

THE

10th December 1938

LEGISLATIVE ASSEMBLY DEBATES

(Official Report)

Volume VIII, 1938

(5th December to 12th December, 1958)

EIGHTH SESSION

OF THE

FIFTH LEGISLATIVE ASSEMBLY,

1938



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9-10

Legislative Assembly.

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

Deputy President :

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SIR H. P. MODY, K.B.E., M.L.A.

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Assistants of the Secretary :

MR. M. N. KAUL, BAR-AT-LAW.

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.*

MR. A. AIKMAN, C.I.E., M.L.A.

MR. M. S. ANEY, M.L.A.

SYED GHULAM BHIK NAIRANG, M.L.A.

MR. N. M. JOSHI, M.L.A.

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LEGISLATIVE ASSEMBLY.

Saturday, 10th December, 1938.

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.

STATEMENTS LAID ON THE TABLE.

Information promised in reply to starred question No. 607, asked by Mr. Manu Subedar on the 3rd March, 1938.

INCONVENIENCE AND HARDSHIP CAUSED TO INDIAN PASSENGERS GOING TO CEYLON.

- (a) Yes. The Ceylon Government carry out quarantine operations on Indian soil.
- (b) and (d). Government have no reason to believe that this is so.
- (c) Government examine any cases that are brought to their notice.

Information promised in reply to parts (b) to (e) of unstarred question No. 73, asked by Mr. B. B. Varma on the 10th November, 1938.

CONTRIBUTION TOWARDS CRIME AND ORDER BY THE SHAHDARA-SAHARANPUR LIGHT RAILWAY.

(b) In addition to the two chowkidars at each station, who are on general duty within station limits, the Travelling Ticket Examiner and the train chowkidar are on duty during the stoppage.

(c) Engines and guards of these trains are utilised, when required, to run goods trains from Shamli and Baraut: other engines subsequently working the passenger trains through to destination.

(d) No. The Hours of Employment Regulations do not apply to the staff on the Shabdara-Saharanpur Railway.

(e) Does not arise.

Information promised in reply to starred question No. 1282, asked by Mr. Brojendra Narayan Chaudhuri on the 16th November, 1938.

ENROLMENT OF SPECIAL CONSTABLES DURING FLOODS ON THE EASTERN BENGAL RAILWAY.

(a) and (c). Government are advised that at a meeting attended by certain District and Railway Officials it was recorded that it was considered necessary to approach the District Magistrate immediately to sanction the appointment of some selected villagers as special Police to assist the available regular Police in protecting the railway embankment. Government have no information whether several persons from the villagers mentioned were, in fact, so enlisted.

(b) Yes. The local Railway officers have several times brought to the notice of the local civil and police authorities the action of the villagers in cutting the railway embankments, so that necessary precautions could be taken for the safety of trains. On the 19th August, 1938, the General Manager, Eastern Bengal Railway, brought the matter to the notice also of the Bengal Government. It was at the instance of the civil authorities that additional bridges have been provided at five or six places on the railway line subsequent to its opening.

(d) and (e). No.

Information promised in reply to starred question No. 1713, asked by Babu Kailash Behari Lal on the 2nd December, 1938.

PROPOSAL TO EXTEND CERTAIN LINES ON THE BENGAL AND NORTH WESTERN AND EASTERN BENGAL RAILWAYS.

(a) Yes.

(b) and (c). No.

THE COMMERCIAL DOCUMENTS EVIDENCE BILL.

APPOINTMENT OF MR. J. N. TALUKDAR AND MR. P. A. MENON TO THE SELECT COMMITTEE.

The Honourable Mr. R. M. Maxwell (Home Member): Sir, I beg to move:

"That Mr. J. N. Talukdar and Mr. P. A. Menon be appointed to the Select Committee on the Bill, to amend the Law of Evidence with respect to certain commercial documents in place of Mr. E. Conran-Smith and Mr. N. A. Faruqui who have ceased to be Members of the Assembly."

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

"That Mr. J. N. Talukdar and Mr. P. A. Menon be appointed to the Select Committee on the Bill, to amend the Law of Evidence with respect to certain commercial documents in place of Mr. E. Conran-Smith and Mr. N. A. Faruqui who have ceased to be Members of the Assembly."

The motion was adopted.

THE INDIAN OATHS (AMENDMENT) BILL.

APPOINTMENT OF MR. J. N. TALUKDAR, MR. P. A. MENON AND DR. F. X. DESOUSA TO THE SELECT COMMITTEE.

The Honourable Mr. R. M. Maxwell (Home Member): Sir, I beg to move:

"That Mr. J. N. Talukdar, Mr. P. A. Menon and Dr. F. X. DeSouza be appointed to the Select Committee on the Bill further to amend the Indian Oaths Act, 1873, for a certain purpose, in place of Mr. E. Conran-Smith, Mr. N. A. Faruqui and Mr. G. D. Walker who have ceased to be Members of the Assembly."

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

"That Mr. J. N. Talukdar, Mr. P. A. Menon and Dr. F. X. DeSouza be appointed to the Select Committee on the Bill further to amend the Indian Oaths Act, 1873, for a certain purpose, in place of Mr. E. Conran-Smith, Mr. N. A. Faruqui and Mr. G. D. Walker who have ceased to be Members of the Assembly."

The motion was adopted.

THE MUSLIM DISSOLUTION OF MARRIAGE BILL.

APPOINTMENT OF MR. J. N. TALUKDAR TO THE SELECT COMMITTEE.

Qazi Muhammad Ahmad Kazmi (Meerut Division: Muhammadan Rural): Sir, I beg to move:

"That Mr. J. N. Talukdar be appointed to the Select Committee on the Bill to consolidate the provisions of Muslim Law relating to suits by married Muslim women for dissolution of marriage and to remove doubts as to the effect of apostasy of a married Muslim woman on her marriage tie, in place of Mr. N. A. Faruqui who has ceased to be a Member of the Assembly."

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

"That Mr. J. N. Talukdar be appointed to the Select Committee on the Bill to consolidate the provisions of Muslim Law relating to suits by married Muslim women for dissolution of marriage and to remove doubts as to the effect of apostasy of a married Muslim woman on her marriage tie, in place of Mr. N. A. Faruqi who has ceased to be a Member of the Assembly."

The motion was adopted.

EXTENSION OF THE TIME FOR THE PRESENTATION OF THE REPORT OF THE SELECT COMMITTEE.

Qazi Muhammad Ahmad Kazmi (Meerut Division: Muhammadan Rural): Sir, I beg to move:

"That the time appointed for the presentation of the Report of the Select Committee on the Bill to consolidate the provisions of Muslim Law relating to suits by married Muslim women for dissolution of marriage and to remove doubts as to the effect of apostasy of a married Muslim woman on her marriage tie, be extended up to the 3rd February, 1939."

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

"That the time appointed for the presentation of the Report of the Select Committee on the Bill to consolidate the provisions of Muslim Law relating to suits by married Muslim women for dissolution of marriage and to remove doubts as to the effect of apostasy of a married Muslim woman on her marriage tie, be extended up to the 3rd February, 1939."

The motion was adopted.

THE INDIAN INCOME-TAX (AMENDMENT) BILL—*contd.*

The Honourable Sir Nripendra Sircar (Leader of the House): Sir, I regret to state that my Honourable colleague, Sir James Grigg, is indisposed today and is, therefore, unable to attend the House. Of course, we shall carry on the business as best as we may in his absence. But we very much deplore his absence from the House.

Mr. Bhulabhai J. Desai (Bombay Northern Division: Non-Muhammadan Rural): Sir, I really regret that in the last stages of this Bill on which we strenuously laboured together, he should have been kept away from the House. I hope that though we miss his presence very much, his Honourable colleagues will be able to get through the relatively less contentious portion of the Bill without much difficulty.

Mr. President (The Honourable Sir Abdur Rahim): The House will now resume consideration of the Bill further to amend the Indian Income-tax Act, 1922, as reported by the Select Committee. The question before the House is:

"That in amendment* No. 1 to sub-section (3) of section 58-O, of the proposed Chapter IX-B, the following proviso be added:

'Provided that no approval shall be withdrawn unless the trustee or trustees have had an opportunity of being heard and the order of withdrawal of approval is communicated at least 30 days before the date on which it is to take effect.'

*Moved by Mr. Chambers on the 9th December, *vide* pp. 4246-48, and as subsequently amended by Mr. Chettiar, *vide* p. 4251 of these debates.

Mr. S. P. Chambers (Government of India: Nominated Official): Sir, yesterday, just before the House was moving to other business, I rose to oppose this amendment. I appreciate the intention of the Honourable the Mover and I think, perhaps, he might not have appreciated the difficulties which we would be in if the amendment is passed in this form. With a superannuation fund of this kind, it is necessary to be quite sure that the fund is not abused or that the rules for the exemption are not abused and if we had any provision whereby there is an interval between the time of the last stage in which approval was granted and the date of approving again, then it would be possible during that period for things to be done which were not contemplated when the fund was originally approved. If I can draw the Honourable Member's attention to the original amendment No. 1 in the Revised Final List, page 1—58-P, he will see that:

"the approval may be granted if the fund shall have, for its sole purpose, the provision of annuities for employees in the trade or undertaking and is provided that the Central Board of Revenue may, if it thinks fit and subject to such conditions as it thinks proper to attach to the approval, approve a fund or any part of a fund notwithstanding that the rules of the fund provide for the return in certain contingencies of contributions paid to the fund."

If there was an interval in the circumstances contemplated in the further amendment, then the contributions might be returned during that interval. The whole object of these restrictions might be defeated during that very short period. It is also to be remembered that the approval of the fund or the right to withhold approval is not vested in any local officer and there is no question of approval being granted or refused capriciously and most certainly the Central Board of Revenue would either, in considering the approval or considering the withdrawing of approval, give to the fund or the trustees of the fund, every possible opportunity of being heard and it would be necessary that the date of withdrawing the approval should take place as on the date of the alteration of the rules and not in 30 or more days. I hope that this explanation will satisfy my Honourable friend and that he will see his way to withdraw the amendment.

Mr. K. Santhanam (Tanjore *cum* Trichinopoly: Non-Muhammadan Rural): Sir, I would suggest that my Honourable friend may accept only the first portion of the amendment and the latter portion might be deleted. My Honourable friend said that Government will always give an opportunity; if so, why should he fight shy of having a statutory obligation to do that. Our whole point is that this concerned a large number of people and that Government should take no action without the trustees being consulted so that they might know where the faults lay and whether they could rectify them. Without giving them such an opportunity of being heard, no action should be taken. The latter half may be dropped and Government may accept the first half. I do not think there can be any possible objection to that. If his objection is merely to the provision about 30 days, I shall gladly advise my friend, Mr. Ayyangar, to drop the latter half.

Mr. S. P. Chambers: Sir, I think there seems to be no difference in principle between what the Honourable the Mover wishes and what the intention of Government is. It is perhaps a little inconvenient at this stage to agree to an alteration of an amendment of this kind. But perhaps if I give an assurance that the matter will be investigated and a statutory right given to the trustees of the fund or persons who will be trustees to be

heard before approval is withdrawn or withheld, the Honourable Member might withdraw the amendment.

Mr. T. S. Avinashilingam Chettiar (Salem and Coimbatore *cum* North Arcot: Non-Muhammadan Rural): Does the Honourable Member mean that he will bring forward an amendment in the other House and thus make statutory provision?

Mr. S. P. Chambers: Yes, but with no condition of time limit; there shall be no gap between the dates of formal approval and of withdrawal of approval. That is the chief thing.

Mr. M. Ananthasayanam Ayyangar (Madras Ceded Districts and Chittoor: Non-Muhammadan Rural): If that assurance means the insertion of a statutory provision, I have no objection to withdraw it, and I beg leave of the House to withdraw the amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. T. S. Avinashilingam Chettiar: Sir, I beg to move:

"That in amendment* No. 1, after sub-section (3) of section 58-O of the proposed Chapter IX-B, the following new sub-section be inserted:

"(4) Any employer objecting to the orders of the Central Board of Revenue refusing to grant approval of a superannuation fund may appeal within sixty days of such order to the Central Government.

The appeal shall be in the form and shall be verified in the manner prescribed in this behalf by the Central Government."

It is an elementary principle that whenever an order of this kind of withdrawal of approval to a fund is passed, an appeal should be allowed for that fund. In the clause which they want to incorporate in the Act, no such appeal has been provided for. I find that in a corresponding clause with regard to provident funds such provision has been made, *i.e.*, an appeal has been provided for. I refer to sub-section (5) of section 58B, which says:

"An employer objecting to an order of the Commissioner"—

—the Commissioner being the one to approve or remove approval to the fund—

"refusing to recognise a provident fund may appeal, within sixty days of such order, to the Central Board of Revenue.

The appeal shall be in the form and shall be verified in the manner prescribed by the Central Board of Revenue."

I have incorporated that provision into this clause, so that, in a case in which approval for a superannuation fund has been refused, the employer concerned may appeal against it to the Central Government. Sir, I think it is a just provision which should be accepted by the House. Sir, I move.

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

"That in amendment* No. 1, after sub-section (3) of section 58-O of the proposed Chapter IX-B, the following new sub-section be inserted:

"(4) Any employer objecting to the orders of the Central Board of Revenue refusing to grant approval of a superannuation fund may appeal within sixty days of such order to the Central Government.

The appeal shall be in the form and shall be verified in the manner prescribed in this behalf by the Central Government."

* *Vide* footnotes on p. 4257 *ante*.

Mr. S. P. Chambers: Sir, in opposing this amendment I should like to draw the Honourable Member's attention to the distinction between section 58B and the proposed rules for superannuation funds. In section 58B it is the Commissioner of Income-tax whereas with the superannuation fund it is the Central Board of Revenue. Members of the Central Board of Revenue are, as I think is generally known, Joint Secretaries to the Central Government and any appeal against failure to approve by the Central Board of Revenue to the Central Government will mean an appeal from the members of the Central Board of Revenue *qua* members of the Central Board of Revenue to the same persons as Joint Secretaries to the Government of India. And in such circumstances an appeal has very little significance. The matter would, in the first instance, be thoroughly investigated by the Central Board of Revenue and I hardly think that in a relatively small matter of this kind where there are very detailed rules provided by Statute saying in what circumstances approval should be given or should not be given, we want to ask the same person to reconsider the matter again. I may add that in the United Kingdom the position is almost exactly the same. The Board of Inland Revenue have power to approve or disapprove and there is no second appeal in a case of that kind, and to the best of my knowledge that has worked quite well and the detailed instructions which the Board of Inland Revenue have followed there have been sufficient to make it quite clear which sort of fund should be approved and which sort of fund should not be approved. In practice this type of thing is discussed in advance before approval is granted or refused. It is not done after the fund has actually been constituted. The matter has been discussed informally beforehand so that the trustees have an opportunity of drawing up the rules so as to conform to the rules. Having done as much as that it is not really necessary to have a right of appeal afterwards. Sir, I oppose the amendment.

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

"That in amendment* No. 1, after sub-section (3) of section 58-O of the proposed Chapter IX-B, the following new sub-section be inserted:

'(4) Any employer objecting to the orders of the Central Board of Revenue refusing to grant approval of a superannuation fund may appeal within sixty days of such order to the Central Government.

The appeal shall be in the form and shall be verified in the manner prescribed in this behalf by the Central Government'."

The motion was negatived.

Mr. K. Santhanam: Sir, I beg to move:

"That in amendment* No. 1, in clause (b) of section 58P, of the proposed Chapter IX-B, in sub-section (b), after the word 'at', in the second line, the words 'or after' be inserted."

As the clause stands, it can apply only to the case where retirement is to be on a specified date. I want the provision to be more elastic and say, "after a certain date". Sir, I move.

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

"That in amendment* No. 1, in clause (b) of section 58P, of the proposed Chapter IX-B, in sub-section (b), after the word 'at', in the second line, the words 'or after' be inserted."

* Vide footnotes on p. 4257 ante.

[Mr. President.]

(c) the employer in the trade or undertaking shall be a contributor to the fund:

Provided that the Central Board of Revenue may, if it thinks fit and subject to such conditions, if any, as it thinks proper to attach to the approval, approve a fund or any part of a fund—

- (i) notwithstanding that the rules of the fund provide for the return in certain contingencies of contributions paid to the fund, or
- (ii) if the main purpose of the fund is the provision of such annuities as aforesaid, notwithstanding that such provision is not its sole purpose, or
- (iii) notwithstanding that the trade or undertaking in connection with which the fund is established is carried on only partly in British India.

58-Q. (1) An application for approval of a superannuation fund or part of a superannuation fund for any year of assessment shall be

Application for approval. made in writing before the end of that year by the trustees of the fund to the Income-tax Officer, and shall be accompanied by a copy of the instrument under which the fund is established and by two copies of the rules and of the accounts of the fund for the last year for which such accounts have been made up. The Central Board of Revenue may require such further information to be supplied as it thinks proper.

(2) If any alteration in the rules, constitution, objects or conditions of the fund is made at any time after the date of the application for approval, the trustees of the fund shall forthwith communicate such alteration to the Income-tax Officer, and in default of such communication any approval given shall, unless the Central Board of Revenue otherwise orders, be deemed to have been withdrawn from the date on which the alteration took effect.

58-R. Income derived from investments or deposits of an approved superannuation fund shall be exempt from payment of income-tax,

Exemption of superannuation fund from income-tax.

and any sum paid by an employer or an employee by way of contribution towards an approved superannuation fund shall, in the case of an employer, be deducted in computing his income, profits or gains for the purpose of assessment, and, in the case of an employee, be treated for all the purposes of this Act as if it were a sum to which the provisions of section 15 apply:

Provided that no such exemption shall be allowable to an employee in respect of any sum which is not an ordinary annual contribution:

Provided further that where a contribution by an employer is not an ordinary annual contribution it shall, for the purposes of this section, be treated, as the Central Board of Revenue may direct, either as an expense incurred in the year in which the sum is paid, or as an expense to be spread over such period of years as the Central Board of Revenue thinks proper.

58-S. (1) Where any contributions (including interest on contributions, if any) are repaid to an employee, the amount so repaid shall be

Treatment of repaid contributions

deemed for the purposes of income-tax and super-tax to be income of the employee for that year.

(2) Where any contributions (including interest on contributions, if any) are repaid to an employee during his lifetime but not at or in connection with the termination of his employment, income-tax on the amount so repaid or paid shall except in the case of an employee whose employment was carried on abroad, be deducted by the trustees of the fund at the average rate of tax at which the employee was liable to income-tax and super-tax during the preceding three years or during such period, if less than three years, as he was a member of the fund, and shall be paid by the trustees to the credit of the Central Government within the prescribed time and in such manner as the Central Board of Revenue may direct.

58-T. Where an employer deducts from the emoluments paid to an employee or pays on his behalf any contributions of that employee

Deductions from pay of, and contributions on behalf of, employee to be included in return under section 21.

to an approved superannuation fund, he shall include all such deductions or payments in the return which he is required to furnish under section 21.

58-U. If a fund or a part of a fund for any reason ceases to be an approved superannuation fund, the trustees of the fund shall nevertheless remain liable to account for tax on any sum paid—

- Liabilities of trustees on cessation of approval of fund.
- (a) on account of returned contributions (including interest on contributions, if any) and
- (b) in commutation or in lieu of annuities,
- in so far as the sum so paid is in respect of contributions made before the fund or part of the fund ceased to be an approved fund under the provisions of this Chapter.

58-V. The trustees of an approved superannuation fund and any employer who contributes to an approved superannuation fund shall, when required by notice from the Income-tax Officer, within twenty-one days of the date of such notice:

- Particulars to be furnished in respect of superannuation funds.
- (a) furnish to the Income-tax Officer a return containing such particulars of contributions made to the fund as the notice may require;
- (b) prepare and deliver to the Income-tax Officer a return containing—
- (i) the name and place of residence of every person in receipt of an annuity from the fund,
- (ii) the amount of the annuity payable to each annuitant,
- (iii) particulars of every contribution (including interest on contributions, if any) returned to the employer or to employees; and
- (iv) particulars of sums paid in commutation or in lieu of annuities;
- (c) furnish to the Income-tax Officer a copy of the accounts of the fund to the last date prior to such notice to which such accounts have been made up, together with such other information and particulars as the Central Board of Revenue may reasonably require.’’

The motion was adopted.

New clause 71-A was added to the Bill.

Clauses 72 and 73 were added to the Bill.

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

“That clause 74 stand part of the Bill.”

Mr. H. S. Town (Nominated Non-official): Sir, I move:

“That in clause 74 of the Bill, in sub-section (2) of the proposed section, after the words ‘In this section’ the following new clause be inserted, and the subsequent clauses be re-lettered accordingly:

- (i) a person regularly employed by the assessee shall include any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings’.

Most people keep all their securities with their bankers and there has grown up in England a system whereby banks look after the income-tax returns of their customers. This has been found of very great assistance to the small income-tax payer who gets a very cheap and very efficient service from his banker; and we would like to see a similar service extended to this country and this can only be done by the inclusion of this clause. Sir, I move.

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

“That in clause 74 of the Bill, in sub-section (2) of the proposed section, after the words ‘In this section’ the following new clause be inserted, and the subsequent clauses be re-lettered accordingly:

- (i) a person regularly employed by the assessee shall include any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings’.

Mr. J. F. Sheehy (Government of India: Nominated Official): Sir, Government have no objection to this amendment.

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

"That in clause 74 of the Bill, in sub-section (2) of the proposed section, after the words 'In this section' the following new clause be inserted, and the subsequent clauses be re-lettered accordingly:

(i) a person regularly employed by the assessee shall include any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings."

The motion was adopted.

Mr. K. Santhanam: Sir, I move:

"That in clause 74 of the Bill, in clause (ii) of sub-section (2) of the proposed section 61, after the words 'Auditors Certificate Rules, 1932' the words 'or a holder of a restricted certificate under the Restricted Certificate Rules, 1932' be inserted."

Sir, there are two sets of rules and these people with restricted certificates are actually doing a large part of income-tax work and, therefore, it is absolutely necessary that we should have this amendment. I hope the House will accept it.

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

"That in clause 74 of the Bill, in clause (ii) of sub-section (2) of the proposed section 61, after the words 'Auditors Certificate Rules, 1932' the words 'or a holder of a restricted certificate under the Restricted Certificate Rules, 1932' be inserted."

Mr. J. F. Sheehy: Sir, Government do not oppose this amendment.

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

"That in clause 74 of the Bill, in clause (ii) of sub-section (2) of the proposed section 61, after the words 'Auditors Certificate Rules, 1932' the words 'or a holder of a restricted certificate under the Restricted Certificate Rules, 1932' be inserted."

The motion was adopted.

Mr. Lalchand Navalrai (Sind: Non-Muhammadan Rural): Sir, I have got three connected amendments. If you permit me, I will move all the three and speak once.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member will have to move them one after another.

