendations of Mr. Sen fully. I am opposed to any Government official, whether he is Registrar or anybody else, being in a position to make or mar a business concern, and I have, therefore, provided for the minimum interference required for dealing with these companies.

Sir, the next important provision which Honourable Members will find in the Bill is the change we have proposed in relation to the keeping of accounts and the publication of balance-sheets. In the present Act, the Act of 1913, there is no express provision made as to the books which every company must keep, with the result that in many cases one can hardly find a complete record of the activities of these companies. I am in a position to make this statement from my own personal experience of facts disclosed in Court in connection with winding up proceedings, and, I am sure, other Honourable Members have got similar experience. This defect was noticed in England where also a similar provision was absent, and, in the new Companies Consolidation Act of 1929, this has been remedied, and the Statute now expressly provides for the books which every company must keep. A similar provision has been made in the present Bill also, and, in making this provision, I made inquiries as far as possible from business people to find out whether this would put too heavy a task on the companies.

We have also suggested that the auditors will have to give a certificate annually as to whether all books have been kept or not. We have also provided that the auditors ought to have independent right of their own to attend meetings of shareholders and thus be in a position to see for themselves that the shareholders have all the information which they require as regards the accounts of the company. It has been by this Bill made obligatory on the company to publish the auditor's reports along with the balance-sheet. At present, there is no such liability.

These provisions will, it is hoped, serve to bring home to the shareholders the views, not only of the Directors, but also of the auditors, as to the accounts and affairs of the company. As to the accounts of the company themselves, Honourable Members will find that the Bill provides much greater details being given in the balance-sheets. These details have been worked out so as not to impose, as I have told the House already, any unnecessary or too heavy a burden upon the management, but to ensure that all information as to investments, debts, stocks, etc., should be given to the shareholders.

The Bill also provides a limit within which the balance-sheet must be filed,—I believe, Sir, I am right in saying that there is no provision now,—thus making a much-needed provision which will prevent dilatoriness on the part of the management.

Shareholders in all countries—and the more so in this country—often take very little interest in the activities of companies until it is too late and until they hear that all is not well with the affairs of a company. No legislation can possibly rouse shareholders who make up their minds to go to sleep, but the present improvement will at least enable the wakeful ones to have far greater knowledge of particulars of companies than they can do at present under the Act of 1913. The observation I have made here is of general application and is not confined to the matter which I have just now discussed.

The next matter in the Bill to which I wish to refer at this stage is the provisions regarding Directors and the disclosures of their interest in contracts and the remuneration drawn by them.

The Bill also does away with the insertion of provisions in the Articles of Association by which the liabilities of the Directors are usually sought to be restricted. I am afraid that I cannot go into details now, but when the matter is discussed later on, I shall be in a position to show to the House some of the astounding articles under which the Directors practically escape liability upon all sorts of grounds.

The Bill also provides that of the Board at least two-thirds of the members should be elected at a General Meeting, thus providing for a majority of the nominees of the shareholders. We have, however, been unable to accept the suggestions, made in some quarters, that the law should provide for the number of concerns of which one particular individual may become a Director. We have agreed with Mr. Sen—and that is a matter which may have got to be discussed later on—that such a provision is not practicable. The Legislature must leave it to every individual to decide as to the extent of liabilities which he is prepared to undertake.

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Honourable Members will find that we have provided substantial limitations on loans being granted to Directors. It has often been seen in connection with companies that a company borrows money in the market for the purpose of lending it to the Directors. The Bill imposes a Statutory restriction to any loans being granted to the Directors out of the moneys borrowed by the company, and, even in the case of surplus funds, no loans can be granted without the concurrence of at least three-fourths of the Board. Particulars of any loans granted under those conditions are to be specifically disclosed in the balance-sheet.

Certain provisions have also been inserted to bring to book delinquent Directors. We have provided restrictions against undischarged bankrupts having any concern with the management of companies.

Another evil, against which there has been a very large amount of agitation, is the assignment of offices by Directors, and this has also been dealt with by this Bill. The assignment of offices by Directors except with the sanction of the shareholders in a special Resolution has also been provided against. The Bill also provides for the removal of Directors before the end of their term at the instance of shareholders and also provides that the person appointed in his place shall automatically cease to hold office at the end of the original term. The Bill in this matter makes non-payment of calls by a Director a ground on which he would vacate office automatically.

I have, however, not been able to agree with Mr. Sen in one recommendation which he made in order to prevent misapplication of funds and inter-financing. Mr. Sen suggested the making of a provision in the Act which would run more or less on the following lines, namely:

"Unless specifically sanctioned by the shareholders, the funds of the company not immediately required for the purpose of the business of the company shall be invested in Government securities or securities mentioned in the Indian Trusts Act."

I do not deny that the question of misapplication of funds and inter-financing are matters which require very serious consideration, but Government as also the Members of the Advisory Committee were agreed that the adoption of the recommendation of Mr. Sen in its entirety would create great practical difficulties and that on the whole it was best to leave things as they were.

Sir, it is not possible to state at length the origin of the managing agency system of India within the time-limit at my disposal. Yet, I must make an attempt to give this Honourable House some idea of this system. The managing agency system in Bengal and Upper India and similar systems in Western India had their origin in the special conditions prevailing in this country. In India, when the managing agency system was being evolved, there was hardly any investing class as such, while the average Indian fought shy of putting in capital for industrial ventures. The managing agents had to find the capital. After an industry had been started and nursed by some enterprising businessmen willing to risk their money, and only after the concern was working confidently or showing signs of doing it, would it have been possible to find investors—when the enterprising industrialists converted the business into joint stock companies with themselves as managing agents.

The question as to how the managing agency system prevailing in India should be dealt with has received answers of great diversity. Such of the Honourable Members, as are interested in the history of the growth and working of the managing agency system, will find very valuable material in a book which has been recently published. Being a very industrious book, one need not be surprised that it comes from Madras—I refer to Mr. Lokanathan's "Industrial Organization in India". Although one may not agree with all his conclusions, the facts will be found very carefully marshalled and documented in the book.

As regards the divergent opinions which have been received about this system, some contend that the system should be extinguished at once and with retrospective effect steps should be taken to terminate the agreements which are now in existence and have still to run. In fact, probably it is not much of a parody to say that according to some of the opinions these managing agents should be shot at sight.

At the other end is the opinion that companies are under such a deep debt of obligation to managing agents and so necessary are they still that this institution should not be touched at all. I need hardly say that neither extreme view is correct.

Speaking generally, the largest volume of complaint against managing agents and their alleged dishonest or unconscionable methods comes from the province of Bombay, and more particularly from Ahmedabad. Members are no doubt aware that managing agents owe their dominance to various reasons, and I would like to indicate very shortly some methods by which this dominance is acquired—and when I say dominance is acquired, I do not use that necessarily in any derogatory sense. That dominance may be all for the good of the company. In many cases, I venture to submit, the dominance of the managing agent has been the main cause of success of the business concerned, while in others, it has been unconscionably used for personal aggrandisement, at the expense of the interests of the concern: so there are managing agents. . . . .

Prof. N. G. Ranga (Guntur *cum* Nellore: Non-Muhammadan Rural): Hear, hear.

The Honourable Sir Nripendra Sircar: I do not know to which managing agents Prof. Ranga's "hear, hear" applies.

Coming back to these methods, I start with the first, namely, the invariable practice of managing agents to hold a certain portion of the shares of the company. The proportion of shares held by managing agents in various companies, varies very greatly. From a statement published in 1927—and I have not, I am afraid, come across any compendious statement after 1927—I find that, in the cotton industry in Bombay, the percentage of shares held by managing agents, while in a few exceptional cases is so low as 15 or 17 per cent., in other cases is extremely high and in some cases over 90 per cent; while holding 40 or 50 or 60 per cent. is by no means an unusual incident. There are similar variations in jute and coal companies in Bengal, though possibly the limits are not so divergent and so great as in the cotton industry.

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I have stated that the first factor of control is the holding of a substantial block of shares. I now come to a second feature which is far more effective than the mere holding of a bloc of shares—I mean the managing agency agreements; and I confess that some of the managing agency agreements—I am not tarring them all with the same brush—disclose an astounding set of facts. I do not intend to say that even if an extraordinary clause appears, it is necessarily used in an improper way.

Those agreements, as a rule, are in writing, and, while some of these agreements can be terminated, others—I am afraid not infrequently—are practically non-terminable. Some agreements give control to managing agents and to their successors in perpetuity. To take an example, in the Ajit Mills of Ahmedabad, started in 1931, the managing agents are non-changeable, non-removable and they are also permanent secretaries, treasurers and agents. In the case of another mill, the New National Mills, also started in 1931, the managing agents are not liable to be removed: their appointment cannot be cancelled on any other ground except their voluntary resignation in writing. These agreements are typical of the situation—I will not say universally, but very frequently—in Ahmedabad, the quarter from which the largest volume of complaints against the managing agency system has been received.

In Bombay, while many of the agreements appear to be more elastic in form, in almost all cases the managing agency cannot be terminated unless a majority of three-fourths of the shareholders require it. For practical purposes, this is a very effective safeguard against the involuntary removal of managing agents. Similar terms of agreement have also been found in the jute and in the coal and also in the tea industry.

I think I ought to inform Honourable Members that apart from the rights of management secured by these agreements, other rights are also given to managing agents which enable them to obtain benefits in other ways. Again, turning to Ahmedabad, the agreement in the case of one of the mills provides that if there is winding up of the company—and I ask Honourable Members to note this, that this winding up of the company may be due to the inefficiency or even to the negligence of the managing agents,—the clause provides that if there is winding up of the company, the managing agents become entitled to recover, in priority over all claims, ten times the average annual commission accrued due during five previous years, or, if the company was not in existence for so long a time, a sum equal to ten times the commission earned during the previous year: that is to say, that although the company may go into liquidation owing to their own inefficiency, the managing agents get at once, in priority to others, ten times the commission earned during the last year. Honourable Members will realise that in such cases the managing agents become entitled to the remuneration even if the company has come to grief by bad management.

The managing agency agreements in force in Bombay, Calcutta and elsewhere allow managing agents to become buying and selling agents, to transact other business, and to charge commission on every such business. Before the second Textile Tariff Board enquiry, the Bombay Shareholders' Association gave evidence giving particulars of 27 mills in Bombay, where, under their agreements, the managing agents are allowed to act as brokers and to be paid additional commission for such

work. I have so far given Honourable Members some description of two methods which enable the managing agents to acquire dominance. Time does not permit anything but a passing reference to this matter which is one of great importance.

The third method to which I refer is the control secured by reason of the position of the managing agents as the principal creditor of the company. The company depends on the finances supplied by the managing agents and often the managing agents are the largest debenture holders, having charges on the assets and undertakings of the company.

Though I cannot deal with the matter exhaustively, I must point out another consequence flowing from the dominant position of the managing agents, namely, Boards of Directors are very frequently the nominees of the managing agents. Again, the auditors appointed are, in theory appointed by the shareholders, but, in fact, in many cases, they are the nominees of the managing agents.

Generally speaking, again,—I do not want to indulge in a proposition which is universally true—the bulk of opinion in Bombay is that the managing agency is an institution which has outlived its utility and that the Legislature should now step in and put an end to all managing agents as at present. The other point of view which is held largely in other parts of India is that the existence of the managing agency system is necessary for a healthy growth of the system of corporations in this country, at least until such time as finances can otherwise be available, and that, at the highest, the Legislature should prescribe limitations and see that the managing agents are not able to get, as share of remuneration, exorbitant sums which bear no proportion to the profits and that they may not oust the shareholders from the management of corporations of which they are in a sense the proprietors.

This House also has got to remember this in favour of the managing agents, that it is well-known here, in India, that banks are unwilling to advance monies to companies on their signatures only. Unless repayment of the loan is guaranteed and backed by the personal security of the managing agent, "it is no use proposing an alternative system unless the whole organisation of commercial and banking credit is changed". This was the evidence which was given by a person who was not a managing agent.

Sir, in trying to replace the managing agent by the Managing Director in India, it has to be remembered that in England the Managing Director is a paid servant of the company and he looks after its working, but in India the managing agents are not only to work the company, but also to make advances to the companies and they make themselves responsible for financial transactions.

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The possibility of abuse which is apparent from theoretical considerations does not throw much light on the question, whatever may be the powers in theory, how these powers have been actually exercised.

It is impossible to give a general answer. In many cases, the powers have been beneficently used for organising and maintaining a high level of industrial efficiency. In the matter of financing companies, the managing agents often render invaluable assistance, the interest generally charged being one and two per cent. above banking rate. Sir, in the Indian Tariff Board's Report on cotton industry, the case of a firm

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where the managing agents received only Rs. 9,000 for four years as commission is mentioned, but they had to undertake financing to the extent of one crore of rupees, lending the money at six per cent., when the evidence was that it could not be had in the market for less than eight per cent.

Leaving such exceptional cases, it may be said that very often the managing agents have given invaluable help in the earlier stages and even in the later stages, when the companies have been successful. In periods of depression or financial stringency, they have often prevented the collapse of companies during all times.

I shall now read, Sir, one or two passages from Mr. Lokanathan's Book from page 224—the head line being "The Service of the Managing Agents in Times of Depression":

"In another direction, too, they have fulfilled a very essential and highly important function which in the existing commercial and financial mechanism of the country could not be performed by any one else. The Managing Agents have been the bulwark preventing the industrial concerns from collapsing in times of industrial depression. This aspect of the matter has not been sufficiently recognised in assessing the value of the financial services rendered to industry by managing agents, and while it is possible to exaggerate it, it is equally necessary to know its significance in the industrial development of India. When the tea industry of India passed through difficult times in 1920-21, and again in 1927-28, it was the financial strength of the managing agents which saved them from collapse and liquidation. The continual losses of the industry dissuaded the banks from renewing the advances, and had the industry had no other agency to fall back on, many of the concerns would almost certainly have had to close down.

The same thing happened in jute and coal mining industry and in cotton industry. In the years when the Bombay cotton industry was in a critical condition, many more mills would have gone into liquidation than those that actually closed down but for the capacity of the agents to bear the losses themselves and their willingness or ability to finance at those times."

Sir, as I said, it is impossible to deal with the matter of managing agents in greater detail, and, as I have already said, much valuable material can be found in this book. Now, Sir, both as regards the benefit and the defects of the managing agency system, various other matters of importance arise, but I regret, Sir, I cannot prolong the speech which, I am sure, is likely to tire many of my friends here.

A very great difficulty in change of law is created by the existing managing agents, namely, what has got to be done with them. The propositions governing managing agency in the future are comparatively easy.

As regards many of the existing managing agents, they have advanced large amounts, and the public have subscribed on the reputation of the managing agents. These managing agents have rights under agreements which have not expired.

After a very thorough examination of the contentions urged for and against the system, Mr. Sen came to the conclusion that the system has certainly not outlived its utility, and that it is impossible to do away with it altogether.

Personally, I believe, there will be consternation in Bengal if the managing agency system is abolished altogether. Mr. Sen suggested provisions for the fullest disclosure of what the managing agents would draw, leaving it to the shareholders to judge whether they would have the managing agents on such terms or not.