Mr. Lalchand Navalrai: Yes, Sir, I move:

"That in clause 74 of the Bill, part (iii) of sub-section (2) of the proposed section 61 be omitted."

Mr. President (The Honourable Sir Abdur Rahim): If the House carries this, the rest will be of no use?

Mr. Lalchand Navalrai: Yes, Sir.

Mr. President (The Honourable Sir Abdur Rahim): Then, the Chair cannot allow the others to be moved now.

Mr. Lalchand Navalrai: Very well, Sir. I am asking that the representation that should be given to the assessee should be by persons well versed in law as well as in income-tax law and procedure. The present section as it stands which it is sought to amend, allows wholesale authority to the assessee to appoint by writing any person to represent him. It has been recognised by this Bill that all persons without any restriction should not be allowed. The history of this Bill to those who were in this House, in 1932 and 1933 must be known: at that time, in the days of Sir George Schuster, when amendments to the Act of 1922 were being made, it was demanded that this section 61 which gives a free cheque for any person to run into the income-tax officer's office and represent an assessee should be curtailed. Opinions were called for at that time and many persons were of the opinion that at least that class of persons who were then by custom appearing should be done away with. However, the Finance Member then wanted to investigate that question and call for further opinions and come to some understanding. Now, the Bill is being amended and I am glad to see that there is a good amendment in it; but I would like that that clause which I have mentioned in my amendment should be deleted. My reasons are these. By this clause you are allowing a lawyer, an accountant who is registered and also an income-tax practitioner. I say that income-tax practitioner as defined here should go—the definition given is:

“‘Income-tax practitioner’ means any person who before the 1st day of April, 1938, attended before an Income-tax authority on behalf of any assessee otherwise than in the capacity of an employee or relative of that assessee.”

That means that the class of representation which was objected to is still being allowed, but is restricted in future only: that is, those who were appearing before 1st April, 1938, will be allowed to appear; but, henceforth, they would not be allowed. My humble submission is this: by allowing this, all those who were working before the 1st April, 1938, will remain even though they may have worked for only one or two days before the 1st April, 1938. This, I submit, Sir, is very hard.

Some Honourable Members: Hard on whom? Lawyers?

Mr. Lalchand Navalrai: No, not on the lawyers, but on the public, because these people are exploiting the public,—the assessees, and I shall presently tell you how they are exploiting the assessees. Only allow me to develop my case, and you will be convinced.

Sir, people are always accustomed to demand their vested rights. The English people especially the foreigners who are here always say: ‘Oh, we must have our vested rights safeguarded’. Perhaps on that ground these people who have been hitherto in the line claim their vested rights and like to continue to exploit the assessees. Now, what is this class of people composed of. Most of them are dismissed from the Income-tax Department. They have adopted the grandeloquent names of ‘Income-tax Experts’, though they don't deserve to be known as such, and some of them are practically riff-rafs and want to earn a little by playing upon the credulities of the poor assessees. . . .

Mr. N. M. Joshi (Nominated Non-Official): Who are the riff-rafs?

Mr. Lalchand Navalrai: Those undesirable people whom perhaps the Honourable Member knows well.

Mr. President (The Honourable Sir Abdur Rahim): It is a very strong expression to use.

Mr. Lalchand Navalrai: I shall call them dangerous.

Mr. President (The Honourable Sir Abdur Rahim): Riff-raff is not a proper word to use; the Honourable Member had better withdraw it.

Mr. Lalchand Navalrai: I will then substitute another word; I shall withdraw it.

Mr. N. O. Chunder (Calcutta: Non-Muhammadan Urban): On a point of order, Sir. Is the Honourable Member relevant, because his amendment is:

"That in clause 74 of the Bill, part (iii) of sub-section (2) of the proposed section 61 be omitted."

That means the definition should be omitted. He is not asking that the words "or Income-tax practitioner" in sub-section (1) be omitted.

Mr. President (The Honourable Sir Abdur Rahim): He has got other amendments.

Mr. Lalchand Navalrai: A legal practitioner will be recognised as in clauses 1 and 2 and will remain there. I only say that clause 3 should be removed. I shall now content myself by reading just one sentence from the summary of opinions received. At page 68 there is the opinion of the Registered Accountants, the South Indian Chambers of Commerce, Madras, the Karachi Indian Merchants Association, and the Buyers and Shippers' Association, and also the Bar Association of Sagar, and what they say is this: "We consider that unqualified men who are practising on the 31st March, 1938, should not be protected, because they are dangerous to the assesseees as an unqualified newcomer". Therefore, that is the opinion of the public also, and so why should the clause be retained. Secondly, when you are amending the Bill and when there has been a demand from the public since a long time that this class of practitioner should not be allowed any more, why not to do away with the class. I don't say that some amongst this class are not really good men,—I find there is a gentleman called Mr. Ghatak who has written a book on Income-tax law. . . .

Dr. P. N. Banerjee (Calcutta Suburbs: Non-Muhammadan Urban): He is a lawyer and an M.A., M.L.

Mr. Lalchand Navalrai: I am glad to learn that. First of all, I submit there is no necessity of giving power to appear on behalf of assesseees to so many unqualified people when there are qualified and competent people who can be relied upon to give proper advice and guidance to the assesseees. So, I am asking that that class of practitioners should be eliminated. Next, I have another amendment.

Mr. President (The Honourable Sir Abdur Rahim): It will be dealt with afterwards.

Mr. Lalchand Navalrai: I then submit that this class of people should not be allowed to appear on behalf of the assesseees, and this clause should be omitted.

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

"That in clause 74 of the Bill, part (iii) of sub-section (2) of the proposed section 61 be omitted."

Mr. S. P. Chambers: Sir, I oppose this amendment. First of all, let me say that I sympathise with the Honourable Member in wishing to exclude persons who are really completely unqualified from appearing before income-tax officers and who are in a way a menace to the assessee. There are such persons, and it is known that such persons will take from an assessee a few rupees in an attempt to argue a case which is hopeless and get some money from the assessee which is not warranted. But we are putting that right for the future, and even as far as the present practitioners are concerned, there is a provision in sub-section (3) which says that if any person is found guilty of any misconduct by the Commissioner of Income-tax, then the Commissioner of Income-tax may direct that he shall henceforth be disqualified to represent an assessee under sub-section (1). That is to say, in future, if any of the existing persons are found guilty of any misconduct they can be disqualified, and once they have been disqualified, they can never come back again, unless they come under the other qualifications. That being so, I think the position is sufficiently safeguarded for the future. It is the practice in the United Kingdom,—I think it is the practice here as well,—that when there is a change in legislation which will deprive certain persons from practising in the future, those persons who are already practising, should not be deprived of their livelihood, unless there is substantial cause to show that they are misbehaving themselves. It is for that reason that we will allow all those who have been practising hitherto to continue to practise in the future, though they are not fully qualified, provided they do not misbehave themselves. The matter will automatically be rectified completely in the distant future, but in the near future those persons who are representing assessee, though not qualified, and who are making a livelihood honestly, will continue to do so, and there is no justification for depriving them of the livelihood which the law in the past allowed them.

Mr. Muhammad Azhar Ali (Lucknow and Fyzabad Divisions: Muhammadan Rural): I only want to get one point clarified in connection with clause 24. Income-tax practitioner means any person who, before the first day of April, 1938, attended before an income-tax authority on behalf of any assessee otherwise than in the capacity of an employé or a relative of that assessee. I find that, in clause 74(1), the Government have allowed a person, a relative or a person regularly employed by the assessee when the assessee himself is unable to attend in person for reasons which may be considered to be sufficient by the income-tax officer, to attend. May I know, Sir, what this term "otherwise than in the case of an employé" means? In one place, you allow the assessee to be represented by his employé and the relative, while, in another place, you don't allow the assessee to be represented by his relative or by the employé. In practice, we find that besides solicitors, barristers and other legal practitioners, there are people who are employees and who are given powers of attorney by the assessee to appear before the income-tax officer. When you now say "otherwise than in the capacity of an employé", I can't understand what you have in mind, because, at one place, you have allowed, and, at another

[Mr. Muhammad Azhar Ali.]

place, you have disallowed, and you say, otherwise than in the capacity of an employé or relative of the assessee. In India, there are several *purdah-nashin* ladies who are assessed to income-tax. What will be their condition? In sub-clause (i), you allow them to be represented by a relative or an employé, but here, in this sub-clause (iii), you disqualify them. You say that only those people will be allowed who had been appearing before the 1st April, 1938. I find that there is some sort of inconsistency between these two parts of the clause. I would like the Government to clarify the position, whether those people who are employees should not be allowed, or those who are relatives should not be allowed, or what it means.

Mr. S. P. Chambers: Might I rise to a point of explanation? I think the Honourable Member has misread the section. In future a relative or an employé can represent an assessee, but if he has, in the past, represented his father for example, we do not want him merely because he represented his father in the past he should be allowed in the future to represent not only his father but anybody else. We exclude him from the definition of an income-tax practitioner, but he can still appear as relative or an employé.

Mr. Husenbhai Abdullahai Laljee (Bombay Central Division: Muhammadan Rural): I rise to oppose the amendment that has been moved. I am very thankful to the Government for coming to the rescue at least once to show that they are out to protect the interests of the poor assessee. In fact, I do not know why there is anxiety to have lawyers and accountants. The Government always think that the traders are tax-dodgers and so on. In the whole of this Bill what they have done is—I shall say about that on the third reading—to find out the tax-dodger and make the law as strict as possible. Now, they want a class of persons who would probably create a lot of noise and they give them a little bread at the cost of the poor assessee. A man who makes money, a man who can trade can surely be trusted to look after his own case. It is ordinary simple business. To pay income-tax is not a great thing. It is not as if you are appearing before a court of law, and I am sure that the persons employed in the income-tax offices are not great lawyers or great accountants. In fact, the businessman employs his agent with much more care than the Government does in employing its officials. I only pray that the businessman may be allowed to look after his interests himself. Save the business man from the rigours of the lawyers and let us have our own choice. There is a provision for appeal. A lot has been said about it, but you will find that it has been made with the sole object of making provision for well-to-do people. The poor man cannot have any use for that. Lawyers and accountants—what do they know of business? And if they know, they will have come into business line rather than continue to be lawyers or accountants. With these words I oppose the amendment.

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

“That in clause 74 of the Bill, part (iii) of sub-section (2) of the proposed section 61 be omitted.”

The motion was negatived.

Mr. Lalchand Navalrai: I do not move No. 24, but I move No. 25. I beg to move:

"That in clause 74 of the Bill, to clause (a) of part (iii) of sub-section (2) of the proposed section 61, the following be added at the end:

'Provided he has obtained a certificate of his ability and fitness to continue as an Income-tax practitioner from the Inspecting Assistant Commissioner.'

The object of this amendment is obvious. It has been admitted that some of these persons are objectionable and what my Honourable friend told us was that those persons will be purged off if they misbehave hereafter and the Commissioner has been given power to disallow them when they misbehave. What I submit is that there should be a previous selection of this. Why not the selection be made at this stage from those people, by giving them certificates of fitness and ability not by the Central Board of Revenue as my previous amendment, which I have not moved, suggested, but by the Inspecting Assistant Commissioner. I would request my Honourable friend to consider what will be lost if this is done. The Assistant Commissioner should be given power to see which of those people are really objectionable and are exploiting the people and make a selection of those who will be allowed to carry on. This will not be doing away with the clause or with the vested rights of anybody, but it will be making a good and wise selection.

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

"That in clause 74 of the Bill, to clause (a) of part (iii) of sub-section (2) of the proposed section 61, the following be added at the end:

'Provided he has obtained a certificate of his ability and fitness to continue as an Income-tax practitioner from the Inspecting Assistant Commissioner.'

Mr. S. P. Chambers: I oppose this amendment. The difference between the way in which the Honourable Member proposes to restrict them in the future and the way in which it is done in the Bill is the difference between doing a thing negatively and positively. He suggests that the Inspecting Assistant Commissioner should make an inquisition of these people, should examine them and find out whether they are fit or not. This is a responsibility which the Department does not want to assume for persons who are already practising, and, I think, there are very good reasons for not wishing to assume that responsibility. In the first instance, it is very difficult to tell whether a person is capable or not capable even though he has not the necessary qualifications. The next point which I shall make quite briefly is this. Once a certificate is given to a person, then there is the danger that he will come along to an assessee and say, "I am a Government certificated income-tax practitioner, and, therefore, I am thoroughly competent." Therefore, the Central Board of Revenue or the Inspecting Assistant Commissioner would have to make the class very narrow to avoid having persons who are not very competent, or would have to make it very wide, in which case it would be misleading to the public. For these reasons I oppose the motion.

Mr. Lalchand Navalrai: May I put one question? Will the attention of the Inspecting Assistant Commissioners be drawn to the proceedings that have happened here and ask them to have an eye on those people, to see that those who are misbehaving are disallowed?

Mr. S. P. Chambers: I can give that assurance.

Mr. Lalchand Navalrai: I beg leave of the House to withdraw the amendment. The amendment was, by leave of the Assembly, withdrawn.

Mr. H. S. Town: Sir, I move:

"That in clause 74 of the Bill, in sub-section (2) of the proposed section, for part (c) of clause (iii), the following be substituted:

'(c) any person who has acquired such educational qualifications as the Central Board of Revenue may prescribe for this purpose.'

In the clause it is necessary for the educational institution itself to be recognised. Numbers of children go to England for education from this country and the list of recognised institutions would have to be unduly large. It is surely not of importance where the educational standard or qualification is attained. The qualification itself is the necessary thing. Therefore, Sir, I suggest that this amendment be accepted.

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

"That in clause 74 of the Bill, in sub-section (2) of the proposed section, for part (c) of clause (iii), the following be substituted:

'(c) any person who has acquired such educational qualifications as the Central Board of Revenue may prescribe for this purpose.'

Mr. J. F. Sheehy: Government raise no objection to this amendment.

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

"That in clause 74 of the Bill, in sub-section (2), of the proposed section, for part (c) of clause (iii), the following be substituted:

'(c) any person who has acquired such educational qualifications as the Central Board of Revenue may prescribe for this purpose.'

The motion was adopted.

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

"That clause 74, as amended, stand part of the Bill."

The motion was adopted.

Clause 74, as amended, was added to the Bill.

Clause 75 was added to the Bill.

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

"That clause 76 stand part of the Bill."

Mr. J. F. Sheehy: Sir, I move:

"That in clause 76 of the Bill, for the words 'To sub-section (3) of section 64 of the said Act, the following provisos shall be added, namely—' the following be substituted:

'In section 64 of the said Act,—

(a) in sub-section (1), for the word 'business', where it first occurs, the words 'a business, profession or vocation' shall be substituted; for the word 'business', where it occurs for the second time, the words 'business, profession or vocation' shall be substituted; and for the words 'his principal place of business' the words 'the principal place of his business, profession or vocation' shall be substituted;

(b) to sub-section (3) the following provisos shall be added, namely:—"

Section 64 of the Act, which this amendment seeks to amend, deals with the place of assessment and the officer by whom the assessment is to be made. As it exists at present, it only deals with business, but as there is just as likely to be disputes as to the proper place at which profession or vocation should be assessed, we have proposed this amendment to put that right.

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

"That in clause 76 of the Bill, for the words 'To sub-section (3) of section 64 of the said Act, the following provisos shall be added, namely—' the following be substituted:

'In section 64 of the said Act,—

- (a) in sub-section (1), for the word 'business', where it first occurs, the words 'a business, profession or vocation' shall be substituted; for the word 'business', where it occurs for the second time, the words 'business, profession or vocation' shall be substituted; and for the words 'his principal place of business' the words 'the principal place of his business, profession or vocation' shall be substituted;
- (b) to sub-section (3) the following provisos shall be added, namely:—'

The motion was adopted.

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

"That clause 76, as amended, stand part of the Bill."

The motion was adopted.

Clause 76, as amended, was added to the Bill.

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

"That clause 77 stand part of the Bill."

Babu Baijnath Bajoria (Marwari Association: Indian Commerce): Sir, I move:

"That sub-clause (c) of clause 77 of the Bill be omitted."

This sub-clause has been inserted to nullify the effect of the judgment of the Privy Council. The proviso, as at present in the Act, reads:

"Provided that if the amount of an assessment is reduced as a result of such reference, the amount overpaid shall be refunded with such interest as the Commissioner may allow."

At the present moment, if there is a High Court order revising the assessment, the assessee gets back the excess money paid with interest after the High Court has made the orders; but the words which are going to be inserted will mean that this refund will not be made till the case is decided by the Privy Council. That will mean a delay of several months, and even years. I would like to read a few lines from the judgment of their Lordships in the Bombay Trust Corporation case:

"It should suffice now to observe that since August, 1934, the Income-tax authorities have been withholding from the Bombay Corporation over three lacs of rupees extracted from them by an illegal assessment order, and that there is no pretence of justice in law in the notion that money can be withheld in case on some future date a valid assessment may come into existence."

The words which are going to be inserted will nullify this judgment. I suggest that the money should be refunded without waiting for the judgment of the Privy Council. If the Privy Council judgment is against the assessee, then the money can be recovered later on. Sir, I move.

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

“That sub-clause (c) of clause 77 of the Bill be omitted.”

Mr. Lalchand Navalrai: I have also read that Privy Council decision. There is no reason why the judgment of such a high tribunal should be nullified by the Legislature without any grounds. The reasonable course is that, if the assessee is entitled to certain money, it should be paid to him forthwith. The words of the Privy Council which my friend has read out are quite clear, and I hope that the House will not give authority for nullifying the judgment of the Privy Council.

Mr. Bhulabhai J. Desai (Bombay Northern Division: Non-Muham-madan Rural): I think my Honourable friend is under a misapprehension as to the meaning of the amendment. I am aware of the case that he has referred to. It is true that under the Act at present automatically there was a right to refund in the event of a decision in favour of the assessee. All that this clause provides is that the High Court should have the power to make an appropriate order in the case whether the refund should follow or not. Supposing the High Court itself is of opinion that the matter is of sufficient doubtful validity as a matter of law and it is prepared to give the right of appeal, it may be a case in which they will say that the refund should not follow, but it is entirely misreading the amendment to say that this means that the refund will not be granted until the appeal is decided. The High Court will consider the facts of each case and decide whether it is a proper case in which refund should follow immediately.

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

“That sub-clause (c) of clause 77 of the Bill be omitted.”

The motion was negatived.

Mr. Abdul Qaiyum (North-West Frontier Province: General): Sir, I move:

“That after sub-clause (c) of clause 77 of the Bill, the following be added:

‘(d) in clause (a) of sub-section (8), the words ‘North-West Frontier Province and’ shall be omitted.’”

If this amendment is carried, references on points of law made by the Commissioner or at the instance of the parties, which hitherto used to be heard by the Lahore High Court, would in future be heard by the Bench of the Judicial Commissioner of the North-West Frontier Province. Our litigants and assesseees are being put to a lot of trouble and expense in having to go to Lahore and engage counsel at that distant place. Moreover, under the Government of India Act, section 219, the Judicial Commissioner's Court of the North-West Frontier Province is a High Court for the purposes of that Act and for all other Acts. In Sind, I believe, where there is a Judicial Commissioner's Court references are made to the Judicial Commissioners of Sind, and no longer to the Bombay High Court. This is an amendment which will help assesseees of the Frontier Province, and I hope the House will accept it. Sir, I move.

12 Noon.

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

"That after sub-clause (c) of clause 77 of the Bill, the following be added:
'(d) in clause (a) of sub-section (8), the words 'North-West Frontier Province and' shall be omitted'."

Mr. J. F. Sheehy: Sir, there is no objection on the part of Government to this amendment or the following one.

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

"That after sub-clause (c) of clause 77 of the Bill, the following be added:
'(d) in clause (a) of sub-section (8), the words 'North-West Frontier Province and' shall be omitted'."

The motion was adopted.

Mr. Abdul Qaiyum: Sir, I move:

"That after sub-clause (c) of clause 77 of the Bill, the following be inserted:
'(d) to sub-section (8), the following proviso shall be added, namely:

—Here, Sir, I would like to make one very minor verbal alteration, that instead of the word "case" I would like to have the word "reference" substituted which is more appropriate—

'Provided that whenever in any reference heard by a bench of the Court of the Judicial Commissioner, North-West Frontier Province, a difference of opinion arises between the Judicial Commissioner and the Additional Judicial Commissioner, the opinion of the Judicial Commissioner shall prevail'."

Now, in the Frontier Province, a bench consists of two judges, and it was in 1926 that a second judge was appointed. This is to provide for the case where a difference of opinion is likely to arise. I may here mention that our judges are a very happy family, and, as far as I know, there has never been any difference of opinion between them on any point so far. Rather than follow the practice which obtains in the case of decrees and orders where, in case of a difference of opinion, the decree or order of the lower court prevails, in the case of a reference a certain amount of risk is involved, because I would much rather have the Judicial Commissioner's opinion prevail instead of that of the Commissioner of Income-Tax. The former is more likely to look after the interests of the assessee. Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim): It appears that the Honourable Member has not noticed that there are a few minor errors in the amendment. It ought to be "after sub-clause (d) of clause 77 of the Bill, the following be inserted", etc. Then, in the body of the amendment, it should be "(e)" instead of "(d)".

The question is:

"That after sub-clause (d) of clause 77 of the Bill, the following be inserted:
'(e) to sub-section (8), the following proviso shall be added, namely:

'Provided that whenever in any reference heard by a bench of the Court of the Judicial Commissioner, North-West Frontier Province, a difference of opinion arises between the Judicial Commissioner and the Additional Judicial Commissioner, the opinion of the Judicial Commissioner shall prevail'."

The motion was adopted.

Mr. President (The Honourable Sir Abdur Rahim): The question is: "That clause 77, as amended, stand part of the Bill."

The motion was adopted.

Clause 77, as amended, was added to the Bill.

Mr. N. M. Joshi: Sir, I move:

"That after clause 77 of the Bill, the following new clause be inserted :

'78. After section 67-A of the said Act, the following shall be inserted :-

'67-B. The Governor General shall present every year to the Indian Legislature a report on the working of the Indian Income-tax Act, 1922, as modified by the Clauses of the Bill and shall supply free of cost to the Members of the Indian Legislature copies of such report.'"

An Honourable Member: Sir, I move:

"That the question be put."