As to the existing agents, he suggested they should be given a fixed span of life after which their agencies would come to an end. I have, while with hesitation accepting the principle of the scheme, suggested modifications of the provisions in the light of the discussions in the Advisory Committee, and would like to tell the House that, although we started with very extreme views as the conclusions of the Advisory Committee will show, in the end, the difference between the extreme view of the shareholders and that of the managing agents was not considerable. In the Bill, Honourable Members will find the recommendations of the Government are:

(1) As for new managing agents, they will be limited, as regards duration to 20 years at a time. This is one of the matters in which I have not accepted the conclusions of the Advisory Committee. They suggested 25 years or 20 years followed by a special resolution. I have not followed that advice. I have made it 20 years, and I think the bulk of the opinions rather support 20 years than 25 years. The matter, however, requires full consideration and discussion.

(2) As regards old managing agents, notwithstanding anything to the contrary contained in the articles of a company or in any agreement with the company, a managing agent of a company, appointed before the commencement of the Indian Companies (Amendment) Act, 1936, shall cease to hold office on the expiry of twenty years from the commencement of the said Act.

(3) The Managing Agents, who shall be found guilty of fraud or breach of trust in a Court of law, shall be liable to removal by the shareholders at a general meeting.

(4) A transfer of his office by a managing agent shall be void unless approved by an extraordinary resolution of the company.

(5) Any provision for additional remuneration in the case of new managing agents, except a fixed percentage of the net profits, with a provision for maximum payment in the absence of profit, would be invalid unless sanctioned by the shareholders.

(6) That no loans can be granted to managing agents out of surplus funds of the company except with the consent of the three-fourths of the Directors, and full particulars of such loan should be given in the balance-sheet.

(7) Loans are not to be given to companies under the same managing agents.

As Honourable Members will remember, a good deal of evidence was led before the Tariff Board with regard to the managing agency system, and the same managing agents in charge of two companies lending money from the resources of one company to another and bringing about a collapse of both the companies. For instance, the managing agents in charge of two companies A and B, might lend some money from solvent company A to company B which is not solvent. This is objectionable, and it is suggested that loans are not to be given to companies under the same management.

I frankly admit that to some sections of the public the provisions may appear to be inadequate, while I am equally certain that the adherents of the other school will complain that these measures are too drastic. I hope

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and trust, however, that the provision suggested will, on a calm and dispassionate consideration, be found to be just and fair and enough to prevent the mischiefs now mainly complained of.

Before passing on to the other matters in the Bill, I would like to say a few words on the question of the provisions with regard to shares. The Bill provides for the issue of redeemable preference shares and ordinary shares at a discount. Special provisions have been made with regard to the transfer of shares and for compelling the management to notify the transferee of their decision within a fixed period of time in relation to an application for transfer of shares. I may state to the House that as regards private companies it has been provided among other matters, that the provisions for keeping proper books of account should also be extended to these companies, and that the provision for circulation of balance-sheets should also be extended to private companies.

I now come to the question of mortgages and charges, and I shall be very brief. Hitherto, with the exception of a charge on book debts, the goodwill and the stock-in-trade, no other charges on movables were compulsorily registrable. We have now extended the principle of registration to all kinds of charges and mortgages, except pledges, on any movable property of the company except stock-in-trade. We have, following the English Act, also provided for registration of charge or mortgage to which any property which, subject to any charge or mortgage already effected by the previous owners, is purchased by the Company.

In the matter of winding up of companies, Honourable Members will find very substantial changes have been made which I will shortly indicate. In compulsory winding up of companies, complications often arise because of the delay in appointing liquidators. We have provided that in future the Official Receiver will automatically become the Official Liquidator until another Official Liquidator is appointed, thus doing away with an interrugnum.

We have also provided that reports should be made by the Liquidators periodically as to the progress of the winding up and also for audit of accounts of the Liquidators.

We have also, in order to do away with the delay on the part of those who are in charge of the companies, in making over the assets and books to the Liquidator, made it compulsory for the Directors and managers to submit, within a fixed period of time, a statement giving full details of the assets and other relevant facts for the purpose of enabling the Liquidator to have all the information possible.

In order that the creditors may, if they so desire, be associated with the proceedings in winding up, provisions have been made for the appointment of a Committee of Inspection.

As regards the right of disclaimer of onerous properties and such other details, I would rather not tire the House at this stage by going into them. Honourable Members reading the Bill will find them there, and, I am sure, all these matters may have got to be thrashed out in the Select Committee.

A special provision on the lines of a similar provision in the English Act of 1929 has been made for winding up by the Indian Courts of such of those companies as have ceased to carry on business in British India, I mean, foreign companies which have ceased to carry on business here. Substantial changes have been made as to the provisions applicable to

companies which are incorporated outside British India, but which carry on business in British India. Thus, in the Bill, Honourable Members will find that provisions have been made for the filing of documents and balance-sheets, which at the present moment they have not got to do,—for the filing of documents and balance-sheets which will enable fairly detailed information about a company and its finances being made available to those in India who come into business relations with those foreign companies. The provisions for registration of charges on properties in British India, by such companies, have been extended to them. In the matter of balance-sheets, these foreign companies are placed exactly on the same level as companies incorporated in British India, while restrictions have been put on the sale of shares without the previous publication of a prospectus in India.

While invaluable assistance has been received from the Act of 1929, Honourable Members will realise and find that it has not been deemed expedient to follow the English Act in all its details.

I now come to the special chapter on Banking. Honourable Members are fully aware that the Central Banking Enquiry Committee, in their report, made certain recommendations about the banking companies in India. The Government of India at first intended to have a special banking legislation separately, but, having regard to the fact that the big banks have already been provided for in the Reserve Bank of India Act, the Government came to the conclusion that for the present it would be just as well to make provisions for the banking companies in this amended Act. Accordingly, provisions have been made in the Act on the lines of the recommendations of the Central Banking Enquiry Committee, and I will shortly indicate what those provisions are.

Our intention in the Bill has been to place the banking companies on a separate basis, and for that purpose, we have made a provision that banking companies must confine their activities to banking and banking alone. The difficulty, of course, has been to define in a satisfactory manner banking activities.

All previous Committees avoided defining banking companies, and discussion in the Committee made the difficulty of a definition only too clear. We have given a definition in the Bill, and I hope that it will not be said that we have rushed in where other people feared to tread.

This definition I do not claim to be one of perfection. But we have had the valuable assistance of Sir William Lamond and also the other members of the Advisory Committee interested in this definition, and it has taken us a considerable time, and we have done the best that we could do. I am sure, this matter will be fully discussed in the Select Committee.

The Bill, as Honourable Members will find, provides for the issue of a certificate of commencement of business in the case of banking companies only after a working capital of Rs. 50,000 at least has been got together. It provides for the keeping of a reserve fund out of the profits before they are distributed, until the amount of such fund totals the paid up capital, and also provides for the keeping of a sufficient amount of cash reserve. The Court is given power to come to the aid of these companies in their hours of distress by giving them power to stay all proceedings against these companies, provided a report is made by the Registrar

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on proper enquiries, recommending the taking of such steps. I believe it will be agreed that some provisions of this nature are required to secure confidence in banking in India and to protect the depositors.

Honourable Members are probably aware that a very large number of cases have been brought to light showing how security deposits of servants and employees of companies have been misapplied. The Bill provides for security deposits being kept intact and untouched, in the Imperial Bank of India.

I have to apologise to the House for being unable even to mention many of the provisions of the Bill. I feel, Sir, that the pressure, under which the work has been done since August, 1934, will probably be responsible for the discovery of many defects and deficiencies, when the Bill is further scrutinised by the Select Committee and by this House. I am sure that prolonged deliberations will be required in the Select Committee, but, as a result thereof, I hope the Bill, when it comes back before this House, will be considered far more satisfactory than the Act of 1913 which at present holds the field.

Lastly, I would like to state that this Bill will be forthwith circulated, so that opinions and suggestions in respect of the Bill may be available to the Select Committee when they meet. I trust that all sections of the House will render assistance in connection with the Bill which is one of first class importance and which requires careful attention to balance the conflicting considerations in respect of many of its provisions. Before resuming my seat, I once more repeat that the provisions which are contained in the Bill do not represent, as I have said, any unchangeable views, and we are prepared on this side to discuss the matter from a completely different angle of view. (Applause.)

I wish to ask you, Sir, to change one of the names in the Select Committee members. I request that the name of Pandit Govind Ballabh Pant be substituted for that of Mr. Paliwal.

Mr. Akhil Chandra Datta (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): May I make a suggestion for the consideration of the Honourable Member in charge of the Bill? I find that only one Member has been taken from the Party to which I have the honour to belong, the Congress Nationalist Party. In view of the numbers taken from other Parties, may I suggest that one more Member be taken from my Party? I propose the name of Mr. N. C. Chunder.

The Honourable Sir Nripendra Sircar: I do not agree with the contention that the number that he has got is proportionately less than those of other Parties.

The difficulty is not that I have any serious objection to one more gentleman coming in, though particularly about Mr. N. C. Chunder, I am not sure how often he will be able to be present. If a similar claim is put forward on behalf of other Parties, there is a danger of the Committee becoming unwieldy. That will mean prolongation of business. I would ask Mr. Datta to reconsider the matter and not to press for it.

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

"That the Bill further to amend the Indian Companies Act, 1913, for certain purposes, be referred to a Select Committee, consisting of Mr. Bhulabhai J. Desai, Mr. S. Satyamurti, Mr. Anugrah Narayan Sinha, Pandit Govind Ballabh Pant, Mr. Sami Venkatachelam Chetty, Sir Cowasji Jehangir, Mr. Abdul Matin Chaudhury, Mr. Akhil Chandra Datta, Sir Leslie Hudson, Mr. Mathuradas Vissanji, Babu Baijnath Bajoria, the Honourable Sir Muhammad Zafrullah Khan, Diwan Bahadur R. V. Krishna Ayyar, Sir H. P. Mody, Mr. L. C. Buss and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

Mr. Bhulabhai J. Desai (Bombay Northern Division: Non-Muhammadan Rural): Mr. President, I am not aware of any convention requiring me not to speak on the motion before the House now, inasmuch as I find my name included among those recommended for the Select Committee, but in anything that I say I wish to make it quite clear that it is not my desire to commit myself irrevocably on any of the issues which will come up before the Committee, and I think it is right, unless I am bound by any convention to the contrary, that on a matter of this importance, on a Bill in which all sides of the House are interested for the progress of the industrial development of this country, all of us should pool our respective experiences and knowledge in order to make it as efficient as possible. And it is only in that spirit that I have agreed to serve on the Committee and I make the few observations that I propose to make.

There are three or four points on which I think it is necessary that the attention of the House should be directed on this particular occasion. I will, first and foremost, take up the question of the much abused institution of managing agencies of the joint stock companies existing in this country. Without intending to travel over the ground that the Leader of the House has done, I am free to say, that so far as India is concerned,—at all events, the bulk of the country is concerned,—the managing agency institution has served the country fairly well, and it must not be judged by instances where undoubtedly they have been more or less sponging institutions. There are safeguards which I wish to indicate so as to avoid this result, while maintaining, wherever the shareholders so desire, the continuation and maintenance of the managing agency system. The promotion of business in this country, naturally, has held out to those, who commenced it, an inducement both in their own interests and otherwise first to prospect business and second, to find, at all events, a minimum capital, and, thirdly, what is more important, finding money for working capital; with the knowledge of banking that one possesses in this land, no company is able to raise any monies unless it is backed by the guarantee of the members of the managing agency, and, even in that behalf, it is becoming more and more difficult, because, many of the managing agencies, being themselves private limited companies, and, of late years, I have found a difficulty that many private limited companies, acting as the agents of what I might call the manufacturing or the producing companies, have found themselves in great difficulties in the matter of backing their credit. For instance, it is easy to form a company, and, notwithstanding the name of the Honourable the Baronet from Bombay, the credit of the company that he may form for the purpose of the managing agency is entirely different to the credit that is personal to himself, for the managing agency company, more often than not, has a very

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small and limited nominal capital. The result is that the only guarantee given by private limited company, which is the agency company, does not carry the same force by way of guarantee as has hitherto been done by managing agents, being private firms, and, therefore, all their resources are at the back of the guarantee and are liable for its enforcement and fulfilment. I am, therefore, in agreement with the fact that the utter condemnation or cessation of the managing agency system would be a set back to Indian industries. At the same time, there are two features of that to which I wish to call attention. The first to which I wish to call attention is a matter that has been somewhat common in the formation of companies in earlier days where the appointment of the managing agency system is to be found as one of the clauses in the memorandum of association, a subject-matter that has led to a considerable amount of litigation and difficulty. It has been argued on the one hand that that clause is unchangeable in that it is only particular clauses and provisions which, under the existing Act, section 12, are alterable at all, and it has been strenuously argued in many Courts of which I have knowledge—and it is to be found in the law reports—that managing agents appointed by a provision in the memorandum of association are both irremovable and also argued, to their disadvantage, that the terms of remuneration are also equally unalterable, and I hope and trust that some place will be found to incorporate some of the decisions on this basis that, inasmuch as the provisions for managing agencies which existed in the memorandum are not *per se* necessary, for that purpose they should be treated as they exist as if they were only matters provided for in the articles, so as to enable the shareholders of the company to alter them from time to time. It is a matter that requires particular attention, for the reason that it has been a matter that has worked both ways,—remunerative to those who were appointed agents and at the same time there being the impossibility of remunerating them as the business of the company expands.

The next question to which I wish to call attention is the one that concerns the basis of remuneration of managing agents. It would be profitable if the general opinion tended to provide that the basis of remuneration shall be a percentage on the net profits of the company together with such further allowances for office management as may be required or considered to be adequate, but in no case should the remuneration of the managing agents be based on what was called the outturn. Most of the earlier agency companies have these provisions; whether the company prospered or it did not, it was on the manufactured products of the company and its value that the agency commission has frequently been so based that, while the company possibly was losing, the managing agents were constantly drawing large sums of money. It is, therefore, essential to bear in mind that in future the fortunes of managing agents should be coupled with the fortunes of the companies, and the best way and the easiest way to do that is to provide that, so far as their remuneration is concerned, excepting the question of office maintenance, it should be based on no other basis than the net profits earned by the company. This is a matter that requires very serious attention, because in most of the companies, this provision exists, and, if it were necessary, after a period, for which adequate allowance can be made, even where it exists today, some way must be found out in order that the

future basis of remuneration shall only be the net profits of the company. As regards its duration, so many questions have arisen from time to time that it is necessary to make a provision having regard to the circumstances in which the world finds itself today. Since the year 1910, by the unfortunate results of many companies otherwise believed to be sound and by the flotation of many unsound companies, the credit, so far as the industrial world and the formation of companies have been concerned, has been rudely shocked. It is somewhat of an unfortunate coincidence that it is during that period that we have it from the failure of the Specie Bank right down to Strauss & Co., Ltd., which was an English company operating in India, and those who have any experience of the business world in Bombay realise that the change of law in order to make the interests of the shareholders safe, without unduly fettering the working of the business by managing agents, is a necessary desideratum and it should be achieved as soon as it can be achieved. As regards the duration, Sir, questions have been raised in Courts of law where numerous cases were raised, and the last of them, and which is perhaps known to the Honourable the Leader of the House, was the case of Morarjee Goculdas and Co., and managing agents of the Sholapur Mills, one of the most successful textile concerns in the whole of India if not at all events in Western India. The provision there made was that Morarjee Goculdas and Co., or any other member for the time being of the said company, should be the managing agents of the said company. The difficulty of perpetuation in this matter is undoubtedly one which must be avoided, for it may easily happen that in a short period of time nothing but the label remains. People and the shareholders do not realise that Morarjee Goculdas and Co., which, to their mind, concretely represent either the founder or his partner or perhaps a nominee of his during his lifetime, but, in due course of time, it is purely the label that remains and the entire substratum of that firm disappears.