Mr. N. M. Joshi: I know there are some Members in this Legislature who are not anxious for the maintenance of the constitutional rights of this House, nor do they care for the privileges of the Members of this Legislature. I hope the number of such Members is not very large in this House. The amendment which I am moving has both a constitutional aspect and also an aspect from the point of view of the privileges of the Members of the Legislature. The Indian Legislature is responsible for the passing of the Income-tax Act, and, therefore, it is in the fitness of things that the Executive Government, which is expected to administer this Act, should hold itself responsible to the Indian Legislature for the proper working of this legislation. I, therefore, suggest that the Government of India should recognize their responsibilities to the Legislature by presenting a report to the Indian Legislature for the proper working of this legislation. I know that the Government of India publish some sort of report on Indian income-tax but that report is not presented to the Legislature. I want that report to be presented to the Legislature. This practice is recognized in England, and the report is properly presented to the British Parliament, and I want that practice to be introduced here in India. At present, the Executive Government holds itself responsible to itself. I want that practice to cease. I want the Executive Government to hold itself responsible to the Legislature. I want to secure that from the first part of the amendment. My second part of the amendment deals with the privileges of the Members of this House. We have tried our very best to persuade the Government of India to supply copies of the reports they publish on the working of the various pieces of legislation, but they refuse to recognize that privilege of the Members of the Legislature. Sometimes they tell us that the reports cannot be given to Members free. I say that they should be supplied to us free. That privilege is enjoyed by the Members of Parliament in Great Britain, and that privilege was enjoyed by the Members of the Legislature for many years in my memory. Unfortunately, on the ground of retrenchment, the Government of India have stopped that practice. I, therefore, feel that the House should take some interest in this question of the privileges of Members. I hope the Government of India will accept my amendment.

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

"That after clause 77 of the Bill, the following new clause be inserted :

'78. After section 67-A of the said Act, the following shall be inserted :

'67-B. The Governor General shall present every year to the Indian Legislature a report on the working of the Indian Income-tax Act, 1922, as modified by the Clauses of the Bill and shall supply free of cost to the Members of the Indian Legislature copies of such report.'"

Mr. J. F. Sheehy: Sir, I oppose this amendment; and I think that the Honourable Member's point will be met when I give an undertaking that Government will lay on the table of the House a copy of the annual income-tax report and present Members of the Legislature with copies of it free of cost. As regards putting this in the Act, I am informed that it is not a suitable provision to be put on the Statute-book. I, therefore, hope the Honourable Member will not press his amendment.

Mr. N. M. Joshi: Sir, so far as this particular amendment and this particular occasion are concerned, I am satisfied with the assurance. I would, however, like to inform the Government that till they re-introduce the practice of supplying free copies of the reports to the Members of the Legislature, a similar amendment is likely to appear on the agenda of various pieces of legislation that may come before this Legislature. I should like to withdraw the amendment.

The amendment was, by leave of the Assembly, withdrawn.

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

"That clause 78 stand part of the Bill."

Mr. K. Santhanam: Sir, I move:

"That in clause 78 of the Bill, in the proviso to Rule 2 of the proposed Schedule, the figures and the words '7½ per cent. of the premiums received in respect of single premium life insurance policies *plus*' be omitted and the words 'provided that in the case of life insurance policies in respect of which the number of annual premiums payable is less than 12 the percentage of *first year's* premiums to be allowed shall be 7½ times the number of such annual premiums,' be added at the end."

Sir, as the Bill stands, for the management expenses 85 per cent. of the first year's premiums and 8½ per cent. of the renewal premiums are to be allowed, but they have made an exception in the case of single premiums, in which case 7½ per cent. is to be allowed. There is a big gap between 7½ per cent. and 85 per cent. and so there will be an irresistible temptation on the part of the insurance companies to create two years or three years policies so that a larger percentage than 7½ per cent. might be granted to the management. It is a loophole for evasion, and I am trying to help the Government to get over it. I hope the House will accept my amendment.

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

"That in clause 78 of the Bill, in the proviso, to Rule 2 of the proposed Schedule, the figures and the words '7½ per cent. of the premiums received in respect of single premium life insurance policies *plus*' be omitted and the words 'provided that in the case of life insurance policies in respect of which the number of annual premiums payable is less than 12 the percentage of *first year's* premiums to be allowed shall be 7½ times the number of such annual premiums,' be added at the end."

Mr. S. P. Chambers: Sir, I was considerably puzzled by this amendment, but now that the word "annual" has been changed to "first year", I quite understand it. I think it is a definite improvement, and I have no objection to it.

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

"That in clause 78 of the Bill, in the proviso, to Rule 2 of the proposed Schedule, the figures and the words '7½ per cent. of the premiums received in respect of single premium life insurance policies plus' be omitted and the words 'provided that in the case of life insurance policies in respect of which the number of annual premiums payable is less than 12 the percentage of first year's premiums to be allowed shall be 7½ times the number of such annual premiums,' be added at the end."

The motion was adopted.

Mr. S. P. Chambers: Sir, I move:

"That in clause 78 of the Bill, in the proposed Schedule, in the proviso to Rule 2, for the figures and words '85 per cent. of the premiums received in respect of other life insurance policies effected during the preceding year' the figures and words '85 per cent. of the first year's premiums received during the preceding year in respect of other life insurance policies' be substituted."

This is really a drafting change, but the original words would have excluded from the larger percentage certain premiums if the premiums were paid in instalments. The whole of the first year's premiums now will be at 85 per cent. figure instead of any other figure and I think this should commend itself to the House.

Sir, I move.

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

"That in clause 78 of the Bill, in the proposed Schedule, in the proviso to Rule 2, for the figures and words '85 per cent. of the premiums received in respect of other life insurance policies effected during the preceding year' the figures and words '85 per cent. of the first year's premiums received during the preceding year in respect of other life insurance policies' be substituted."

The motion was adopted.

Mr. K. Santhanam: Sir, I move:

"That in clause 78 of the Bill, in the first proviso to Rule 3 (a) of the proposed Schedule, the words 'to which they are paid out of or in respect' be omitted."

After the evaluation, there is only one surplus, and, therefore, the reference is only to the expenditure and not to the surplus. It is a matter of simplification of the existing process. It is only a verbal alteration.

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

"That in clause 78 of the Bill, in the first proviso to Rule 3 (a) of the proposed Schedule, the words 'to which they are paid out of or in respect' be omitted."

Mr. S. P. Chambers: Sir, I did not realise that this was intended to be a verbal alteration. I think it is a little more than that. The original words were as follows:

"Provided that in the first such computation made under this rule of any such surplus no account shall be taken of any such amounts. . . ."

Mr. K. Santhanam: If there is opposition, I beg leave of the House to withdraw the amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. M. Ananthasayanam Ayyangar: Sir, I move:

"That in clause 78 of the Bill, in the proviso to Rule 3 (b) of the proposed Schedule, for the words 'upon investigation it appears to the Income-tax Officer' the words 'on a reference made by the Income-tax Officer the Superintendent of Insurance finds' be substituted."

Sir, the power that is given in Rule 3(b) to the income-tax officer is to find out whether the mode of assessment of surplus is right or wrong. Power is given to the income-tax officer to scan the various items and even to declare that there ought to be a larger surplus and that adjustment ought to be made according to his finding. Ordinarily, the income-tax officer cannot be expected to know the details of the insurance companies, but there is a Superintendent of Insurance who is appointed for this very purpose amongst others under the Insurance Act. By my amendment, I seek the reference to the Superintendent of Insurance to be made obligatory and the assessment to be made according to the report of the Superintendent of Insurance. Later on, on the Order Paper there is amendment No. 40 by the European Group which is couched in similar terms,—“on the advice of the Superintendent of Insurance”. But ours is better, because the mere advice of the Superintendent of Insurance is not enough. A reference ought to be made to him, and he must send in a report and, in accordance with his finding, adjustment ought to be made, so that the income-tax officer may not tamper with it.

Sir, I move.

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

"That in clause 78 of the Bill, in the proviso to Rule 3 (b) of the proposed Schedule, for the words 'upon investigation it appears to the Income-tax Officer' the words 'on a reference made by the Income-tax Officer the Superintendent of Insurance finds' be substituted."

Mr. S. P. Chambers: Sir, I oppose this amendment. I appreciate the fact that the Income-tax officers cannot be expected to know everything about life insurance which is a very complicated subject and it is our intention that there should be consultation with the Superintendent of Insurance not only on this point but on a number of other points. But at the same time we feel that it would be undesirable for income-tax decisions to be made entirely by another officer who is not an officer of the Income-tax department. If I may say so, perhaps the Honourable Member might feel disposed to withdraw his amendment, if amendment No. 40 is accepted with a small verbal alteration. That is, instead of "on the advice of" it should be "after consultation with".

Mr. M. Ananthasayanam Ayyangar: I beg leave of the House to withdraw the amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. T. Chapman-Mortimer (Bengal: European): Sir, I beg to move:

"That in clause 78 of the Bill, in the proviso to clause (b) of Rule 3 of the proposed Schedule to the Bill, after the word 'officer' the following words be inserted: 'after consultation with the Superintendent of Insurance.'"

[Mr. T. Chapman-Mortimer.]

I am moving this amendment with the correction suggested by the Honourable Member for Government. It is unnecessary for me to make any speech, as I understand it is acceptable in all quarters of the House. Sir, I move

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

"That in clause 78 of the Bill, in the proviso to clause (b) of Rule 3 of the proposed Schedule to the Bill, after the word 'officer' the following words be inserted:

'after consultation with the Superintendent of Insurance.'"

The motion was adopted.

Mr. T. Chapman-Mortimer: Sir, I beg to move:

"That in clause 78 of the Bill, Rule 4 of the proposed Schedule to the Bill be re-numbered as sub-rule (1), and after the word 'paid', occurring in the last line, of the sub-rule as so re-numbered, the words 'by deduction at source from interest on securities or otherwise'; be inserted;

and the following sub-rule be added:

'(2) In the case of all other assessments credit shall be given in computing the tax payable for any year, in accordance with sub-section (5) of Section 18 for any income-tax deducted in accordance with the provisions of Section 18.'"

Sir, the first part of this amendment is designed to make it clear that the deduction at source is in payment of tax.

The Rule as it stands provides the method by which credit is to be given in the case of companies assessed on the profits basis where the intervalation period is more than one year, but it does not specifically provide for other cases, as for example cases of companies assessed on the profits basis where the valuation is made annually or companies assessed on the interest less expenses basis.

The amendment, Sir, I suggest makes the position clear in respect of these two latter cases and I commend it for the acceptance of the House.

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

"That in clause 78 of the Bill, Rule 4 of the proposed Schedule to the Bill be re-numbered as sub-rule (1), and after the word 'paid', occurring in the last line, of the sub-rule as so re-numbered, the words 'by deduction at source from interest on securities or otherwise'; be inserted;

and the following sub-rule be added:

'(2) In the case of all other assessments credit shall be given in computing the tax payable for any year, in accordance with sub-section (5) of Section 18 for any income-tax deducted in accordance with the provisions of Section 18.'"

Mr. S. P. Chambers: Sir, I oppose this amendment. In so far as the first part of it is concerned, as has already been mentioned, it is the subject of another amendment on supplementary list No. 2 and to that extent I have no objection to it. I ought to make that perfectly clear. The second part of this amendment is unnecessary. I think I would do well to read out the appropriate words to show that the effect is already

given in the wording of the Bill as it stands. Rule 4 of these Rules to the Schedule reads:

"Where for any year an assessment is made in accordance with the annual average of a surplus disclosed by a valuation for an inter-valuation period exceeding twelve months then, in computing the tax payable for that year credit shall not be given in accordance with sub-section (5) of section 18."

If this is read with sub-section (7) of section 10 as is intended, sub-section (7) reads:

"Notwithstanding anything to the contrary contained in section 8, 9, 10, 12, or 18."

and section 18, which is the one we are talking about here, reads:

"(5) Any deduction made in accordance with the provisions of this section shall be treated as a payment of income-tax, or super-tax on behalf of the person from whose income the deduction was made, or of the owner of the security, as the case may be, and credit shall be given to him therefor in the assessment, if any, made for the following year under this Act:

Provided that, if such person or such owner obtains, in accordance with the provisions of this Act, a refund of any portion of the tax so deducted, no credit shall be given for the amount of such refund.

Provided further that where such person or owner is a person whose income is included under the provisions of sub-section (3) of section 16 in the total income of another person that person shall be deemed to be the person or owner on whose behalf payment has been made and to whom credit shall be given in the assessment for the following year."

Where an assessment is not made in accordance with the annual average of the surplus, as disclosed by valuation for an intervalation period, then, clearly section 18 does apply, because this section only says that where the assessment is made in accordance with the surplus, then this credit should not be given according to sub-section (5) of section 18. Therefore, these words are sufficient to show that when the other circumstances apply, then section 18 does apply. Therefore, it is quite unnecessary to have a specific provision to this effect. For these reasons, I oppose the amendment.

Mr. T. Chapman-Mortimer: In view of my Honourable friend's very clear explanation of the position, I beg leave of the House to withdraw the amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. T. Chapman Mortimer: Sir, I beg to move:

"That in clause 78 of the Bill, in Rule 4 of the proposed Schedule to the Bill, after the word 'paid', occurring in the last line, the words 'by deduction at source from interest on securities or otherwise' be inserted."

I have very sufficiently explained the reasons for this amendment, and I commend it for the acceptance of the House.

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

"That in clause 78 of the Bill, in Rule 4 of the proposed Schedule to the Bill, after the word 'paid', occurring in the last line, the words 'by deduction at source from interest on securities or otherwise' be inserted."

The motion was adopted.

Mr. T. Chapman-Mortimer: Sir, I beg to move:

"That in clause 78 of the Bill, in clause (ii) of Rule 5, after the word 'policy-holders', in the fourth line, the words 'and interest and dividends on any annuity fund' be inserted."

This amendment seeks to exclude from assessment interest on the annuity fund of a company. The annuity fund, as some Honourable Members know, is composed almost entirely of the fund for annuity payments. Annuitants are taxed on any annuity payment made out of the annuity fund and it is clearly inequitable to tax the same interest twice over. In the United Kingdom income-tax on annuity payments is deducted at source and the office is allowed to retain a sum up to the amount of the taxed interest on the annuity fund. This means in practice that the interest on the annuity fund in the hands of the company is not taxed. If the Government of India were to tax the interest of the annuity fund in the hands of the company it would render most of the existing annuity funds insolvent, because provision has not been made in such funds for payment of tax on interest in the hands of the company. I commend this amendment to the House. Sir, I move.

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

"That in clause 78 of the Bill, in clause (ii) of Rule 5, after the word 'policy-holders', in the fourth line, the words 'and interest and dividends on any annuity fund' be inserted."

Mr. S. P. Chambers: Sir, perhaps I ought to explain to the House that there is no question of exemption of interest or anything like that. In the same part of the rule, we are taxing the profits of the annuity fund and the interest will be included in the profit; and, therefore, as the Honourable Member has said, we do not want to include interest again in the first part of the same section. I had thought that it was sufficiently clear that in including the tax on profits we could not also include the interest included in the profit. But I think this clarifies the position and I have no objection to accepting the amendment.

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

"That in clause 78 of the Bill, in clause (ii) of Rule 5, after the word 'policy-holders', in the fourth line, the words 'and interest and dividends on any annuity fund' be inserted."

The motion was adopted.

Mr. S. P. Chambers: Sir, I beg to move:

"That in clause 78 of the Bill, in the proposed Schedule to clause (ii) of Rule 5, the following proviso be added:

'Provided that incomes, including the annual value of the property occupied by the assessee, which but for the provisions of sub-section (7) of section 10 would have been assessable under section 9 shall be computed upon the basis laid down in the latter section, and that there shall be allowed from such gross incomes such deductions as are permissible under that section.'

The reason for this proviso is that the profits of life insurance companies from whatever source they are obtained, including profits from property owned, are to be computed in accordance with these Rules and not in

accordance with the rules in the various sections under which they would otherwise have been computed. Now in a case of the income from property it is suggested that we should continue to assess them according to the rules of section 9 but to include them in the profits under these Rules, and that is considered to be quite an equitable arrangement and I think it was the intention when the original rules were drafted that that should be done. This certainly makes the matter absolutely clear. Sir, I move.

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

"That in clause 78 of the Bill, in the proposed Schedule to clause (ii) of Rule 5, the following proviso be added:

'Provided that incomings, including the annual value of the property occupied by the assessee, which but for the provisions of sub-section (7) of section 10 would have been assessable under section 9 shall be computed upon the basis laid down in the latter section, and that there shall be allowed from such gross incomings such deductions as are permissible under that section.'

Mr. T. Chapman-Mortimer: Sir, I just want to ask my Honourable friend if he will clarify one small point. I think this amendment is identical with my amendment No. 47 except that I have got a second proviso which is designed to ensure that insurance companies will have the same exemption as other assesses from payment of tax on commission charged by banks for collecting interest on securities. Perhaps my Honourable friend will be kind enough to clarify the position on that point.

Mr. S. P. Chambers: I may explain that we assess an insurance company on its income from the business of insurance as business income and we would allow all commission and other expenses incurred in connection with its investments, and that therefore this rule is unnecessary, whilst in section 8 itself which taxes interest on securities there is need for positive exemption or allowance for expenses incurred in earning that interest, as otherwise the gross interest would be taxable. But where the interest forms part of the business profits all the expenses which are incurred in earning that interest are automatically allowed and would be allowed under the head "Management expenses".

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

"That in clause 78 of the Bill, in the proposed Schedule to clause (ii) of Rule 5, the following proviso be added:

'Provided that incomings, including the annual value of the property occupied by the assessee, which but for the provisions of sub-section (7) of section 10 would have been assessable under section 9 shall be computed upon the basis laid down in the latter section, and that there shall be allowed from such gross incomings such deductions as are permissible under that section.'

The motion was adopted.

Mr. T. Chapman-Mortimer: Sir, I beg to move:

"That in clause 78 of the Bill, the following proviso shall be added to Rule 6 of the proposed Schedule to the Bill:

'provided that any amount which is actually charged against the receipts for the sole purpose of forming a reserve to meet outstanding liabilities or unexpired risk in respect of policies which have been issued (including risks of exceptional losses) and is not used for any other purpose shall be treated as expenditure laid out or expended wholly and exclusively for the purpose of such business.'

[Mr. T. Chapman-Mortimer.]

This amendment seeks to insert in the Schedule existing rule 29 relating to the reserve for unexpired risks in the case of non-life companies. This reserve is generally 40 per cent. of the premiums and is a long standing practice in insurance whereby a reserve is created out of the premiums to provide for risks which have not expired. The premiums are not all paid at the beginning of the year but at various times throughout the year, so that at the end of the year there is still an unexpired portion of risk. It is to meet such cases that this amendment is moved. Sir, I move.

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

"That in clause 78 of the Bill, the following proviso shall be added to Rule 6 of the proposed Schedule to the Bill:

'provided that any amount which is actually charged against the receipts for the sole purpose of forming a reserve to meet outstanding liabilities or unexpired risk in respect of policies which have been issued (including risks of exceptional losses) and is not used for any other purpose shall be treated as expenditure laid out or expended wholly and exclusively for the purpose of such business.'

Mr. S. P. Chambers: Sir, I oppose this amendment. The allowance of a reserve in the case of a company, which is carrying on insurance business other than life insurance, is one which need not be specifically provided for in the rules themselves. In a case, in the United Kingdom, it has been held in the House of Lords that in the absence of any rule whatever allowing such a reserve, such a reserve must be allowed in arriving at profits. The case in question is the *Sun Insurance Office vrs. Clark*, in the House of Lords, 23rd January and 7th March, 1912, contained in 6 Tax Cases, page 59; and here are the words at the heading,— this case related to fire insurance:

"Held that there is no rule of law as to the admissibility of an allowance for unexpired risks in estimating profits. But the question is one to be decided by reference to the facts of each case and that on the facts found in this case the allowance claimed is the proper allowance to be made."

Sir, the position is this that without any special rule any fair reserve must be allowed: if we try to make a specific rule we are in difficulty at once. And in particular in this rule as it is put down it would be necessary for the Income-tax Officer to allow whatever reserve was charged whether it was unreasonably large or unreasonably small. It says:

"provided that any amount which is actually charged against the receipts", etc.

As I suggest, such reserve, as is allowable, is allowable without any specific rule and by putting in a specific rule we tie the income-tax officer to allowing something which may be unreasonable. For these reasons, I oppose the amendment.

Mr. M. S. Aney (Berar: Non-Muhammadan): Does the Honourable Member mean that it is allowable because of the ruling of the House of Lords?

Mr. S. P. Chambers: The ruling in the House of Lords is just this that, in the United Kingdom, there is no rule allowing any reserve for fire insurance companies—no rule whatever; but they have said that the

allowance of such a reserve is absolutely essential in arriving at profits; in order to arrive at the profits you must allow a fair and proper reserve for fire insurance risks; but you cannot possibly treat the gross premiums as the income without deducting something in respect of unexpired risks; so that in the United Kingdom where there is no rule for allowing a reserve, the House of Lords have held that a proper reserve must be allowed and I suggest therefore that in this country as well where we have no rule whatever a reasonable reserve must be allowed; but to try to put this matter in a specific section does tie the income-tax department, and for that matter the company, in a way which seems to be unwarranted and I think unnecessary.

Mr. M. S. Aney: Will the Honourable Member then assure the House that he will at least provide for some such rule by way of instruction to the assessing officers?

Mr. S. P. Chambers: Yes, certainly.

Mr. T. Chapman-Mortimer: Sir, In view of the explanation given by my Honourable friend, I ask for leave of the House to withdraw this amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. T. Chapman-Mortimer: Sir, I move:

"That in clause 78 of the Bill, after Rule 8 of the proposed Schedule to the Bill, the following new Rule be inserted and Rule 9 be re-numbered as Rule 10 :

'9. If the Indian income-tax deducted from interest on the investments of an insurance company exceeds the tax on the income, profits and gains, calculated in accordance with these rules, a refund shall be allowed of the amount by which the deduction from interest on investments exceeds the tax payable on such income, profits and gains.

Explanation.—For the purpose of calculating the refund allowable under this rule in the case of any company where for any year an assessment is made in accordance with the annual average of a surplus disclosed by a valuation for an inter-valuation period exceeding twelve months, the refund to be allowed, will be the difference between the annual average of the income-tax deducted from interest on the investments of the company during the inter-valuation period and the tax payable on the annual average of the surplus computed in accordance with clause (b) of Rule 2 if such annual average of the tax deducted from interest on the investments exceeds the annual average of the surplus disclosed by the actuarial valuation."

The object of this amendment is to insert in the Schedule existing rule 27, a suitable extension being given to make it apply in the case of companies assessed on a valuation profits basis for an inter-valuation period of more than one year as the new rule 4 in the Schedule provides credit being given only for the annual average of the tax deducted at source in such cases.

When companies are assessed on the interest less expenses basis, the tax deducted at source on investments may frequently exceed the tax payable on assessment and a refund is then due to the company.

This position may also arise in the case of companies assessed on the profits basis, and in fact it has arisen in the past.

It is, therefore, suggested that it is possible for the tax payable on assessment to be less than the actual tax deducted at source or the annual average of such tax in the case of companies assessed on the profits basis.

[Mr. T. Chapman-Mortimer.]