Now, that should undoubtedly be avoided, and the construction placed by one of the learned Judges of the Bombay High Court was reasonable enough following an early decision of the Bombay High Court that Morarjee Goculdas and Co. or any other company for that matter should be construed to mean nothing more than this that all the partners of the company have power in case of retirement, death, etc., to appoint nominees to fill up their places but as soon as the last survivor of partnership is gone, that company should not be able to perpetuate itself as claiming the right to continue to be managing agents of the company. This has been sought to be made in the proposed Bill by a twenty-year period of duration. Whether that is advisable or whether any alternative form which I suggest is advisable is a matter that should I think be considered, for indeed many of the managing agents claim and might reasonably claim that so far as those men who were responsible for the promotion of the company and on whose credit shares were subscribed and by whose efforts the company became successful, so long as these or any of them remain, it should not be a matter of duration by a number of years as duration by the life of the survivor of those who made the company possible at all. I suggest that because this is a question that is likely to arise and that this objection would exist. Next, Sir, as regards the provision concerning managing agents that now exist, I ask that attention should be called to another very important matter. It is suggested that whatever the existing

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period by way of agreement may be, you should provide for a period of some twenty years at the end of which the shareholders should be free to appoint managing agents, because it should be remembered that though perpetuation may not be possible in the sense of the once for all managing agents, having got appointed themselves, continuing as they do now, perpetuation by the vote of the dominant majority will always be possible. I do not suggest that this is a matter which should necessarily be avoided but it is a matter that will be considered that by reason of the many forms which are very familiar holding a dominant voice, not indeed alone through either being shareholders or through being creditors or indirectly but through one or two other ways which have been described, is possible, but that certainly is much more healthy, in that, if the matter comes before the company at the end of over twenty years, then they should have an undetermined period of a lease of life, for indeed, when it goes out, even though it may be a minority, it is always easy to a minority, or where affairs are so managed as for it to be worth while, notwithstanding what I may call it being a minority that cannot be affected, continuing to hold, if the agents continue, on terms which they feel are not advisable or to their interests. It is in that way that the future of the managing agents lies, but not in its extinction or abolition, but to provide for the duration of the lives of those who have been managing agents, and terminate in that way or by a period of time.

There is also another provision which can be rendered practically impossible,—the operation of the nomination exercised by the managing agents in the holding of shares, for in most cases they probably will hold a little more than half the total number of shares. If we provide for the appointment of managing agents, so far as majorities are concerned it should not be an ordinary majority; I think it is a precaution which will probably serve the purpose but one thing must be done, that it should not be part of the memorandum of association so that if that company feels it should always be a subject-matter which can be provided for in the statute as being a part of the articles of association so that the votes of the members shall be effective, and when the event arises when the matter is to be determined as regards the duration and the terms of remuneration and other matters relating to the managing agency.

There is one matter that I wish to refer as regards Directors. Indeed I find myself in entire agreement with the institution of Directorship as a necessity, particularly where managing agents have such wide and extensive powers. I also wish to say here that to the extent to which it is possible, every effort should be made not to pack the Board of Directors by more or less those who are nominees of the managing agents. That has worked to the detriment as and when companies with apparently high credit come to be wound up, it works to the disadvantage both of the lending public as well as the shareholders. There are two clauses with reference to Directors to which I wish to make some reference. First is what is called the indemnity clause. While I do not approve for the moment the entire elimination of that clause, I am

not in favour of the clause which now exists. In England, illustrated by the Equitable Insurance Case run by Mr. Beevan, and, in India, by numerous cases of companies which I do not wish to name because some of their Directors might still be affected, the fact has been borne in upon us that that indemnity clause practically makes Directors irresponsible for the consequences of their own personal neglect. I know of a company in Bombay, it was a steamship company which was floated with a capital of ten crores, out of which seventy-five lakhs were paid at the end of six months being wound up. It went into liquidation and the liquidator got five lakhs of rupees in cash and yet, Sir, after months and months of legal difficulties and battles, we found that practically every Director escaped the consequences which they justly deserved for mismanagement and neglect by reason of what was called the indemnity clause. It was at that very moment when the judgment of Mr. Justice Romer since confirmed in England by the Court of Appeal came to the aid of the Directors. I, therefore, say that so far as indemnity clause is concerned, in the terms in which it now exists should be eliminated. Some provision should be made for *bona fide* errors of judgment on the part of the Directors in proper cases. I know that there is a provision which is by way of qualification to the misfeasance section of the existing Companies Act where Courts of law dealing with misfeasance matter are in a position to exonerate the Directors from liability provided they acted with reasonable *bona fide*. But I presume that that may not go far enough. Either a place must be found in that section by way of a proviso or if this clause is to be omitted altogether from the articles of every company, some provision should be made either by that proviso or with an enabling article when the limitation which I have suggested should be brought in. For I feel that the indemnity clause hitherto is such that no shareholder public ever understood the effect of it. It has had the effect of Directors coming and saying "during the proceedings something was brought before us by the management and we passed it. We were entitled to rely—as it was mentioned in the House of Lords in *re*: Dovay *versus* Cordey—on the integrity and skill and knowledge of our executive and we are not responsible for any loss or damage". I submit that such a thing must be rendered impossible so far as legislation can render it impossible. Otherwise directorship has no meaning except for making sitting fees, in one day probably they dispose of 20 companies and thus earn fat fees. A matter of that kind must certainly be rendered impossible.

There is one more matter relating to the borrowing powers which I wish to refer to. It is now suggested that the lending to Directors or lending to companies in which the same Directors or managing agents are also Directors and managing agents should be rendered at least as difficult as possible, if not impossible. My experience in the winding up of many companies in Bombay, Ahmedabad and outside showed me that companies which had something like 50 lakhs reserve—I am thinking at least three of them—when they went into liquidation, the borrowers being the managing agents or one or the other of the directors were unable to put in a single pie, so that on paper their shares so far as the public were concerned were three or four times their nominal value, but when it came to actual winding up, it had no value at all. There are two ways in which this question could be tackled. First there

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must be restraint on the borrowing powers of directors and the borrowing should be purely and *bona fide* required for the purpose of the company. For indeed, it has happened in the past to my knowledge that people have treated companies as so many banks and companies have received deposits far far beyond their requirements and having got enormous deposits, they found it very difficult to reinvest them. The object at the back of the mind was that money in the hands of the company, there is greater facility for the Board of Directors or the Managing Agents to use them for purposes *bona fide* or otherwise. This is the case with regard to a company which I know of and which is under liquidation and as the matter is *sub-judice*, I do not wish to mention its name. The fact remains that there must be some restraint on the borrowing powers of the directors, restraint not so much as to affect the lender, for I am aware of the doctrine of what is called "indoor management" which does not affect the lender at all, but at the same time a salutary check of this kind would render a director liable for loss caused to the company by borrowing more than is required and lending it on securities like those which I have already suggested. I, therefore, suggest that there are three matters in this connection which it is necessary to remember, firstly the limitation of borrowing powers—this is very essential and very important, secondly lending by one company to another which is not merely under the same managing agents, but substantially the same managing agency or substantially the same board of directors, because it is not merely the managing agents who try to prop up one of their failing companies by the credit of one of their stronger companies, of which indiscretions were found in the Bombay High Court between 1910—1914 and those lessons will never be forgotten and indeed must be utilised for the purpose. Therefore, I suggest that whereas on the one hand the lending public may not be concerned and in fact are not concerned with the indoor management of the company, it is therefore in the restriction on the indoor management of the company itself and the consequent liability of the directors and managing agents as borrowers that we can see the real need. For undoubtedly it is true that so far as the doctrine of indoor management is concerned, it is essential and necessary to maintain the restriction without which dealings by outsiders with companies will be difficult if not impossible.

One thing more I should like to say with reference to the accounts of companies. As to that the law cannot be too careful and cannot be too scrupulous in the enforcement of the keeping of accounts and the obligation of the auditors to the companies. For I have often found that you get a certificate in terms of the section, a certificate which leads even a lawyer to guess as to what was the truth behind that certificate. I have read many certificates and I have given opinions on many certificates. In fact many an auditor has asked me for an opinion as to which is the form of certificate that would protect him knowing as he did the internal affairs of the company of which he did not approve. I am therefore here to tell you, Sir, and the House that so far as the keeping of accounts and so far as the watchfulness by the auditor is concerned, the auditor should have in one form or other an independent obligation to the shareholders and the auditor should not feel as if he is a nominee or an employee, either of the managing agents or of the board of directors. In some of the cases, perhaps the company becomes concrete to

the auditors only in the shape of either the board of directors or in the personnel of the managing agents—an idea which if you cannot make a concrete thing in one way, you must make a concrete thing in the other way. I know, as a matter of law, auditors are independently liable and in fact in the Equitable Insurance Company case, the accountants and auditors were sued along with the directors outside. But in many of these cases it is not sufficiently clearly perceived that they owe a duty to the shareholders. In fact, they ought to be the watch-dogs on behalf of shareholders as against,—if that expression is pardonable—the managing agents and the board of directors.

Mr. M. S. Aney (Berar Representative): Who appoints them?

Mr. Bhulabhai J. Desai: The shareholders generally appoint them. Anyway, I have hitherto seen that sufficient care is not taken by the shareholders though recently I think they are more awake and more alert than before. But I can think of a period of some 30 years of professional life in which more often than not the office of the auditors was more a matter in the gift of the board of directors or the managing agents and they never bothered about . . . .

Sir Cowasji Jahangir (Bombay City: Non-Muhammadan Urban): That is when the managing agents have a majority of the shares, isn't it?

Mr. Bhulabhai J. Desai: It is not always voted upon quite so seriously or earnestly. At all events, if it is done I am glad to hear it. But I know a great many instances to the contrary. In one company that I remember, a cement company, it was found during the course of liquidation that they had no books by which to find out how much had been paid by way of allotment of shares or by way of the first and second calls. There is one other matter in this connection which it is necessary to remember, and that is this, that except the commission which must be fixed in the Act, no shares should be issued at a discount at all. For, in two of the most important companies that came up for liquidation, a large amount of the money went into the pockets of either the managing agents or the promoters either in their own names or in the names of their nominees, and the actual capital was found to be very much shorter than under the law ought to have been found to exist. And I think the healthy principle enunciated in the earlier Acts and maintained in this one that no shares may be issued at a discount should be maintained. You may add a proviso to this effect as to what commission or brokerage or by way of underwriting or otherwise may be allowed. But the maximum of that I think it will be a healthy thing to provide for in the Act itself rather than leave it to the exigencies, because the weaker the company the greater the commission and the less equivalent of share money that comes into the till. It is, therefore, necessary that so far as these three things are concerned we ought to be careful in the interest of the business, in the interest of encouraging the shy capital once more acquiring and investing courage, because today the cause of the failure of companies is the misfeasance of managing agents who escape the consequences of their misfeasance, and by the causes which have been described the progress and the growth of companies formed for the purpose of smaller industries has now almost come to a standstill. I am confining my attention to these important points of view for this reason that those are the principal matters in which you cannot be too careful.

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As regards mushroom companies there is only one particular point of view that I have come across which I wish to state. In addition to the provision suggested with reference to, at all events, the prevention as far as possible or continuation of mushroom companies, there is one provision about winding up to which I wish to call attention. In what is called the just and equitable clause by way of powers given to the Courts for the purpose of winding up the companies the English decisions go a long way towards maintaining the mushroom companies. The English decisions show that even though the company shows continuous years of loss it is no legitimate ground under the just and equitable clause for the purpose of winding up. And the decisions have shown that you have got to show that what is called the substratum of the company has gone before you are in a position to get the intervention of the Court. I ask, Sir, that with a view to prevent the further frittering away of companies of doubtful value either in integrity or in character, some larger discretion should be provided for under the just and equitable clause than the one which now exists. A company might continue to show losses over a period of years but so long as the substratum of the company is not gone they should continue. So that there are judges who have held that out of a subscribed and paid-up capital (say) of a crore, so long as 20 lakhs are still available they should be allowed to function. And I have found by actual experience that it will be much better to save the remaining 20 lakhs than allow the company to wind up, so that at all events you may arrest the continuous growing losses of the company. For indeed the majority of shareholders are found to say, "I have already lost 75 or 80. Let me see whether these managing agents are not going to be wiser and again produce 100 for the 20". It is that sort of forlorn hope, what is called the losing speculators' mind, with which many of these companies continue to exist. It is, therefore, necessary that some provision should be made towards the end of the section dealing with what is called the just and equitable clause with reference to the powers of the Court in the winding up of companies which are continually losing in the business of their undertaking.

These are some of the points that must require the attention of the Select Committee when it meets, and I have only indicated them in the hope and in the belief that our minds must go back to our past experience and that as it is not uncommon in some parts of the House to quote poetry I may wind up by saying that:

"Men may rise
From the stepping stones of their dead selves
To higher things."

Mr. B. Das (Orissa Division: Non-Muhammadan): Sir, I speak as a common man of the street. I do not speak with a mandate from the great Party to which I belong, nor do I speak as a representative of the industrial community whose views I occasionally voice here. Sir, Bengal has continuously given us three Law Members, and the predecessor of my Honourable friend brought forward an important measure and placed it on the Statute-book to which, no doubt, the legal community is very much indebted. I refer to Sir Brojendra Mitter and the Partnership Act. The present Law Member has also applied his mind to certain important Statutes and he narrated how he brought Mr. Sen and consulted the Indian mercantile community in the matter of amendment

of the Companies Act. He said that in the past the Government of India had tinkered with the Companies Act. I do hope he will not apply the tinkering process to the other two important Bills, namely, the Insurance Act and the Railways Act. I know Mr. Sen has submitted a report on the Insurance Act, and probably next Session, it will come before the House. Spokesmen of the Government of India had also said, on the floor of the House, that the Indian Railways Act should not be tinkered with, but should also be amended fully.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member should confine his attention to this Bill.

Mr. B. Das: When my Leader spoke, he touched only on a few points. It pleased me very much and it also pleased my friend Prof. Ranga, that he spoke with his eye on the millions of investors that are always exploited by this gang of exploiters who have imported their tactics from America, gangsters of professional company promoters who promote companies and liquidate them to suit their ends. From the speech of the Honourable the Law Member, I understood that Government had appreciated how certain Indian gangsters and so-called professional company promoters followed customs of trade of other parts of the world and exploited unwary investors in big cities like Calcutta and Bombay. That has been stopped, not so much due to any effort on the part of the Government, but due to the fact that people are not forthcoming to invest their money, and so these professional company promoters cannot swindle the public by promoting companies. The Law Member has envisaged that in future, when companies come into existence, a minimum capital must be subscribed before the companies will be allowed to commence their business. That is a very good change, and I welcome it.