Credit is allowed under rule 4 in the Schedule, but "credit" is not the same as a "refund". A "credit" of, say, a lakh of rupees might be taken as simply washing out tax payable of, say, Rs. 80,000, instead of an actual refund being given of the difference of Rs. 20,000. Sir, I move.

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

"That in clause 78 of the Bill, after Rule 8 of the proposed Schedule to the Bill, the following new Rule be inserted and Rule 9 be re-numbered as Rule 10:

'9. If the Indian income-tax deducted from interest on the investments of an insurance company exceeds the tax on the income, profits and gains, calculated in accordance with these rules, a refund shall be allowed of the amount by which the deduction from interest on investments exceeds the tax payable on such income, profits and gains.'

Explanation.—For the purpose of calculating the refund allowable under this rule in the case of any company where for any year an assessment is made in accordance with the annual average of a surplus disclosed by a valuation for an inter-valuation period exceeding twelve months, the refund to be allowed will be the difference between the annual average of the income-tax deducted from interest on the investments of the company during the inter-valuation period and the tax payable on the annual average of the surplus computed in accordance with clause (b) of Rule 2 if such annual average of the tax deducted from interest on the investments exceeds the annual average of the surplus disclosed by the actuarial valuation."

Mr. S. P. Chambers: Sir, I oppose this amendment. Here, again, the difference is only a matter of drafting. The rules for the assessment of life insurance companies—the ones we are discussing—are made operative by section 10(7) which has been inserted by the Bill and that says:

"Notwithstanding anything to the contrary contained in sections 8, 9, 10, 12 or 18, the profits and gains of any business of insurance and the tax payable thereon shall be computed in accordance with the rules contained in the Schedule to this Act."

That does not include section 48 which provides for refunds; section 48 has been re-drafted, and the re-draft has been accepted by this House. It reads:

"If any individual, Hindu undivided family, company, firm or other association of persons, or any partner of a firm or member of an association individually satisfies the Income-tax officer. . . . that the amount of tax paid by him. . . . for any year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of any such excess."

So that, whenever any assessee—and this includes an insurance company—has suffered tax by deduction or otherwise in excess of the true amount that is payable, then a refund shall be given. That applies equally to an insurance company because this rule is operative for an insurance company. Had this alteration not been made in section 48 then I think the proposed amendment would have been necessary, but the whole object of having a short clause in section 48 instead of the very extensive sub-clauses which were contained in the old Act in section 48 and section 48 A, was to prevent and render unnecessary separate provisions in various parts of the Act for making refunds. The words in section 48 do grant to an insurance company a refund if it is found that the tax paid by them is in excess of the tax payable in accordance with these rules. For these reasons, I think the amendment is unnecessary and I oppose it.

Mr. T. Chapman-Mortimer: Sir, I ask for leave of the House to withdraw the amendment.

The amendment was, by leave of the Assembly, withdrawn.

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

"That clause 78, as amended, stand part of the Bill."

The motion was adopted.

Clause 78, as amended, was added to the Bill.

Mr. J. F. Sheehy: Sir, I move:

"That after clause 78 of the Bill, the following heading and clauses shall be added:

'PART II.

79. The provisions of this Part shall not take effect until the expiry of two years after the commencement of this Act.

Insertion of new section 5A in Act XI of 1922. 80. After section 5 of the said Act the following section shall be inserted, namely:

'5A. (1) The Central Government shall appoint an Appellate Tribunal consisting of not more than ten persons to exercise the functions conferred on the Appellate Tribunal by this Act.

(2) The Appellate Tribunal shall consist of an equal number of judicial members and accountant members as hereinafter defined.

(3) A judicial member shall be a person who has exercised the powers of a District Judge or who possesses such qualifications as are normally required for appointment to the post of District Judge; and accountant member shall be a person who has, for a period of not less than six years, practised professionally as a Registered Accountant enrolled on the Register of Accountants maintained by the Central Government under the Auditors Certificate Rules, 1932:

Provided that the Central Government may appoint as a judicial member or accountant member of the Tribunal any person not possessing the qualifications required by this sub-section, if it is satisfied that he has qualifications and has had adequate experience of a character which render him suitable for appointment to the Tribunal.

(4) The Central Government shall appoint one member of the Tribunal to be president thereof.

(5) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted from members of the Tribunal by the president of the Tribunal.

(6) A Bench shall consist of not less than two members of the Tribunal, and shall be constituted so as to contain an equal number of judicial members and accountant members, or so that the number of members of one class does not exceed the number of members of the other class by more than one.

(7) If the members of a Bench differ in opinion on any point the point shall be decided according to the opinion of the majority, if there is a majority; but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the president of the Tribunal for hearing on such point or points by one or more of the other members of the Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard it.

(8) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure, and the procedure of Benches of the Tribunal in all matters arising out of the discharge of its functions.'

Amendment of section 28, Act XI of 1922. 81. In section 28 of the said Act—

(a) in sub-section (1) and sub-section (2), for the words 'or the Commissioner' the words 'or the Appellate Tribunal', and for the words 'he may direct' the words 'he or it may direct' shall be substituted;

(b) in sub-section (5), for the words 'or a Commissioner who has made' the words 'or the Appellate Tribunal on making' shall be substituted.

[Mr. J. F. Sheehy.]

Omission of section 32, Act XI of 1922.

82. Section 32 of the said Act shall be omitted.

Substitution of new section for section 33, Act XI of 1922.

83. For section 33 of the said Act the following section shall be substituted, namely :

- '33. (1) Any assessee objecting to an order passed by an Appellate Assistant Appeals against orders of Ap- Commissioner under section 28 or section 31 pellate Assistant Commissioner. may appeal to the Appellate Tribunal within sixty days of the date on which he is served with notice of such order.
- (2) The Commissioner may, if he objects to any order passed by an Appellate Assistant Commissioner under section 31, direct the Income-tax Officer to appeal to the Appellate Tribunal against such order, and such appeal may be made at any time before the expiry of sixty days from the date of the order.
- (3) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner, and shall, except in the case of an appeal referred to in sub-section (2), be accompanied by a fee of one hundred rupees.
- (4) The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and shall communicate any such orders to the assessee and to the Commissioner.
- (5) Save as provided in section 66 orders passed by the Appellate Tribunal on appeal shall be final'.

84. In section 35 of the said Act sub-sections (2) and (3) shall be renumbered sub-sections (3) and (4), respectively, and the following shall be inserted as sub-section (2), namely :

- '(2) The provisions of sub-section (1) apply also in like manner to the rectification of mistakes by the Appellate Tribunal.'

85. In section 37 of the said Act, for the words 'and Commissioner' the words 'Commissioner and Appellate Tribunal' and for the words 'or Commissioner' in clause (c) the words 'Commissioner or Appellate Tribunal' shall be substituted.

86. In sub-section (2) of section 48 of the said Act, for the words 'The Appellate Assistant Commissioner in the exercise of his appellate powers, or the Commissioner in the exercise of his appellate powers or powers of revision' the words 'The Appellate Assistant Commissioner or the Appellate Tribunal in the exercise of their appellate powers' shall be substituted.

Amendment of section 66, Act XI of 1922.

87. In section 66 of the said Act—

- (a) for sub-sections (1), (2), (3), (3-A), (4) and (5), the following sub-sections shall be substituted, namely :—

- '(1) Within sixty days of the date upon which he is served with notice of an

Statement of case by Appellate Tribunal to High Court.

order under sub-section (4) of section 33 the assessee or the Commissioner may, by application in the prescribed form, accom-

panied where application is made by the assessee by a fee of one hundred rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order, and the Appellate Tribunal shall within ninety days of the receipt of such application draw up a statement of the case and refer it to the High Court :

- Provided that, if, in the exercise of its powers under sub-section (2), the Appellate Tribunal refuses to state a case which it has been required by the assessee to state, the assessee may, within thirty days from the date on which he receives notice of the refusal to state the case, withdraw his application and, if he does so, the fee paid shall be refunded.

- (2) If on any application being made under sub-section (1) the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the Commissioner, as the case may be, may, within six months from the date on which he is served with notice of the refusal, apply to the High Court, and the High Court may, if it is not satisfied of the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition the Appellate Tribunal shall state the case and refer it accordingly.

- (3) If on any application being made under sub-section (1) the Appellate Tribunal rejects it on the ground that it is time-barred the assessee or the Commissioner, as the case may be, may, within two months from the date on which he is served with notice of the rejection, apply to the High Court, and the High Court, if it is not satisfied of the correctness of the Appellate Tribunal's decision, may require the Appellate Tribunal to treat the application as made within the time allowed under sub-section (1).
- (4) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Appellate Tribunal to make such additions thereto or alterations therein as the Court may direct in that behalf.
- (5) The High Court upon the hearing of any such case shall decide the questions of law raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded and shall send a copy of such judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment';
- (b) in sub-section (7-A), for the words, brackets, figures and letter 'under sub-section (3) or sub-section (3-A)', the words, brackets and figures 'under sub-section (2) or sub-section (3)' shall be substituted."

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

"That after clause 78 of the Bill, the following heading and clauses shall be added :

'PART II.

79. The provisions of this Part shall not take effect until the expiry of two years from the commencement of this Act.

Insertion of new section 5A in Act XI of 1922. 80. After section 5 of the said Act the following section shall be inserted, namely :

'5A. (1) The Central Government shall appoint an Appellate Tribunal consisting of The Appellate Tribunal. not more than ten persons to exercise the functions conferred on the Appellate Tribunal by this Act.

(2) The Appellate Tribunal shall consist of an equal number of judicial members and accountant members as hereinafter defined.

(3) A judicial member shall be a person who has exercised the powers of a District Judge or who possesses such qualifications as are normally required for appointment to the post of District Judge; and accountant member shall be a person who has, for a period of not less than six years, practised professionally as a Registered Accountant enrolled on the Register of Accountants maintained by the Central Government under the Auditors Certificate Rules, 1932 :

Provided that the Central Government may appoint as a judicial member or accountant member of the Tribunal any person not possessing the qualifications required by this sub-section, if it is satisfied that he has qualifications and has had adequate experience of a character which render him suitable for appointment to the Tribunal.

(4) The Central Government shall appoint one member of the Tribunal to be president thereof.

(5) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted from members of the Tribunal by the president of the Tribunal.

(6) A Bench shall consist of not less than two members of the Tribunal, and shall be constituted so as to contain an equal number of judicial members and accountant members, or so that the number of members of one class does not exceed the number of members of the other class by more than one.

(7) If the members of a Bench differ in opinion on any point the point shall be decided according to the opinion of the majority, if there is a majority; but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the president of the Tribunal for hearing on such point or points by one or more of the other members of the Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard it.

[Mr. President.]

(8) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure, and the procedure of Benches of the Tribunal in all matters arising out of the discharge of its functions.'

Amendment of section 28, Act XI of 1922.

81. In section 28 of the said Act—

- (a) in sub-section (1) and sub-section (2), for the words 'or the Commissioner' the words 'or the Appellate Tribunal', and for the words 'he may direct' the words 'he or it may direct' shall be substituted;
- (b) in sub-section (5), for the words 'or a Commissioner who has made' the words 'or the Appellate Tribunal on making' shall be substituted.

Omission of section 32, Act XI of 1922.

82. Section 32 of the said Act shall be omitted.

Substitution of new section for section 33, Act XI of 1922.

83. For section 33 of the said Act the following section shall be substituted, namely :

- '33. (1) Any assessee objecting to an order passed by an Appellate Assistant Appeals against orders of Appellate Assistant Commissioner. may appeal to the Appellate Tribunal within sixty days of the date on which he is served with notice of such order.
- (2) The Commissioner may, if he objects to any order passed by an Appellate Assistant Commissioner under section 31, direct the Income-tax Officer to appeal to the Appellate Tribunal against such order, and such appeal may be made at any time before the expiry of sixty days from the date of the order.
- (3) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner, and shall, except in the case of an appeal referred to in sub-section (2), be accompanied by a fee of one hundred rupees.
- (4) The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and shall communicate any such orders to the assessee and to the Commissioner.
- (5) Save as provided in section 66 orders passed by the Appellate Tribunal on appeal shall be final.'

84. In section 35 of the said Act sub-sections (2) and (3) shall be re-numbered sub-sections (3) and (4), respectively, and the following shall be inserted as sub-section (2), namely :

- '(2) The provisions of sub-section (1) apply also in like manner to the rectification of mistakes by the Appellate Tribunal.'

85. In section 37 of the said Act, for the words 'and Commissioner' the words 'Commissioner and Appellate Tribunal' and for the words 'or Commissioner' in clause (c) the words 'Commissioner or Appellate Tribunal' shall be substituted.

86. In sub-section (2) of section 48 of the said Act, for the words 'The Appellate Assistant Commissioner in the exercise of his appellate powers, or the Commissioner in the exercise of his appellate powers or powers of revision' the words 'The Appellate Assistant Commissioner or the Appellate Tribunal in the exercise of their appellate powers' shall be substituted.

Amendment of section 66, Act XI of 1922.

87.—In section 66 of the said Act—

- (a) for sub-sections (1), (2), (3), (3-A), (4) and (5), the following sub-sections shall be substituted, namely :—

- '(1) Within sixty days of the date upon which he is served with notice of an order under sub-section (4) of section 33 the assessee or the Commissioner may, by application in the prescribed form, accompanied where application is made by the assessee by a fee of one hundred rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order, and the Appellate Tribunal shall within ninety days of the receipt of such application draw up a statement of the case and refer it to the High Court :

Statement of case by Appellate Tribunal to High Court.

Provided that, if, in the exercise of its powers under sub-section (2), the Appellate Tribunal refuses to state a case which it has been required by the assessee to state, the assessee may, within thirty days from the date on which he receives notice of the refusal to state the case, withdraw his application and, if he does so, the fee paid shall be refunded.

- (2) If on any application being made under sub-section (1) the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the Commissioner, as the case may be, may, within six months from the date on which he is served with notice of the refusal, apply to the High Court, and the High Court may, if it is not satisfied of the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition the Appellate Tribunal shall state the case and refer it accordingly.
 - (3) If on any application being made under sub-section (1) the Appellate Tribunal rejects it on the ground that it is time-barred the assessee or the Commissioner, as the case may be, may, within two months from the date on which he is served with notice of the rejection, apply to the High Court, and the High Court, if it is not satisfied of the correctness of the Appellate Tribunal's decision, may require the Appellate Tribunal to treat the application as made within the time allowed under sub-section (1).
 - (4) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Appellate Tribunal to make such additions thereto or alterations therein as the Court may direct in that behalf.
 - (5) The High Court upon the hearing of any such case shall decide the questions of law raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded and shall send a copy of such judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment;
- (b) in sub-section (7-A), for the words, brackets, figures and letter 'under sub-section (3) or sub-section (3-A)', the words, brackets and figures 'under sub-section (2) or sub-section (3)' shall be substituted.'

Mr. T. S. Avinashlingam Othettiar: Sir, I move:

"That in amendment* No. 51, in the proposed clause 79, for all the words occurring after the word 'shall' the words 'come into force on such date as the Central Government may by notification in the official Gazette appoint, but not later than two years from the commencement of this Act' be substituted."

As it is, it reads as follows:

"The provisions of this part shall not take effect until the expiry of two years from the commencement of this Act."

There is no guarantee given as to when it will come into effect at all. They say in the report of the Select Committee that the introduction of the new appellate body may be postponed for a period not exceeding two years, and so I think what is put here does not correctly represent the views of the Select Committee. So, Sir, I think this does not correctly represent the views of the Select Committee nor of the Government, and for that reason I have moved this amendment. Sir, I move.

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

"That in amendment No. 51,* in the proposed clause 79, for all the words occurring after the word 'shall' the words 'come into force on such date as the Central Government may by notification in the official Gazette appoint, but not later than two years from the commencement of this Act' be substituted."

The motion was adopted.

*Moved by Mr. Sheehy.

Mr. T. S. Avinashilingam Chettiar: Sir, I move:

"That in amendment No. 51, in the proposed clause 80, the proviso to sub-section (3) of section 5A be omitted."

It will be seen, Sir, that the clause, as they seek to introduce it, provides that an equal number of the appellate tribunal shall be accountant members and an equal number shall be those who possess judicial qualifications, and, as usual, Sir, the Government have come out with a proviso under which they may appoint anybody other than those people who are mentioned here. The proviso reads thus:

"Provided that the Central Government may appoint as a judicial member or accountant member of the Tribunal any person not possessing the qualification required by this sub-section, if it is satisfied that he has qualifications and has had adequate experience of a character which render him suitable for appointment to the Tribunal."

Now, Sir, this takes away what has been given under section 5-A, and I, therefore, think that this proviso ought to be deleted. I know that in the Select Committee's Report they have provided that people other than those possessing these qualifications, but who have acted as Assistant Income-tax Commissioners, may be appointed, but in my opinion that must be limited. I feel, Sir, that this proviso will do more harm than good, unless the Government give us an assurance that they will not abuse the power under this proviso. Sir, I move.

Mr. M. S. Aney: Sir, on a point of order. Amendment No. 51 has been moved, and the amendments to which are under discussion consist of several new sections to be added to the Bill. Is it not necessary that each separate section should be moved and put to the House separately from clause 79 to 87? These are new separate clauses to be added to the Bill, and the amendments are intended to relate to different clauses separately. It is, therefore, necessary, in my opinion, that each separate clause should be moved and put separately.

The Honourable Sir Nripendra Sircar (Law Member): The point of order has been taken too late, because the whole thing has been put to the House.

Mr. President (The Honourable Sir Abdur Rahim): The Chair does not think any inconvenience will be caused.

Mr. M. S. Aney: Each clause has to be put separately.

Mr. President (The Honourable Sir Abdur Rahim): It is only one amendment.

Mr. M. S. Aney: But each clause will have to be put separately to the vote.

Mr. President (The Honourable Sir Abdur Rahim): Only the amendment has to be put, but if the Honourable Member wishes to delete any portion of this Part II, of course he can put in an amendment to it . . .

Mr. M. S. Aney: It is a matter of procedure, Sir.

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

"That in amendment No. 51, in the proposed clause 80, the proviso to sub-section (3) of section 5A be omitted."

Mr. J. F. Sheehy: Sir, I oppose this amendment. I hope the Honourable Member will withdraw it or at least not press it when I give him the assurance that this provision will not be abused so as to pack the tribunal with officers of the Income-tax Department and that it will be used only very sparingly for the purpose of appointing persons who are not qualified to be judicial or accountant members, whether they belong to the Income-tax Department or not. I give that assurance to the Honourable Member.

Mr. T. S. Avinashilingam Chettiar: Sir, in view of this assurance, I ask leave of the House to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Dr. P. N. Banerjea: Sir, I move:

"That in amendment No. 51, in the proposed clause 80, for the proviso to sub-section (3) of section 5A, the following be substituted:

'Provided that the Central Government may appoint as accountant member of the tribunal any person now holding the position of Appellate Assistant Commissioner who shall be deemed to possess the qualifications required by this sub-section'."

Sir, the proviso to this section is so wide

Mr. President (The Honourable Sir Abdur Rahim): Is it not covered by the assurance given by the Honourable Member?

Dr. P. N. Banerjea: No, Sir, it is not covered by that assurance. The proviso is so wide and vague that it takes away what is actually provided in the proposed section itself. Any person who does not possess the qualifications required of a judicial member may, under this proviso, be appointed, and any person who does not possess the qualifications required of an accountant member, may also be appointed. The whole thing is left to the Board of Revenue. Sir, this may result in nepotism and favouritism, and persons ill qualified may be appointed. In this very House, we very often hear of complaints which have been made of appointments not on merits, but with regard to other considerations. In order to guard against that, Sir, the proviso should be qualified. I don't object to there being a proviso, but the proviso should not be in the terms in which it stands at present. In the Select Committee Report, it was accepted as a compromise that Appellate Assistant Commissioners should be entitled to become accountant members of this tribunal. I do not object to that, and in order to provide for such appointments, I am prepared to accept the second portion. Their proposal refers to two portions, the proposal relating to judicial members and the one relating to accountant members. So far as judicial members are concerned, the qualifications laid down here are not very high, because many persons are available who have worked as District Judges or who possess the qualifications required of a District Judge. Therefore, on account of paucity, persons possessing lower qualifications should be appointed, but with regard to the appointment of accountant members, it may be said that the Appellate Income-tax Assistant Commissioners possess the requisite qualifications, and, therefore, Sir, I suggest that with regard to accountant members the proviso should remain in the form in which I suggest in my

[Dr. P. N. Banerjea.]

amendment. But so far as the judicial members are concerned, their qualifications should not be reduced. That matter should not be left entirely in the hands of the Central Board of Revenue. Sir, I move.

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

"That in amendment No. 51, in the proposed clause 80, for the proviso to sub-section (3) of section 5A, the following be substituted:

'Provided that the Central Government may appoint as accountant member of the tribunal any person now holding the position of Appellate Assistant Commissioner who shall be deemed to possess the qualifications required by this sub-section.'

Mr. S. P. Chambers: I oppose this amendment. The matter has been discussed to some extent on an earlier amendment, and all I wish to say at this stage is that it is highly undesirable to fetter the Central Government in this manner. There may be Appellate Assistant Commissioners who may be qualified, there may be Inspecting Assistant Commissioners who may be qualified, and there may be persons outside, whether in Government service or not, who are well qualified or who are deemed to be persons eminently suitable. This is a very important office and I have no doubt that the appointment will be made with the greatest care. I oppose.

Mr. M. S. Aney: As a matter of fact, I do not see why the Government have introduced this proviso at all. The recommendation of the Select Committee does not justify them to depart from the test which have been laid down there, and having provided in sub-section (3) of this clause that there will be one judicial member and one accountant member with the qualifications mentioned in that section, where is the necessity for Government to claim any discretion to ignore the conditions laid down in that section and make the appointment of anybody they like? If a person has got the qualifications mentioned in sub-section (3), then there is no need of any proviso for the sake of appointing that man at all. He can be appointed. But if he has not got these qualifications what are the other qualifications which the Government can imagine, that can satisfy Government that the particular man can be deemed to be qualified to occupy an important position like that. The question reduces itself to this. The Central Board of Revenue wants to retain to itself the power of appointing a man with or without qualifications. I submit that we should oppose this proviso if the Government are not prepared to accept any limitations upon their power of discretion as provided for by my Honourable friend, Dr. Banerjea. There must be some restriction on the discretion to be used by Government. I do not want to give Government power to appoint a man who may or may not be qualified under sub-section (3). I can understand a man having those qualifications and something more. But I cannot understand a man being appointed to this high post if he does not possess even the minimum qualifications required in sub-section (3). Unless my Honourable friend, Mr. Chambers, gives me a concrete case of a person whom he can consider to be duly qualified without his possessing any one of the qualifications required—take the qualifications for judicial member—if he has got legal training that can

qualify him to act as District Judge,—he may or may not have acted as District Judge, but he must have the qualification to be appointed a District Judge—if a man has not got even that amount of qualification, can it be contended that such a man is capable of being a judicial member of the highest tribunal against whose judgments there is practically no appeal except a reference to the High Court? Similarly on the accountant side, if he has not got the qualifications required of an accountant member, how is he qualified to be an accountant member of that tribunal? I believe that they must lay down certain specific qualifications of a high order. I do not want to leave the discretion to the Government and make it so unfettered as to give them practically the right to ride roughshod over the qualifications which are being enacted here by the House. This is driving a coach and four through the Bill just as section 60 of the old Act had given power to the Governor General to override the whole Act. I therefore think that either the Honourable Member should accept the amendment which has been moved by Dr. Banerjee or I shall have to oppose the proviso itself, and I shall request you, Sir, to put the proviso separately for vote in that case.

Mr. Bhulabhai J. Desai: I must confess that the proviso as drafted by Government is wider than what the Select Committee intended. The only intention of the Select Committee was, and is to-day, that in so far as regards the accountant members, if any member from the service is to be appointed we do agree. Therefore I do ask my Honourable friend to see if for the words, ". . . . may appoint as accountant member of the tribunal any person now holding the position of Appellate Assistant Commissioner . . ." the words, ". . . . may appoint as accountant member of the tribunal any person from the Department who shall be deemed to possess . . ."—if that would not meet the needs of the case. There may be an exceptionally well qualified income-tax officer without being an Appellate Assistant Commissioner, who may be qualified for the post. What I am suggesting is that the words "may appoint as accountant member of the tribunal any person from the Department who shall be deemed to possess the qualifications required by this sub-section" may be substituted in place of the words "may appoint an accountant member of the tribunal any person now holding the position of Appellate Assistant Commissioner who shall be deemed to possess the qualifications required by this sub-section." That is all that we in the Select Committee agreed.

Mr. S. P. Chambers: I am sorry that I cannot accept the suggestion just made. My own impression was that the discretion was to be somewhat wider than that which was the impression of the Honourable the Leader of the Opposition. May I suggest that these provisions were based largely on the provisions of the United Kingdom Act? There there are Special Commissioners who are appointed in a very similar manner except that there is no question of division into accountant members and judicial members. Some of those persons are appointed from legal profession, some from the services, and some are appointed quite independently,—persons who are deemed to be suitable. And that body has worked exceptionally well. That is not merely my opinion; that is the opinion expressed in a number of cases by the High Court, by the Court of Appeal and by the House of Lords. I am afraid I cannot accept the suggestion that has been made.

Sir Cowasji Jehangir (Bombay City: Non-Muhammadan Urban): I understand that the amendment now before the House is the one suggested by the Leader of the Opposition.

Mr. S. P. Chambers: On a point of explanation. That was the suggestion by the Honourable the Leader of the Opposition, and, as we have not been able to accept it, it is the original amendment which is now before the House.

Sir Cowasji Jehangir: The House can amend any amendment that is before the House. It does not require the permission of any Government Member or representative of the Government. It is within the power of the House. May I suggest that the amendment, as amended by the Leader of the Opposition, should be formally put to the House?

Mr. S. P. Chambers: It is not a mere verbal alteration. It is an alteration of very considerable importance, and I suggest it is not one for which the usual provision of two days' notice should be waived.

Mr. President (The Honourable Sir Abdur Rahim): Does the Honourable Member want time to consider it?

Mr. S. P. Chambers: May I make a suggestion? We are now approaching the luncheon interval. Between now and the time the House re-assembles after Lunch, some kind of suggestion might be devised, which will be acceptable to all parties.

Mr. President (The Honourable Sir Abdur Rahim): Then, this amendment will stand over.

Mr. B. Das (Orissa Division: Non-Muhammadan): Sir, I move:

"That in amendment No. 51, in the proposed clause 80, in sub-section (4) of section 5-A, for the word 'one' the words 'a judicial' be substituted."

I hope this amendment will be accepted.

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

"That in amendment No. 51, in the proposed clause 80, in sub-section (4) of section 5-A, for the word 'one' the words 'a judicial' be substituted."

The motion was adopted.

Mr. K. Santhanam: Sir, I move:

"That in amendment No. 51, to sub-section (8) of section 5A, of the proposed clause 80, the words 'including the place at which the Benches shall hold their sitting' be added at the end."

There is a doubt as to where the Benches may be allowed to sit—at a central place or wherever they may find it convenient. My amendment simply wants to give the appellate tribunal power to sit wherever they find it convenient to do so. I think this is also the intention of the Government. Sir, I move.

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

"That in amendment No. 51, to sub-section (8) of section 5A, of the proposed clause 80, the words 'including the place at which the Benches shall hold their sitting' be added at the end."

The motion was adopted.

Dr. P. N. Banerjea: Sir, I move:

"That in amendment No. 51, in the proposed clause 83, in sub-section (3) of section 33, for the words 'of one hundred rupees' the following words be substituted: 'of fifty rupees in case of an appeal on an assessment of a total income not exceeding five thousand rupees and a fee of one hundred rupees in other cases'."

The object of my amendment is to fix a smaller fee in the case of poorer persons. It may happen that an assessee whose income is very small may feel a grievance against the decision of the appellate Assistant Commissioner. In that case, it will be really prohibiting him from filing an appeal if the fee is fixed at Rs. 100. In order to give some relief, I suggest that in such small cases the fee should be Rs. 50. In all other cases, the fee should be Rs. 100. Sir, I move.

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

"That in amendment No. 51, in the proposed clause 83, in sub-section (3) of section 33, for the words 'of one hundred rupees' the following words be substituted: 'of fifty rupees in case of an appeal on an assessment of a total income not exceeding five thousand rupees and a fee of one hundred rupees in other cases'."

Mr. J. F. Sheehy: Government oppose this amendment.

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

"That in amendment No. 51, in the proposed clause 83, in sub-section (3) of section 33, for the words 'of one hundred rupees' the following words be substituted: 'of fifty rupees in case of an appeal on an assessment of a total income not exceeding five thousand rupees and a fee of one hundred rupees in other cases'."

The motion was negatived.

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

The Assembly re-assembled after Lunch at Half Past Two of the Clock, Mr. Deputy President (Mr. Akhil Chandra Datta) in the Chair.

Mr. S. P. Chambers: Sir, may I make a statement about the amendment which was postponed till after the luncheon interval (No. 57 on page 12 of Revised Final List). The Honourable the Leader of the Opposition suggested that if the original proviso read, "provided that the Central Government may appoint as an accounting member", leaving out the words "a judicial member or", that might be acceptable, and I replied to the effect that we would consider the matter to see whether any acceptable arrangement could be come to. Since then, I have had an opportunity of speaking to the Honourable the Finance Member and he raises no objection to the acceptance of that amendment. I do not know whether the wording of the amendment before the House can be made to have that effect. The Leader of the Opposition, I think, suggested the deletion of the words "a judicial member or" in the original proviso.

Mr. Bhulabhai J. Desai: I did not do that. What I did was to omit the words from the Appellate Assistant Commissioners. In order to save time, I may say, I would accept: "Provided that the Central Government may appoint an accountant member, etc." omitting the words "a judicial member or".

Mr. S. P. Chambers: I would accept that.

Mr. Deputy President (Mr. Akhil Chandra Datta): Does the Honourable Member, Dr. Banerjea, wish then to withdraw this amendment?

Dr. P. N. Banerjea: I ask for leave to withdraw the amendment, Sir.

The amendment was, by leave of the Assembly, withdrawn.

Mr. S. P. Chambers: Sir, I move, then:

"That in amendment No. 51, in the proposed clause 80, in the proviso to sub-section (3), for the words 'a judicial member or' the word 'an' be substituted."

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is:

"That in amendment No. 51, in the proposed clause 80, in the proviso to sub-section (3), for the words 'a judicial member or' the word 'an' be substituted."

The amendment was adopted.

Dr. P. N. Banerjea: Sir, I move:

"That in amendment No. 51, after sub-clause (5) to the proposed clause 87 (a), the following be added:

'(6) if as a result of such reference to the High Court the Commissioner is dissatisfied and is granted leave to appeal to His Majesty-in-Council, the costs of the assessee in respect of such appeal shall be borne by the Commissioner.'

Sir, certain additions are made in the existing section 66 of the Act. These run as follows:

"Provided that if the amount of assessment is reduced as a result of such reference to the High Court the amount over-paid shall be refunded, with such interest as the Commissioner may allow unless the Commissioner intends to ask for leave to appeal to His Majesty-in-Council."

Now, in this case, the Commissioner asks for leave to appeal to His Majesty-in-Council and he drags the assessee to the Privy Council. Now, it is well-known that the costs of an appeal to the Privy Council are very heavy and it is not fair to the assessee to compel him to bear the costs. Therefore, I suggest that when the Commissioner feels dissatisfied with the decision of the High Court and appeals to the Privy Council, he should bear the costs of the assessee. Well, the Commissioner—who really is the Government of India—is in possession of large funds, and the assessee may or may not be in a position to incur the heavy cost which is incidental to an appeal before the Privy Council. Therefore, the demand that I make is a very fair one, and I hope it will commend itself to the House.

Mr. Deputy President (Mr. Akhil Chandra Datta): Amendment moved:

"That in amendment No. 51, after sub-clause (5) to the proposed clause 87 (a), the following be added:

'(6) if as a result of such reference to the High Court the Commissioner is dissatisfied and is granted leave to appeal to His Majesty-in-Council, the costs of the assessee in respect of such appeal shall be borne by the Commissioner.'

The Honourable Sir Nripendra Sircar: Sir, this amendment is totally unacceptable to the Government. This involves introducing a principle which has never been accepted in any Statute, and, surely, the Judicial Committee will be in the best position to judge as to who will bear the cost.

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is:

"That in amendment No. 51, after sub-clause (5) to the proposed clause 87 (a), the following be added:

'(6) if as a result of such reference to the High Court the Commissioner is dissatisfied and is granted leave to appeal to His Majesty-in-Council, the costs of the assessee in respect of such appeal shall be borne by the Commissioner.'

The motion was negatived.

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is:

"That after clause 78 of the Bill, the following heading and clauses shall be added:—

PART II.

79. The provisions of this Part shall come into force on such date as the Central Government may by notification in the official gazette appoint, but not later than two years from the commencement of this Act.

Operation.

Insertion of new section 5A in Act XI of 1922. 80. After section 5 of the said Act the following section shall be inserted, namely:

'5A. (1) The Central Government shall appoint an Appellate Tribunal consisting of The Appellate Tribunal. not more than ten persons to exercise the functions conferred on the Appellate Tribunal by this Act.

(2) The Appellate Tribunal shall consist of an equal number of judicial members and accountant members as hereinafter defined.

(3) A judicial member shall be a person who has exercised the powers of a District Judge or who possesses such qualifications as are normally required for appointment to the post of District Judge; and accountant member shall be a person who has, for a period of not less than six years, practised professionally as a Registered Accountant enrolled on the Register of Accountants maintained by the Central Government under the Auditors Certificate Rules, 1932:

Provided that the Central Government may appoint as an accountant member of the Tribunal any person not possessing the qualifications required by this sub-section, if it is satisfied that he has qualifications and has had adequate experience of a character which render him suitable for appointment to the Tribunal.

(4) The Central Government shall appoint a judicial member of the Tribunal to be president thereof.

(5) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted from members of the Tribunal by the president of the Tribunal.

(6) A Bench shall consist of not less than two members of the Tribunal, and shall be constituted so as to contain an equal number of judicial members and accountant members, or so that the number of members of one class does not exceed the number of members of the other class by more than one.

(7) If the members of a Bench differ in opinion on any point the point shall be decided according to the opinion of the majority; if there is a majority; but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the president of the Tribunal for hearing on such point or points by one or more of the other members of the Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard it.

(8) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure, and the procedure of Benches of the Tribunal in all matters arising out of the discharge of its functions including the place at which the Benches shall hold their sittings.

Amendment of section 28, Act XI of 1922. 81. In section 28 of the said Act—

(a) in sub-section (1) and sub-section (2), for the words 'or the Commissioner' the words 'or the Appellate Tribunal', and for the words 'he may direct' the words 'he or it may direct' shall be substituted;

(b) in sub-section (5), for the words 'or a Commissioner who has made' the words 'or the Appellate Tribunal on making' shall be substituted.

[Mr. Deputy President.]

Omission of section 32, Act XI of 1922.

82. Section 32 of the said Act shall be omitted.

Substitution of new section for section 33, Act XI of 1922.

83. For section 33 of the said Act the following section shall be substituted, namely :

- '33. (1) Any assessee objecting to an order passed by an Appellate Assistant Commissioner under section 28 or section 31 Appellate Assistant Commissioner may appeal to the Appellate Tribunal within sixty days of the date on which he is served with notice of such order.
- (2) The Commissioner may, if he objects to any order passed by an Appellate Assistant Commissioner under section 31, direct the Income-tax Officer to appeal to the Appellate Tribunal against such order, and such appeal may be made at any time before the expiry of sixty days from the date of the order.
- (3) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner, and shall, except in the case of an appeal referred to in sub-section (2), be accompanied by a fee of one hundred rupees.
- (4) The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and shall communicate any such orders to the assessee and to the Commissioner.
- (5) Save as provided in section 66 orders passed by the Appellate Tribunal on appeal shall be final.'

84. In section 35 of the said Act, sub-sections (2) and (3) shall be renumbered sub-sections (3) and (4), respectively, and the following shall be inserted as sub-section (2), namely :

- '(2) The provisions of sub-section (1) apply also in like manner to the rectification of mistakes by the Appellate Tribunal.'

85. In section 37 of the said Act, for the words 'and Commissioner' the words 'Commissioner and Appellate Tribunal' and for the words 'or Commissioner' in clause (c) the words 'Commissioner or Appellate Tribunal' shall be substituted.

86. In sub-section (2) of section 48 of the said Act, for the words 'The Appellate Assistant Commissioner in the exercise of his appellate powers, or the Commissioner in the exercise of his appellate powers or powers of revision' the words 'The Appellate Assistant Commissioner or the Appellate Tribunal in the exercise of their appellate powers' shall be substituted.

Amendment of section 66, Act XI of 1922.

87. In section 66 of the said Act—

- (a) for sub-sections (1), (2), (3), (3-A), (4) and (5), the following sub-sections shall be substituted, namely :—

'(1) Within sixty days of the date upon which he is served with notice of an order under sub-section (4) of section 33 the assessee or the Commissioner may, by application in the prescribed form, accompanied where application is made by the assessee by a fee of one hundred rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order, and the Appellate Tribunal shall within ninety days of the receipt of such application draw up a statement of the case and refer it to the High Court :

Provided that, if, in the exercise of its powers under sub-section (2), the Appellate Tribunal refuses to state a case which it has been required by the assessee to state, the assessee may, within thirty days from the date on which he receives notice of the refusal to state the case, withdraw his application and, if he does so, the fee paid shall be refunded.

- (2) If on any application being made under sub-section (1) the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the Commissioner, as the case may be, may, within six months from the date on which he is served with notice of the refusal, apply to the High Court, and the High Court may, if it is not

satisfied of the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition the Appellate Tribunal shall state the case and refer it accordingly.

- (3) If on any application being made under sub-section (1) the Appellate Tribunal rejects it on the ground that it is time-barred the assessee or the Commissioner, as the case may be, may, within two months from the date on which he is served with notice of the rejection, apply to the High Court, and the High Court, if it is not satisfied of the correctness of the Appellate Tribunal's decision, may require the Appellate Tribunal to treat the application as made within the time allowed under sub-section (1).
- (4) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Appellate Tribunal to make such additions thereto or alterations therein as the Court may direct in that behalf.
- (5) The High Court upon the hearing of any such case shall decide the questions of law raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded and shall send a copy of such judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment.';

(b) in sub-section (7-A), for the words, brackets, figures and letter 'under sub-section (3) or sub-section (3-A)', the words, brackets and figures 'under sub-section (2) or sub-section (3)' shall be substituted."

The motion was adopted.

The heading "Part II", new clauses 79 and 80, as amended, and new clauses 81 to 87 were added to the Bill.

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is:

"That clause 3 stand part of the Bill."

Babu Baijnath Bajoria: Sir, I beg to move:

"That clause 3 of the Bill be re-numbered as sub-clause (1) of clause 3, and after this sub-clause, the following new sub-clause be inserted, namely:

- '(2) That the following proviso shall be added to section 3 of the said Act:
'Provided however that in the case of a Hindu undivided family, the tax payable on the total income shall be computed as the aggregate of taxes payable by its individual adult male members as if such members have separated and been taxed accordingly'."

Sir, the Honourable the Leader of the House at a public function, a few days ago, said that whenever any Bill came before the Legislature, he would expect me to say that that would mean the end of the Hindu joint family system. Sir, I do not want to disappoint my Honourable friend. As a matter of fact, I assert and say that this Income-tax Bill or, as a matter of fact, even the parent Act, as it stands, does bring the joint family system to an end, as will be evident from the fact that the number of assesseees, who are being assessed under the Hindu joint family system, is on the decrease, and, therefore, there is sufficient and adequate reason for this end. This is a serious amendment, and I would like my Honourable friends to bear with me for a few minutes and give this matter their most serious consideration, because, on this amendment will probably depend whether the Hindu undivided family, especially of the middle class and the wealthier classes, will remain or will go out.

[Babu Baijnath Bajoria.]

Sir, I spoke at some length in my speech on the general discussion as to how this Income-tax Act is affecting the Hindu undivided family. To make the position clear, I hope I shall be given some indulgence if I do some repetition at this stage. I shall not take much time. I will just refresh the memory of my Honourable friends. My grievance is that, if a father and three sons live jointly, then they will have to pay on the aggregate income at the rate applicable to the aggregate income. The whole trouble is about the rate. There is no trouble about the aggregate income which is to be assessed. But if we are forced to divide, as this Act is doing, then we get the benefit of separate assessment. But, Sir, why should a fiscal enactment force us, the Hindus, who have been living under the joint family system for ages, to separate? This is most inequitable, and it should not be. The joint family system has got several advantages, and we should like to take the benefit of those advantages. Especially the middle class families gain much when they live jointly: such as the expenses of running one establishment and living in one house are all advantageous. It is obvious that we should not be forced to have separate kitchens. If you do so, you should not call yourself an undivided family. Then, we will be getting the benefits of this Act.

Then, again, there is another point. Supposing four persons live together and they earn Rs. 100 each. Then, if they are individually assessed, as they would have been if they did not belong to a Hindu undivided family, they will pay no tax, whereas, if they live as an undivided family, they will be taxed on Rs. 400. This is most iniquitous. It is a hardship which is felt by all persons living under this system. Even the expert enquiry Committee, of which my Honourable friend, Mr. Chambers, was a distinguished member, were also obliged to accept that a real hardship existed, and they also made some recommendations to mitigate the hardship to a certain extent. At that time, they had also in their mind that the income of the husband and the wife will be aggregated for every family. But that provision has been deleted by the Select Committee, and so the case of the Hindu undivided family becomes much stronger. We expect to get more relief. After all, what do I want by this amendment? What I want is that they should be treated as an association of persons. If there are four or five brothers and other members of the family, the rate of income-tax should be the rate which is applicable to the income of each person. It may be said that the income of each person is not ascertainable, but I deny that charge. Even when we file a return at the present moment, we have to give the names of the adult members of the family, and so what I want is that the names, which have been given, may be verified, and there is no difficulty in verifying them. When the Income-tax Department can verify receipts of small sums which the man gets from here, there and everywhere, certainly they cannot say that they cannot find out the income of the various members of the Hindu undivided family. Supposing, I say, I have got three sons. They can certainly verify whether I have got three sons, or one son and have falsely mentioned three sons. So, this is not a very difficult thing. I do not think that the argument that the share is not ascertainable can hold any water.

Then, again, just to simplify matters, I am also sacrificing the rights of the minors. I am not counting them, otherwise the Honourable the Law Member would like to know whether this is *Khoka* No. 7 or *Khoka*

No. 8. I am leaving out all *Khokas* as he also very kindly did in the case of the Companies Bill. I am also proceeding practically on the same basis. That is a point which I would like the Honourable Mr. Chambers and Mr. Sheehy to bear in mind when they reply. I am making that sacrifice. I only want about the adult members. If the adult members are making the total income what it is, then why should they not be allowed to get their share? I think that it is like the Communal Award against us. I will go even further and say that it is like the *Jizia* tax. We have been paying this *Jizia* tax for such a long time. It is said that this Bill is meant to catch the tax-dodger and to give relief to the honest assessee. As an honest assessee, I would like the Government to agree to this amendment, otherwise they themselves would be responsible for asking us to take steps which probably we would not have taken. I hope the Honourable the Leader of the Opposition in his good sense will see sense at least in the nonsense that I am talking. I won't take the time of the House any further and I hope the House will do us a justice which is long overdue by accepting this amendment.

Sir, there is one more point which I would like to mention. It may be argued that this amendment will mean a big hole in the revenues of the State. I do not know what the figures would be, but I will say this that there should be a just incidence of taxation. Why should one particular section of assessees suffer? As I understand, at the present moment there are about 30,000 families who are assessed under this system, and, on behalf of these 30,000 assessees, I appeal to the Government to accept this amendment.

Mr. Deputy President (Mr. Akhil Chandra Dutta): Amendment moved:

"That clause 3 of the Bill be re-numbered as sub-clause (1) of clause 3, and after this sub-clause, the following new sub-clause be inserted, namely:

'(2) That the following proviso shall be added to section 3 of the said Act:

'Provided however that in the case of a Hindu undivided family, the tax payable on the total income shall be computed as the aggregate of taxes payable by its individual adult male members as if such members have separated and been taxed accordingly.'

Mr. Brojendra Narayan Chaudhury (Surma Valley *cum* Shillong: Non-

3 P.M.

Muhammadan): Sir, the Honourable the Finance Member in reply to a question of mine yesterday promised me a discussion on the justice of taxing undivided Hindu families on aggregate income. Now, I invite him, he is absent, or his representative here to satisfy me that it is just to tax the income of undivided Hindu families in the aggregate as they have been doing all these years. Sir, the protest against this injustice has not been manufactured by my Honourable friend, Babu Baijnath Bajoria. It is as old as the imposition of this form of graded taxation itself. Our public leaders and our Congress leaders of old days, like Mr. Surendra Nath Banerjee and Mr. Bhupendra Nath Bose, proved in the Imperial Legislative Council that this system of taxing the undivided Hindu families in the aggregate and at a higher rate was most unjust. But the plea has always been that it will make a big hole in the amount of taxes raised.