1 P.M.

As regards the obligations of Directors, the Leader of my Party displayed his great legal talent, particularly acquainted as he is with the day to day life of Bombay and its Directors who so often try to evade law and waste public money and occasionally make public money their own. I do think that Mr. Sen's enquiry has brought out one thing; it has cleared a very big Augean table. At least the Select Committee will envisage both the credit and debit side, both the good and bad points. When I heard the splendid speech of the Honourable the Law Member, I felt that in matters of law he was speaking like a Congressman and his speech was better delivered from this side of the House. I hope that the same attitude will prevail in other measures and that such ill-feeling as we have often found during this Session will not be generated.

I also welcome the restriction on the share of profits of the managing agents, and I welcome the suggestion which my Leader made that a managing agent should not take more shares under the new Companies Act than is necessary, and that his source of income may not be transmitted to his descendants after 20 years.

The Honourable the Law Member pointed out that too much restriction about the obligations of Directors or managing agents may keep away honest men from becoming company Directors or managing agents. That is a point which the Select Committee ought to take into consideration. But honest men and good men have no chance of belonging to the gang of professional company promoters and Directors.

Mr. Akhil Chandra Datta: That is true.

Mr. B. Das: They do not know the trick of American gangsters, and they cannot escape from the hard-headed clutches of the professional managing agents and company promoters. I find that, after Mr. Sen submitted his report, the Government of India appointed a Committee. The Law Member told us that it was a mere advisory committee in which the representatives of the Federation of Indian Chambers of Commerce, of the Associated Chambers of Commerce and also of the Imperial Bank met and gave advice. Sir, I would like to ask a question of the Government of India. Why do they not apply the same principle when they introduce other important measures in this House? A few days ago, we were discussing the Ottawa Agreement; they did not consult the representatives of the Indian Chambers. . . .

Mr. President (The Honourable Sir Abdur Rahim): The House has nothing to do with that now.

Mr. B. Das: Sir, I would ask Government to apply the same wholesome principle of consulting representatives of public and mercantile opinion whenever they bring in any measure which will do good to the largest number of people. That is a wholesome principle which Government should adopt not only in one case when they are not afraid of this side, but they should adopt it in all cases.

I do hope that when the Select Committee meets, its members will not be guided by the claptrap views of the Socialist School of thought which do not want any managing agents in this country. At the same time, they should not be guided by agitation, if at all, any agitation comes from the diehard school of managing agents. I belong to the commercial school of thought, and I do not belong to the extreme diehard school of managing agents who want to have their own ways always as the Law Member pointed out, but the point is that the Act should incorporate part of what exists already, though certain amendments are necessary to completely safeguard the interests of investors. As long as that is done and honest investment in India is encouraged, India has a glorious future for industrial recovery. It is because there was no good Companies Act that all the follies that happened after the Great War occurred, and for that the exploiters—the managing agents and company promoters—are as much responsible as Government for their supine policy.

With these few observations, I support the reference of the Bill to the Select Committee.

Prof. N. G. Ranga: Mr. President, if there is anything needed to condemn outright the capitalist claptrap with which my Honourable friend, Mr. Das, has been so much in love for a very long time, this Bill is enough. This Bill is really an eloquent condemnation of the capitalist system under which and according to which the industries of India are supposed to be progressing in this country. There are six objects to satisfy which this Bill is supposed to have been introduced in this House. They are mentioned with a statement that there is a unanimity of opinion in regard to these six great and grave defects of the capitalist system in

this country. It is necessary, we are told, to deal with mushroom and fraudulent companies, and we are asked to sing eloquent praise of the capitalist system. Next, we are asked to provide for changes in the provisions relating to the issue and contents of prospectuses. Prospectuses of companies are being issued in such a vague fashion as to deceive the prospective shareholders as well as the country at large, not to speak of the Government itself; and that is the system we are asked to prop up by this Bill. Then, again, this Bill seeks to provide for increased disclosure to shareholders of the financial position of the companies and for increased rights of shareholders in the management of the companies. We not only hand over the workers to these capitalist companies, to be exploited, we not only hand over the Government itself to be exploited in every possible way, either in the way of bounties or in the way of protective duties or in any of these directions, but also the shareholders, who are supposed to be the chief beneficiaries of the capitalist system, to those who are in charge of these capitalist concerns. And, after all these years of capitalist development in this country, even after the British Government has come, and after nearly one hundred years of development, we are now asked to come forward and make some provisions in order to protect these shareholders whose money has been placed in these capitalist concerns, on whose money for ever and ever large sums have been distributed as profits, and for modification of the present law applicable to the managing agents. Those, who are in charge of these capitalist concerns, are supposed to be the most efficient people, are supposed to be the best judges of what is good for themselves and also for their shareholders: yet we are now asked to see that these people do not misbehave themselves, to see that these people do not continue to deceive their own clientele, do not deceive their own shareholders and to see that these people are, at least, prevented from utilising all their vicious powers that they have been enjoying for a very long time without any let or hindrance. Then, again, we are asked to provide for special provisions to govern banking companies and numerous other improvements.

These few admissions alone are enough to condemn this system of industrial development by joint stock companies. Why should we have these joint stock companies at all? If we admit that there should be joint stock companies, then there will be the need for the promulgation of this particular law. If we do not admit the necessity for the existence of these companies at all, then this law becomes thoroughly valueless. Do we have the capitalist system? We have. Do we want it? Government says yes: many friends say yes. And, those of us, who deny the necessity for its existence, are simply dismissed as those who are in favour of socialist claptrap, as has been put here by my friend, Mr. B. Das himself.

But I wish to maintain, that even this Government is not so completely wedded to the capitalist system, especially private ownership. The Government is without doubt one of the biggest socialist concerns in this world. This Government has under its control the management and supervision of the railways and the posts and telegraphs and the broadcasting now, and also municipalities: and nobody has come forward to say against this Government that this sort of Bill should be passed: no one has come forward to say that Government is suffering from the same difficulties. The capitalist system is considered to be suffering from so many grave defects according to their own admission, according to the report of their Special

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Officer. Mr. Sen. We have had on several occasions to criticise the mismanagement that we find in the railways as well as the posts and telegraphs. Quite true: but at least we have got the right, as representatives of the people of this country, to examine, either in this House or at the bar of the Finance Committee or the Public Accounts Committee, the manner in which this Government is carrying on its own business concerns. But what chance have we got to examine how these capitalist concerns are carrying on their business, how these capitalist concerns are trying to safeguard the interests of their own clientele, their shareholders, and how much exploitation they have been carrying on not only of their shareholders but also of the general public? Absolutely none. Why then should we be asked to help them and pass this Bill and give a further lease of power and existence to these capitalist concerns? I do not know why Government is so much in love with them. Evidently, this Government being the agent of another Government, which itself is an agent of the capitalist system in England, is anxious to prop up this particular system and help this system to double the industrialisation of this country at the expense of the consumers, at the expense of the workers and peasants, at a huge annual cost, in terms of protective duties as well as excise duties and bounties and barriers.

This country is having the satisfaction of being one of the eight industrially great countries of the world. I say India must be the fourth, or third, or second, if not the first industrially great country. I want this country to be the first industrially great country, the greatest country from an industrial point of view: but I do not want the industrial development of this country to be carried on under the ægis of the capitalist system, under the ægis of these joint stock companies; and, it is for that reason that I am completely opposed to this Bill, and I am completely opposed to this kind of legislation.