Now, Sir, I tried to scrutinise the figures for Bengal and Assam, the two provinces with which I am intimately concerned. The figure for Bengal is only 12 lakhs and that for Assam Rs. 2,80,000. This is the total amount of Income-tax collected from the Hindu undivided families

[Mr. Brojendra Narayan Chaudhury.]

in Bengal and Assam. Now, we are not asking that all this tax should be remitted. We are only asking that where there is more than one member of the family the rate should be the rate appropriate to the income in the share of each member. This will reduce the rates in some cases, and even increase the rates where personal earnings are high. In this way, the amount of 12 lakhs for Bengal and, approximately, 3 lakhs for Assam, in all 15 lakhs, could not be reduced by more than, say, 3 lakhs. Of that, I am quite sure. The Honourable Mr. Chambers and his two colleagues of the Income-tax Inquiry Committee have tried to make some sort of a case against the undivided Hindu family, but I may tell him at the outset that none of the arguments put forward by that Committee touch the Dayabhadg families of Bengal and Assam at all. Here are the arguments. First of all, we are told that the joint Hindu family, being a sort of co-parcenary, do not pay death duties. I may tell Mr. Chambers for his illumination that on my father's death I had to pay death duties at the rate of 2 or 3 per cent. only on the aggregate value of the property on succession certificate to be able to collect the debts due to my father, whereas at the higher rate of income-tax paid and payable by me for a lifetime—taxes all together will be many times the death duty, so that even if I had not to pay the death duties I would be a loser. I say without fear of contradiction that the Dayabhadg families do pay their death duties and the amount of succession duties in the case of Mitakshara families is not so big as for the exemption to compensate for high rate of Income-tax payable. It is not so big as to compensate for the additional income-tax at the additional rate which they have been paying and have to pay for many years, whereas the death duty is small and paid only once. The next point made out is that it is a matter entirely within the choice of the family whether to separate or to remain joint. I cannot refrain from laughing at an argument like this. Does it not amount to this that a robber may tell me that I, not personally, for I am separate, but the member of joint family can escape being robbed, but for that I must get out of the house bag and baggage? Why should I be compelled to leave my house like that on a threat. I have heard that argument not only from the Treasury Benches but from other Honourable Members whom I respect and I was pained to hear it put forward. Then, Sir, we are given a kind of solace by the inquiry committee that henceforward husband and wife also be taxed jointly; but where is that solace? That is gone, it is not in the Bill as amended, because there is a considerable section of what they call people with progressive ideas whose definition of "family" is confined to man and wife and it is in order to placate that section of the House that that clause has been changed. I may be told that my feeling is one of jealousy. I say, no. I would be glad if husband and wife were to be taxed together not because they will be losers and I would gloat over others' loss, but because if the husband and wife's income had been aggregated the total income of the State would have been more and I could extract a general lowering in the rates for all. So what I am asking for is for the sake of my gain along with public gain and not out of jealousy.

Now, the last argument put forward by the inquiry committee is that though they are convinced that hardship exists they feel that its effect on the revenue would be considerable. I ask the House to tell me whether the effect on the revenues, irrespective of the justice or otherwise of the case, is any consideration at all. I have heard often the argument put

forward by the Finance Member that a certain proposal cannot be accepted because it will make a big hole in his net. But that I submit is not the relevant or just point. Here in this Bill we are going to devise such a method by which each person will be taxed in proportion to his ability to pay. Here there is no question of the total income which we are going to get or lose. I have said on a previous occasion that that question is for the Finance Bill.

Now, I want to make out another point about undivided Hindu families. It is a doubtful point whether Hindu families of the Dayabhadg school come under the purview of this Act at all or not. Unfortunately no Dayabhadg family has gone up to the High Court to have a ruling on this point, but we have at least two cases started by Mitakshara families where the courts have held *obiter dicta* in the case of Moolji Sica in the Privy Council and also in the case of Chamaria in a High Court that the law did not intend by the words "undivided Hindu family" to say that the Dayabhadg school where the shares of the partners are distinct, transferable and can be willed away, and where there are merely joint board and lodge, chummery, so to speak, should be taxed as one entity. I shall be glad to be convinced by the Honourable the Leader of the Opposition that I am wrong and that no injustice is being done to the undivided Hindu families, particularly of the Dayabhadg school. What I want about the Dayabhadg school is only a clarification of the position. Government are so stolid that they have not accepted even the recommendation of the inquiry committee which as a half measure recommended that where there is more than one married male member the rates will be appropriate to half the income. I hope Government will now satisfy me that no injustice is being done. I tell this House that a very large part of my constituents in the rural districts are undivided Hindu families because though politically they are called "Non-Muhammadan" or "general constituency" I doubt whether there is a single voter who is not a Hindu. So long there was some justification for taxing an undivided Hindu family as also a Dayabhadg family in the lump when a joint family of Muhammadans could be taxed jointly as an association of individuals. But in this Bill you have even given up that method. You are now going to tax individually "association of individuals", e.g., Muslim brothers who have inherited property from their fathers just as a Hindu family has and living jointly in the same way, in the same chummery, with the same common ceremonies and the same common property with the same economic advantages of being joint. And now you are going to tax them separately and not jointly. I cannot call this discrimination anything but religious disability against the clauses of the Queen's Proclamation on which the official benches swear so much.

The Honourable Sir Nripendra Sircar: Sir, Government very strongly oppose this amendment. Before trying to deal very shortly with the points which have been raised let us see how this amendment will work out. I assume that there is a joint family of four brothers two of whom are adults and two are minors. Now let us apply Mr. Bajoria's formula to them:

"Provided however that in the case of a Hindu undivided family, the tax payable on the total income shall be computed as the aggregate of taxes payable by its individual adult male members as if such members have separated."

Now, let us suppose the whole income is Rs. 40,000 and each brother is entitled to Rs. 10,000 of it. The adults have Rs. 10,000 each and the minors have Rs. 10,000 each and therefore the minors escape altogether.

Babu Baijnath Bajoria: No, no.

The Honourable Sir Nripendra Sircar: Yes, they do. The language is clear: "taxes payable by its individual adult male members". What happens to the share of the minors? They go out altogether.

Babu Baijnath Bajoria: That is not my intention.

The Honourable Sir Nripendra Sircar: That may not be the intention and that may not be in the Honourable Member's mind; but, as a learned Judge once said, what is in the mind of man the devil himself does not know. But what is expressed here? According to that the minors escape altogether. . . .

Mr. Sri Prakasa (Allahabad and Jhansi Divisions: Non-Muhammadan Rural) What about the mind of the devil?

The Honourable Sir Nripendra Sircar: About the mind of the devil, my friend will speak for himself. I need not take up the time of the House by going into the distinction between the positions of Mitakshara and Dayabaga families, because this amendment ropes in both Mitakshara and Dayabaga. According to Mitakshara what is the share of an undivided member? I read only four lines of Mulla's Hindu law—I am sure my friend, Mr. Bajoria, has got this up by heart:

"According to the true notion of an undivided family governed by the Mitakshara law, no individual member of that family whilst he remains undivided can predicate of the joint and undivided property that he or a particular member has a definite share—one-third or one-fourth. His interest is a fluctuating interest capable of being enlarged by deaths in the family and liable to be diminished by births in the family. It is only on partition that he becomes entitled to a definite share." . . .

Babu Baijnath Bajoria: But at a certain time it is always ascertainable. What my share is is ascertainable at any particular time.

The Honourable Sir Nripendra Sircar: That involves a medical examination of the ladies of the House. I am talking quite seriously. According to the Mitakshara law this child or rather potential child, assuming there is no trouble afterwards, will have a share. As soon as that child is born, in a proper case, he can even ask for partition, though not as a general right. He gets a share and there is no good brushing away minors. The Mitakshara infant is a terrible gentleman. . . .

Babu Baijnath Bajoria: But this definition is just like the definition of 'ordinarily resident' which has been passed in the House only yesterday: where he is not an ordinary resident he has been made an ordinary resident and here also what I mean is that for the purposes of income-tax the minors will not be considered and the adult members will be considered to have the whole income.

The Honourable Sir Nripendra Sircar: I have followed my friend's point. I was trying to show that you cannot neglect the minors in a Mitakshara family. In a Bengal family that minor has no interest whatever in the property: his father can will away whole property and the infant can never claim a single pice from his father, except possibly maintenance and so on; but that is not the position of a Mitakshara family. In a Mitakshara

family a son, as soon as he is born, acquires a right in the joint family property. Therefore what justification is there for brushing aside the minors? That is the whole point.

Lastly, I am told by those who ought to know that this will make a really serious encroachment on the revenues to be collected under this tax.

Mr. F. E. James (Madras: European): The cat is out of the bag!

The Honourable Sir Nripendra Sircar: That is quite true: the cat is out of the bag, but I let loose two tigers before I called out the cat. I am told that this amount collected from the joint Hindu family is in the region of a crore and a half: of course, one cannot exactly calculate what would be the amount of loss, but the loss will be very severe: it may be 50 or it may be 75 lakhs. But quite irrespective of the argument based on loss of revenue, what has been called the cat, the point remains that there is no substance in my friend's argument when once we realise the position of a Mitakshara member in a joint family, and no distinction has been made in this amendment between a Mitakshara family and a Dayabaga family. Sir, I oppose.

Mr. M. S. Aney: Sir, I thought that the Honourable the Law Member would treat the amendment with a degree of sympathy and that his legal knowledge would be used more in favour of showing that there was a case for the Hindu joint family—a real and genuine case to claim a relief, now that the Income-tax Act is being amended. But, anyhow, occupying as he does a particular position, he had to plead the brief given to him. I would, however, like to know. . . .

Mr. Husenbhai Abdullabhai Laljee: Is that not insinuating a motive?

Mr. Deputy President (Mr. Akhil Chandra Datta): No.

The Honourable Sir Nripendra Sircar: My friend is equally holding a brief.

Mr. M. S. Aney: I hold a brief, and I would have liked him to hold that brief and I would have willingly handed over my brief to him, being an acuter and a more able lawyer to plead the case of the joint Hindu family; and it is unfortunate that the case has to be pleaded by a lawyer of far less reputation than the Honourable the Law Member. However, there it is. And another misfortune is that we have got also another big lawyer who could have been pitted against him but who has chosen to remain mum on most of the important questions so far as this Bill is concerned. That is another misfortune of the great community which he is privileged to represent here in this House that its best exponent should not have felt himself free to take up the cudgels and fight out the case which really deserves his advocacy and ability which he can bring to bear upon the exposition of questions of this kind. However, with my limited ability I will try to explain what the position of the Hindu community is in this matter.

In the first place, I refuse to regard any combination of men that is not made for the sake of making a profit or gain as having anything to do at all with the fiscal law or a law like the income-tax. Any association or club which has no object of making any profit or loss should have no existence at all in the eye of the fiscal law, particularly of a law like

[Mr. M. S. Aney.]

the Income-tax Act. The Hindu joint family is not a combination of that kind at all. I can understand a firm or a joint company being run like that; but a Hindu joint family is a combination which comes into existence not for the sake of making any monetary gain or profit. That position will have to be conceded by everybody. It comes into existence in accordance with old usage; sentiment has grown in the community and this particular combination is there. There is no doubt that the combination can break up at the will of any of its members who go to form that joint family. This is the important point that has to be borne in mind when we consider the question of the joint Hindu family. This sentiment is a thing which has to be taken into consideration. It is said "The law is like that and you can separate in a moment and you can be free from the extra liability which this law fastens on the members of a joint Hindu family." But have you taken the sentiment into consideration? If there is a father or mother living, the brothers do not like to separate, the father and mother do not like that the sons should be separate from themselves. There is a good deal of sentiment which it is difficult for my European friends on the treasury benches to appreciate. It should not be difficult for a Hindu to appreciate this sentiment: how, even if the relations among the brothers are not very cordial but if the father or mother is alive, for the sake of keeping the respect for him or for her, we wish to submit at times to the disadvantage of a certain amount of friction in the House for years together but do not want to displease the old mother by demonstrating to her that her sons have been separated. That is a kind of sentiment which controls the actions of the members of the Hindu Joint family. Are we to be punished for the sake of cherishing a feeling of respect for our elders in this manner? Are we to be punished for it? Because, Sir, so long as an elder brother is alive, after the death of the father, the younger brothers of the family naturally look up to the elder brother and hold him with the same high esteem and regard with which they would have looked on their father had he been alive, and as a mark of respect to the elder brother, we want to remain joint with him despite any disabilities in the family. Now I ask are we to be punished for cherishing feelings of respect of that kind? This is one of the ways by which the continuance of the joint family membership will be broken. You must remember that a joint family is not formed for the sake of carrying on any mercantile business or for making a profit, it is not formed like any corporation or a joint limited concern. It has been there ever since the dawn of civilization, and it is there for the sake of perpetuating or fostering a certain sentiment which exists. Therefore, I do not think it is right to punish anybody for cherishing feelings of respect to the eldest surviving member and trying to remain joint in the family.

Now, Sir, so far as the Income-tax Act is concerned, it should concern itself, in my opinion, with individuals or with combinations as are made for the sake of making a profit or gain. Here, the Hindu joint family system has been recognised among the Hindus for a very very long time. The system is not recognised among my Muslim friends,—I don't mean that they don't live jointly. I know that their religion or law does not recognise the jointness which is recognised in Hindu law. But it recognises the interests of each individual member, but the mere fact that all those members live together, have a common mess and do a common business also has not come in the way of giving due recognition to the fact that each one has a separate interest, though it may or may not be actually visible.

That fact is recognised, and I think it is rightly recognised. Any doubt that might have existed on that matter has been removed. It is a piece of justice done to them by removing even the remotest doubt like that, but it is really impossible for any lawyer to say that on a given date, on the date on which a Hindu joint family is to be taxed, it will not be possible to ascertain the exact share of each member of the family. You are concerned with the state of things on the date on which the family is to be taxed. What is going to happen later on is quite immaterial for that purpose on that date. In the case of a firm or joint corporation, it may go to liquidation, one of the partners may die, or anything may happen. What is to come has never been a factor in ascertaining the real position of any firm or combination of firms or any group of men on the date on which the tax is to be assessed. Is it proper for any one to urge that it is not possible in the case of a joint Hindu family to know on a given date what is the exact share or interest of any particular member of the family, whether the family is governed by the Mitakshara law or by the Dayabhaga law. My Honourable and learned friend read out to us an extract to show that such interest is fluctuating. It is true, I admit, it is a fluctuating interest, it is fluctuating in the sense that the share of any member may be reduced or increased on account of certain unforeseen contingency. In that sense it is fluctuating, but all that the law is concerned with is, with an exact knowledge of the state of things. It would like to know the exact share or interest of any particular member of the family; that is, the date on which you can make calculation for the purpose of assessing income-tax on particular members of the family for the coming year. Therefore the argument that the interests of the members will fluctuate is no argument at all, in my humble opinion.

The Honourable the Law Member no doubt pointed out that the amendment, as it is worded, is capable of being treated in the way in which he has treated it. It does not take notice of the minor boy. Sir, in this House we have discussed so many amendments and when we found that if the main principle underlying the amendment was agreed to, a small change here or there in the wording was always allowed. If the Honourable the Law Member agrees, I do not think that, with the legal acumen of the Honourable the Leader of the House and of the Honourable the Leader of the Opposition it would not be possible for us to evolve a suitable amendment to remove this difficulty to which my learned friend the Honourable the Law Member has adverted. What my friend, Mr. Bajoria, suggests is that for the purpose of income-tax, we are prepared to ignore the shares of the minors. If you do a particular thing for the purpose of a particular Act, it is not going to affect the shares of the minors either permanently or at the time of the partition. When you do a thing for the sake of an Act, its application is entirely confined to the operation of that particular Act, to a particular thing. It can have no effect whatsoever upon the real state of things, that is to say, upon the real share of the minor. Therefore, the interests of the minors will not in any way be jeopardised. On the other hand, by allowing the present amendment, we shall be able to rope in income which has so far remained untaxed. If only the income will be taken as the income of adult members ignoring the minor members, or the members to be born, to which a dramatic reference was made by the Honourable the Law Member by calling our attention to the necessity of medical examination of female members of the family and so on, even if you ignore for the time being the interests of the minor members to be born—for the purpose of this Act we have

[Mr. M. S. Aney.]

assumed many artificial things which really do not conform to actualities and this is one of those artificial units we have assumed here,—we are giving permission to the income-tax officer to regard the income as income made only by the adult male members of the family and divide it among the number of adult male members of the family to determine the share of each adult male member of the family for the purpose of Income-tax. That ought not to be a very difficult matter at all for calculation. The difficulty is, as was pointed out by my learned friend towards the conclusion of his speech, it is likely to create a big hole in the revenues. I do not know what the total amount of loss is likely to be, but I can say this much. Under the existing system we know that wherever there is a Hindu joint family assessed, the income of its individual member is taxed separately. The income of the joint family is not included in the total income of the individual. That is also pointed out in the Committee's Report. I am prepared to forego that advantage. Suppose you get your share, that can be added to the separate income of the man, and thus there may be an increase in the number of assesseees also, of which no account has been taken by the department. As to what the increase is likely to be in this manner, I cannot say now, and although there is likely to be a big hole in the revenues, there is also a likelihood of an increase, but the exact amount of increase I cannot say with accuracy. All the same, it is not wholly a case of loss. There is some gain also which has not been taken into account, while the losses have been unnecessarily exaggerated with a view to frighten everybody out of his wits.

Then, Sir, there is another point on which I should like to touch before I finish. The Income-tax measure is one of those statutes in which it is not always open to any private member to suggest amendments or to come forward with any amending Bills. It is only when the Treasury Benches think it necessary that something should be done to extort more money from the people, an amending Bill is brought here for our consideration; even then they would not bring in a consolidated Bill and give full opportunities to bring in such amendments as we should like to bring in. They will bring in an Amending Bill so as to touch up a few sections here and there. Therefore, Sir, the opportunity for consideration of income-tax difficulties and for removing those difficulties is a rare opportunity which we get in the House and when such an opportunity has been offered here, I think it is necessary for us all to bring all our grievances together and find out if some kind of relief could not be devised to remove the difficulties. If we lose that opportunity, probably we shall not get it again till that day when some of those who are on this side occupy the treasury benches opposite.

An Honourable Member: You will be there too.

Mr. M. S. Aney: I am not afraid of being there. I shall be very glad to be there one day, that is true.

The Honourable Sir Nripendra Sircar: When you are here, it will be worse for the assessee.

Mr. M. S. Aney: I would have liked the Honourable the Law Member to do that for us because, in him, I thought we are already there partially.

An Honourable Member: He said, nothing can be worse than that.

Mr. M. S. Aney: I thought he said that it will be worse. All I can say, then, is that it has yet to be tested. A man thinks that what he does is best and what is likely to come is worst. That is the human tendency, and it is unfortunate that to that little weakness even the Honourable the Law Member seems to be a victim. My point is this. This being the case, it is necessary for the whole House to consider coolly, apart from the little loss which it might bring, whether it is not possible to remove the great disabilities under which the Hindu joint family has been labouring so long and I submit it is an old standing complaint. As has been rightly pointed out by my friend Mr. Brojendra Narayan Chaudhury, up to this time all the responsible Hindu leaders who have been Members of this Legislature or the Legislature that existed before the reformed legislature came into existence—they have voiced forth this grievance on the floor of the Legislature on behalf of the Hindus. But, somehow or other, the thing has not been properly dealt with and it still continues. The difficulties of Government revenues are likely to increase day by day and not to decrease. But in the name of that financial difficulty are we to be a party to perpetuate the injustice to the Hindus which is being done for the sake of simply making more money? I think we should do something to mitigate that evil and the amendment of my Honourable friend Mr. Bajoria, although it does not go as far as it should have gone, is a modest amendment, and in spite of the flaw therein, if the principle is admitted, it should be possible to suggest a suitable formula to remove the difficulty. But the question is whether there is the will on the part of the Government to remove the evil. I hope—it is rather difficult to hope—I wish to make an appeal to the Treasury Benches to see and recognise that there is equity and justice in favour of those who stand for this amendment. Sir, I support the amendment.

Mr. Suryya Kumar Som (Dacca Division: Non-Muhammadian Rural): I am really surprised at the light-hearted manner in which such an important Bill which affects all classes of people is being treated. I am surprised at the light manner in which the Leader of the House has dealt with this subject. I must say that an acute lawyer like himself is competent enough to bluff us by citing this line or that line from Privy Council judgments, he is intelligent enough to do that. But I was surprised when he quoted some principle of Mitakshara law in order to mislead us. His point was that in the Mitakshara family at no point of time the shares of the coparceners are ascertainable. I submit that it is not true at all. At every point of time the shares are definite and can with greater ease be ascertained than the dividend of a company which the income-tax officer will have to find out oftentimes. However, that is a different matter. When such a matter, that is, the taxation of the Hindu undivided family was being talked of all over the country after the introduction of this Bill and even long before that, I was surprised that the matter did not attract the notice of the Members of the Select Committee. It seems to me that there must be something behind it. I must be plain. The sudden compromise proposal here about sections 4, 5 and 49 has changed the attitude of the House altogether and we have been put in great difficulty in dealing with the important sections in their proper light. After the compromise nobody seems to be serious in this House when most vital questions are being discussed because there is already a compromise behind our back about many matters and because. . . .

Mr. Bhulabhai J. Desai: On a point of personal explanation. I wish most emphatically to protest against the inauination now being made, that

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on the question of undivided Hindu family and the method of its taxation there has been any compromise.

Mr. Suryya Kumar Som: I withdraw. I am very glad because it pains me very much and it will pain me very much if I even indirectly have to make an insinuation against the Congress Party Leader and the Congress Party. I am very glad that my countrymen will know that there has never been any compromise on that point with the Congress Party Leader.

The Honourable Sir Nripendra Sircar: May I offer a word of explanation on another matter? My Honourable friend feels very much pained if he has insinuated against the Congress Party Leader, but as he is not similarly pained by his insinuation against me, may I say that when he said I misled the House by telling the House that the share of a Mitakshara member cannot be ascertained—may I submit that he has entirely misunderstood. What I read was from the decision of the Judicial Committee, and may I once more draw his attention and request him to make an effort to understand it? The sentence is this.

“According to the true notion of an undivided family governed by the *Mitakshara* law no individual member of the family, whilst he remains undivided, can predicate of the joint and undivided property that he or a particular member has a definite share—one-third or one-fourth.”

Mr. Suryya Kumar Som: I am afraid to argue with the Leader of the Calcutta Bar.

The Honourable Sir Nripendra Sircar: Then don't argue.

Mr. Suryya Kumar Som: The word is 'predicate'. That is, we cannot say what the share will be tomorrow, what it will be in future, or what it will be at his death. So I have not misunderstood him but he misunderstood the law. However, that is not a matter with which we are directly concerned. All I want to say is this, that this is a very serious matter. This is a taxation Bill, and by this improper and inequitable method they extract about over half a crore of rupees from the Hindu undivided families. I do not pretend that I am right in putting my point, but I would ask the House to give me a patient hearing and to decide later whether there is not something in this amendment. First of all, I object to the word Hindu undivided family. There are divided families, there are separate families, and there are undivided families, whether they are Hindus, Muhammadans or Christians. I know that the Muhammadan law does not accept the principle of jointness, as a matter of presumption, but there is no bar to some Muhammadan brothers joining together and forming a joint family and the incidents of joint family will apply to that particular family, though the incidents may not be exactly like that of a Hindu undivided family. I do not see why the words here should be "Hindu undivided family". Thereby it is made clear that the Hindus are being selected here as a separate class of assesses from whom a certain amount is to be extracted in excess of others. Others who join together and form undivided families will escape. Under the present Act, they will be treated as an association of persons, that is undivided families other than "Hindu undivided families" will be considered as association of persons, and this association of persons

will be taxed according to the income of the individuals that form the association. That is the rule made by this Act. I ask seriously why there should be this discrimination against the Hindus. In these days of democracy, when we speak so much of equity and justice, I do not see why such an invidious distinction should be introduced in an Act by an Englishman. I thought that there might be some weighty reasons for this differentiation. Then I took up the Income-tax Inquiry Committee report and there I found that they did not give any reasons except that it will be very difficult to find out the number of persons who make up the undivided family. That is a stupendous nonsense. You are able to calculate the reserved capital of a company. You calculate the dividend that should have been distributed but has not been distributed but you cannot find out the number of children in a joint undivided family. Is this any argument? When I read this argument, I was convinced that there was a conspiracy against the Hindu joint family. An income-tax expert, like Mr. Chambers, had to be brought in to produce an argument like that. You can find out whether a man is in America, or in Rumania but you cannot find out the children of a joint family. This very argument shows that they have no case. Then why do you put in this clause? Is there any motive to penalise the Hindu society on account of their political activity. I want a straight answer.

The Honourable Sir Nripendra Sircar: No.

Mr. Suryya Kumar Som: I do not want the reply from an Indian. I want the answer from the Finance Member who is responsible for this Bill.

The Honourable Sir Nripendra Sircar: Then put the question to Mr. Desai. He was a Member of the Select Committee.

Mr. Suryya Kumar Som: As to Mr. Desai, I can say this much; that in a taxation matter like this we expect support from the Leader of the Opposition, the Leader of the Opposition must protect the people from harsh taxation. My friend, Mr. Aney, told us the other day that when the last Income-tax Bill was introduced in the Assembly, the late lamented Pandit Motilal Nehru threw it out on the ground that he would not give a single pie to the bureaucracy until they had become responsible.

Mr. Bhulabhai J. Desai: It was not the Income-tax Bill. Your history is all wrong.

An Honourable Member: It was the Finance Bill.

Mr. Suryya Kumar Som: It makes very little difference whether it was the Income-tax Bill or the Finance Bill. Pandit Motilal said that he would not give this irresponsible Government a single pie more than what is needed for running the administration and what is strictly just and equitable.

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

With these observations, I come to the amendment. First of all I take objection to the word 'Hindu undivided family', which has not been defined in the Act. So far as my humble knowledge goes, as a lawyer, the words

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'undivided family' have been interpreted by the High Courts in different senses with respect to different transactions but here, it has been left to the sweet will of the income-tax officer to treat a family as a Hindu undivided family or to treat each member separately. This is a great defect. This could not have escaped the notice of the Treasury Benches but it has been left purposely vague.

Now, I come to the iniquity of this section. By this section, you take away with the left hand what you have given with the right hand. You have given a limit of Rs. 2,000. We don't know what is coming next year. Sometimes the limit was Rs. 1,000 and sometimes it was 500. At present there is the limit of exemption to Rs. 2,000. Now you give out to the country that you leave sufficient money in the hands of a particular man so that he may carry on his family, he may manage his food and clothing. That is, you will tax only the amount in excess of two thousand, but by this section you take away that exemption. Here, if there are five brothers in a Hindu undivided joint family, some of the brothers' income may be Rs. 20 a month but the whole income may come to three thousand rupees. That family will be taxed on the total income, and so the brother who is a clerk on Rs. 20 will be taxed. Practically, ninety per cent. of Hindu society are living in joint undivided families, and you take away with the left hand what you give with the right hand and you take away exemption from a member of a Hindu undivided family which is granted to him by the main section. By this provision even a clerk on Rs. 10 or Rs. 20 will be taxed. Secondly, that is not so unjust as the next thing. Now, in a Hindu undivided family there may be five brothers. You add up their incomes, but at the very same moment you neglect their liabilities, their responsibilities; each brother has probably got twelve children and he has got one wife if not more. Now, each brother has the responsibility of maintaining twelve children and dependants. . .

Mr. Bhulabhai J. Desai: On a point of order, Sir, the point which my Honourable friend is dealing with was dealt with on a motion which was put before the House and rejected, in connection with allowances for wife and so many children.

Mr. Suryya Kumar Som: That gives additional strength to my argument for doing away with this section and accepting this amendment. Five brothers' incomes are all added up ignoring their responsibility to maintain their wives and children. Sir, much of the rigour of this section would have been mitigated if my amendment for allowance for wives and children was accepted. Unfortunately, that amendment has been rejected. Therefore, here you tax five brothers' incomes without considering the responsibility on all of them of maintaining a dozen children each! You add their incomes, but you neglect their responsibilities and liabilities.

Mr. President (The Honourable Sir Abdur Rahim): All this has been discussed over and over again. It is all repetition.

Mr. Suryya Kumar Som: It has been admitted, Sir, that the tax should be according to the capacity of the assessee.

Mr. President (The Honourable Sir Abdur Rahim): All this has been discussed during the general discussion. These arguments need not be repeated, they ought not to be repeated.

Mr. Suryya Kumar Som: I show how harshly this will act. You add up all the incomes of all the members and thus come to a very high figure, and the assessment is made according to the rate applicable to that big sum. . . . ,

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member has already made that clear.

Mr. Suryya Kumar Som: I am referring to the rate. Now, I submit, Sir, what can be the reason for applying this sort of calculation only in respect of the Hindu undivided family? No such arrangement has been made with regard to the other associations or other undivided families. Why should it be applied only to the case of the Hindu undivided family? That is my objection, and I appeal to the Leader of the Opposition to consider this point.

Mr. Bhulabhai J. Desai: Mr. President, I really thought that this subject did not require such heated and long discussion as it has turned out to have done. Before I say anything I regret very much, Sir, that my Honourable friend, who inspires so much affectionate respect, should allow himself to believe that on any matter of taxation or otherwise we should be led away by any idea of compromise, either in his presence or in his absence. It is a matter of regret that my Honourable friend, Mr. Aney, and those thinking with him did not approve of the compromise. But each time when I disagree with them it is rather uncharitable to suggest that it follows from the fact that they did not otherwise agree with me, there is nothing I can say. . . .

Mr. M. S. Aney: I believe in my speech I did not make any insinuation.

Mr. Bhulabhai J. Desai: I hope I won't be called an un-Hindu person by the mere fact that I take a somewhat different view of this particular matter. Like on many previous occasions, the words "inequity" and "injustice" can be used. If they are used where they are properly attracted by the facts or the events, I have not the least quarrel; I have used them myself, but by merely calling a thing unjust and using a *petitio principii*—starting with the thing to be proved and saying, "I have proved it"—is a logic I was warned against when I was in the intermediate stage at the college. I entirely agree with my Honourable friend, Mr. Aney, that this is a matter of property. I may remind him that it is on that ground and that ground alone that when it came to a question of that part of the Bill which dealt with divided Hindu families or partitioned Hindu families that the words 'separation of the members of the family' were omitted and I supported that omission, so that my friend must rest assured that it is only and solely on the ground of property that I am dealing with this issue. I may tell my Honourable friend, Mr. Aney, also, that in so far as he talked about the respect for the elder brother and the old mother, it is by reason of the omission of the words "separation of the members of the family", that he has gained all that he could expect to gain—and I do not think that the old lady bothers as to how four *khokas* divided their properties or did not divide their properties and carry on their business. If they all want all the children to live under the same roof, I have, by the support I lent—I do not pretend that that was the reason for that—done what I could; I honestly also lent my support to that sentiment. So that sentiment according to

[Mr. Bhulabhai J. Desai.]

me does not come in at all. My friends may bring it in but I cannot see how that sentiment comes into the matter. The only question is one of property. Now I will deal with some very elementary ideas of Hindu law. Often an appeal has been made to me and it is my duty to tell Honourable Members what my idea of the thing is. Apart from the Privy Council decision and the weight of authority of my Honourable friend, the Leader of the House, I may remind my friends who know Hindu law that but for the fact that this is a different species of property, you would not have the distinction in Hindu law between a joint Hindu family and self-acquired property. Therefore, my friends cannot ask me even on the charge of being un-Hindu to expound wrong Hindu law. Hindu law essentially distinguishes between joint family property and separate or self-acquired property. You will find that in the elements of any Hindu law book that you may care to read. Therefore, without fear of contradiction I say that it is a very special species of property. It is a single, descendable, heritable asset in which there is no individual volition and the minors gain or lose by the operations of the adult male members of the family and the manager. It is a very special species of property and I, for one, at all events, cannot admit that the joint family property, under the Hindu law, is not a single entity of property. Of course, it is expressed in different terms, more solicitous, in a sense, and less explicable. Then, my Honourable friend quoted from the judgment of the Privy Council. Omitting sentiment, if it is such an unnecessary thing, then why so many of our friends continue to remain joint? My Honourable friend Mr. Bajoria himself admitted that there are many advantages, and that is really the real cat out of the bag. I know of a family, a very very big family, which had five crores worth of property and I used to advise them in respect of the income-tax law not to divide notwithstanding the dissensions. But they divided and the result was that the banking business which had behind it the credit of five crores and the bills which were negotiated throughout this country has practically ceased to exist. It is an astounding instance of how the joint credit enjoyed as a result of joint property and joint liability could lead to the prosperity of the business. If I had not allowed myself to be really convinced that this law was good, I would not have vouched on one side or the other. I recognise that there are good, valid, and genuine grounds why the joint family property should be treated as a special species of single unit of property. If they are not satisfied, I ask again that my friends can partition and they can partition without separation under the new law.

Mr. Akhil Chandra Datta (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): May I ask my Honourable friend whether it applies 4 P.M. equally to Dayabhaga and Mitakshara?

Mr. Bhulabhai J. Desai: I am now concerned, as far as possible, with the amendment before the House and I do not propose to expound a particular branch of the Hindu law with which, I know, my Honourable friend is much more familiar and probably much more learned. But let me deal with the bulk of the properties. I may tell my Honourable friend that, apart from the land and other things which are jointly held, the large bulk of the income-tax paying of joint Hindu families are trading Hindu families. I may also tell my Honourable friend that the bulk of the trading families are Mitakshara families to whichever species they may belong. I am glad

that my Honourable friend, Mr. Bajoria, also agrees that the bulk of them are Mitakshara families. So, let me deal with my Honourable friend, Mr. Aney, because he appealed to me that I was sitting mum and had not explained the matter.

Mr. M. S. Aney: I never meant any insinuation. The Honourable Member was mum, it is true, but I did not give any reason for his being mum.

Mr. Bhulabhai J. Desai: My Honourable friend, Mr. Aney, is beyond all malice; that I would tell him. But I thought he would, at all events, compel me and make me say some words and I did not say anything, he might think that perhaps I had no answer. It is only for that reason that I am speaking. To continue my argument and I shall be very brief. I wish to justify my position. My Honourable friend also thought that a joint family business is a descendable asset. Now, look at the amendment as my Honourable friend would have it. Let us see how much would escape apart from the fact whether the treasury wants it or not. He says:

“Provided however that in the case of a Hindu undivided family, the tax payable on the total income shall be computed as the aggregate of taxes payable by its individual adult male members.”

Now, I know many cases in which there may be four brothers, three of whom die and leave infant sons and the fourth brother is the only adult member. Does my Honourable friend seriously suggest to this House that it is equitable that one-fifth of the tax should be paid by the undivided family? That would be the result of this amendment.

Babu Baijnath Bajoria: On a point of personal explanation, Sir. As was pointed out by the Leader of the House and later on explained by my Leader, the Honourable Mr. Aney, if the wording of the amendment is ambiguous or faulty, we are prepared to make verbal alterations, but the intention is clear, namely, that the aggregate income is to be divided by the number of adult persons and then the rate will be applicable to that income. That is all we want.

Mr. Bhulabhai J. Desai: We come back to the same point. It is no use telling me that. I am giving him an instance in which no amount of change will make any difference. If there is one adult member in one branch and minor members in the other three branches, where do you get that from this amendment? It is one of the most extraordinary plea that was put forward under cover of an amendment which cannot possibly be justified under any circumstances whatsoever. Here is the amendment which says that if there is one adult member in the five branches and the others are minors, they can pay one-fifth of the tax and the total income shall be in the name of the adult member as if he had been separated.

Mr. M. S. Aney: He wants the co-operation of the Honourable the Leader of the Opposition in framing it properly in case he agrees with the principle.

Mr. Bhulabhai J. Desai: But the principle cannot exist if there are no adults in the other branches. It would lead to absurd results. It is incapable of a reasonable alteration according to my humble judgment. Now, supposing there are no adults in three other branches of the family, what is going to happen?

Babu Baijnath Bajoria: The tax will be on the aggregate income.

Mr. Bhulabhai J. Dessai: It is the rate that I am discussing. The remaining adult should pay only one-fifth of the tax. That is what I am seriously asked to support in the name of being a Hindu and on the penalty of not being a Hindu. I am Hindu enough to understand that the joint family property is a single asset and is not divisible until it is divided, that is to say, according to Hindu law, by partition. Supposing there are no adults, what is to happen? Then there is no rate applicable and therefore there will be no tax. What my Honourable friend wants is to divide a joint Hindu family into minors or adults whatever may be the case and then divide the income into as many parts and then put them together and then find out what rate is applicable to it. That is what he wants. What he wants is the rate applicable to each one-fifth and then collect it together and take it as if it was paid by the joint Hindu family. My Honourable friend is wrong in the conception of the Hindu law and is equally wrong in this case of the conception of equity. I do really think that a person or a group of persons who enjoy reputation, credit and advantage as the result of joint property should also bear a joint and aggregate burden of it. My Honourable friend, I think, is pleading wrongly in trying to say as if there was any question of Hindu or non-Hindu involved in this matter. That is the only charge which I want to acquit myself of, that if I take this view, it is not because I have in my heart any the less interest of the Hindu where any such interests require proper protection and therefore so far as I am concerned, I entirely oppose this amendment on the grounds I have stated.

Some Honourable Members: The question may now be put.

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

"That the question be now put."

The motion was adopted.

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

"That clause 3 of the Bill, be re-numbered as sub-clause (1) of clause 3, and, after this sub-clause, the following new sub-clause be inserted, namely:

(2) That the following proviso shall be added to section 3 of the said Act:

'Provided however that in the case of a Hindu undivided family, the tax payable on the total income shall be computed as the aggregate of taxes payable by its individual adult male members as if such members have separated and been taxed accordingly.'

The motion was negatived.

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

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

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

"That clause 2 stand part of the Bill."

Maulvi Abdur Rasheed Chaudhury (Assam · Muhammadan): Sir, I beg to move:

"That in sub-clause (b) of clause 2 of the Bill, sub-clause (a) of the proposed clause (6A) be omitted."

Sir, this definition of dividend has apparently been put in on the recommendation of the Select Committee. This is one of the cases in which the recommendation of the Select Committee has no bearing on the conditions obtaining in this country. It is an age long practice in this country that traders generally begin with small capital and then gradually improve by accumulating profits in good years, so as to stabilise the business or to provide for emergency in bad times. It is also the ordinary practice that capital is very shy in this country, and, by capitalising income, the companies, in the shape of bonus shares or debentures, or whatever they might be called, keep their business expanded. Now, Sir, this capitalised income, according to the existing law, is a receipt and is free from income. Now, by this definition of "dividend" the whole aspect is going to be changed, and, instead of considering it as capital receipt free from income-tax, it is now going to be treated as profit liable to income-tax.

Mr. President (The Honourable Sir Abdur Rahim): Have not these questions been decided by implication by the House already?

Mr. M. S. Aney: No, Sir. The definitions have not been decided.

Mr. President (The Honourable Sir Abdur Rahim): Whether these have to be taxed or not?

Mr. S. P. Chambers: This definition itself is of some importance apart from other clauses.

Maulvi Abdur Rasheed Chaudhury: Now, Sir, a very great change is going to be effected so far as capitalising of income is concerned. At present, as I said, this is considered a receipt free from income-tax, and hereafter it is going to be treated as profit liable to income-tax. Sir, this will affect the development of our industries. The Government render no help towards the development of our industrial resources, and whenever we try to stand on our legs, so far as industries are concerned, they try to interfere with us by taxing us this way and that way, so that we may not make any headway in trade and industry. What is the reason for this topsy-turvy change in the matter? They say that some are in the habit of tax dodging. If a few do this, why should others be penalised for it? Granting that some are natural tax dodgers, this provision should not have been introduced. The administrators themselves are in the habit of dodging taxes, and it is no wonder that some people at least follow this example and dodge taxes. For the fault of a few, why are you penalising all? Nowadays, we hear a great deal about the persecution of the Jews by the Germans. It was for the fault of a single young youth, who shot Von Rath, a German ambassador. But what do the Government of India do? For the fault of a few firms, they are going to penalise the entire country, and this is much worse than the persecution of Jews by Germans.

Then, Sir, tax dodging has been going on for years. When the Government of India were in the height of their power, they were not able to do anything to stop this. How can they dream of stopping it, now that their

[Maulvi Abdur Rasheed Chaudhury.]

power is vanishing? I submit, Sir, if this definition is accepted, it is going to hurt the industries to a great extent. I admit that the definition has been made a little better in the Select Committee, but the objectionable feature in which capital receipt is going to be made profit liable to taxation, that objection still remains. I think, Sir, the House will consider this and will not make this capital receipt a profit so as to do harm to the industry of the country. Sir, I move.

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

"That in sub-clause (b) of clause 2 of the Bill, sub-clause (a) of the proposed clause (6A) be omitted."

The motion was negatived.

Maulvi Abdur Rasheed Chaudhury: Sir, I beg to move:

"That in sub-clause (b) of clause 2 of the Bill, in sub-clause (b) of the proposed clause (6A), after the words 'accumulated profits' the words 'of not more than three years arising after the passing of this Act' be inserted."

This is a very simple amendment. What I want is that this Act should not be given retrospective effect, and that accumulated profits should be considered only for three years for the purpose of income-tax assessment. I take three years, because, as regards claims of individuals, that is the period of limitation as lawyers say. Here also I want it to be three years, and I do not want to give retrospective effect to the Bill, *i.e.*, after the passing of the Bill the accumulated income of three years will be taken into consideration in assessing the accumulated income. Sir, I move.

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

"That in sub-clause (b) of clause 2 of the Bill, in sub-clause (b) of the proposed clause (6A), after the words 'accumulated profits' the words 'of not more than three years arising after the passing of this Act' be inserted."

The motion was negatived.

Dr. P. N. Banerjee: Sir, I beg to move:

"That in sub-clause (b) of clause 2 of the Bill, to sub-clause (b) of the proposed clause (6A), the following proviso be added:

'Provided that both in cases (a) and (b) dividend shall not include any distribution by a public company of profits prior to 1st April, 1938, already capitalised'."

The object is to prevent retrospective effect being given to this clause. It is a general principle of legislation that retrospective effect is not given to any of the provisions contained in a particular law, and, in view of that general principle, I urge that this amendment should be accepted by the House. Sir, I move.

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

"That in sub-clause (b) of clause 2 of the Bill, to sub-clause (b) of the proposed clause (6A), the following proviso be added:

'Provided that both in cases (a) and (b) dividend shall not include any distribution by a public company of profits prior to 1st April, 1938, already capitalised'."

The motion was negatived.

Dr. P. N. Banerjea: Sir, I beg to move:

"That in sub-clause (b) of clause 2 of the Bill, to sub-clause (c) of the proposed clause (6A), the following further proviso be added:

'Provided further that no portion of the profits that accrued or arose or were received by the company before the 1st of April 1938 shall be so included.'

Here, again, I want to prevent retrospective effect being given to the provisions of this Bill. Sir, I move.

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

"That in sub-clause (b) of clause 2 of the Bill, to sub-clause (c) of the proposed clause (6A), the following further proviso be added:

'Provided further that no portion of the profits that accrued or arose or were received by the company before the 1st of April 1938 shall be so included.'

The motion was negatived.

Dr. P. N. Banerjea: Sir, I beg to move:

"That in sub-clause (b) of clause 2 of the Bill, in sub-clause (d) of the proposed clause (6A), for the figures '1933' the figures '1938' be substituted."

Here, again, my object is to prevent retrospective effect being given to the provisions of this Bill. Sir, I move.

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

"That in sub-clause (b) of clause 2 of the Bill, in sub-clause (d) of the proposed clause (6A), for the figures '1933' the figures '1938' be substituted."

The motion was negatived.

Mr. H. S. Town: Sir, with your permission, I should like to make a small modification in the amendment—substituting "cash" for "adequate consideration". Sir, I move:

"That in sub-clause (b) of clause 2 of the Bill, to the proposed clause (6A), the following proviso be added:

'Provided that 'dividend' does not include a distribution in respect of any share issued for cash which is not entitled in the event of liquidation to participate in the surplus assets, when such distribution is made in accordance with paragraphs (c) and (d) of this sub-section.'

Part (d) of this sub-section makes it clear that if a company has undistributed accumulated profits it cannot distribute ordinary capital and retain its profits: that of course is perfectly just; but the preference shares in a company have no right to participate in those undistributed profits: they are only entitled in the event of liquidation to get their own capital value back; and we consider there should be a distinction drawn between the ordinary share and the preference share which is not entitled in the event of liquidation to participate in any of the surplus profits. Sir, I move.

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

"That in sub-clause (b) of clause 2 of the Bill, to the proposed clause (6A), the following proviso be added:

'Provided that 'dividend' does not include a distribution in respect of any share issued for cash which is not entitled in the event of liquidation to participate in the surplus assets, when such distribution is made in accordance with paragraphs (c) and (d) of this sub-section.'

Mr. S. P. Chambers: Sir, as I understand it from the Honourable Member's speech, his intention is to exclude from the definition of dividend all distributions in this form which are really distributions of shares which have been issued for cash of the same value, but, the exact expression used in the proviso is not very happy because the word cash may mean of course one anna or one rupee for a large number of shares, and I feel that the original definition is such that it can only apply to distributions which are out of profits and cannot strictly apply to a distribution of shares for full consideration. It is very difficult to get a form of words which would cover what the Honourable Member wants, because if he said 'adequate consideration' then of course the giving up of the right to receive a dividend is adequate consideration; and there again the matter is not quite clear and would leave a loophole. In the circumstances I feel that the amendment can be accepted in principle subject to this, that in the Council of State, if these words appear to be too wide and if they do more than what the Honourable Member clearly intends, I reserve the right there to make an amendment to make it quite clear that what is intended is only that shares issued for full cash consideration and not for one anna or two annas are let out. As the wording stands it would cover that. I accept the amendment.