Then, Sir, I make a few suggestions. There are certain stipulations made here for a minimum capital for every company that is to be floated in this country. When you are stipulating for a minimum capital for every company, why not also stipulate for a maximum rate of profit? Why not also stipulate for a minimum wage to be paid to the workers there? Why not also stipulate, if there should be any such capitalist system at all ,for a partnership in those companies for the workers? I do not know why it is that Government does not wish to make any of these proposals.

Sir, at one time there were railways which were given a guarantee of minimum interest: even today there are central land mortgage banks being floated all over India to which Government are guaran'eeing a minimum rate of interest and dividend for the shareholders. This was done and is being done because at that time as well as at present, Government have felt that unless they gave that guarantee the capital would not be forthcoming to develop the railway system in this country or the co-operative land mortgage system.

Similarly we are told by my Honourable friend, the Leader of my Party, that the managing agency system should not be abolished completely, because without it the capitalist development of this country could not be carried on. I admit that some sort of stimulus has got to be given to this shy capitalists in this country in order to induce them to come-

forward and carry out these joint stock companies and develop this industrialisation, if industrialisation there must be and it must be carried on, only under the capitalist ægis. But even according to the capitalist system, why should not this Government itself come forward and offer to do the work that these managing agents are supposed to have been doing, that is, to come forward. . . . .

Mr. President (The Honourable Sir Abdur Rahim): These may be excellent suggestions, but they have nothing to do with the provisions of the Bill.

Prof. N. G. Ranga: I want the whole Bill to be redrafted and amended so that this particular suggestion may be incorporated in it.

Mr. President (The Honourable Sir Abdur Rahim): When the Bill comes from Select Committee, the Honourable Member can do it.

Prof. N. G. Ranga: After it is committed to Select Committee, they can consider only this Bill and nothing beyond it.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member is entitled to oppose this Bill.

Prof. N. G. Ranga: That is why I am opposing the Bill as such. I maintain that it is necessary that Government should take the necessary steps and see that this managing agency system is completely abolished and whatever necessary and beneficial functions today that this system might discharge the Government itself should come forward and undertake to discharge those functions, so that there will always be capital enough to finance. . . . . .

Sir Cowasji Jehangir: Buy up the capital and take it.

Prof. N. G. Ranga: I will answer your question in a minute. . . . .

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member need not answer his questions at all.

Prof. N. G. Ranga: I want the Government to come forward and stand surety for a minimum dividend, as they have done in the case of railways in the past and as they are doing today in the case of the central land mortgage banks in this country, and thus encourage these shareholders and small people who have got small amounts of money to come forward and place their money at the disposal of these companies which are interested in the development of the industrial system and thus help this country to escape from the evils of this managing agency system. At the same time, I do not want this Government to waste all its resources by standing surety for these companies indefinitely. I want the Government also to stipulate, as they have done in the case of the railways, that, after a particular period, it must be open to the State to take over the management of these companies. . . . .

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member is speaking outside the scope of this Bill, and the Chair cannot allow him to do so.

Prof. N. G. Ranga: I am opposing the Bill, Sir.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member can oppose the Bill totally, but he cannot speak outside the scope of the Bill.

Prof. N. G. Ranga: I am opposing the Bill totally, Sir, and that is why I am stating this point.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member is proposing an alternative Bill which is not before the House.

Prof. N. G. Ranga: Then, Sir, I want that the Government should fix a maximum period for working these companies, after which it should be open to the Government to purchase those companies for which they stand surety. Government should also have the right to stipulate, whenever it finds it necessary, to insist on the necessity of either a combination of some of these companies or on rationalisation or a trustification, so that the inefficiency which exists now can be minimised. And inefficiency there always has been,—in fact the existence of this inefficiency this Government itself has admitted, and, I want the Government to retain powers in their hands to reduce this inefficiency.

I also want, Sir, that the shareholders' rights should be restricted. There should be a maximum fixed for the dividends they can draw from any of these companies. The Government has stipulated a certain maximum, that is 6 per cent. of dividend to be drawn by the shareholders of various central land mortgage banks, and I do not see any reason why the Government should not similarly come forward with a proposal that there should be a certain maximum dividend that the shareholders could draw from companies, and the remaining profits should go either into the coffers of the State or to the workers themselves who are interested in all these industries or companies.

Sir, I am not one of those, who like my friend, Mr. B. Das, grow eloquent about the claims of these shareholders. I am not very enthusiastic about these shareholders at all. Even with the present capitalistic system, our shareholders have been too ignorant, they have been too voracious and too very selfish. It is all very well for our capitalists to come forward and say that they are very enthusiastic about the development of industries in this country. What have these capitalists done to promote and advance the cause of industries in this country? They, for their own part, have done nothing to foster the industries of this country. Either Government have encouraged them at the expense of the taxpayer or because they were assured of 100 or 150 per cent. profits almost from the very beginning, and that is why, they have come forward to put small sums of money in various companies, and thus we have some sort of

capitalistic system. At the same time, how much capitalistic exploitation have we in this country? Very little. When comparing the phenomenal progress marked by post-war Russia, or post-regulated Russia, the industrial progress that we have been able to make in this country is practically insignificant.

An Honourable Member: They are socialistic only in one direction.

Prof. N. G. Ranga: Our own capitalists have not been patriotic, our own capitalists have not been progressive, our own capitalists have not been enthusiasts of industrialisation; our capitalists have put their money only in some small industries merely because they were assured of very high profits. Our capitalists have always been very shy; they have not grit or courage in them, nor have they any foresight; as was stated only the other day by the Finance Member himself with a large element of truth that the European capital, western capital have had to give a lead to Indian capital in various directions; and even then our Indian capital waited and waited for so many years until some others had shown them how to make profits. Then only our capitalists came forward and put a little bit of their money. That sort of capital should have no claim on our support. . . . .

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member knows that we have to adjourn at half past one.

Prof. N. G. Ranga: Sir, I have some more points to speak on.

Mr. President (The Honourable Sir Abdur Rahim): The Chair takes it the Honourable Member will finish before the House adjourns.

Prof. N. G. Ranga: It is for that reason, Sir, that I am not prepared to grow eloquent about the capitalists or shareholders. . . . .

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member must confine himself to the general principles of the Bill, and not indulge in all sorts of talk.

Prof. N. G. Ranga: I want, Sir, this Government to come forward with a proposal to incorporate in the Act, as far as it is possible for them to do so, even in the present capitalistic system, co-operative principles. . . .

Mr. President (The Honourable Sir Abdur Rahim): The Chair cannot allow the Honourable Member to go on at this rate and indulge in talks outside the scope of this Bill.

Prof. N. G. Ranga: Then, I shall conclude, Sir. In conclusion, I want to oppose this Bill *intoto*. At the same time, I submit I shall reserve my right to propose amendments when the Bill comes back from the Select Committee. I do hope that the Select Committee, at least, will bear in mind the general remarks I have made and try to amend this Bill as radically as possible so that it may, at least, go some way to meet the demands I am making, not on behalf of myself, but on behalf of the vast millions of this country who have been bled white in the interests of the present capitalistic system and in the interests of the capitalist world.

Mr. M. Ananthasayanam Ayyangar (Madras ceded Districts and Chittoor: Non-Muhammadan Rural): Sir, I want to speak on this motion.

Mr. President (The Honourable Sir Abdur Rahim): It is half past one now. The question is that the Bill. . . . . .

Mr. M. Ananthasayanam Ayyangar: Sir, I want to speak on this Bill. Do you say I should not speak?

Mr. President (The Honourable Sir Abdur Rahim): The House stands adjourned till 11 o'clock tomorrow morning.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 16th April, 1936.