Mr. Bhulabhai J. Desai: Sir, I oppose this, unless the words are introduced now—"full cash consideration".

Mr. S. P. Chambers: Yes.

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

"That in sub-clause (b) of clause 2 of the Bill, to the proposed clause (6A), the following proviso be added:

'Provided that 'dividend' does not include a distribution in respect of any share issued for full cash consideration which is not entitled in the event of liquidation to participate in the surplus assets, when such distribution is made in accordance with paragraphs (c) and (d) of this sub-section.'

The motion was adopted.

Mr. Manu Subedar (Indian Merchants' Chamber and Bureau: Indian Commerce): Sir, I move:

"That in sub-clause (b) of clause 2 of the Bill, to the proposed clause (6A), the following *Explanation* be added:

Explanation.—The words 'accumulated profits' wherever they occur in this section shall not include 'capital profit'."

This is income-tax law, and the intention is that at no time in no form should capital be taxed. Sir, I move.

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

"That in sub-clause (b) of clause 2 of the Bill, to the proposed clause (6A), the following *Explanation* be added:

Explanation.—The words 'accumulated profits' wherever they occur in this section shall not include 'capital profit'."

Mr. S. P. Chambers: Sir, I have no objection to this amendment.

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

"That in sub-clause (b) of clause 2 of the Bill, to the proposed clause (6A), the following Explanation be added:

'Explanation.—The words 'accumulated profits' wherever they occur in this section shall not include 'capital profit.'"

The motion was adopted.

Mr. S. P. Chambers: Sir, I move:

"That for part (iii) of sub-clause (e) of clause 2 of the Bill, the following be substituted:

'(iii) after sub-clause (b) the following shall be added, namely:

'or

(c) where a business, profession or vocation has been newly set up in the financial year preceding the year of assessment, the period from the date of the setting up of the business, profession or vocation to the 31st day of March next following or to the last day of the period determined under sub-clause (b), or, if the accounts of the assessee are made up to some other date than the 31st day of March, then, at the option of the assessee, the period from the date of the setting up of the business, profession or vocation to such other date:

Provided that when such other date does not fall between the setting up of the business, profession or vocation and either the next following 31st day of March or the last day of the period determined under sub-clause (b), it shall be deemed that there is no previous year; and

when the assessee is a partner in a firm, 'previous year' in respect of his share of the income, profits and gains of the firm means the previous year as determined for the assessment of the income, profits and gains of the firm; and'

The principal alteration is the addition in the 4th and 5th lines of the words "or to the last day of the period determined under sub-clause (b)" after the words "31st day of March". The intention of this is to provide for the case of any particular community which has a practice of making up accounts to some day near the 31st March, it may be the 5th or 6th of April, and that is for the purposes of the Act treated as the same as the 31st March; and it is necessary to make the provision in this sub-clause to correspond to the provision in sub-clause (b). Sir, I move.

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

"That for part (iii) of sub-clause (e) of clause 2 of the Bill, the following be substituted:

'(iii) after sub-clause (b) the following shall be added, namely:

'or

(c) where a business, profession or vocation has been newly set up in the financial year preceding the year of assessment, the period from the date of the setting up of the business, profession or vocation to the 31st day of March next following or to the last day of the period determined under sub-clause (b), or, if the accounts of the assessee are made up to some other date than the 31st day of March, then, at the option of the assessee, the period from the date of the setting up of the business, profession or vocation to such other date:

Provided that when such other date does not fall between the setting up of the business, profession or vocation and either the next following 31st day of March or the last day of the period determined under sub-clause (b), it shall be deemed that there is no previous year; and

when the assessee is a partner in a firm, 'previous year' in respect of his share of the income, profits and gains of the firm means the previous year as determined for the assessment of the income, profits and gains of the firm; and'

The motion was adopted.

Dr. P. N. Banerjee: Sir, I move:

"That in sub-clause (f) of clause 2 of the Bill, after the words 'shall be substituted', occurring in the sixth line, the following be inserted:

'before the word 'and' occurring at the end, the words 'less any interest or charge payable out of one's income under any of the heads taxable under the Act and not specifically provided for in the computation of income under any head' shall be inserted.'

The amendment speaks for itself. I move.

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

"That in sub-clause (f) of clause 2 of the Bill, after the words 'shall be substituted', occurring in the sixth line, the following be inserted:

'before the word 'and' occurring at the end, the words 'less any interest or charge payable out of one's income under any of the heads taxable under the Act and not specifically provided for in the computation of income under any head' shall be inserted.'

The motion was negatived.

Mr. K. Santhanam: Sir, I move:

"That in sub-clause (f) of clause 2 of the Bill, the words 'if arising, accruing or received in British India' be omitted, and after the word 'income', occurring in the last line, the words 'if the assessee were a person ordinarily resident in British India' be inserted."

My main reason for changing this definition is, that as the definition stands as it is, the total world income will not include agricultural income arising outside India. Therefore, instead of transposing the income to India, by my amendment the entire world income will automatically come in and all the allowances will apply.

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

"That in sub-clause (f) of clause 2 of the Bill, the words 'if arising, accruing or received in British India' be omitted, and after the word 'income', occurring in the last line, the words 'if the assessee were a person ordinarily resident in British India' be inserted."

Mr. S. P. Chambers: Government have no objection to offer it.

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

"That in sub-clause (f) of clause 2 of the Bill, the words 'if arising, accruing or received in British India' be omitted, and after the word 'income', occurring in the last line, the words 'if the assessee were a person ordinarily resident in British India' be inserted."

The motion was adopted.

Mr. Akhil Chandra Datta: Sir, I move:

"That after sub-clause (f) of clause 2 of the Bill, the following new sub-clause be inserted:

(g) after clause (16) the following new clause shall be added, namely:

(17) 'Hindu undivided family' means a Hindu coparcenary and not a Hindu joint family in the wider sense of several members living together, irrespective of the existence or non-existence of any coparcenary property'."

Sir, like other Members of this House, I am equally anxious to finish the whole thing today, and, therefore, I shall be very brief. In fact, I shall merely state the question involved in this amendment. We have been talking about undivided Hindu family, but the whole question is, what is an undivided Hindu family? There is an acute controversy in the courts as to what an undivided Hindu family is within the meaning of the Indian Income-tax Act. Sir, different courts have taken different views. Some courts have held that it is interchangeable with a Hindu co-parcenary, that is a family composed of members who have co-parcenary interest, while other courts have held that it means a joint family in a wider sense consisting of several members living together irrespective of the existence or non-existence of any legal rights to property. The Calcutta High Court has taken one view, the Lahore and other High Courts have taken a different view on this question. The time-honoured practice has been, and it is a very good practice,—that if in actual working of any Act, any particular provision is found to be susceptible of different interpretations, and if conflicting interpretations are put by different courts, then there were two views held by different High Courts, and if those decisions were capable of different interpretations, when the next opportunity occurs for amending the measure, then all doubts are set at rest by giving a clear expression to the intention of the Legislature. The object of my amendment is to set at rest that controversy. This particular amendment is based upon the decision of the Calcutta High Court reported in 40, Calcutta Weekly Notes, at page 517. I wish I could develop the point.....

Mr. M. S. Aney: You better read out the extract.

Mr. Akhil Chandra Datta: Very well. This is the head note of that ruling:

“‘Hindu undivided family’ in the Income-tax Act means a Hindu co-parcenary and not a Hindu joint family in the wider sense of several members living together, irrespective of the existence or non-existence of any co-parcenary property.”

According to this decision a Hindu undivided family within the meaning of the Indian Income-tax Act means only a Mitakshara undivided family. There are other courts which hold that it includes both Mitakshara and Dayabhaga families. Therefore, it is absolutely necessary that, all controversy should be set at rest by clearly defining the intention of the Legislature as to what is meant. The Honourable the Leader of Opposition opposed the amendment of my friend, Mr. Bajoria, and advanced certain arguments in support of his contention. I asked him if those arguments apply at all to Dayabhaga families. But he did not attempt any answer. He has avoided the real issue. So far as the opinion of the Honourable the Leader of the House is concerned, he confined himself to a certain passage which is applicable exclusively to the Mitakshara family. The real test is this. Are the shares definite and asserted? That is the foundation of the whole principle. With regard to the Dayabhaga family, at all events, the shares are always definite. The principle of separate assessment when the shares are definite and ascertainable has already been adopted. That is a practice which we have adopted even in this amending Bill with regard to income from property. That is to be found in clause 9(c). My contention is that the principle which has been adopted with regard to one class of income, namely, income from property, should be extended to all classes of income. Sir, I move.

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

"That after sub-clause (f) of clause 2 of the Bill, the following new sub-clause be inserted :

'(g) after clause (16) the following new clause shall be added, namely :

'(17) 'Hindu undivided family' means a Hindu coparcenary and not a Hindu joint family in the wider sense of several members living together, irrespective of the existence or non-existence of any coparcenary property'."

Mr. J. F. Sheehy: Sir, I beg to oppose it. In so far as the Courts have given different decisions on this question, I think it should be left to the Privy Council to decide finally what a Hindu undivided family means.

Mr. M. S. Aney: Sir, in view of the reply just given by the Honourable Member, I think it is necessary for me to make a few observations. Now they know that there have been different decisions in respect of the definition of a Hindu undivided family in different ways by different High Courts, and when that fact is admitted, and the term "Hindu undivided family" has to be used throughout this Act, it is very necessary that the Act should make it clear as to what is exactly meant by the term "Hindu undivided family". My Honourable friend said that it is for the Privy Council to decide. You are here to make law, not to leave doubts or room for doubt and litigation to be ultimately decided by the Privy Council. I am sure that the particular questions raised by my Honourable friend, Mr. Akhil Chandra Datta, are not within the province of my Honourable friend, Mr. Sheehy; they are more or less questions of a legal nature. He could have very well referred the matter to the Honourable the Law Member for reply. But instead of doing that, he wants to gag discussion and give no opportunity to the House for any explanation from him, but he merely says, "I oppose it". That is not the way, the responsible way of dealing with an amendment like this. I expect that some responsible Member from the Treasury Benches will take the trouble and meet the objections which have been raised by my Honourable friend, Mr. Datta.

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

"That after sub-clause (f) of clause 2 of the Bill, the following new sub-clause be inserted :

'(g) after clause (16) the following new clause shall be added, namely :

'(17) 'Hindu undivided family' means a Hindu coparcenary and not a Hindu joint family in the wider sense of several members living together, irrespective of the existence or non-existence of any coparcenary property'."

The motion was negatived.

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

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

The motion was adopted.

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

Clause 1 was added to the Bill.

Mr. J. F. Sheehy: I move:

"That after clause 1 of the Bill, the heading 'Part I' be inserted."

This is consequential on the insertion of Part II.

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

"That after clause 1 of the Bill, the heading 'Part I' be inserted."

The motion was adopted.

Heading "Part I" was added to the Bill.

The Title and the Preamble were added to the Bill.

Mr. J. F. Sheehy: Sir, I move:

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

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

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

Mr. Bhulabhai J. Desai: Mr. President, I have very little to say in support of the motion that has now been made before the House. I only rise because of the cordiality with which almost every Member of the House regards the efforts we made—whether partially or wholly successful is not irrelevant at this stage. When I was speaking here two days ago in attempting to explain the position of myself and my Honourable friend, Mr. Jinnah, as regards clause 4A, I recounted as briefly as I could the different gains and losses arising out of this Bill, and it is not my desire to repeat any part of that speech over again. I read this morning an article by an esteemed correspondent in the *Hindustan Times* taking stock of the Income-tax Bill as it stands now, including the suggested compromise in it. It is suggested there that, though the improvement is undoubtedly good and material, we might have waited for some future date, rejected clause 4 and allowed the Bill not to die a natural death but to be strangled by the author. The only feeling I had which I wish to express to the House is this. As my Honourable friend, Mr. Aney, said in connection with a clause irrespective of all hopes and fears, it may be some time before it is possible to get an amending Act of a fiscal measure of this character, and to wait for some future event in order that the Act, at least in some respects, may be improved—it did not commend itself as a very wise step to take. So that, under the circumstances forced upon us by the Government of India Act and under the circumstances of the actual position in which we stood *vis-a-vis* ourselves and the Finance Member who introduced the Bill, I venture to say that the Act as it now stands is certainly better not merely from the point of tax gathering but also from the point of view of the assessee. It is a bold thing to say, but I venture to say it because, while undoubtedly the State would be able to collect a large amount of tax, from the point of view of the assessee there are features which are of very great value. At least, so far as the honest assessee is concerned, he will, according to my humble judgment, get a fairer and squarer deal in future than at all events he believed he hitherto got, for in life there is no such thing as absolute justice but a feeling that justice has been done. I am able to say that the improvement in the Bill as regards tribunal is a matter on which I feel that we can lay a certain amount of stress with a feeling of satisfaction. As regards the derivation of the powers of the executive for all practical purposes to treat the Act as if it did not exist, I have already addressed myself. There are features of the Bill in the matter of the improved basis of taxation of life insurance companies which are noteworthy. There are other gains which are purely

[Mr. Bhulabhai J. Desai.]

financial and, if in arriving at the conclusion at which the House has done, it might appear to any one that his or his class interest has borne a severe burden, severer than before, he would probably be able to feel when he contemplates a little more coolly and in a more disinterested and unselfish atmosphere after he goes out of this House, and thinks of the extent to which he will contribute to the resources of the State, he may perhaps have wished to do less but he is not unjustly doing more.

There is another thing which I would like to say to those of my friends here who advocated different points of view that it was farthest from me or those who are associated with me that their points of view should be disregarded. But in a representative Assembly if the result is that you do not and cannot see eye to eye with each other and the necessary and inevitable consequence is that you cannot get the vote on one side, I think it is unjust to believe that that defeat is the consequence of anything else than the result of the popular opinion itself. If there are others who have differed from us, I trust that they will extend to us the credit that their failure was not the result of any unjust action on the part of the majority. I give them the credit of pressing their point of view and it may well be that if the House had otherwise been constituted, they might have still have succeeded but there is one thing I would like to say on what is called the accrual basis and that is this, that from the commencement of the introduction of this Bill I have considered this matter as deeply and anxiously as those of my friends who are unable to agree with me on it and giving it the best consideration, the only way we can judge an issue of this kind is not as if we were carrying on a no-tax campaign or carrying on a war of independence on this basis of non-payment of taxes. If the war of American Independence arose of no tax without representation, I fully appreciate it and I wish to assure my Honourable friend, Mr. Aney, that it is one thing to say: 'I will pay no tax to a Government which is not acting according to my wishes and the actions of which I cannot mould to what I think is right'. It is a very different thing altogether to say whether A or B, a subject of the State, will either remain exempt or will pay a particular tax on a particular basis and it is that distinction alone which I had in mind and not to regard it as a matter of constitutional propriety or impropriety. It is for that reason and that alone that I considered this matter as one merely of a balance of loss and gain. It has been suggested that there are others who ought to have paid and who have escaped. The law can do no more than prescribe the conditions that ought to exist and appeal to one's mind and attract within its scope those who, they think, should pay a tax on a particular basis and I am the last person to believe that any loyal subject here would simply set about devising means in order to evade a tax which has been passed by this Legislature. I believe that those who opposed clause 4 as those who supported it are now unanimously of the view that once it becomes law, it will be obeyed and carried out in a spirit of perfect integrity. I do not wish to judge the results of this Bill from a possibility of its failure by way of evasion, meaning legal evasion or avoidance. I rather venture to think that those who have hitherto not been within its scope will as cheerfully contribute their share as defined by this Act as they escaped it in times past and it is in a feeling of trustfulness, which is the basis of all human negotiations, that this measure must be carried out. There are larger affairs of life where people of different views may come to the same conclusion and enter into pacts not intended to be obeyed but I

belong to an ordinary sphere of life and in that sphere my ambition has always been that even at the risk of being deceived I would rather trust and, thereby, hope to get trust than each time believe that the opponent is always very alert to take something out of you while you are not watchful enough. It is in that spirit that I have approached the questions which were the subjects of discussion.

There is another matter which I should like also to explain and it is
 5 P. M. this. If ever my colleagues or any Member of this House appealed to me on a particular point, I attempted to judge it as an ordinary humble citizen in this country. If I felt that as a national of this country a particular thing is right and ought to be done, I never hesitated to support it, even at the risk of incurring a little personal temporary displeasure. I have no doubt that in all these matters each individual will regard it as an issue as if the rest of the world did not exist. That is not the way in which those of us who put public life before private life can ever afford to judge the results either of legislation or public acts. It is perfectly right and it is perfectly necessary that each point of view should be pressed to its understanding but once it is understood and weighed, a stage is reached where there is such a thing as an honourable submission and it is in that feeling we have judged all issues, as citizens of this country and as the representatives of the citizens of this country. There is no question of dealing with it on what may be called party lines except in the sense that no body of men or organisation can act usefully unless they pool their wisdom and their judgment but when a decision is reached they act like one man. In that sense, there is nothing acrimonious or wrong in what may be called the party spirit. We are not voting for the wrong knowing it to be wrong, merely because I wish to disaffirm what my opponent wishes to affirm. I can, therefore, assure the House that the labours so far as this Bill is concerned involved more strain on us than on some others, on account of the work that we had to put in in the Select Committee and I will also say this that my Honourable friend, Sir James Grigg, and his colleagues have, in so far as statements of facts or their knowledge and experience are concerned, not grudged their time and have never consciously said anything which they did not believe to be fully right and never concealed anything which might lead to an opposite judgment. We differed from them and my Honourable friend whom I am sorry to miss today. He came to the House with a closed mind on two issues. On one of them at all events he has opened not only his mind but even his constitutional position. As regards the other, section 49, that still stands. I hope some day the time will come when my Honourable friends who benefit by it and I will negotiate on a more equal basis and come to a more equitable and just decision. Today they stand protected and hedged and as I said a few days ago, on the discussion of clause 4(a), I appeal to them again that the greatest strength of any trader and, in particular, the British trader in India, lies in earning the good-will of the Indian people and their representatives rather than in Parliamentary statutes. Protection may be given. Goods may be allowed to come in but remember ultimately it is the people who will have to buy the goods. So, the mere freedom to trade is not enough unless you cultivate the good-will of the people with whom you propose to trade.

I acknowledge handsomely the way in which my friend, the Leader of the European Group, and his colleagues have accepted the change which they themselves opposed. I do not fail to recognise their generosity and

[Mr. Bhulabhai J. Desai.]

the way in which they have dealt with the matter, for they have recognised at the back of it all that it is in this country that they have got to make their fortune. I remember, as they must also remember, the answer that was given by Mr. Ramsay Macdonald to a deputation of Lancashire that waited upon him. It says: "we can do everything for you, but we cannot go the length of billeting a soldier on every Indian to buy a quarter inch of your cloth". It is an answer which carries a great lesson to all my Honourable friends in this House—both the European Group and those Europeans even who belong to the Treasury Benches. It must be remembered that when a nation wakes up, no amount of legal and constitutional safeguards will ever continue your business, and the time has now come when we must begin to understand them, and, therefore, notwithstanding the fact that the request I made for sanction to re-open clause 45 of the Bill, about double taxation relief, was refused by His Excellency the Governor General in his discretion, I may tell my Honourable friends that I am not doing so in any spirit of unpleasantness or bitterness. I accept that as the exercise of a privilege conferred by an Act of Parliament, but I also wish to remind my Honourable friends and those for whom and in whose interest that ban was not lifted that our better understanding, our better good-will and the recognition of the ultimate foundation that you cannot trade in a land without the people of that country wanting to buy from you, will go a long way. Sir, I have many unpleasant and many poignant memories which I do not wish to put forward here but I will say this, that notwithstanding my disappointment that the request was not granted, on the whole I feel satisfied that the Government and those in charge of the Bill accented our co-operation, that we accepted theirs in a spirit of perfect friendship, and that it is as a result of that that this Bill, if passed in the other House, will become the income-tax law here.

One word more, Sir, and that is that I wish to reciprocate the compliment which my Honourable friend—who is absent here—the Finance Member paid to me. It is true that by training and experience I have a little more acquaintance with the branch of the subject on which we were engaged but it was up to me, if I possessed that experience or that knowledge, to use it, not merely for the purpose of those who are shouldering the responsibility of the Bill but for the purpose of putting the law on as good a footing as was possible to do within the limits of our powers and responsibilities. I, therefore, claim no more credit than any other Member of the House for it, but none-the-less as he cordially paid me a compliment, I reciprocate this, as he himself acknowledged, that he curbed his usual temper, ill temper, bad temper, short temper, but, what is more, that during the discussions, as soon as we began to see eye to eye with each other, or as soon as we began to explore whether we could see eye to eye with each other, our relations became different, our discussions became full, candid and honourable, and from that point of view, Sir, I am able to congratulate those who have succeeded, by dint of exceptional circumstances, in saving what might otherwise have been a disaster from their point of view at all events,—killing the very child before it could be got into a condition of respiration. I, therefore, congratulate my Honourable friend, Sir James Grigg, who is otherwise childless, that he will now hug this one to his breast and that he will have the satisfaction of having lived and orphaned this child which I hope will now be adopted by his successor and worked in the spirit in which this House has generously assisted in bringing it into existence.

Mr. President (The Honourable Sir Abdur Rahim): Sir Muhammad Yamin Khan.

(Cries of "We cannot sit any more", "Adjourn".)

Mr. President (The Honourable Sir Abdur Rahim): The Chair thought it was the desire of the House to sit late

Voices: No, Sir.

The Honourable Sir Nripendra Sircar (Leader of the House): Will you allow me, Sir, to make a statement? From the statement I made yesterday it was clear that there were only two more things before the House,—the conclusion of the third reading on the Income-tax Bill and the other Bill which I may shortly call the Wheat Bill, and I am asking, the view of the House, as to which one of two courses might be adopted so as to be sure that we may not have to meet on Tuesday. I do not think anybody wants to do that if it can be helped. I am suggesting, without expressing my preference for either course, that either the questions may not be insisted upon or that the House may agree if necessary to sit a little late on Monday for finishing the business. If you will kindly ascertain the view of the House, Sir, I should be very grateful.

Mr. S. Satyamurti (Madras City: Non-Muhammadan Urban): I would recommend the latter course,—after all, questions won't take more than fifteen or twenty minutes.

Mr. President (The Honourable Sir Abdur Rahim): That depends on the Honourable Member.

Mr. S. Satyamurti: I will co-operate with you, Sir, and the House to see that they do not take more than ten or fifteen minutes; and you will sit for a few minutes after five to finish the business.

Mr. President (The Honourable Sir Abdur Rahim): I will remember that.

The Assembly then adjourned till Eleven of the Clock on Monday, the 12th December, 1938.